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# PENNSYLVANIA BULLETIN

Volume 27  
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Human Relations Commission's  
Housing Accomodations/Commercial  
Property Statement of Policy

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Turnpike Commission

**Detailed list of contents appears inside.**

**Latest Pennsylvania Code Reporter  
(Master Transmittal Sheet):**

**No. 275, October 1997**

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**PENNSYLVANIA**



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# READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

## *Pennsylvania Bulletin*

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

There are no restrictions on the republication of official documents appearing in the *Pennsylvania Bulletin*.

## **Adoption, Amendment or Repeal of Regulations**

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted

proposal must be published in the *Pennsylvania Bulletin* before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

## **Citation to the *Pennsylvania Bulletin***

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

## ***Pennsylvania Code***

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

## **How to Find Documents**

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

**SUBSCRIPTION INFORMATION: (717) 766-0211**  
**GENERAL INFORMATION AND FINDING AIDS: (717) 783-1530**

**Printing Format**

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [ ] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

**Fiscal Notes**

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where "no fiscal impact" is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

# List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 1997.

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# PENNSYLVANIA BULLETIN

Volume 27 Number 42  
Saturday, October 18, 1997 • Harrisburg, Pa.

## **Part II**

This part contains the  
Human Relations Commission's  
Housing Accomodations/Commercial  
Property Statement of Policy

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## PENNSYLVANIA

## BULLETIN

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# THE GOVERNOR

## Title 4—ADMINISTRATION

### PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 5]

[EXECUTIVE ORDER NO. 1997-5]

#### Governor's Advisory Council on Physical Fitness and Sports

September 24, 1997

*Whereas*, the Commonwealth is concerned with improving the health and well-being of its citizens; and

*Whereas*, the leading causes of death in Pennsylvania include heart disease, certain kinds of cancer, stroke and diabetes; and

*Whereas*, physical activity can significantly reduce the risk of developing or dying from these leading causes of death, reduce symptoms of depression and increase the quality of life for people of all ages; and

*Whereas*, the 1996 United States Surgeon General's Report encourages a regular program of moderate physical activity to help individuals develop and maintain good health and vigor; and

*Whereas*, the Pennsylvania Department of Health is charged with providing leadership to promote good health and healthy communities, to prevent disease, and to work collaboratively with public and private partners to achieve these goals.

*Now, Therefore*, I, Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, to further enhance the physical health and welfare of our citizens, hereby reestablish the Governor's Advisory Council on Physical Fitness and Sports (hereinafter referred to as "Council") as hereinafter set forth.

#### Annex A

### TITLE 4. ADMINISTRATION

#### PART I. GOVERNOR'S OFFICE

#### CHAPTER 5. COUNCILS AND COMMITTEES

#### Subchapter J. PHYSICAL FITNESS AND SPORTS

- Sec.
- 5.111. Appointment of members.
  - 5.112. Terms of membership.
  - 5.113. Functions.
  - 5.114. Cooperation by State agencies.
  - 5.115. Effective date.
  - 5.116. Rescission.

#### § 5.111. Appointment of members.

(a) The Governor Advisory Council on Physical Fitness and Sports (Council) consists of 15 individuals, all of whom are appointed by, and serve at the pleasure of, the Governor representing various sectors, including business and labor, amateur and professional sports, education, local and State governments, other State agencies, persons with special needs and the general public. The Secretary of Health, the Physician General and the Secretary of Education serve as ex-officio members. The Secretary of Health and Secretary of Education may designate a representative to serve in the Secretary's place.

(b) The Governor designates one Council member to serve as chairperson. The chairperson serves at the pleasure of the Governor.

**§ 5.112. Terms of membership.**

(a) Members are appointed for terms of 2 years and continue to serve thereafter until their successors have been appointed. If a vacancy occurs during a member's term, a successor will be appointed by the Governor.

(b) Upon the expiration of a term of an appointed member, the successor is appointed for a term of 2 years.

**§ 5.113. Functions.**

The Governor's Council on Physical Fitness and Sports:

(1) Enlists active community support by creating partnerships with individual citizens, civic and professional groups, amateur and professional athletes, business and labor groups, educational institutions, health care providers and volunteer organizations in an effort to promote and improve physical fitness activities for the citizens of this Commonwealth.

(2) Seeks to strengthen and coordinate State services and programs relating to physical fitness, recreation and sports by making recommendations to the Department of Health and other State agencies as appropriate.

(3) Encourages local governments to enhance physical fitness activities and facilities.

(4) Assists in promoting school health and physical education programs throughout this Commonwealth.

(5) Encourages development of community-centered sports and physical activity programs throughout this Commonwealth.

(6) Recognizes outstanding contributions and achievements by individuals and groups for their efforts to promote physical activity.

(7) Promotes events throughout this Commonwealth that integrate physical activity with disease prevention and health promotion initiatives.

(8) Encourages physical fitness among special populations, such as older Pennsylvanians, persons with disabilities and employees in the workplace.

(9) Works with other groups concerned with promoting physical activity, such as the President's Council on Physical Fitness and Sports and other State and National organizations.

**§ 5.114. Cooperation by State agencies.**

The Department of Health is the lead agency for the Governor's Council on Physical Fitness and Sports (Council) and provides administrative support. All agencies under the Governor's jurisdiction shall cooperate fully with the Governor's Council and provide assistance and information as needed by the Council to carry out its functions effectively.

**§ 5.115. Effective date.**

This subchapter is effective October 18, 1997.

**§ 5.116. Rescission.**

Executive Order 1991-4 is rescinded.



*Governor*

**Fiscal Note:** GOV 97-16. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 97-1654. Filed for public inspection October 17, 1997, 9:00 a.m.]



**PART I. GOVERNOR'S OFFICE**

[4 PA. CODE CH. 5]

[EXECUTIVE ORDER NO. 1988-11 REVISION NO. 3]

**Motor Carrier Advisory Committee**

September 15, 1997

By virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, I, Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, hereby revises § 5.565 to Executive Order 1988-11 to extend the order to December 31, 2000.

**Annex A****TITLE 4. ADMINISTRATION****PART I. GOVERNOR'S OFFICE****CHAPTER 5. COUNCILS AND COMMITTEES****Subchapter PP. MOTOR CARRIER ADVISORY COMMITTEE****§ 5.565. Termination date.**

The duties and responsibilities of the Committee will be reviewed and if not reconstituted, will expire on December 31, 2000.

*Governor***Fiscal Note:** GOV 97-15. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 97-1655. Filed for public inspection October 17, 1997, 9:00 a.m.]

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART IV. ADMISSION TO PRACTICE OF LAW [204 PA. CODE CH. 71]

Amendment of Rule 231 of the Pennsylvania Bar Admission Rules; No. 0185; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 2nd day of October, 1997, Rule 231 of the Pennsylvania Bar Admission Rules is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Pennsylvania Rule of Judicial Administration No. 103 or otherwise, the immediate amendment of Pa. B.A.R. 231 is hereby found to be required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and shall be effective immediately.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART IV. ADMISSION TO PRACTICE OF LAW

#### CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

#### Subchapter B. ADMISSION TO THE BAR GENERALLY ADMISSION TO PRACTICE

#### Rule 231. Motions for Admission.

(a) *General rule.* Motions for admission to the bar of this Commonwealth shall be made by filing one copy thereof with the Prothonotary. The motion shall be in writing on a form prescribed by the Board and shall include or be accompanied by:

(1) A certificate from the Board recommending such admission, either:

(i) dated within [ **one year** ] **six months** of the filing of the motion; or

(ii) dated [ **one year** ] **six months** or more prior to the filing of the motion and accompanied by a written statement of the Board dated within [ **one year** ] **six months** of the filing of the motion to the effect that it knows of no reason why the motion should not be granted. **All applicants shall file a motion for admission to the bar within three years of the date that the original certificate recommending admission had been issued by the Board. The failure to file a motion for admission within three years of the date when the certificate had been issued by the Board will cause the right to admission to the bar to lapse and require the applicant to reapply and successfully meet all of the requirements for admission to**

the bar including, where applicable, the taking and passing of a future bar examination.

\* \* \* \* \*

[Pa.B. Doc. No. 97-1656. Filed for public inspection October 17, 1997, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

#### [234 PA. CODE CH. 30]

Order Adopting Rules 30, 31, 32 and 39; No. 228; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the Supreme Court's promulgation of new Chapter 30, Rules 30 through 39, which establishes the procedures to implement 42 Pa.C.S. § 4137, 4138, and 4139 concerning criminal contempt powers of district justices, judges of the Pittsburgh Magistrates Court, and judges of the Traffic Court of Philadelphia. The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

*Now*, this 1st day of October, 1997, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been published at 25 Pa.B. 12 (January 7, 1995) and 25 Pa.B. 1841 (May 13, 1995) and in the *Pennsylvania Reporter* (Atlantic Second Series Advance Sheets Vols. 650 and 656) before adoption, with a Final Report to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Pa.Rs.Crim.P. 30, 31, 32, and 39 are hereby promulgated in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective October 1, 1998.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 30. PROCEDURES PROCEDURES IMPLEMENTING 42 Pa.C.S. §§ 4137, 4138, and 4139: CRIMINAL CONTEMPT POWERS OF DISTRICT JUSTICES, JUDGES OF THE PITTSBURGH MAGISTRATES COURT, AND JUDGES OF THE TRAFFIC COURT OF PHILADELPHIA

**Rule 30. Contempt Proceedings before District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges.**

(A) *Contempt in the Presence of the Court.*

1. An issuing authority may summarily hold an individual in contempt for misbehavior in the presence of the court which obstructs the administration of justice, and, after affording the individual an opportunity to be heard, may impose a punishment of a fine or imprisonment as provided by law.

2. The issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that:

a. any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;

b. if the contemnor files an appeal within the 30-day period, the stay will remain in effect pending disposition of the appeal;

c. when the punishment is imprisonment, the contemnor has the right to assistance of counsel for the purpose of the de novo hearing in the court of common pleas, and, if the contemnor is without financial resources or otherwise unable to employ counsel, counsel will be assigned as provided in Rule 316;

d. the contemnor must appear in the court of common pleas for the de novo hearing or the appeal may be dismissed; and

e. unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:

(1) pay any fine imposed, and

(2) appear before the issuing authority for execution of any punishment of imprisonment.

3. The issuing authority shall issue a written order of contempt, in which the issuing authority shall:

a. set forth the facts of the case which constitute the contempt;

b. certify that the issuing authority saw or heard the conduct constituting the contempt, and that the contempt was committed in the actual presence of the issuing authority;

c. set forth the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and

d. set forth the information specified in paragraph (A)2.

4. The order of contempt shall be signed by the issuing authority, and a copy shall be given to the contemnor.

(B) *Contempt not in the Presence of the Court.*

1. *Institution of Proceedings*

a. An issuing authority may institute contempt proceedings by either

(1) giving written notice to the alleged contemnor of the time, date, and place of the contempt hearing, or

(2) when deemed appropriate by the issuing authority, issuing an attachment by means of a warrant, whenever a person is alleged to have (i) failed to obey a subpoena issued by the issuing authority; (ii) failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order; (iii) failed to comply with an order of a district justice directing a defendant to compensate a victim; (iv) violated an order issued pursuant to 23 Pa.C.S. § 6110; or (v) failed to comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt.

b. If the proceedings are instituted by notice, the notice shall:

(1) specify the acts or omissions and the essential facts constituting the contempt charged;

(2) advise what the statutorily provided punishment may be for a finding of contempt in the case;

(3) if, in the event of a finding of contempt, there is a likelihood that the punishment will be imprisonment, advise the alleged contemnor of the right to the assistance of counsel and that counsel will be assigned pursuant to Rule 316 if the alleged contemnor is without financial resources or is otherwise unable to employ counsel; and

(4) advise the alleged contemnor that failure to appear at the hearing may result in the issuance of a warrant of arrest.

c. The notice shall be served in person or by both first class and certified mail, return receipt requested.

2. *Hearing*

a. The hearing shall be conducted in open court, and the alleged contemnor shall be given a reasonable opportunity to defend.

b. At the conclusion of the hearing:

(1) The issuing authority in open court shall announce the decision, and, upon a finding of contempt, impose punishment, if any.

(2) If the issuing authority finds contempt and imposes punishment, the issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that:

(a) any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;

(b) if the contemnor files an appeal within the 30-day period, the stay will remain in effect until disposition of the appeal;

(c) when the punishment is imprisonment, that the contemnor has the right to assistance of counsel for the purpose of the de novo hearing in the court of common pleas and, if the contemnor is without financial resources or otherwise unable to employ counsel, that counsel will be assigned as provided in Rule 316;

(d) the contemnor must appear in the court of common pleas for the de novo hearing or the appeal may be dismissed; and

(e) unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:

(i) pay any fine imposed, and

(ii) appear before the issuing authority for execution of any punishment of imprisonment.

(3) If the issuing authority finds contempt and imposes punishment, the issuing authority shall issue a written order of contempt setting forth:

(a) the facts of the case which constitute the contempt;

(b) the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and

(c) the information specified in paragraph (B)2.b(2).

(4) The order of contempt shall be signed by the issuing authority, and a copy given to the contemnor.

(5) Whether or not the issuing authority finds an individual in contempt for failure to comply with an order to pay restitution or to pay fines and costs, the issuing

authority may alter or amend the order. If the issuing authority alters or amends the order, the issuing authority shall:

(a) issue a written order setting forth the amendments and the reasons for the amendments, make the order a part of the transcript, and give a copy of the order to the defendant; and

(b) advise the defendant that the defendant has 30 days within which to file a notice of appeal of the altered or amended order pursuant to Rule 31.

c. The issuing authority shall not hold a contempt hearing in the absence of the alleged contemnor. If the alleged contemnor fails to appear for the contempt hearing, the issuing authority may continue the hearing and issue a warrant of arrest.

**Official Note:** Adopted October 1, 1997, effective October 1, 1998.

### Comment

This rule sets forth the procedures to implement 42 Pa.C.S. §§ 4137, 4138, and 4139 concerning contempt powers of the minor judiciary, as well as any other statutes subsequently enacted which would provide for findings of contempt by the minor judiciary. It is not intended to supplant the procedures set forth in 23 Pa.C.S. § 6113 concerning violations of protection from abuse orders.

The scope of the contempt powers of district justices, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges is governed by 42 Pa.C.S. §§ 4137, 4138, and 4139 respectively. Therefore, as used in this rule, "issuing authority" refers only to district justices, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers.

All contempt proceedings under this rule are to be entered on the issuing authority's miscellaneous docket, and a separate docket transcript for the contempt proceeding is to be prepared. If an appeal is taken, the issuing authority is required to forward the transcript and the contempt order to the clerk of courts. See Rule 31.

Paragraph (A) sets forth the procedures for handling contempt proceedings when the misbehavior is committed in the presence of the court and is obstructing the administration of justice. 42 Pa.C.S. §§ 4137(a)(1), 4138(a)(1), and 4139(a)(1). This type of contempt is commonly referred to as "direct" or "summary" contempt. The issuing authority may immediately impose punishment without a formal hearing because prompt action is necessary to maintain or restore order in the courtroom and to protect the authority and dignity of the court. Although immediate action is permitted in these cases, the alleged contemnor is ordinarily given an opportunity to be heard before the imposition of punishment. See *Commonwealth v. Stevenson*, 393 A.2d 386 (Pa. 1978).

Customarily, individuals are not held in summary contempt for misbehavior before the court without prior oral warning by the presiding judicial officer.

Paragraph (B) provides the procedures for instituting and conducting proceedings in all other cases of alleged contemptuous conduct subject to the minor judiciary's statutory contempt powers, which are commonly referred to as "indirect criminal contempt" proceedings.

Pursuant to 42 Pa.C.S. §§ 4137(a)(2), (3), (4), and (5), 4138(a)(2) and (3), and 4139(a)(2) and (3), only district

justices have the power to impose punishment for contempt of court for failure to comply with an order directing a defendant to compensate a victim or an order issued pursuant to 23 Pa.C.S. § 6110. See paragraph (B)1.a.

"Indirect criminal contempt" proceedings must be instituted either by serving the alleged contemnor with a notice of the contempt hearing, or by issuing an attachment in the form of a warrant. The alleged contemnor must be afforded the same due process protections that are normally provided in criminal proceedings, including notice of the charges, an opportunity to be heard and to present a defense, and counsel. See, e.g., *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), and *Bloom v. Illinois*, 391 U.S. 194 (1968).

When a warrant of arrest is executed under this rule, the alleged contemnor should be taken without unreasonable delay before the proper issuing authority.

Although 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3) permit an issuing authority to impose summary punishments for indirect criminal contempt when a defendant fails to comply with an order of the issuing authority directing the defendant to pay fines and costs in accordance with an installment payment order, nothing in this rule is intended to preclude an issuing authority from proceeding pursuant to Rule 85 (Default Procedures: Restitution, Fines, and Costs).

The Supreme Court in *Commonwealth v. Abrams*, 336 A.2d 308 (Pa. 1975) held that the right to counsel applies in cases of criminal contempt. See also *Commonwealth v. Crawford*, 352 A.2d 52 (Pa. 1976).

For the assignment of counsel, follow the Rule 316 procedures for summary cases.

For waiver of counsel, follow the Rule 318 procedures for proceedings before an issuing authority.

For the procedures for taking, perfecting, and handling an appeal from an order entered pursuant to this rule, see Rule 31.

If a contemnor defaults in the payment of a fine imposed as punishment for contempt pursuant to 42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c), the matter is to proceed as provided in Rule 32.

See Chapter 4000 concerning bail before a contempt hearing. See 42 Pa.C.S. § 4137(e) concerning a district justice's authority to set bail after an adjudication of contempt.

Paragraphs (A)2.e and (B)2.b(2)(e) require the issuing authority to set a date for the contemnor to pay any fine or to appear for execution of any punishment of imprisonment. This date should be at least 35 days from the date of the contempt proceeding to allow for the expiration of the 30-day automatic stay period and the 5-day period within which the clerk of courts is to serve a copy of the notice of appeal on the issuing authority. See Rule 31.

Paragraph (B)2.b(5) requires that the case be reviewed at the conclusion of a contempt hearing to determine whether the restitution order or the fines and costs installment order should be altered or amended, rather than scheduling another hearing. This review should be conducted whether or not the district justice finds an individual in contempt for failure to comply with an order to pay restitution, or whether or not the issuing authority finds an individual in contempt for failure to comply with an installment order to pay fines and costs. For the authority to alter or amend a restitution order, see 18 Pa.C.S. § 1106(c)(2)(iii).

*Committee Explanatory Reports:*

Final Report explaining the provisions of new Rule 30 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

**Rule 31. Appeals from Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges.**

(A) An appeal authorized by 42 Pa.C.S. §§ 4137(d), 4138(d), or 4139(d) of the action of an issuing authority in a contempt proceeding shall be perfected by filing a notice of appeal within 30 days after the action of the issuing authority with the clerk of courts and by appearing in the court of common pleas for the de novo hearing.

(B) In all cases, the punishment imposed for contempt shall be stayed for 30 days from the imposition of the punishment. If an appeal is filed within the 30-day period, the stay shall remain in effect pending disposition of the appeal.

(C) The notice of appeal shall contain the following information:

- (1) the name and address of the appellant;
- (2) the name and address of the issuing authority who heard the case;
- (3) the magisterial district number where the case was heard;
- (4) the date of the imposition of punishment;
- (5) the punishment imposed;
- (6) the type or amount of bail furnished to the issuing authority, if any; and
- (7) the name and address of the attorney, if any, filing the notice of appeal.

(D) Within 5 days after the filing of the notice of appeal, the clerk of courts shall serve a copy either personally or by mail upon the issuing authority.

(E) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

- (1) the transcript of the proceedings;
- (2) either the notice of the hearing or a copy of the attachment;
- (3) the contempt order; and
- (4) any warrant of arrest.

(F) Upon the filing of the transcript and other papers by the issuing authority, the case shall be heard de novo by the appropriate division of the court of common pleas as the president judge shall direct. If the appellant fails to appear for the de novo hearing, the judge assigned to hear the matter may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

**Official Note:** Adopted October 1, 1997, effective October 1, 1998.

**Comment**

This rule provides the procedures for taking an appeal from a finding of contempt by a district justice, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge.

As used in this rule, "issuing authority" refers only to district justices, Pittsburgh Magistrates Court judges, and

Philadelphia Traffic Court judges when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137, 4138, and 4139.

Pursuant to paragraph (B), any punishment imposed for contempt will be automatically stayed for 30 days from the date of the imposition of the punishment, during which time a notice of appeal may be filed with the clerk of courts. To the extent that 42 Pa.C.S. §§ 4137(d), 4138(d), and 4139(d) are inconsistent with this rule, they are suspended by Rule 39 (Suspension of Acts of Assembly—Chapter 30).

If no notice of appeal is filed within the 30-day period following imposition of the punishment, Rule 30 requires the issuing authority to direct the contemnor on a date certain to pay any fine imposed or to appear for execution of any punishment of imprisonment.

See 42 Pa.C.S. § 4137(e) concerning the imposition of bail as a condition of release by a district justice.

Paragraph (F) makes it clear that the judge assigned to conduct the de novo hearing may dismiss an appeal of the action of an issuing authority in a contempt proceeding when the judge determines that the appellant is absent without cause from the de novo hearing. If the appeal is dismissed, the judge should enter judgment and order execution of any punishment imposed by the issuing authority.

*Committee Explanatory Reports:*

Final Report explaining the provisions of new Rule 31 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

**Rule 32. Procedures Governing Defaults in Payment of Fine Imposed as Punishment For Contempt.**

(A) If a contemnor defaults on the payment of a fine imposed as punishment for contempt pursuant to 42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c), the issuing authority shall notify the contemnor in person or by first class mail that within 10 days of the date on the default notice the contemnor must either:

- (1) pay the amount due as ordered, or
- (2) appear before the issuing authority to show cause why the contemnor should not be imprisoned for nonpayment as provided by law, or a warrant for the contemnor's arrest shall be issued.

(B) When the contemnor appears either in response to the paragraph (A)(2) notice or following an arrest with a warrant issued pursuant to paragraph (A), the issuing authority shall conduct a hearing to determine whether the contemnor is financially able to pay as ordered.

(1) Upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose imprisonment for nonpayment, as provided by law.

(2) Upon a determination that the contemnor is financially unable to pay as ordered, the issuing authority may order a schedule for installment payments.

(C) A contemnor may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rule 31.

**Official Note:** Adopted October 1, 1997, effective October 1, 1998.

### Comment

This rule provides the procedures governing defaults in the payment of fines imposed as punishment for contempt in proceedings before district justices, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges. See 42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c).

As used in this rule, "issuing authority" refers only to district justices, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137, 4138, and 4139.

For contempt procedures generally, see Rule 30.

When a contemnor defaults on a payment of a fine, paragraph (A) requires the issuing authority to notify the contemnor of the default, and to provide the contemnor with an opportunity to either pay the amount due or appear within a 10-day period to show cause why the contemnor should not be imprisoned for nonpayment. If the contemnor fails to pay or appear, the issuing authority must issue a warrant for the arrest of the contemnor.

If the hearing on the default can not be held immediately, the issuing authority may set bail as provided in Chapter 4000.

This rule contemplates that when there has been an appeal pursuant to paragraph (C), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of new Rule 32 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

### **Rule 39. Suspension of Acts of Assembly—Chapter 30.**

The Act of June 15, 1994, P.L. 273, No. 45, § 1, 42 Pa.C.S. §§ 4137, 4138, and 4139, which provides, *inter alia*, that any punishment imposed for contempt will be "automatically stayed for a period of 10 days from the date of the imposition of the punishment during which time an appeal of the action" of a district justice, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge "may be filed with the court of common pleas of the judicial district," and which is implemented by Rules 30, 31, and 32, is hereby suspended only insofar as it is inconsistent with the 30-day appeal period and 30-day automatic stay period set forth in Rule 31.

**Official Note:** Adopted October 1, 1997, effective October 1, 1998.

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of new Rule 39 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

### **FINAL REPORT**

*Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, and 4139: Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia*

#### *Introduction*

On October 1, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted new Chapter 30 of the Rules of Criminal Procedure, which provides the procedures to implement 42 Pa.C.S. § 4137, 4138, and 4139 concerning criminal

contempt powers of district justices, judges of the Pittsburgh Magistrates Court, and judges of the Traffic Court of Philadelphia. New Chapter 30 consists of new Rules of Criminal Procedure 30 (Contempt Proceedings Before District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges), 31 (Appeals From Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges), 32 (Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt), and 39 (Suspension of Acts of Assembly—Chapter 30). The new rules will become effective October 1, 1998. This Final Report highlights the Committee's considerations in formulating these new rules.<sup>1</sup>

#### *Discussion*

##### *A. New Chapter 30: Organization and Definitions*

The Committee reviewed the legislation providing for the new power of the minor judiciary to "impose summary punishments for criminal contempts" of their courts (42 Pa.C.S. §§ 4137(a), 4138(a), 4139(a)), and concluded that this new power is separate and distinct from the minor judiciary's jurisdiction in summary criminal cases as provided in 42 Pa.C.S. §§ 1143, 1321, and 1515. In view of this, the new rules governing the contempt powers of the minor judiciary have been incorporated into a new and separate chapter, Chapter 30 (Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, and 4139: Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia).

Throughout the new rules, the term "issuing authority" has been used to refer to those members of the minor judiciary whose contempt powers are governed by the new statute and the new rules. This usage is explained in the Comments to new Rules 30, 31, and 32.

##### *B. New Rule 30. Contempt Proceedings before District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges.*

###### *1. Rule Title*

Because this area of contempt is new, the title to new Rule 30 spells out exactly to whom it applies.

###### *2. Organization of Rule*

The general contempt statute gives the minor judiciary contempt powers in specific categories, and defines all these categories as criminal contempts.

(1) The first category involves cases in which there is misbehavior in the presence of the court which obstructs the administration of justice (42 Pa.C.S. §§ 4137(a)(1), 4138(a)(1), and 4139(a)(1)), i.e., direct criminal contempt, which may be summarily handled.

(2) The remaining categories all pertain to situations in which an individual fails to act as ordered by the issuing authority, but the disobedience to the order does not occur in the presence of the court (42 Pa.C.S. §§ 4137(a)(2)-(5), 4138(a)(2)(3), and 4139(a)(2)(3)), i.e., indirect criminal contempt. In these cases, the alleged contemnor must be afforded the same procedural safeguards afforded a defendant in a criminal proceeding.

With these distinctions in mind, new Rule 30 has been divided into two parts. Paragraph (A) sets forth the procedures when the contempt occurs in the presence of the court, and paragraph (B) sets forth the procedures

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

when the contempt is not in the presence of the court. The paragraphs (A)1. and (B)1.a(2) enumerate the statutory categories to which the respective paragraphs apply. Because these rules will be used primarily by the minor judiciary, who generally have had little experience with the law relating to criminal contempt, there is a lengthy explanatory Comment which discusses the basic concepts of direct criminal contempt and indirect criminal contempt as set forth in paragraphs (A) and (B) respectively.

### 3. Paragraph (A)—Contempt in the Presence of the Court

Bearing in mind the "summary" nature of the contempt proceeding when the contempt is committed in the presence of the court, the Committee kept the procedures in paragraph (A) to a minimum. We discussed at length whether any due process rights are constitutionally required in these proceedings. After looking at the case law and Federal Rule of Criminal Procedure 42 (Criminal Contempt), the Committee concluded that paragraph (A)1. should only require the issuing authority to afford the alleged contemnor an opportunity to be heard before imposing a punishment, and that the Comment should include a provision to alert the issuing authorities that before finding an individual in direct contempt, it is customary to warn the individual that their behavior is contemptuous.

Paragraph (A)2.a-e enumerates the information which the issuing authority is to orally give the contemnor at the conclusion of the contempt proceeding concerning the right to appeal to the court of common pleas for a de novo hearing; the automatic stay of punishment during the appeal period; if an appeal is taken, the right to counsel when the punishment is imprisonment; and the date the contemnor is to appear for imposition of punishment if no appeal is taken. The authority for the automatic stay of the punishment, paragraph (A)2.a, b, and the appeal, paragraph (A)2, is derived from 42 Pa.C.S. §§ 4137(d), 4138(d), and 4139(d).

The issue of the right to counsel in these direct criminal contempt proceedings generated a great deal of discussion. The Committee ultimately concluded that the contemnor should be advised of the right to counsel for the purpose of the de novo hearing in the court of common pleas when the issuing authority has imposed a punishment of imprisonment. Paragraph (A)2.c.

Paragraph (A)2.e requires the issuing authority to inform the contemnor of the date on which the contemnor is to pay any fine or to appear for execution of any punishment of imprisonment if no appeal is filed within the 30-day appeal period. As explained in the Comment, this date should be at least 35 days from the date of the contempt proceeding to allow for the expiration of the 30-day appeal period and for the 5-day period within which the clerk of courts is to serve a copy of the notice of appeal on the issuing authority. See Rule 31(d).

Because proceedings at the minor judiciary level are not of record, paragraph (A)3 requires the issuing authority to issue a written order setting forth the facts of the case which constitute the contempt, certifying that the issuing authority saw or heard the conduct constituting the contempt and that the contempt was committed in the actual presence of the issuing authority. The written order also must set forth the punishment imposed, the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment, and the information specified in paragraph (A)2. Paragraph (A)4 requires the issuing authority to sign the order, and to give a copy to the contemnor.

The Comment includes an explanation of the administrative procedures implemented by the Administrative Office of Pennsylvania Courts for processing contempt proceedings. These cases are docketed as separate cases on the miscellaneous docket, with a separate docket transcript. The information for the docket transcript is entered into the computer, and a hard copy of the transcript is printed when there is an appeal.

### 4. Paragraph (B)—Contempt not in the Presence of the Court

Paragraph (B) sets forth the procedures for handling cases in which the minor judiciary have indirect criminal contempt powers.

Paragraph (B)1.a(2)(i)—(iv) enumerates the four statutory categories of summary criminal contempt authorized by 42 Pa.C.S. §§ 4137(a), 4138(a), and 4239(a).<sup>2</sup> Because Pittsburgh Magistrates Court judges and Philadelphia Traffic Court judges only have contempt powers in two of the four categories of indirect criminal contempt—where the individual fails to obey a subpoena or fails to comply with an order directing a defendant to pay an installment payment order for fines and costs, 42 Pa.C.S. §§ 4138(a) and 4139(a), the Committee used the broader term "issuing authority" in paragraph (B)1.a(2)(i) and (ii). However, because only district justices are given the authority by the statute to find contempt in cases in which there is a failure to comply with a restitution order, we used the term "district justice" in paragraph (B)1.a(2)(iii). This distinction is also explained in the Comment. Finally, paragraph (B)1.a(2)(v) provides a catchall category to cover any other cases in which the issuing authority, by a statute other than 42 Pa.C.S. §§ 4137-4139, is given the power to find a person in contempt. See, e.g., 42 Pa.C.S. § 1523(b).

Paragraph (B)1.a provides that indirect criminal contempt proceedings may be instituted either by notice of the hearing or, in the appropriate case, by issuing an attachment by means of a warrant.

#### (a) Contempt Hearing Notice, Service

Paragraph (B)1.b sets forth the contents of the contempt hearing notice, and paragraph (B)1.c provides that service may be accomplished either in person, or by both first class mail and certified mail, return receipt requested. In the latter method, the Committee agreed to require both types of mailing to provide a more reliable gauge of service.

In developing these service by mail procedures, the Committee noted that the criminal contempt proceeding is separate and distinct from the underlying case, and is being instituted by the notice required in paragraph (B)1.a(1). In view of this, the Committee agreed that the new rule should provide the minor judiciary with a means of ensuring adequate service, and looked to Chapter 50 for guidance. Under Chapter 50, summary criminal cases are instituted by personal service of the citation or mailing of the summons by certified or first class mail. See Rule 80 (Service). Rule 80 requires that, when a summons is served by first class mail, and the defendant fails to respond or appear, a second summons must be either personally served or mailed by certified mail. We also looked at the practicalities of service by mail. It has been the experience of the Committee members and others involved in the criminal justice system that there

<sup>2</sup> There was a good deal of discussion about the Protection from Abuse Act (PFA), which permits the arrest without a warrant of an alleged contemnor, as it relates to the new contempt statute and the new rule. The Committee agreed that Rule 30 would only provide the procedures to implement the contempt statute and the Comment would make it clear that the rule procedures are not intended to supplant the PFA.

are occasions when certified mail is intentionally not accepted, but a first class mailing is not returned. In these cases, it has been generally accepted that there is a presumption that the notice was served. Therefore, based on these considerations, the Committee concluded that for summary criminal contempt proceedings, it is less onerous to require the dual mailing in every case, as long as the rule makes it clear that, if the certified mail is returned undelivered, and the first class mail is not returned, there is a presumption that the notice was served. In fact, we agreed that this dual service procedure is more expeditious than providing for the initial service to be by first class mail, followed by a second service requirement if the defendant fails to appear.

(b) Hearing

Paragraph (B)2.a requires that the hearing be conducted in open court, and that the alleged contemnor be given a reasonable opportunity to defend. At the conclusion of the hearing, the issuing authority is required to announce the decision, impose punishment if there is a finding of contempt, and orally advise the contemnor of his or her rights following the finding of contempt. Paragraphs (B)2.b(1) and (2). The issuing authority must issue a signed written order as provided in paragraphs (B)2.b(3) and (4).

Paragraph (B)2.b(5) permits the issuing authority, at the conclusion of a contempt hearing, to review an order for payment of fine and costs or restitution to determine whether the order should be amended or altered. The issuing authority should conduct this review whether or not the issuing authority finds the individual in contempt. This process is elaborated in the Comment.

(c) Hearings in the Defendant's Absence

The question of whether Rule 30 should specifically prohibit summary criminal contempt hearings in the defendant's absence was discussed by the Committee when the proposal was initially being developed. The Committee explored permitting contempt hearings in the alleged contemnor's absence, similar to the procedure in Rule 84 for summary criminal trials in the defendant's absence, and concluded that this procedure was inappropriate for contempt hearings and should not be permitted.

The Committee's decision was based on several factors. First, the members considered that holding a contempt hearing in the defendant's absence was inappropriate because, in the criminal contempt proceeding, where the court is making a determination whether the defendant disregarded the court's order and should be disciplined, the defendant should be present to answer the allegations. If a purpose of contempt is to vindicate the court's authority, then finding someone in contempt in absentia seemed an empty gesture. After all, the defendant has already allegedly ignored an order of the court, and failing to appear for the hearing is another incident of the defendant ignoring the court's authority. Second, the members determined that it was virtually impossible to devise adequate procedures to follow a hearing in absentia in view of (1) the statutorily required automatic stay of sentence immediately following the hearing during the time period for filing an appeal, and (2) the constitutional right to counsel if the sentence is imprisonment.

Agreeing that these factors outweighed any potential benefit that expediting the matter by holding the hearing in the defendant's absence would have, the Committee added paragraph (B)2.c, which specifically prohibits in absentia hearings, and provides that, if the alleged contemnor fails to appear, the issuing authority may continue the hearing and issue a warrant of arrest.

5. Comment Provisions

In addition to the Comment provisions discussed above, the Comment refers to the statutory bail provision, 42 Pa.C.S. § 4137(e), concerning procedures for the setting of bail after adjudication of contempt, which applies only to district justices. The Comment also refers to Chapter 4000 of the Criminal Rules for the procedures for setting bail before a contempt hearing takes place, a process not addressed in the statute.

We have included in the Comment a reference to *Commonwealth v. Abrams*, 336 A.2d 308 (Pa. 1975) and *Commonwealth v. Crawford*, 352 A.2d 52 (Pa. 1976), cases in which the Court held that the right to counsel applies in criminal contempt cases, to emphasize that a contemnor may not be imprisoned if the right to counsel was not afforded at the contempt hearing. In this same vein, we have included cross-references to the procedures in Rule 316 for assignment of counsel and Rule 318 concerning waiver of counsel.

The Comment includes a cross-reference to Rule 85 (Procedures Regarding Default in Payment of Fine and Costs After Conviction). The Committee wanted to eliminate any confusion concerning the interplay between the new power to impose summary punishments for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order under 42 Pa.C.S. § 4137(a)(3), 4138(a)(3), and 4139(a)(3) and the Rule 85 default procedures. This reference makes it clear that the Rule 85 procedures are separate and distinct from contempt proceedings.<sup>3</sup>

C. *New Rule 31. Appeals from Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges.*

1. Background

During the development of this proposal, the Committee debated at length whether the language in 42 Pa.C.S. §§ 4137(d), 4138(d), and 4139(d), which provides that any punishment imposed for contempt will be "automatically stayed for a period of ten days from the date of the imposition of the punishment during which time an appeal of the action" of a district justice, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge "may be filed with the court of common pleas of the judicial district," created a new ten-day appeal period or was merely a ten-day stay period within the standard thirty-day appeal period.

When the Committee initially developed its proposal, the members elected to merely reflect in Rule 31 the language in the statute. Following the publication of the proposal, the Committee received a number of comments which revealed that this question needed to be resolved in the new contempt rules.

In determining how best to address this matter, the Committee extensively researched the legislative history of the statute, including a review of the House Journal and conversations with the House Judiciary Committee staff, with Representative Caltagirone (one of the bill's sponsors) and some of his staff, and the staff of the Chief Clerk of the House. This research yielded nothing that explained the intent of the statute concerning the appeal time.

The Committee also looked at the statutory basis for a thirty-day appeal period, in particular 42 Pa.C.S. § 5571(b), which provides:

<sup>3</sup> For the same reasons, the Rule 85 Comment was revised in October 1997 to include a cross-reference to the new contempt rules.



(b) Other Courts.—Except as otherwise provided in subsections (a) and (c), an appeal from a tribunal or other government unit to a court or from a court to an appellate court must be commenced within 30 days after the entry of the order from which the appeal is taken, in the case of an interlocutory or final order.

In addition, we noted that 42 Pa.C.S. § 1722(c) gives the Supreme Court, as the governing authority, the power: to prescribe and modify general rules:

(1) on any subject covered by Subchapter D of Chapter 55 (relating to appeals)<sup>a</sup> . . . .

and provides that:

The provisions of Chapter 55 (relating to limitation of time)<sup>b</sup> and all other statutes shall be suspended to the extent that they are inconsistent with rules prescribed under this subsection. The intention of this subsection is to authorize the governing authority to develop and maintain uniformity in time periods within the scope of this subsection by eliminating statutory time limitations which are inconsistent with the general pattern of similar time limitations then in effect.

In view of the Supreme Court's authority to modify by rule the general appeal time periods, the Committee agreed that the new contempt rules should specify the time for taking an appeal, and that time period should be the standard thirty-day period. Similarly, the Committee concluded that the automatic stay of sentence time period should be extended to thirty days to be consistent with the thirty-day appeal period. In this way, the appeal provisions for appeals from minor judiciary contempt findings are consistent with the appeal periods for other appeals from decisions by the minor judiciary, thus achieving the uniformity referred to in 42 Pa.C.S. § 1722(c).

## 2. Discussion of rule provisions

For the most part, Rule 31 is modeled on Rule 86, which governs appeals in summary criminal cases. Paragraph (A) provides that, to perfect an appeal, the appellant is required to file a notice of appeal with the clerk of courts within thirty days after the action of the issuing authority, and to appear in the court of common pleas.

Paragraph (B) implements the provisions of 42 Pa.C.S. §§ 4137(d), 4138(d), and 4139(d) concerning staying the imposition of punishment, but provides for a thirty-day stay.

Paragraph (C) sets forth the contents of the notice of appeal, and paragraph (D) requires the clerk of courts to serve a copy of the notice on the issuing authority within five days of the filing. The issuing authority is required in paragraph (E) to file with the clerk of courts a copy of the hearing notice or the attachment and the contempt order, as well as the transcript and any arrest warrant.

The Comment explains that the rule provides the procedures for taking an appeal pursuant to the statute, and points out that to the extent the statute is inconsistent with Rule 31, the statute is suspended by new Rule 39.

### D. New Rule 32. Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt.

Consistent with the Committee's decision to keep all procedures related to the minor judiciary's new contempt powers within one chapter, there is a separate rule

addressing the procedures for handling cases in which a contemnor fails to pay a fine imposed as punishment for contempt.

Paragraph (A) requires the issuing authority to notify the contemnor in person or by first class mail that unless the contemnor, within ten days of the notice, either pays the amount due or appears for a hearing, a warrant for the contemnor's arrest will be issued.

Paragraph (B) requires that the issuing authority conduct an ability to pay hearing when the contemnor appears voluntarily in response to the notice or involuntarily following an arrest for failing to respond to the notice. Paragraph (B)(1) provides that if the defendant is found to be financially able to pay, the issuing authority may impose imprisonment as provided by law. Paragraph (B)(2) provides that the issuing authority may schedule installment payments if the contemnor is financially unable to pay.

Paragraph (C) provides that an appeal may be taken by filing a notice of appeal within thirty days of the order, and that the appeal is to proceed as provided in Rule 31.

### E. New Rule 39. Suspension of Acts of Assembly—Chapter 30.

Because the automatic stay period has been extended from the ten days provided in 42 Pa.C.S. §§ 4137(d), 4138(d), and 4139(d) to thirty days to be consistent with the thirty-day appeal period provided in new Rule 31, 42 Pa.C.S. §§ 4137, 4138, and 4139 have been suspended by new Rule 39 (Suspension of Acts of Assembly—Chapter 30), but only insofar as they are inconsistent with the thirty-day appeal period and the thirty-day automatic stay period set forth in Rule 31.

[Pa.B. Doc. No. 97-1657. Filed for public inspection October 17, 1997, 9:00 a.m.]

## [234 PA. CODE CH. 50]

### Order Rescinding Rule 85; Adopting New Rule 85; and Amending Rules 75, 76, 83, 84 and 86; No. 227; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the Supreme Court's changes to Chapter 50, which (1) clarify the process by which an issuing authority sets fines and restitution in the first instance, to increase the likelihood that the amount imposed will be paid, (2) provide that, in a summary case, an arrest warrant should not be issued for a default unless the defendant has been given notice that failure to pay or appear may result in the issuance of an arrest warrant, and (3) encourage defendants to seek adjustments in payment schedules before a default occurs. The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 1st day of October, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published before adoption at 25 Pa.B. 937 (March 18, 1995), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 652-653), with a Final Report to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

<sup>a</sup> Sections 5571 to 5574 of Title 42

<sup>b</sup> Section 5501 *et seq.* of Title 42

- (1) Rule of Criminal Procedure 85 is rescinded,
- (2) New Rule of Criminal Procedure 85 is adopted, and
- (3) Rules of Criminal Procedure 75, 76, 83, 84, and 86 are amended, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective October 1, 1998.

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 50. PROCEDURE IN SUMMARY CASES**

**PART V. PROCEDURES REGARDING ARREST WARRANTS IN SUMMARY CASES**

**Rule 75. Issuance of Arrest Warrant.**

\* \* \* \* \*

(3) A warrant for the arrest of the defendant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of fine and costs specified in the citation or summons; or

**(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or**

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay a fine and costs, and the collateral deposited by the defendant is less than the amount of fine and costs imposed.

**(4) No warrant shall issue under Rule 75(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of an arrest warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.**

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; **amended October 1, 1997, effective October 1, 1998.**

**Comment**

Personal service of a citation under paragraph (1)(a) is intended to include the issuing of a citation to a defendant as provided in Rule 51(a) and the rules of Part IIA.

An arrest warrant may not be issued under paragraph (1)(a) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 80.

Ordinarily, pursuant to Rule 84, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a warrant for the arrest of the defendant pursuant to paragraph (2) in order to bring the defendant before the issuing authority for the summary trial.

**[An]** The arrest warrant issued under paragraph (3) should state the amount required to satisfy the sentence.

**When contempt proceedings are also involved, see Chapter 30 for the issuance of arrest warrants.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 ( May 3, 1997).

**Final Report explaining the October 1, 1997, amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. (October 18, 1997).**

**Rule 76. Procedure when Defendant Arrested with Warrant.**

**[ (a) ](A) \*\*\***

**[ (b) ](B) \*\*\***

\* \* \* \* \*

(3) accept from the defendant the amount of fine and costs due as specified in the warrant if the warrant is for collection of fine and costs after a guilty plea or conviction; or

\* \* \* \* \*

**[ (c) ](C)** When the police officer accepts fine and costs or collateral under **[ subparagraphs ] paragraphs [ (b) ](B)**(1), (2), or (3), the officer shall issue a receipt **to the defendant** setting forth the amount of fine and costs or collateral received **[ to the defendant ]** and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

**[ (d) ](D)** When the defendant is taken before the issuing authority under **[ subparagraph ] paragraph [ (b) ](B)**(4), the defendant shall be given an immediate trial unless:

\* \* \* \* \*

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; **amended October 1, 1997, effective October 1, 1998.**

**Comment**

**[ This rule is derived from the arrest warrant procedures in previous Rules 60, 61, and 65(g), (h).**

**Under former Rule 61, when a defendant was arrested in a summary case with a warrant outside the judicial district where the warrant was issued, the defendant was first taken before an issuing authority in the judicial district where the arrest was made for the purpose of posting bail. Thereafter, the defendant appeared or was taken for trial before the proper issuing authority in the judicial district where the warrant was issued. This procedure was deleted with the general revision of the summary case rules in 1985. ]**

For the procedure in court cases following arrest with a warrant, see Rules 123 and 124.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond

the territorial limits of the police officer's primary jurisdiction. See also *Commonwealth v. Mason*, [ 507 Pa 396, ] 490 A.d. 421 (Pa. 1985).

Delay of trial under [ subparagraph ] paragraph [ (d) ](D)(1) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken without unnecessary delay before the proper issuing authority remains unaffected.

**For the procedures required before an arrest warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 75(4). When contempt proceedings are also involved, see Chapter 30 for the issuance of arrest warrants.**

For what constitutes a [ the ] "proper" issuing authority, see Rule 21.

[ On ] Concerning the defendant's right to counsel and waiver of counsel, see Rules 316 and 318.

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 [ amendments ] revision published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

## PART VI. GENERAL PROCEDURES IN SUMMARY CASES

### Rule 83. Trial in Summary Cases.

\* \* \* \* \*

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial. [ When the defendant is sentenced to pay fine and costs and is found to be without the financial means to pay immediately, the issuing authority shall provide for installment payments as provided in Rule 85. ]

(E) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal within 30 days for a trial de novo in the court of common pleas, [ and trial de novo, of the time within which to exercise that right, ] and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the de novo trial or the appeal may be dismissed [ . ] ;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (E)(1) through (E)(3), and a copy of the order shall be given to the defendant.

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998.

### Comment

The defendant has a right to counsel at trial in all summary cases in which the issuing authority determines there is a likelihood of imprisonment. See Rules 316 and 318.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 87 (Withdrawal of Charges in Summary Cases).

Paragraph (E)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rule 86.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

Under paragraph (E)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph (E)(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iv), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. 42 Pa.C.S. § 9726(c)(2) and § 9730(b)(3).

See Rule 85 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

**A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 85(A).**

*Committee Explanatory Reports:*

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

**Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).**

**Rule 84. Trial in Defendant's Absence.**

\* \* \* \* \*

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall [ **notify** ] **give notice** to the defendant of the conviction and sentence by first class mail. **In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within 10 days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due may result in the issuance of an arrest warrant.**

(E) Any collateral previously deposited shall be forfeited and applied **only** to the payment of the fine and costs. When the amount of collateral deposited is more than the fine and costs, the balance shall be returned to the defendant. **[When the amount of collateral deposited does not satisfy the fine and costs, ]**

**(F) If the defendant does not respond within 10 days to the notice in paragraph (D), the issuing authority may issue a warrant for the defendant's arrest.**

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997, 27 Pa.B. 2116; **amended October 1, 1997, effective October 1, 1998.**

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*Committee Explanatory Reports:*

Final Report explaining the April 18, 1997 amendments mandating a summary trial in absentia with certain exceptions published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

**Final Report explaining the October 1, 1997 amendments to paragraphs (D) and (E) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).**

**[ Rule 85. Procedures Regarding Default in Payment of Fine and Costs after Conviction. ] Rescinded.**

**[ (a) When a defendant defaults in the payment of a fine or costs after a finding of guilt, the issuing**

**authority shall conduct a hearing to determine whether the defendant is financially able to pay the fine or costs.**

**(b) If the issuing authority determines that the defendant is financially able to pay the fine or costs, the issuing authority may impose imprisonment for nonpayment, as provided by law.**

**(c) If the issuing authority determines that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the issuing authority may provide for payment in installments. In determining the appropriate installments, the issuing authority shall consider the defendant's financial resources, the defendant's ability to make restitution and reparations, and the nature of the burden payment will impose on the defendant.**

**(d) When installment payments are ordered, and the defendant is in default of a payment or advises the issuing authority that such default is imminent, the issuing authority may schedule a rehearing on the payment schedule. At the rehearing the defendant shall have the burden of proving changes of financial condition such that the defendant is without the means to meet the payment schedule. The issuing authority may extend or accelerate the schedule or leave it unaltered, as the issuing authority finds to be just and practicable under the circumstances.**

**(e) The defendant may appeal the issuing authority's determination in (b), (c), or (d) by filing a notice of appeal within thirty (30) days after the date of the default hearing. The appeal shall proceed as provided in Rule 86. ]**

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986. Comment revised February 1, 1989, effective July 1, 1989; **rescinded October 1, 1997, effective October 1, 1998, and replaced by new Rule 85.**

**[ Comment**

**This rule replaces previous Rule 65(a)–(d). ]**

**[ When a "child" fails to pay a fine levied for a summary offense, notice of that fact shall be certified to the court of common pleas and the Juvenile Act would then apply, rather than these rules. Juvenile Act §§ 6302–6303, 42 Pa.C.S. §§ 6302–6303 (1982).**

**If the hearing on the default can not be held immediately, the issuing authority may set bail as provided in Chapter 4000 or may fix collateral as provided in Rule 81.**

**It is intended, pursuant to paragraph (d), that when the defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth may schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of fine and costs a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See also Rules 316 and 318 (dealing with the right to counsel).**

**This rule contemplates that when there has been an appeal pursuant to paragraph (e), the case would return to the issuing authority who presided at the default hearing for completion of the collection process. ]**

**Committee Explanatory Reports:**

**Final Report explaining the October 1, 1997 rescission published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).**

*(Editor's Note: The following rule is new. It is printed in regular type to enhance readability.)*

**Rule 85. Default Procedures: Restitution, Fines, and Costs.**

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to show cause why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

(C) If the defendant appears as provided in paragraph (B), the issuing authority shall conduct a hearing to determine whether the defendant is financially able to pay as ordered.

(1) Upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

(b) advise the defendant of the right to appeal within 30 days for a hearing de novo in the court of common pleas, and that if an appeal is filed:

(i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and

(ii) the defendant must appear for the hearing de novo in the court of common pleas or the appeal may be dismissed;

(c) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (C)(3)(a) through (C)(3)(c), and a copy of the order shall be given to the defendant.

(D) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rule 86.

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1996 effective dates extended to July 1, 1986. Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998.

**Comment**

The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to show cause why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 75(4).

If the default hearing cannot be held immediately, the issuing authority may set bail as provided in Chapter 4000.

Under paragraph (C)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent fines or court costs may be turned over to a private collection agency, 42 Pa.C.S. § 9730(b)(2).

When a "child" fails to pay a fine levied for a summary offense, notice of that fact must be certified by the court of common pleas and the Juvenile Act would then apply, rather than these rules. 42 Pa.C.S. §§ 6302—6303.

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of fines or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See also Rules 316 and 318 (dealing with the right to counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. 42 Pa.C.S. § 9730(b)(3).

This rule contemplates that when there has been an appeal pursuant to paragraph (D), the case would return

to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 30.

**Committee Explanatory Reports:**

**Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).**

**Rule 86. Appeals [ From Summary Judgments ].**

**[(a)] (A)** When an appeal is authorized by law in a summary proceeding, including a prosecution for violation of a municipal ordinance which provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the conviction or other final order from which the appeal is taken and by appearing in the court of common pleas for the trial de novo. The notice of appeal shall be filed with the clerk of courts.

**[(b)] (B) Stays.**

**[In all cases where a sentence of imprisonment is imposed, the execution of sentence shall be stayed until the time for appeal expires, and the issuing authority may set bail or collateral. The issuing authority shall direct the defendant to appear for the execution of sentence on a date certain unless a notice of appeal is filed within the period prescribed.]**

**(1) In all cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires.**

**(2) In any case in which a notice of appeal is filed, the execution of sentence shall be stayed.**

**(3) Whenever the execution of sentence is stayed pursuant to this paragraph, the issuing authority may set bail or collateral.**

**(C) During the 30-day appeal period, failure to pay fines and costs, or restitution, shall not be grounds for imprisonment and shall not be grounds to preclude the taking of an appeal.**

**[(c)] (D)** The notice of appeal shall contain the following information:

\* \* \* \* \*

**(7) the sentence imposed, [if any,] and if the sentence includes a fine, [and] costs, or restitution, whether the [same have] amount due has been paid;**

\* \* \* \* \*

**[(d)] (E) \*\*\***

**[(e)] (F) \*\*\***

**[(f)] (G) \*\*\***

**[(g)] (H) \*\*\***

**(I) This rule shall not apply to appeals from contempt adjudications.**

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; **January 1, 1986** effective [date] dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 25, 1995, effective July 1, 1995; **amended October 1, 1997, effective October 1, 1998.**

**Comment**

This rule [replaces former Rule 67. It] applies to appeals in all summary proceedings, including prosecutions for violations of municipal ordinances which provide for the possibility of imprisonment, and default hearings.

**Appeals from contempt adjudications are governed by Rule 31.**

The Rules of Criminal Procedure are applicable generally to these proceedings. See, e.g., Rule 3, Chapter 50 (Summary Cases), Rule 1117, and Chapter 6000. The narrow holding in *City of Easton v. Marra*, [230 Pa. Super. 352,] 326 A.d. 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

**Under paragraph (B)(2), the stay applies to all "sentences" imposed after conviction, including sentences of imprisonment, fines and costs, or restitution, and sentences of imprisonment for defaults in payment pursuant to Rule 85.**

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 85, the matter must be heard de novo by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

Certiorari was abolished by former Rule 67 in 1973, pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, [as Section 934.] 42 Pa.C.S. § 934 [(1981)]. The abolition of certiorari, of course, continues.

Bail, when set in a summary case, [shall] must be set in accordance with the bail rules, Chapter 4000.

*Committee Explanatory Reports:*

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

**Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).**

## FINAL REPORT

### *Imposition of Fines, Costs, and Restitution in Summary Cases; Default Procedures; Appeals*

#### *Introduction*

On October 1, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania rescinded present Rule 85 (Procedures Regarding Default in Payment of Fine and Costs after Conviction), adopted new Rule 85 (Default Procedures: Restitution, Fines, and Costs), and amended Rule 75 (Issuance of Arrest Warrant), Rule 76 (Procedure When Defendant Arrested with Warrant), Rule 83 (Trial in Summary Cases), Rule 84 (Trial in Defendant's Absence), and Rule 86 (Appeals from Summary Judgments). These changes will become effective on October 1, 1998.

This Final Report has three parts. The Background section explains how the Committee came to consider the various issues addressed in the proposal, and the manner in which the Committee developed the proposal through research and discussion. The Statutory section discusses the statutes providing the substantive law on sentencing, fines, and restitution, the problems of interpretation encountered as we considered the substantive law, and how the Committee resolved those problems. The Explanation of Rule Changes section contains an overview of the changes and a rule-by-rule discussion.

#### *Background*

The Committee's consideration of restitution procedures in summary cases began in response to an inquiry from the Supreme Court's Minor Courts Rules Committee asking us to consider recommending amendments to the summary case rules to address restitution. This request raised two questions. The first issue was straightforward: should the summary case rules be amended to expressly recognize restitution as a sentence in summary cases? The second issue was more problematic: under 18 Pa.C.S. § 1106, may the summary case rules, under existing law, include a procedure for terminating an order of restitution (or fines) as "uncollectible"?

After the Committee reviewed the substantive law governing restitution in the Sentencing Code and the Crimes Code, as discussed more fully below, we readily agreed that the summary case rules should recognize restitution as a sentence. The second question, whether the Legislature intended to authorize issuing authorities to "terminate" restitution pursuant to 18 Pa.C.S. § 1106, was far more difficult. Although there is no direct statutory authority for a district justice to terminate a restitution order, 18 Pa.C.S. § 1106(c)(2)(iii) provides that the issuing authority may at any time "alter or amend any order of restitution" as long as the reasons for the change are stated. The Committee agreed that, practically speaking, this language could be construed to permit a district justice to "alter or amend" an order to reflect the amount already paid by a defendant, a reduction which would effectively terminate the order. Despite this possible interpretation, the Committee concluded that the Rules of Criminal Procedure could not be used to resolve the statute's ambiguities.<sup>1</sup>

Our discussion of these two issues generated a broader consideration of the degree to which the rules should also be amended to more clearly reflect the statutorily re-

quired process by which a district justice determines the amount of fine or restitution to impose, because the amount and payment schedule — relative to a defendant's resources—have a direct impact on the "collectability" of those monies.

Defaults in the payment of fines and restitution occur often in summary cases, and therefore constitute an ongoing problem for all of us concerned with a fair and final resolution of summary cases. On the one hand, fines, costs, and restitution are an important part of the criminal justice system's response to summary criminal violations. They serve to deter and rehabilitate defendants and, in the case of restitution, directly respond to the losses suffered by victims. On the other hand, often a defendant's lack of financial resources, practically speaking, prevents the collection of some or all of the fine or restitution imposed. We are also aware that some district justices, frustrated by the entire process, are too quick to issue warrants for a defendant's arrest for default in payment, a practice which the Committee criticized.

Finally, as the Committee concluded the development of its proposal, Act 45 of 1994 was signed, permitting issuing authorities to impose sanctions for contempt under certain circumstances, including defaults in payment of fines, costs, and restitution. 42 Pa.C.S. §§ 4137—4139. We agreed that the new contempt sanction was separate and distinct from the Rule 85 default procedures, and accordingly have made that distinction clear in these rule changes.

#### *Statutes Involved*

This section of the Final Report provides an overview of the basic statutory law governing the imposition of fines and restitution in summary cases. Implicit in the statutory law governing the imposition of fines and restitution is the principle that, as a sentence, a fine or restitution can only successfully punish, deter, or rehabilitate a defendant if the defendant can realistically be expected to pay the amount ordered.

#### A. Authority to Impose Sentence of Fines and Restitution: In General

Both the Sentencing Code, 42 Pa.C.S. § 9701 et seq., and the Crimes Code, 18 Pa.C.S. § 101 et seq., authorize the imposition of sentences by a district justice when the district justice exercises criminal or quasi-criminal jurisdiction pursuant to 42 Pa.C.S. § 1515. See 18 Pa.C.S. § 103; 42 Pa.C.S. § 9702. The imposition of a fine as a sentence is generally governed by the Sentencing Code, 42 Pa.C.S. § 9701 et seq., and the Crimes Code, 18 Pa.C.S. § 1101. Similarly, the imposition of a sentence of restitution is governed by the Crimes Code, 18 Pa.C.S. § 1106, and the Sentencing Code, 42 Pa.C.S. § 9721(c).

#### B. Fines

1. *When a fine may be imposed.* Except for mandatory fines, a district justice may sentence a defendant to pay a fine or to pay a fine in addition to another sentence if (1) the defendant is or will be able to pay the fine; and (2) the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. § 9726(a), (b), and (c)

2. *How the amount of a fine and the payment schedule are determined.* In determining the amount and method of payment of a fine, the district justice must take into account (1) the financial resources of the defendant, and (2) the nature of the burden that payment of the fine will impose. See 42 Pa.C.S. § 9726(d) and 42 Pa.C.S. § 9730(b)(3).

<sup>1</sup> Article 5, § 10(c) of the Pennsylvania Constitution provides, "The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all court . . . if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose." (emphasis added)

3. *What the sentence of a fine must include.* When imposing a fine, the district justice must, at the time of sentencing, specify the amount of the fine—up to the amount authorized by law, and must provide when it is to be paid. See 42 Pa.C.S. § 9758(a). The district justice may permit installment payments. See 42 Pa.C.S. § 9758(b) and 42 Pa.C.S. § 9730(b)(3). The sentence may include an alternative sentence in the event of nonpayment. See 42 Pa.C.S. § 9758(c) and 42 Pa.C.S. § 9730(b)(3).

4. *Defaults in fines.* After a fine is imposed, if a defendant defaults in payment, and the district justice determines that the defendant is financially able to pay the fine or costs, the district justice may turn the delinquent account over to a private collection agency or impose imprisonment for nonpayment as provided by law. See 42 Pa.C.S. § 9730(b)(2) and 42 Pa.C.S. § 9728.

When installment payments have been ordered and a defendant defaults or tells the district justice that a default is imminent, the district justice may schedule a rehearing, and may extend or accelerate the payment schedule, leave it as ordered, or sentence the defendant to a period of community service as is just and practicable. See 42 Pa.C.S. § 9730(b)(3) and 42 Pa.C.S. § 9728.

#### C. Restitution

1. *When restitution may be imposed.* In addition to the other sentencing alternatives, a district justice may sentence a defendant to make restitution to the victim of the criminal conduct for the damage or injury that the victim suffered as a direct result of the defendant's criminal conduct. See 18 Pa.C.S. §§ 1106(a) and 42 Pa.C.S. § 9721(c).

2. *How the amount of restitution and payment schedule are determined.*

In determining whether to order restitution, the district justice must consider the extent of the injury to the victim, and such other matters as the district justice deems appropriate. See 18 Pa.C.S. § 1106(b)(1). Furthermore, the statute limits the amount of restitution which may be ordered by a district justice. See 18 Pa.C.S. § 1106(d). When a district justice decides to impose restitution, the district justice may order payment in installments. See 18 Pa.C.S. § 1106(b)(2). At any time, the district justice may alter or amend an order of restitution made pursuant to 18 Pa.C.S. § 1106, but must state the reasons and conclusions as a matter of record for any change or amendment to any previous order.

3. *Defaults in restitution.* The statutes do not address defaults in restitution as clearly as they do defaults in fines and costs. Prior to the enactment of the contempt statute, 42 Pa.C.S. § 4137, noncompliance with a restitution order was governed by 18 Pa.C.S. § 1106(f), which provides that when a defendant does not comply with a restitution order, the district justice is required to forward the case to the court of common pleas. To the best of our knowledge, this provision has not been utilized by district justices very often. Rather, most district justices have looked to present Rule 85 default procedures and applied them to restitution matters. We anticipate—despite the availability of the new contempt statute—that district justices will continue to use the Rule 85 procedures when defendants default in payment of fines and costs or restitution, and that the contempt sanction of 42 Pa.C.S. § 4137(a)(3) will only be used as a last resort.

#### *Explanation of Rule Changes*

After reviewing the current rules, the problems raised by correspondents, and the substantive law, the Commit-

tee concluded that the following changes were necessary. (1) The rules should clarify the process by which an issuing authority sets fines and restitution in the first instance, to increase the likelihood that the amount imposed will be paid. (2) The rules should provide that, in a summary case, an arrest warrant should not be issued for a default unless the defendant has been given notice that failure to pay or appear may result in the issuance of an arrest warrant. (3) The rules should encourage defendants to seek adjustments in payment schedules before a default occurs.

#### A. Rule 75. Issuance of Arrest Warrant.

Rule 75 has two distinct provisions. Paragraph (1) governs the circumstances under which an arrest warrant must be issued. Paragraphs (2) and (3) govern those circumstances under which a district justice has the discretion to issue an arrest warrant, including cases in which a defendant has failed to pay monies due after a conviction or plea.

The rule has been amended in two ways. First, paragraph (3)(b) makes it clear that an arrest warrant may be issued when a defendant defaults on the payment of restitution, as well as fines or costs. See Rule 75(3)(b).

Second, new paragraph (4) makes it clear that before an arrest warrant may issue pursuant to paragraph (3), the defendant must be given notice, in person or by first class mail, to pay or appear. To avoid generating litigation on the issue of notice, the new requirement also makes it clear that it is the sending of the notice that completes it. Paragraph (4) was added to discourage a practice which we learned about during the development of these changes. Some district justices, frustrated by their inability to collect money owed, and hence their inability to close out cases, are far too quick to issue a warrant to arrest a defendant for defaulting in payment. The Committee felt that, before a defendant is arrested for failure to pay, he or she should at least be notified that failure to pay or appear may result in an arrest warrant's being issued.

The Rule 75 Comment has been expanded to include a reference to the separate procedures in new Chapter 30 (Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, and 4139; Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia)<sup>2</sup> for arrest warrants when contempt proceedings are involved.

#### B. Rule 76. Procedure when Defendant Arrested With Warrant.

The Comment to Rule 76 has been revised to reference the changes to Rule 75 discussed above, and the separate procedures in new Chapter 30 for issuance of arrest warrants when contempt proceedings are involved. A few stylistic changes have been made to the text of the rule.

#### C. Rule 83. Trial in Summary Cases.

1. *Changes to text of rule.* The amendments to Rule 83 affect paragraph (E), which covers procedures at the time of sentencing. New paragraph (E)(1) addresses sentences which include fines, costs, or restitution. We have moved to this paragraph a provision in present Rule 85(C) which permits an issuing authority to order installment payments if a defendant cannot pay the required amount in a single remittance. In addition, paragraph (E)(1) requires the issuing authority to state the date or dates on which payments are due.

<sup>2</sup> See 27 Pa.B. (October 18, 1997) for the Final Report explaining new Chapter 30.



Paragraph (E)(2) covers the appeal-related information which must be communicated to the defendant. The issuing authority must advise the defendant of the right to appeal within thirty days, and of the requirement that the defendant appear for the trial *de novo* or the appeal may be dismissed. New language requires the issuing authority to advise the defendant that, if an appeal is filed, the execution of the sentence will be stayed, and the issuing authority may set bail or collateral. See Rule 83(E)(2)(a).

Under paragraph (E)(3), if a sentence of imprisonment has been imposed, the issuing authority is required to direct the defendant to appear for the execution of sentence on a date certain unless the defendant files an appeal within the thirty-day appeal period. This paragraph was moved from Rule 86(B). The Comment notes that the specified date for the execution of sentence should be the earliest date possible after the thirty-day appeal period expires.

New paragraph (E)(4) requires the issuing authority to issue and sign a written order imposing sentence. The order must include the information in paragraphs (E)(1) through (E)(3), described above, and a copy of the order must be given to the defendant.

2. *Comment revisions.* The Comment to Rule 83 has been revised in several ways. The issuing authority is reminded that under paragraph (E)(2)(a), he or she should explain to the defendant that if an appeal is filed, any sentence — fines, restitution, or imprisonment — will be stayed for the appeal period.

The Comment also references the default procedures in new Rule 85, and includes the common sense recommendation that at the time of sentencing, the defendant should be encouraged to seek an adjustment of a payment schedule before a default occurs.

Finally, the Rule 83 Comment contains an extensive discussion of the statutory bases for determining the amount of fine or restitution to impose. The discussion includes a citation to *Commonwealth v. McLaughlin*, 574 A. 2d. 610 (Pa. Super. 1990), appeal denied 590 A. 2d. 756, cert. denied 502 U.S. 916, which discusses the factors which must be considered when determining the amount of restitution to impose and the method of payment. *Id.* at 617. The Comment also underscores the importance of the statutory requirement that before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim, citing 42 Pa.C.S. § 9726(c)(2) and 42 Pa.C.S. § 9730(b)(3).

#### D. Rule 84. Trial in Defendant's Absence.

The amendments to Rule 84 align the notice and warrant procedures in paragraph (D) with the changes to Rule 75. Paragraph (D) requires that when a defendant has been found guilty in absentia and either the amount of collateral deposited does not satisfy the fine and costs imposed, or restitution has been imposed, the notice of conviction and sentence must also state that failure within ten days to pay or to appear for an ability to pay hearing, may result in the issuance of an arrest warrant. Paragraph (F) makes the defendant's failure to respond to this notice a precondition to the issuance of an arrest warrant.

#### E. Rescission of Present Rule 85. Procedures Regarding Default in Payment of Fine and Costs after Conviction.

Because of the number of clarifying changes to the default procedures in present Rule 85, the Committee

agreed that it would be less confusing to the reader if the changes were shown in a new rule.

#### F. New Rule 85. Default Procedures: Restitution, Fines, and Costs.

New Rule 85 covers the procedures, both mandatory and discretionary, that the issuing authority must follow when a defendant notifies the issuing authority that a default is imminent, or when a default occurs.

1. *Text of Rule.* Paragraph (A), derived in part from former Rule 85(d), provides that when a defendant notifies the issuing authority that a default on a single remittance or installment payment is imminent, the issuing authority may schedule an ability to pay hearing. If a new payment schedule is ordered, paragraph (A) requires that the order state the date on which each payment is due, and that the defendant be given a copy of the order. These latter requirements, similar to the amendments to Rule 83(E), are intended to insure that the defendant has specific instructions, in writing, for complying with the new installment schedule.

Paragraph (B) contains new default procedures, and mirrors the notice requirement in Rule 75(4), discussed above. If a defendant defaults on the payment of fines, costs, or restitution, this paragraph requires the issuing authority to notify the defendant, in person or by first class mail, that a warrant for the defendant's arrest may be issued unless, within ten days of the date on the default notice, the defendant pays the amount due or appears before the issuing authority to show cause why he or she should not be imprisoned for nonpayment as provided by law. This provision is intended to give the defendant a short grace period to act on the default before the issuing authority decides whether to issue an arrest warrant.

If a defendant appears in response to this notice, paragraph (C) requires the issuing authority to conduct an ability to pay hearing. Under paragraph (C)(1), if the issuing authority determines that the defendant is able to pay, the issuing authority may then impose any sanction permitted by law. Under paragraph (C)(2), if the issuing authority determines that the defendant cannot pay as ordered, the issuing authority may change the payment schedule, or alter or amend the order as permitted by law. See 18 Pa.C.S. § 1106(c)(3) (an issuing authority may alter or amend an order of restitution at any time), and 42 Pa.C.S. § 9730(b)(3) (as to fines, an issuing authority may extend or accelerate a payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances).

Under paragraph (C)(3), at the conclusion of the hearing, the issuing authority must do the following:

1. state the date on which each installment is due, if a new or first schedule of installments is ordered;
2. advise the defendant of the right to appeal within thirty days and that, if an appeal is filed, the execution of the order will be stayed and the issuing authority may set bail or collateral;
3. advise the defendant that, if the defendant appeals, he or she must appear for the *de novo* default hearing in the court of common pleas or the appeal may be dismissed.

Under paragraph (C)(3)(c), if the issuing authority imposes imprisonment, the defendant must be directed that unless the defendant files a timely appeal, the

defendant must appear for the execution of the order of imprisonment on a specific date.

Finally, the issuing authority is required to issue a written and signed order imposing sentence. The order must include all the information outlined in paragraph (C), and the defendant must be given a copy of the order. See Rule 85(C)(3)(d).

Paragraph (D) of new Rule 85 provides that appeals of Rule 85 determinations must be filed within thirty days of the order and are governed by Rule 86 (Appeals).

2. *Comment.* The Rule 85 Comment underscores the key provisions of the rule by highlighting the various stages of default proceedings, and by providing the statutory authority for the alternatives available to the issuing authority when a default occurs. The Comment notes, for example, that when the issuing authority determines after a default hearing that a defendant is able to pay as ordered, the issuing authority may not only impose any "sanction" provided by law, but also may turn the delinquent fine account over to a private collection agency, as provided in 42 Pa.C.S. § 9730(b)(2). Similarly, the Comment provides the issuing authority with the various actions he or she may take when a defendant is unable to meet a payment schedule on fines, as provided in 42 Pa.C.S. § 9730(b)(3), or when a defendant is unable to pay restitution, as provided in 18 Pa.C.S. § 1106(c)(2) and (3).

The Comment also contains a recommendation that, pursuant to paragraph (A), defendants should be encouraged to seek an adjustment in a payment schedule before they are in default.

Finally, the last paragraph of the Comment addresses the new contempt provisions in 42 Pa.C.S. §§ 4137-4139. The Comment makes it clear that Rule 85 default procedures are not intended to preclude an issuing authority from imposing punishment for criminal contempt, and references the separate Rules of Criminal Procedure governing contempt adjudications in Chapter 30.

#### G. Rule 86. Appeals.

The amendments to Rule 86 contain two significant provisions. First, restitution has been added to the possible sentences subject to an appeal under the rule. Second, new language has been added to address an open question under the present rule: what happens to a sentence of fines and costs, or restitution, when an appeal is filed?

Formerly, Rule 86 provided that when a sentence of imprisonment was imposed, the execution of that sentence was stayed until the appeal period expired, but made no reference to the disposition of sentences of fines or restitution during the appeal period. Although the Committee recognized that, in practical terms, monies owed should be collected as soon as possible, we debated at length the fairness of treating sentences involving fines and restitution differently from sentences of imprisonment during the appeal period. We were concerned to learn, for example, that in some judicial districts, defendants are precluded from filing an appeal unless fines and costs are paid, and in others, defendants are imprisoned for default in the payment of fines and costs during the thirty-day appeal period. Ultimately, we agreed that the Rule 86 procedures should be amended to address these issues.

New paragraph (B), which is titled "Stays," contains three sections. Paragraph (B)(1) carries over the present Rule 86(b) requirement that, when a sentence of impris-

onment has been imposed, execution of that sentence is stayed for the entire appeal period, regardless of whether the defendant files an appeal. Under paragraph (B)(2), when a notice of appeal is filed, the execution of sentence is stayed. The Comment to this new provision explains that the stay applies to all sentences, including sentences of imprisonment, fines and costs, restitution, and imprisonment ordered after a Rule 85 default hearing. Paragraph (B)(3) contains the provision in former paragraph (b) that, when the execution of sentence is stayed, the issuing authority may set bail or collateral.

In addition, paragraph (C) states expressly that during the thirty-day appeal period, failure to pay fines, costs, or restitution shall not be grounds for imprisonment or grounds to preclude the taking of an appeal.

Finally, a new paragraph (I) has been added to make it clear that the appeal procedures in Rule 86 do not apply to appeals from contempt adjudications under the new contempt statutes. See 42 Pa.C.S. §§ 4137-4139.

[Pa.B. Doc. No. 97-1658. Filed for public inspection October 17, 1997, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### BRADFORD COUNTY

Rule of Civil Procedure No. 1910.4.1; No.  
96IR000066

#### Order

*And Now*, this 30th day of September, 1997, the Court hereby amends the following Bradford County Rule of Civil Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

It is further ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

*By the Court:*

JEFFREY A. SMITH,  
*President Judge*

#### Bradford County Rule of Civil Procedure 1910.4.1.

(a) In any support proceeding, all pleadings, including, but not limited to, exceptions, support agreements, and motions must be filed in the Office of the Prothonotary and a copy thereof immediately served upon the Domestic Relations Office, the Court Administrator's Office, and all parties of record.

(b) The Prothonotary shall [ **not** ] accept for filing any pleading in a support action which is not accompanied by a certification that service will be made as required by section (a) of this rule, **but shall promptly notify the presiding judge of the party's failure to file the required certification.**

(c) The provisions of this rule shall not apply to pleadings filed by the Domestic Relations Office.

[Pa.B. Doc. No. 97-1659. Filed for public inspection October 17, 1997, 9:00 a.m.]

## LUZERNE COUNTY

### Amendment to Rule of Court No. 288; Criminal Division

#### Order

And Now, this 2nd day of October, 1997, at 12:25 p.m., upon consideration of the filing of the certification by the District Attorney of Luzerne County, pursuant to Pa.R.Crim.P. 107 (relating to Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth), which follows and is made a part hereof as Exhibit "A", it is hereby *Ordered* as follows:

(1) Local Rule 288 is rescinded and renumbered to Rule 107;

(2) Rule 107 follows and is made a part hereof as Exhibit "B";

(3) This Rule shall become effective thirty days following its publication in the *Pennsylvania Bulletin*.

*By the Court*

JOSEPH M. AUGELLO,  
*President Judge*

#### Exhibit "A"

##### *Certification Pursuant to PA.R. CRIM.P. 107*

The District Attorney of Luzerne County hereby files a certification pursuant to Pa.R.Crim.P. 107, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure charging one or more of the following offenses, or an attempt, solicitation, or conspiracy to commit any of the following:

(a) All offenses set forth in Chapter 25 of the Crimes Code (relating to criminal homicide): Murder of the first degree; Murder of the second degree; Murder of the third degree; Voluntary manslaughter; Involuntary manslaughter; Causing or aiding suicide; and Drug delivery resulting in death;

(b) Rape, in violation of 18 Pa.C.S.A. § 3121;

(c) Statutory sexual assault, in violation of 18 Pa.C.S.A. § 3121.1;

(d) Involuntary deviate sexual intercourse, in violation of 18 Pa. C.S.A. § 3123;

(e) Sexual Assault, in violation of 18 Pa.C.S.A. § 3124.1;

(f) Aggravated indecent assault, in violation of 18 Pa.C.S.A. § 3125;

(g) Robbery, in violation of 18 Pa.C.S.A. § 3701;

(h) Arson, in violation of 18 Pa.C.S.A. § 3301;

(i) All prohibited acts as set forth in the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-113 (a)(30);

(j) Kidnapping, in violation of 18 Pa.C.S.A. § 2901;

(k) Homicide by vehicle, in violation of 75 Pa.C.S.A. § 3732;

(l) Homicide by vehicle while driving under the influence, in violation of 75 Pa.C.S.A. § 3735;

(m) Corrupt organizations, in violation of 18 Pa.C.S.A. § 911;

(n) Ethnic intimidation, in violation of 18 Pa.C.S.A. § 2710;

(o) All offenses as set forth in Chapter 47 of the Crimes Code, relating to bribery and corrupt influence;

(p) Obstructing administration of law or other governmental function, in violation of 18 Pa.C.S.A. § 5101;

(q) All offenses as set forth in Chapter 53 of the Crimes Code, relating to abuse of office;

(r) All offenses as set forth in Chapter 57 of the Crimes Code, relating to wiretapping and electronic surveillance;

(s) Obscene and other sexual materials and performances, in violation of 18 Pa.C.S.A. § 5903 shall not hereafter be accepted by any judicial officer unless the complaint and/or affidavit has the approval of an attorney for the Commonwealth prior to filing.

#### Exhibit "B"

##### *Local Rule 107*

The District Attorney of Luzerne County having filed a certification pursuant to Pa.R.Crim.P. 107, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure charging one or more of the following offenses, or an attempt, solicitation, or conspiracy to commit any of the following:

(a) All offenses set forth in Chapter 25 of the Crimes Code (relating to criminal homicide): Murder of the first degree; Murder of the second degree; Murder of the third degree; Voluntary manslaughter; Involuntary manslaughter; Causing or aiding suicide; and Drug delivery resulting in death;

(b) Rape, in violation of 18 Pa.C.S.A. § 3121;

(c) Statutory sexual assault, in violation of 18 Pa.C.S.A. § 3121.1;

(d) Involuntary deviate sexual intercourse, in violation of 18 Pa.C.S.A. § 3123;

(e) Sexual Assault, in violation of 18 Pa.C.S.A. § 3124.1;

(f) Aggravated indecent assault, in violation of 18 Pa.C.S.A. § 3125;

(g) Robbery, in violation of 18 Pa.C.S.A. § 3701;

(h) Arson, in violation of 18 Pa.C.S.A. § 3301;

(i) All prohibited acts as set forth in the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-113 (a)(30);

(j) Kidnapping, in violation of 18 Pa.C.S.A. § 2901;

(k) Homicide by vehicle, in violation of 75 Pa.C.S.A. § 3732;

(l) Homicide by vehicle while driving under the influence, in violation of 75 Pa.C.S.A. § 3735;

(m) Corrupt organizations, in violation of 18 Pa. C.S.A. § 911;

(n) Ethnic intimidation, in violation of 18 Pa.C.S.A. § 2710;

(o) All offenses as set forth in Chapter 47 of the Crimes Code, relating to bribery and corrupt influence;

(p) Obstructing administration of law or other governmental function, in violation of 18 Pa.C.S.A. § 5101;

(q) All offenses as set forth in Chapter 53 of the Crimes Code, relating to abuse of office;

(r) All offenses as set forth in Chapter 57 of the Crimes Code, relating to wiretapping and electronic surveillance;

(s) Obscene and other sexual materials and performances, in violation of 18 Pa. C.S.A. § 5903 shall not hereafter be accepted by any judicial officer unless the complaint and/or affidavit has the approval of an attorney for the Commonwealth prior to filing.

PETER PAUL OLSZEWSKI, Jr.,  
*District Attorney*

[Pa.B. Doc. No. 97-1660. Filed for public inspection October 17, 1997, 9:00 a.m.]

### WESTMORELAND COUNTY

#### Administrative Order: Rules W205.1 and W211; No. 3 of 1997

##### Order of Court

*And Now*, to wit, this 29th day of September, 1997, it is *Ordered* that Westmoreland County Rule of Civil Procedure W205.1 and the Comment to Rule W211 be revised effective January 1, 1998.

*By the Court*

BERNARD F. SCHERER,  
*President Judge*

##### Rule W205.1. Filing of Motions and Petitions.

(a) The trial judge assigned to a specific case will hear all matters relating to that case through and including trial.

(b) Each judge will establish when motions and other matters may be presented.

(1) Judges Loughran, Ackerman, and Caruso will hear all routine motions, orders of court, etc. presented by counsel, in civil matters specifically assigned to them, on the first and last Wednesday of each month at 10:00 a.m. Emergency motions on civil matters assigned specifically to Judges Loughran, Ackerman, and Caruso may be presented at any time convenient to the Court.

Judge Scherer will hear motions on any matter specifically assigned to him at 8:30 a.m. on any work day on which he is available. Emergency motions may be presented at any time convenient to the Court.

(c) Except for emergency matters, before a motion or petition is presented, the moving party shall furnish a copy of the pleading and any proposed order to every other party or attorney of record at least 4 days in advance of when the presentation is to occur. The date and time of presentation is to be scheduled with the assigned judge. The matter must be accompanied by a certification stating that notice has been given under this rule and, in the case of an uncontested matter, that the matter is in fact uncontested. In emergency matters, the moving party must give telephone notice to every other party or attorney of record prior to presenting the motion or petition and shall, at the time of presentation of same, provide to the Court an affidavit of the notice provided.

(d) The moving party shall present any motion or petition and a copy of the judicial assignment form to the chambers of the assigned judge.

(e) The filing of preliminary objections, motions for judgment on the pleadings, motions for summary judgment, the post-trial relief shall be in accordance with Westmoreland County Rule of Civil Procedure W227.2.

##### Rule W211. Oral Arguments.

Each judge shall establish procedures for oral argument. The judge may establish a procedure requiring that no oral argument be scheduled unless requested by a party, subject to approval by the judge.

##### Comment

All argument court matters before Judge Loughran shall be automatically scheduled by the Court Administrator.

All argument court matters, excepting preliminary objections before Judges Ackerman and Caruso shall be automatically scheduled by the Court Administrator. Oral argument on Preliminary objections shall be scheduled on an individual basis after consideration of a petition or motion presented to the Court.

Oral argument shall not be scheduled before Judge Scherer except on a case by case basis. Parties may request oral argument by petition or motion. The Court Administrator shall then schedule the oral argument on a case by case basis.

[Pa.B. Doc. No. 97-1661. Filed for public inspection October 17, 1997, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1 AND 74]

[L-970122]

#### Perfection of Security Interests in Intangible Transition Property

The Pennsylvania Public Utility Commission (Commission) on July 10, 1997, adopted a final rulemaking to establish the processes necessary for the perfection of security interests in intangible transition property required by 66 Pa.C.S. § 2812(d) (relating to approval of transition bonds). These bonds may be necessary to help electric utilities manage the transition to electric competition in this Commonwealth. The bonds would help retire the stranded costs a utility faces. Stranded costs represent the expenses a utility incurred to provide electricity before competition, which expenses may not be recovered now that competition is going to be implemented in this Commonwealth.

##### *Executive Summary*

At its public meeting of July 10, 1997, the Commission adopted an order establishing final regulations for the perfection of security interests in intangible transition property under section 2812(d) of the Electric Generation Customer Choice Act of 1996 (act), 66 Pa.C.S. § 2812(d). Final regulations are necessary to facilitate the issuance of the transition bonds allowed under 66 Pa.C.S. § 2812.

At its public meeting of April 10, 1996, the Commission adopted an order that proposed regulations for the perfection of security interests in intangible transition property under 66 Pa.C.S. § 2812. A public comment period of 20 days was provided. The Commission also took other steps, including dissemination of the order and proposed regulations on its electronic bulletin board and mailings to members of the legal and financial communities, to facilitate input about the proposed regulations. The staff had several meetings with the interested parties on the myriad technical details necessary to creating a workable regulations. The changes in the final regulations reflect the Commission's response to those comments.

The Commission contact persons are Joseph K. Witmer, Assistant Counsel, Law Bureau, (717) 787-3663 and Shirley M. Leming, Regulatory Coordinator, Law Bureau, (717) 772-4597.

##### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final rulemaking, which was published as a proposed rulemaking at 27 Pa.B. 2134, for a 20-day comment period and served on April 21, 1997 to IRRC and the Chairpersons of House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1), the Commission also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs and by the Senate Committee on Consumer Protection and Professional Licensure, and were approved by IRRC on September 4, 1997, in accordance with section 5(c) of the Regulatory Review Act.

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; John Hanger; David W. Rolka; and Nora Mead Brownell

Public Meeting held  
July 10, 1997

#### Final Rulemaking Order

By order adopted and entered April 10, 1997, we initiated a rulemaking at Doc. No. L-00970122 to adopt regulations governing the perfection of security interests in intangible transition property. The regulations, which are required under 66 Pa.C.S. § 2812(d)(3), were undertaken as part of the implementation duties performed by the Commission under the Electric Generation Customer Choice and Competition Act.

##### *Background*

On December 3, 1996, Governor Tom Ridge signed into law the "Electricity Generation Customer Choice and Competition Act" (act). The act revised the Public Utility Code, 66 Pa.C.S. §§ 101, et seq., by, inter alia, adding Chapter 28, relating to restructuring of the electric utility industry.<sup>1</sup>

On April 10, 1997, the Commission adopted an Opinion and Order setting forth proposed regulations under Chapter 28 with a 20-day public comment period. Moreover, the Commission took several measures to extend the public comment period beyond the formal 20 days set forth in the April 10, 1997 Order.

The proposed regulations at Doc. No. L-00970122 were published for comment at 27 Pa.B. 2134 (May 3, 1997). The deadline for public comment was May 23, 1997. Written comments were provided by the following parties:

- Pennsylvania Electric Association (PEA);
- Philadelphia Electric Company (PECO);
- Public Utility Commission Office of Trial Staff (OTS).

In addition, copies of the proposed regulations were provided to the Pennsylvania Bankers Association, the Pennsylvania Bar Association, the Article 9 Committee of the Pennsylvania Bar Association, the Global Power Group of Fitch Investors, L.P., the Asset Backed Finance Group of Merrill Lynch, the Securities Commission and the Department of State.

Following public comment, State Representative William R. Lloyd, Jr. (D-69th) and the Independent Regulatory Review Commission (IRRC) submitted written comments.

No other parties provided written comments. However, the Department of State participated extensively in several meetings and provided feedback on the proposed regulations. The Department of State's comments were largely confined to Uniform Commercial Code implications as well as public information and access issues.

<sup>1</sup> Chapter 28 authorizes the issuance of Qualified Rate Orders for the recovery of qualified transition expenses of an electric utility. Recovery of those expenses can give rise to Intangible Transition Property interests perfected under these regulations.

Following review of the comments and several meetings with the interested parties, the Commission developed the final-form regulations incorporating the appropriate comments of the interested parties. These regulations are basically similar in function to those finalized by our order entered April 10, 1997, at Doc. No. L-00970122 except for some revised language as discussed in more detail below. The changes are largely due to the persuasive comments of the interested parties.<sup>2</sup>

#### *Discussion*

The regulations are necessary because the Commission is required under 66 Pa.C.S. § 2812(d)(3) to promulgate regulations governing the perfection of security interests arising under any Commission-issued QRO. 66 Pa.C.S. § 2812(d)(3). The Commission is also required by 66 Pa.C.S. § 2812(d)(4) to establish and maintain a separate system of records to reflect the date and time of receipt of all filings. The Commission may also provide for the filing of a notice of a transfer of intangible transition property to an assignee in accordance with such a system.

The PEA and PECO largely agreed on the comments they separately provided. Both parties disputed the distinction in the proposed regulations between the Filing Date and the Effective Date and urged the Commission to make the regulations' definitions consistent with those in Chapter 28. They also urged the Commission to simplify the number system used for security filings and to correct some inadvertent transpositions in terminology. In addition, they asked the Commission to delete the references to liberal construction, retention of discretion, informational filings with the Secretary of State and the use of UCC Forms 1 and 3. Finally, they disputed the Commission's proposed filing fees as excessive in light of the services rendered to the filing parties.<sup>3</sup>

IRRC's comments reflected those of the PEA and PECO with regard to the filing date and effective date, making definitions consistent with Chapter 28, correcting the reversal of release and retransfer, and the deletion of provisions governing liberal construction, retention of discretion and the use of UCC Forms 1 and 3. IRRC also agreed with PEA and PECO that the proposed fees were disproportionate to the benefit conferred and that there was no reason to require informational filings with the Department of State.<sup>4</sup>

IRRC's comments also went beyond those of the PEA and PECO in specific instances. IRRC urged the Commission to clarify the definitions of "certificate" and "file number" and to eliminate unnecessary language in the definitions section in § 74.2. IRRC also urged the Commission to combine subsections (a) and (b) in the information, filing and hours section in § 74.4 and simplify the language governing termination notices in § 74.8.<sup>5</sup>

Finally, Rep. Lloyd commented on an apparent ambiguity between "intangible transition property" and "intangible transition notice" in the proposed regulations. The

OTS' comments urged the Commission to retain the distinction between the filing and effective date. The OTS also proposed definitions for "intangible transition property" and "qualified rate order" different from those set forth in the proposed regulations.<sup>6</sup>

*General Issues.* Our April 10, 1996 order solicited comments on five general issues concerning the proposed regulations. We dispose of those issues as follows:

*Issue 1: The Filing Date vs. The Effective Date.* The Commission's proposed regulations made a distinction between the Filing Date and the Effective Date for perfection of a security interest. Upon consideration of the comments, the Commission is deleting this requirement consistent with our following discussion. The Commission agrees with the comments that the ministerial nature of the task involved does not lend itself to such a refined distinction.

*Issue 2: Definitions.* The Commission defined terms under the act and also crafted new definitions. Consistent with our discussion, the Commission has confined all terms to the language of Chapter 28 whenever that language is provided. In the absence of that language, the Commission relied on the comments of the interested parties, in particular the PEA, PECO and IRRC, to develop clear definitions that reflect the realities of the financial markets.

*Issue 3: Liberal Construction.* The Commission proposed a provision allowing for the liberal construction of the proposed regulations. Upon consideration, the Commission will delete this provision based on the comments suggesting that the provision was unnecessary, redundant and could cause more harm than good to the perfection process provided for in Chapter 28.

*Issue 4: Retention of Discretion.* Section 74.9(a) of the proposed regulations preserved administrative discretion. Upon consideration, the Commission agrees with the comments to the extent that the express retention of discretion is unnecessary and counterproductive.

*Issue 5: Use of Proposed Forms and UCC-1 and UCC-3.* The Commission proposed use of Form A and Form B as well as UCC-1 and UCC-3. Upon consideration, the Commission concludes that UCC Form-1 and UCC Form-3 are unnecessary and no longer in the public interest. The Commission agrees with the comments that any perfection under Chapter 28 can be readily attained by simply filing Form A or Form B.

*Detailed Discussion of the Final-Form Regulation.* Section 74.1 sets forth the purpose of the regulations. The original § 74.1 contained a general statement of purpose. The revised § 74.1 sets forth a more concise purpose of the regulations in response to the comments of the interested parties.

Section 74.2 (relating to definitions) provides a list of definitions for the regulations. The original definition section consisted of a general statement of meaning with definitions taken from both Chapter 28 and the comments of others.

The revised § 74.2 contains a narrower general statement in response to IRRC and the new definitions. The new definitions for "assignee," "financing party," "intangible transition property" and "qualified rate order" are limited to their meaning in Chapter 28 in response to comments from PECO, the PEA, Rep. Lloyd and IRRC. The definition of "assignment" has been deleted as confus-

<sup>2</sup> The Commission staff, consisting of Pat Burkett, Shirley Leming, James McNulty, Veronica Smith and Joe Witmer, convened several meetings and telephone conferences between IRRC, the PEA, PECO, the Department of State and the Commission's Law Bureau. IRRC's participants were Fiona Wilmarth and James Smith, PEA's participants were Hugh M. Dougan of Winthrop, Stimson in New York and Dave Everard and Dick Flati; PECO's participants were E. Carolan Berkley from Ballard, Spahr in Philadelphia and Ward Smith; and the Department of State's participants were Mike Frick, Patricia Hegedus, John Henderson and Bob DaSouza. The Commission and its staff recognize that their valuable contribution helped facilitate the timely completion of these regulations in an extremely short time period notwithstanding the complex and novel challenges presented by the regulations.

<sup>3</sup> Comments on PECO Energy (May 21, 1997), pp. 1-25; Comments of PEA (May 23, 1997), pp. 1-13; Comments of E. Carolan Berkley (June 12, June 27, June 28, 1997, and June 30, 1997); Comments of Hugh Dougan (June 12, June 26, and June 30, 1997).

<sup>4</sup> IRRC Comments, pp. 1-6.

<sup>5</sup> IRRC Comments, pp. 1-6.

<sup>6</sup> Rep. William R. Lloyd comments (June 12, 1997), p. 1; OTS Comments, (May 22, 1997), pp. 1-2.

ing based on comments from PECO. The definitions of "certificate" and "file number" have been revised in response to comments from IRRC. The remaining definitions are edited for clarity and to correct minor errors. The Commission agrees with the comments that definition revisions are needed for clarity and brevity.

The original § 74.3 provided for the liberal construction of the regulations to facilitate perfection of security interests. That provision has been deleted in response to comments from the PEA, PECO and IRRC. The Commission agrees with the commenting parties that the provision was unnecessary and counterproductive to its intended purpose.

The original § 74.4 set forth the location for information about the filing and the hours for receipt of filings. The revised § 74.3 combines the original § 74.4(a) and (b) into one section. The Commission agrees with IRRC that both sections served a similar function and need not be replicated.

The original § 74.5 mandated an informational filing with the Department of State's Corporation Bureau and determined the effect of a successor entity on a filing. The revised § 74.4 imposes no mandatory filing obligations on a filing party. Instead, the Commission will forward a copy of a filing under this chapter to the Secretary of State for informational purposes. The Commission agrees with the comments that another mandated filing by a filing party could undercut the purpose of Chapter 28 and provoke litigation over technical compliance.

The original § 74.6 set forth the general rule and requirements for filing an intangible transition property notice and the procedures that would govern minor errors, amendments and recharacterizations. The revised § 74.5 retains most of the same requirements.

The original § 74.6(a)(5) and (7) governed the filing of public statements and identification of a filing party. The revised § 74.5(a) combines both functions in one subsection. The Commission agrees with PECO that the requirements of the original § 74.6(a)(5) and (7) are better met through a revised § 74.5(a)(5) that sets forth both requirements in one clause.

The original § 74.6(d) and (f) governed what forms had to be filed for perfection. The revised § 74.5(d) only requires the filing of Form A with the Commission. The revised § 74.5(f) only requires the filing of Form B with the Commission. The Commission agrees with the parties that the regulations should minimize any confusion between perfection under this chapter and the Uniform Commercial Code. The Commission also agrees with the parties that Form A and Form B are all that is necessary to secure the perfection sought by this chapter.

The original § 74.7 governed the filing of notices, the duration of notice, lapses in notice and the role of the filing officer under the regulation. The revised § 74.6 retains most of these functions with some modifications.

However, the original § 74.7(a) granted the filing officer the discretion to reject or otherwise return an unreasonable and insufficient filing. The revised § 74.6(a) deletes this discretionary authority. The Commission agrees with IRRC, the PEA and PECO that express statements about the authority are redundant and could lead to unnecessary litigation over when a party perfected a filing.

In addition, the original § 74.7(e)(3) required the filing officer to place perfected filings in a general docket and the Commission's qualified rate order docket. The revised

§ 74.6 deletes this filing obligation. The Commission agrees with the PEA, and Hugh Dougan in particular, that the perfection requirements contemplated by this chapter will require a discrete file number for every filing made under this chapter. The Commission also agrees with PECO, and E. Carolan Berkley in particular, that filings by the filing officer in the general docket and qualified rate order docket should not relate to the perfection provided under this chapter.

The original § 74.7(g) governed the fees for services performed under this chapter. The revised § 74.6 deletes this language here and in the other sections of the proposed regulations. The revised regulations combine the fee requirements in § 74.12 of the final-form regulations. The Commission agrees with the comments of the PEA and PECO that the fee provisions originally scattered throughout the proposed regulations are better consolidated in one subsection of the final-form regulation.

The original § 74.8 set forth provisions governing termination notices, filing officer duties, and fees. The revised § 74.7 retains similar provisions with the exception of minor adjustments made to correct errors and provide clarity. In addition, the revised § 74.7 deletes the language regarding fees and places it in § 74.12 of the final-form regulations. The Commission agrees with the comments on the fees provision based on our earlier discussion.

The original § 74.9 established procedures for the assignment of security interests, fees and the role of the filing officer. The revised § 74.8 retains most of these requirements with the exception of minor adjustments made to correct errors and provide clarity. In addition, the original fee provisions set forth in § 74.8(b) and (d) have been deleted and moved to § 74.12 of the final-form regulations. The Commission agrees with the parties on the fees provision based on our earlier discussion.

The original § 74.10 governed release or retransfers, filing fees and the duties of the filing officer. The revised § 74.9 retains the purpose of § 74.10. However, the inadvertent juxtaposition of release and retransfer is corrected in the revised § 74.9 consistent with the comments of IRRC, the PEA and PECO. In addition, the original § 74.10(a) language regarding the requirements for action under this subchapter have been broken out in a revised § 74.9(b) for clarity. Finally, the original § 74.10(b) language regarding fees was deleted and moved to § 74.12 consistent with our earlier discussion.

The original § 74.11 governed the procedures and fees for information requests, certificates and copies. The original § 74.11 contained a phrase dealing with a notice of a Federal tax lien. The revised § 74.10 deletes this phrase. The Commission agrees with the comments from the PEA and PECO that the phrase is redundant, unnecessary and handled elsewhere. The original § 74.11(b) language regarding fees was deleted in the revised § 74.10 consistent with our earlier discussion.

The original § 74.12 governed record retention, admissibility and filing officer requirements. The revised § 74.11 contains similar language with the exception of minor adjustments made to correct errors and provide clarity.

The original § 74.13 governed fees and the filing of notice changes. The revised § 74.12 contains similar language, with the exception of minor adjustments made to correct errors and provide greater clarity, and provides one all-encompassing discussion of the applicable fees. The Commission agrees with those comments consistent with our earlier discussion.

The original § 74.14 governed the duties and obligations of the Forms Officer. The original § 74.14 language regarding UCC Form-1 and UCC Form-3, however, has been deleted consistent with our discussion.

The revised § 74.14 allows a permissive filing by the Commission with the Department of State for a filing made under this chapter. The Commission agrees with the parties that a mandatory filing by a filing party is not necessary and it also agrees with the Department of State that an informational filing is in the public interest. The Commission believes this permissive filing strikes a balance between the PECO and PEA opposition to mandatory filings and the Department of State's concern with public access and information about perfection under this chapter.

The filing fees for the perfection of security interests under the act are set forth in § 1.43(a) (relating to schedule of fees payable to the Commission). The Commission has significantly reduced the fees established in the final-form regulations. The Commission takes this action in light of the comments from the PEA and PECO that the charges were excessive in light of the benefits conferred. The Commission accepts, for the time being, the claim that the number and frequency of these filings will not be so extensive, complex or time-consuming that the proposed fee was appropriate.

However, the Commission disagrees with IRRC that no fee should be charged for the services rendered to these entities. That is because the perfection services rendered by the Commission under this chapter are not the type of services that have previously been provided by the Commission. The type of services that will be rendered under this chapter are closer to those traditionally rendered by the Department of State. Moreover, the entities securing perfection services from the Commission under this chapter may not be public utilities normally subject to our traditional assessment process.

Finally, the perfection services provided under this chapter may extend for long periods of time under 66 Pa.C.S. §§ 2808 and 2812 of the act. The filing fees facilitate the fair and orderly transition to competition as required by 66 Pa.C.S. § 2802(13) and are flexible as required by 66 Pa.C.S. § 2812(b)(9). The filing fees would allocate the costs of providing the services closer to the source of cost causation consistent with the general principle of economic pricing.

Consequently, the Commission concludes that the filing fees, albeit significantly reduced, are a necessary and appropriate component to the regulations established under this chapter. The Commission's fees, albeit significantly reduced, are premised on the parties' comments on the anticipated level of service. The fees are intended to cover, at least partially, the reasonable costs, including staffing and related infrastructure support and development, of providing that anticipated level of service. The Commission reserves the right to revisit this issue in the event circumstances are different from those used today to set the fees.

Accordingly, under sections 501 and 2812(d), 66 Pa.C.S. §§ 501 and 2812(d), of the Public Utility Code, and the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1208) and 71 P.S. §§ 745.1—745.15, the Commission adopts the regulations, following as Annex A of this order as final-form regulations; *Therefore,*

*It Is Ordered that,*

1. The regulations of the Commission, 52 Pa. Code, are amended by amending § 1.43 and by adding §§ 74.1—

74.14 and Appendices A and B to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. This order, together with Annex A, be published as final in the *Pennsylvania Bulletin*.

3. The Secretary shall submit this order and Annex A to the Office of the Attorney General for approval as to legality.

4. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this Order and Annex A for formal review and comments by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by IRRC.

6. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

7. The Secretary shall provide a copy of this Order and Annex A for placement on the Commission's electronic Bulletin Board, the Department of State's Corporation Bureau, the Pennsylvania Electric Association, the Pennsylvania Banking Association and the Commonwealth of Pennsylvania Securities Commission.

8. This regulation shall become effective upon publication in the *Pennsylvania Bulletin*.

9. A copy of this Order and Annex A shall be provided to all persons that submitted comments in the rule-making proceeding at Docket No. L-00970122, and upon all jurisdictional utilities subject to the Commission's jurisdiction, the Office of Consumer Advocate and the Office of Small Business Advocate.

10. Alternate formats of this Order and Annex A are available to persons with disabilities and may be obtained by contacting Shirley M. Leming, Regulatory Coordinator, Law Bureau, at (717) 772-4597, or toll free, through the AT&T Relay Center at 1 (800) 654-5988.

*By the Commission*

JAMES J. MCNULTY,  
*Acting Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4879 (September 20, 1997).)*

**Fiscal Note:** Fiscal Note 57-183 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE**

**Subchapter E. FEES**

**§ 1.43. Schedule of fees payable to the Commission.**

(a) *Fees for services.* The fees for services rendered by the Commission are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
* * * * *	



<i>Description</i>	<i>Fee (in dollars)</i>
Initial filing of Form A for intangible transition property notice	\$550
Subsequent filing of notice changes in intangible transition property notice on Form B	\$350
Chapter 74 public information requests relating to perfection of security interests	\$10 plus standard per page copying costs.
* * * *	*

**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 74. PERFECTION OF SECURITY INTERESTS IN INTANGIBLE TRANSITION PROPERTY**

Sec.	Purpose.
74.1.	Definitions.
74.3.	Information, filing and hours.
74.4.	Place of filing.
74.5.	Intangible transition property notice requirements; amendment; forms; error; recharacterization.
74.6.	Intangible transition property notice filing; duration; lapses; filing officer.
74.7.	Termination notice; filing officer.
74.8.	Assignment of security interest or interest of an assignee; filing officer.
74.9.	Release or retransfer; filing officer.
74.10.	Information requests; filing officer.
74.11.	Record retention; admissibility; filing officer.
74.12.	Fees.
74.13.	Forms officer.
74.14.	Additional Commission filings; Commission information filing.

**§ 74.1. Purpose.**

This chapter implements the ministerial requirements of section 2812(d)(1)–(4) of the act (relating to security interests in intangible transition property) governing the perfection of a security interest in intangible transition property and the filing of notice of transfer to an assignee of an interest in intangible transition property. This chapter establishes the recordkeeping regulations and requirements and provides technical rules on administration concerning the perfection of the security interests and the filing of the notices of transfer to an assignee. This chapter also establishes how an intangible transition property notice is filed, what a filing must contain and what obligatory record retention requirements are imposed on the Commission. This chapter governs notice, amendment, effectiveness, and termination of the perfection of a security interest and notice of transfer to an assignee.

**§ 74.2. Definitions.**

The following words and terms, when used in this chapter have the following meanings, unless the context clearly indicates otherwise:

*Act*—66 Pa.C.S. Chapter 28 (relating to restructuring of electric utility industry).

*Assignee*—An assignee as defined in section 2812(g) of the act (relating to approval of transition bonds).

*Assignor*—An electric utility or other person who transfers an interest in intangible transition property to an assignee.

*Certificate*—A document establishing, based upon the file number, a qualified rate order docket number and general docket number, whether there is on file with the Commission on the date and time stated a presently effective intangible transition property notice.

*Commission*—The Pennsylvania Public Utility Commission, including an appointed successor entity.

*Continuation notice*—A notice submitted to extend the effectiveness of an intangible transition property notice.

*Department of State*—The Corporation Bureau of the Department of State of the Commonwealth, including an appointed successor entity.

*File number*—A numerical sequence assigned by the Commission to identify a specific filing made under this chapter.

*Filing*—The submission of a completed intangible transition property notice or other document described in this chapter to the filing officer, together with the applicable filing or processing fee, and the acceptance thereof by the filing officer as evidenced by the indication of a file number and filing date thereon.

*Filing date*—The date and time at which a filing is accepted by the Commission as described in this chapter.

*Filing officer*—An authorized person in the Office of the Prothonotary of the Commission, including an appointed successor entity or office.

*Filing party*—A person who makes a filing under this chapter. The term does not include the Commission.

*Financing party*—A financing party as defined in section 2812(g) of the act.

*General docket*—A generic docket established by the Commission as a collective repository for all filings pertaining to the perfection of a security interest in, or the transfer to an assignee of an interest in, intangible transition property.

*General docket number*—The generic docket number M-00970937 established by the Commission to identify the general docket for perfection of security interests.

*Grantor*—An electric utility or other person who grants a security interest in intangible transition property to another person. The term does not include the Commission.

*Information request*—A request from a person to the Commission concerning a filing.

*Intangible transition property*—Intangible transition property as defined in section 2812(g) of the act.

*Intangible transition property notice*—A notice of a security interest in, or of a transfer to an assignee of an interest in, intangible transition property, complying with § 74.6 (relating to intangible transition property notice filing; duration; lapses; filing officer) and properly filed amendments to the notice.

*Lapse*—The expiration of the period of effectiveness of an intangible transition property notice.

*Person*—A human being, partnership, corporation, public authority or trust (including a business trust), unincorporated association, limited liability company, joint stock company or any other legal entity, whether public or private, existing under the laws of the Commonwealth, another state, the United States or a foreign country.

*Qualified rate order*—A qualified rate order as defined in section 2812(g) of the act.

*Qualified rate order docket number*—The established Commission filing number for a qualified rate order.

*Release*—An action taken by a filing party to alter a right, duty or obligation concerning the perfection of a security interest.

*Retransfer*—An action taken by an assignee to return to an assignor all or a portion of the interest of the assignee in intangible transition property.

*Security interest*—An interest in intangible transition property securing the payment or performance of an obligation.

*Termination notice*—The notice submitted to terminate perfection of a security interest.

**§ 74.3. Information, filing and hours.**

(a) Information on the procedures and forms for filing under this chapter, submittals, requests and other information or instructions supplementing this chapter in special instances can be obtained upon request:

Office of the Prothonotary  
 Pennsylvania Public Utility Commission  
 Attention: Filing Officer  
 P. O. Box 3265  
 Harrisburg, Pennsylvania 17105-3265

If hand carried or delivered by courier, submittals, requests or other information shall be delivered as follows:

Office of the Prothonotary  
 Attention: Filing Officer  
 Pennsylvania Public Utility Commission  
 Harrisburg, Pennsylvania 17120

(b) A filing, information request concerning the procedures and forms for filing under this chapter, submittals, requests and other information or instructions supplementing this chapter in special instances shall be sent to the attention of the filing officer.

**§ 74.4. Place of filing.**

(a) *Place of filing.* An intangible transition property notice shall be filed with the filing officer of the Commission by the filing party and be accompanied by the payment of the filing fees established by the Commission.

(b) *Effect of successor entity on filing.* An effective intangible transition property notice continues in force and effect even though the grantor or assignor whose intangible transition property notice is (or originally was) the subject of a filing merges, consolidates or otherwise reorganizes.

**§ 74.5. Intangible transition property notice requirements; amendment; forms; error; recharacterization.**

(a) *General rule.* An intangible transition property notice will be deemed sufficient if it provides the following:

- (1) The name of the grantor or assignor.
- (2) The address of the grantor or assignor.
- (3) A signature of an authorized person acting on behalf of the grantor or assignor.
- (4) The name of the financing party or assignee.
- (5) The address of the financing party or assignee from which information concerning the security interest or transfer of an interest in intangible transition property may be obtained.
- (6) The signature of an authorized person acting on behalf of the financing party or assignee.
- (7) A statement setting forth whether all or a portion of the recovery permitted under the qualified rate order (from which the intangible transition property is derived) is covered by the intangible transition property notice. If the portion covered by an intangible transition property notice relates to less than all of the qualified rate order,

the portion or the amount thereof to which the intangible transition property notice relates shall be stated.

(8) A statement (subject to subsection (h)) of whether the intangible transition property notice is intended to be filed to perfect a security interest in intangible transition property or to give notice of a transfer of an interest in intangible transition property to an assignee.

(9) The qualified rate order docket number from which the intangible transition property is derived.

(10) The general docket number.

(b) *Filing sequence.* An intangible transition property notice may be filed before a security agreement is made or a security interest otherwise attaches or before a transfer of an interest in intangible transition property to an assignee becomes effective.

(c) *Effect of partial completion.* An intangible transition property notice which otherwise complies with this section will be deemed sufficient when it is signed by the financing party or assignee instead of the grantor or assignor, if it is submitted to perfect a security interest in or record a transfer to an assignee of:

(1) In the case of a security interest, intangible transition property as to which the filing of an intangible transition property notice has lapsed.

(2) Intangible transition property under a security agreement or an agreement effecting a transfer to an Assignee signed by the grantor or assignor and authorizing the financing party or the assignee, to file an intangible transition property notice. The intangible transition property notice shall state that it is being submitted in accordance with a security agreement or an agreement effecting a transfer signed by the grantor or assignor that authorizes the filing of an intangible transition property notice by the financing party or the assignee.

(d) *Form.* A filing party shall submit Form A, in Appendix A, to comply with subsection (a).

(e) *Amendments.* Except when only one signature is expressly required by a provision of this chapter, an intangible transition property notice may be amended only with a written document signed by both the grantor or assignor and the financing party or assignee. An amendment does not extend the period of effectiveness of an intangible transition property notice unless it is filed as a continuation notice. If any amendment adds intangible transition property, it is effective as to the added intangible transition property only from the filing date of the amendment.

(f) *Amendment form.* A filing party shall submit Form B, in Appendix B, to comply with subsection (e).

(g) *Sufficiency of name.* An intangible transition property notice sufficiently shows the name of the grantor or assignor who is not an individual only if it gives the partnership, corporate, trust or entity name of the grantor or assignor, as the name is shown on the public records in the jurisdiction of organization in the case of persons who are required to register in the public records to organize or as the name is shown on the organizational documents of the person in the case of other persons formed under written agreements that are not required to register in the public records to organize. An intangible transition property notice that sufficiently shows the name of the grantor or assignor is not rendered ineffective by the absence of trade names or other names or names of partners, members or associates. A filed intan-

gible transition property notice remains effective with respect to intangible transition property transferred by the grantor or assignor even though the financing party or the assignee knows of or consents to the transfer. No amendment to an intangible transition property notice is required to reflect a change in the name, identity or corporate structure of a grantor or assignor.

(h) *Effect of minor errors; recharacterization.* An intangible transition property notice substantially complying with this chapter will be sufficient even if it contains minor errors which are not seriously misleading. If an intangible transition property notice is filed to give notice of a transfer to an assignee of an interest in intangible transition property under this chapter, and the transfer is thereafter held for any reason or purpose to constitute the grant of a security interest in the intangible transition property, the intangible transition property notice will be deemed to constitute a filing with respect to a security interest under this chapter, from and as of the filing date of the original intangible transition property notice, without the necessity of any amendment of (or other action by the parties with respect to) the originally filed intangible transition property notice.

**§ 74.6. Intangible transition property notice filing; duration; lapses; filing officer.**

(a) *What constitutes a filing.* Presentation of an intangible transition property notice and tender of the filing or processing fee, and acceptance of the intangible transition property notice by the filing officer by indication of a file number and filing date on the intangible transition property notice, will constitute a filing under the act and this chapter. Nothing in the act or this chapter precludes the filing officer from refusing to accept for filing an intangible transition property notice not complying with this chapter.

(b) *Purposes of filing.* An intangible transition property notice shall be filed to perfect the security interest of a financing party in intangible transition property. An intangible transition property notice shall also be filed in respect of each transfer to an assignee of an interest in intangible transition property.

(c) *Duration of effectiveness of filing in general.* An intangible transition property notice filed to perfect the security interest of a financing party will be effective for 12 years from the filing date. An intangible transition property notice filed to perfect the security interest of a financing party lapses on the expiration of the 12-year period unless a continuation notice is filed prior to the lapse. An intangible transition property notice filed to record the transfer to an assignee of intangible transition property is continuously effective.

(d) *Lapse.* Upon lapse, the security interest becomes unperfected and is deemed to have been unperfected as against a person who became a purchaser or lien creditor before the lapse.

(e) *Continuation notice.* A continuation notice shall be filed by a financing party no earlier than 6 months prior to the expiration of the 12-year period specified in subsection (c). A continuation notice shall be signed by the financing party, identify the original notice by file number and state that the original intangible transition property notice is still effective. A continuation notice signed by a person other than the financing party of record shall be accompanied by a separate written statement of assignment of the security interest signed by the financing party of record and comply with this chapter, including payment of the required fees. Upon timely filing

of the continuation notice, the effectiveness of the original notice is continued for 12 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (d) unless another continuation notice is filed prior to a lapse. Succeeding continuation notices may be filed in the same manner to continue the effectiveness of the original notice.

(1) Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed notice from the files and destroy it if he has retained a microfilm or other photographic record or, in other cases, 1 year after the lapse.

(2) The filing officer will manage the intangible transition property notice filings to retain a filing that is continued beyond the 12-year limitation.

(f) *Establishment and duties of filing officer.*

(1) The Commission will establish and appoint a filing officer to maintain the records and to take other necessary action. The filing officer will place copies of filings made under this chapter in the appropriate dockets for future reference and manage the filings.

(2) The filing officer will also mark each intangible transition property notice and each subsequent related filing with a consecutive file number and with the date and time of filing and will hold the intangible transition property notice and each subsequent related filing or microfilm or other photographic or electronic copy thereof for public inspection. Consecutive file numbers for intangible transition property notices and subsequent related notices filed in each calendar year will begin with the number one preceded by the last two digits of the calendar year in which the filing occurs. In addition, the filing officer will index the intangible transition property notices according to the name of the grantor or assignor and will mark in the index the file number and the address of the grantor or assignor.

(g) *Legible papers.* The duties of the filing officer prescribed in this chapter relate only to clearly legible papers submitted to the filing officer. The filing officer will accept only clearly legible papers. No intangible transition property notice or other related notice will be accepted unless it is typed or printed in black ink and, in the determination of the filing officer, can be interpreted or reproduced using the technology employed by the Commission.

**§ 74.7. Termination notice; filing officer.**

(a) *General rule.* Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the financing party shall on written demand by the grantor send the grantor a termination notice to the effect that it no longer claims a security interest under the applicable intangible transition property notice, which shall be identified by its file number. A termination notice signed by a person other than the financing party of record shall be accompanied by a separate written notice of assignment of the security interest signed by the financing party of record and complying with this chapter, including payment of the required fee. If the affected financing party fails to file a termination notice or send a termination notice within 10 days after proper demand therefor, the financing party shall be liable for the loss caused to the grantor by reason of the failure.

(b) *Duties of filing officer.* On presentation to the filing officer of a termination notice, the filing officer shall mark the date and time of filing on the termination notice. If

the filing officer has received the termination notice in duplicate, the filing officer will return one copy of the termination notice to the financing party marked to show the date and time of filing thereof. The filing officer may remove the original, microfilm or other photographic record from the file no sooner than 1 year after receipt of the termination notice.

**§ 74.8. Assignment of security interest or interest of an assignee; filing officer.**

(a) *Assignment disclosed in intangible transition property notice.* An intangible transition property notice may disclose an assignment of a security interest of a financing party or of the interest of an assignee in the intangible transition property described in a filed intangible transition property notice by indication in the notice of the name and address of the transferee. Either the original financing party or assignee or the transferee may sign this statement as the financing party or assignee. On presentation to the filing officer of an intangible transition property notice, the filing officer will mark it as provided for in this chapter.

(b) *Separate notice of assignment.* A financing party or assignee of record may assign all or a part of its rights under an intangible transition property notice by submitting a separate written notice of assignment signed by the financing party or assignee of record and setting forth the name of the financing party or assignee of record, the grantor or assignor, the file number and the filing date of the intangible transition property notice and the name and address of the transferee, a description of the interest in the intangible transition property assigned, the qualified rate order docket number for the qualified rate order from which the intangible transition property is derived, and the general docket number. A copy of the assignment is sufficient as a separate notice if it complies with the preceding sentence. On presentation to the filing officer of a separate notice which complies with this section, the filing officer will mark a separate notice with the date and time of the filing. The filing officer will mark the assignment on the indices of the intangible transition property notice or enter the assignment information into the computerized system for intangible transition property notices.

(c) *Status of transferee.* After the filing of an assignment under this section, the transferee becomes the financing party or assignee of record as to the interest assigned.

**§ 74.9. Release or retransfer; filing officer.**

(a) A financing party or assignee of record may by its signed notice release or retransfer all or a part of its interest in intangible transition property described in a filed intangible transition property notice.

(b) The notice of a release or retransfer is sufficient if it contains the following:

- (1) A description of the intangible transition property being released or retransferred.
- (2) The name and address of the grantor or assignor.
- (3) The name and address of the financing party or assignee.
- (4) The file number of the intangible transition property notice.
- (5) The qualified rate order docket number for the qualified rate order from which the intangible transition property is derived.
- (6) The general docket number.

(c) A notice of release or retransfer signed by a person other than the financing party or assignee of record shall be accompanied by a separate written statement of assignment of the interest in intangible transition property signed by the financing party or assignee of record and comply with this chapter, including payment of the required fee.

(d) Upon presentation of a notice of release or retransfer to the filing officer, the filing officer will mark the notice with the date and time of filing and will mark the same on the indices of the intangible transition property notice or enter the release or retransfer information into the computerized system for intangible transition property notices.

**§ 74.10. Information requests; filing officer.**

(a) *Marking copy of intangible transition property notice filed.* If the filing party submitting an intangible transition property notice, continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer, furnishes the filing officer with a copy, the filing officer will upon request mark upon the copy the file number and date and time of the filing of the original and deliver or send the copy to the filing party.

(b) *Furnishing certificates and copies.* Upon request of a person, the filing officer will issue a certificate showing whether there is on file on the date and time stated therein, a presently effective intangible transition property notice naming a particular grantor or assignor and a notice of assignment and, if there is, giving the date and time of filing of each notice and the names and addresses of each financing party or assignee named therein. A certificate will also show whether there is on file on the date and time stated therein, a notice affecting intangible transition property of the grantor or assignor, and if there is, giving the date and time of filing of each notice. Upon request, the filing officer will furnish, upon payment of the requisite fee, a copy of a filed intangible transition property notice, or notice affecting intangible transition property of a grantor or assignor, or a continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer respecting an intangible transition property notice.

**§ 74.11. Record retention; admissibility; filing officer.**

In lieu of retaining the original of a filing, a filing officer may make microfilm, photographic, photostat, electronic or other copies which accurately reproduce an original and may thereafter dispose of the originals so copied, and the copy will be admissible in evidence in a proceeding with the same effect as though it were an original. If a filing officer upon making a copy of a paper disposes of the original, then upon the filing of a termination notice the filing officer will be relieved of the duties imposed regarding the underlying intangible transition property notice, and instead will mark the termination notice on the index and will send to the financing party an acknowledgement of the filing of the termination notice.

**§ 74.12. Fees.**

(a) The fees are those in § 1.43(a) (relating to schedule of fees payable to the Commission) for services. The fees in § 1.43(a) governing this chapter are based on the total direct and indirect administrative cost of providing the service, including staffing and infrastructure support, necessary to effectuate the perfection of a security interest under the act and as required by 66 Pa. Code § 317(a) (relating to fees for services rendered by Commission).

(b) The initial filing fee will be that in § 1.43 for the filing of Form A. The fee for changes and other actions with respect to an intangible transition property notice in connection with an amendment, assignment, continuation, release, retransfer or termination will be that in § 1.43 for the filing of Form B. The forms will be available from the filing officer of the Commission. The fee for information requests relating to this chapter is the fee in § 1.43 for Chapter 74 related public information requests.

**§ 74.13. Forms officer.**

The filing officer shall also be the forms officer responsible for providing Forms to the public. The forms will include, at a minimum, the following:

- (1) Form A, in Appendix A, for intangible transition property notice.
- (2) Form B, in Appendix B, for any amendment, assignment, continuation, release, retransfer or termination of interest in an intangible transition property notice.
- (3) An established fee schedule.
- (4) Other forms as may be necessary to effectuate the

perfection of a security interest under the act and this chapter.

**§ 74.14. Additional Commission filings; Commission informational filing.**

(a) *Commission filing.* The filing officer may place a copy of any filing in the Commission's general docket and in the qualified rate order docket related to the intangible transition property covered by any intangible transition property notice.

(b) *Informational filing.* The filing officer will forward to the Department of State, for informational purposes only, a copy of any filing in accordance with the procedures and fees as determined to be necessary by the Department of State. Any failure of the Commission to make such an informational filing shall have no effect whatsoever on the perfection of a security interest in or transfer of an interest in intangible transition property under section 2812(d) of the act (relating primarily to perfection of security interests in intangible transition property). The Commission is not liable in law or equity for failure to make the informational filing.

**APPENDIX A**

For Filing Officer Only  
File Number:  
Filing Date:

**Form A  
Intangible Transition Property Notice**

General Docket Number: M-00970937

Name of Grantor or Assignor:

Address of Grantor or Assignor:

Name of Financing Party or Assignee:

Address of Financing Party or Assignee from which Information concerning the Security Interest or Transfer in Interest Intangible Transition Property may be obtained:

This Intangible Transition Property Notice covers the Intangible Transition Property arising from the following Qualified Rate Order:

Commission Docket Number:

Date of Entry:

State whether the Intangible Transition Property Notice relates to all the above Qualified Rate Order and the amount of Intangible Transition Property arising therefrom, or only to a portion of such Order or Amount:

\_\_\_\_\_ All \_\_\_\_\_ Portion

If "Portion" is checked, state either:

The Portion of the Qualified Rate Order to which this Notice relates (by reference to the applicable section(s) or paragraphs(s) of the Order:

**OR**

The Amount of the Intangible Transition Property to which this Notice relates (in comparison to the Total Amount of such property):

\$ \_\_\_\_\_ of a Total of \$ \_\_\_\_\_

Check one:

- \_\_\_\_\_ This Form A is filed to Perfect a Security Interest in Intangible Transition Property.
- \_\_\_\_\_ This Form A is filed to give notice of a Transfer of an Interest in Intangible Transition Property to an Assignee.

\_\_\_\_\_  
Signature of Grantor or Assignor

\_\_\_\_\_  
Signature of Financing Party or Assignor

APPENDIX B

Form B
Intangible Transition Property Notice Changes

This Intangible Transition Property Notice filing relates to an Intangible Transition Property Notice originally filed at (File Number). The P.U.C. General Docket relating to such filing is Docket No. M-00970937 and the Qualified Rate Order Docket No. is .

Name of Grantor or Assignor:

Address:

Name of Financing Party or Assignee of Record:

Address:

The following change in the intangible transition property notice is contemplated by this filing: (Check One):

- Amendment: The original Intangible Transition Property Notice identified above is amended as set forth below.
Assignment: The Financing Party or Assignee of record has assigned to the transferee, whose name and address is set forth below, rights in the Intangible Transition Property described above under the original Intangible Transition Property Notice identified above.
Certificate: Request showing whether there is on file on the date and hour stated therein, a presently effective Intangible Transition Property Notice based on information provided to the Filing Officer.
Continuation: The original Intangible Property Notice identified above is still effective.
Release: The Financing Party of record has released the Intangible Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above.
Retransfer: The Assignee of record has retransferred the Intangible Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above.
Termination: The Financing Party of record is no longer claiming a security interest in the Intangible Transition Property described in the original Intangible Transition Property Notice identified above.

Description

The following describes the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

Transferee Name:

Transferee Address:

Description of the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

Signature of Financing Party or Assignee of record

Signature of Grantor or Assignor

[Pa.B. Doc. No. 97-1662. Filed for public inspection October 17, 1997, 9:00 a.m.]

# PROPOSED RULEMAKING

## LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 3, 5, 7, 13 AND 15]

### License Applications; Duties and Rights of Licensees; Transfer, Extension, Surrender and Exchange of Licenses; Promotion; Special Rules of Administrative Practice and Procedure Regarding Matters Before the Office of Administrative Law Judge

The Liquor Control Board (Board) under the authority of section 207(i) of the Pennsylvania Liquor Code (47 P. S. 2-207(i)) proposes to amend §§ 3.52, 5.91, 7.7, 13.102 and 15.42.

#### *Purpose*

In accordance with Executive Order 1996-1, the Board has reviewed its regulations and determined that certain ambiguities need to be eliminated, responsible consumption of alcoholic beverages should be promoted and unnecessary paperwork that slows down the citation adjudication process should be eliminated.

#### *Summary of Amendments*

*Chapter 3, § 3.52 (relating to connection with other business).* A provision was added whereby licensees would be prohibited from conducting another business on the licensed premises without Board approval.

*Chapter 5, § 5.91 (relating to required report).* Clubs would be required to file a change of manager or steward on a yearly basis and notification of change of officers every other year at renewal of license.

*Chapter 7, § 7.7 (relating to approval of a transfer of license).* A provision was added that places responsibility on the new licensee for violations occurring between the time a license is transferred and actual settlement occurs.

*Chapter 13, § 13.102 (relating to discount pricing practices).* The offering of an indefinite or unlimited amount of alcoholic beverages with a meal package would be deleted as an exception to prohibited discount pricing practices. The time frame for arranging catered events would be shortened to 24 hours from 48 hours to comply with section 491(6) of the Liquor Code (47 P. S. § 4-491(6)).

*Chapter 15, § 15.42 (relating to waiver of hearing or appeal).* The requirement that clubs and corporations execute a resolution with the waiver of hearing before an administrative law judge would be deleted.

#### *Affected Parties*

The proposed regulatory changes would affect licensees of the Board.

#### *Paperwork Requirements*

This proposed rulemaking will not increase paperwork for the Board or licensees affected by the proposed amendments.

#### *Fiscal Impact*

This proposed amendments will have no fiscal impact on the regulated community, the Commonwealth or local governments.

#### *Effective Date/Sunset Date*

The proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

#### *Public Comment/Contact Person*

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed amendments in the *Pennsylvania Bulletin*. Comments should be addressed to Jerry Danyluk, Regulatory Coordinator, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the proposed rulemaking on October 3, 1997, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control and the Senate Committee on Law and Justice. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Board, the Governor and the General Assembly prior to final publication of the regulations.

JOHN E. JONES, III,  
*Chairperson*

**Fiscal Note:** 54-51. No fiscal impact; (8) recommends adoption.

#### **Annex A**

#### **TITLE 40. LIQUOR**

#### **PART I. LIQUOR CONTROL BOARD**

#### **CHAPTER 3. LICENSE APPLICATIONS**

#### **Subchapter F. PREMISES**

#### **§ 3.52. Connection with other business.**

\* \* \* \* \*

**(c) A licensee may not conduct another business on the licensed premises without Board approval.**

#### **CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES**

#### **Subchapter G. CHANGE OF OFFICERS OF CORPORATIONS AND CLUBS**

#### **§ 5.91. Required report.**

(a) A corporation, [ **club**, ] association or other Board licensed entity, **except a club**, having officers, or directors, or stockholders, shall report a change in officers, or directors or stockholders within 15 days. A change in stockholders involving less than 10% of outstanding voting stock need not be reported, except when the change involves a majority or controlling interest. Control is defined as the power or authority to manage, direct, govern, administer or oversee the operation of the licensed business.

\* \* \* \* \*

(c) Club change of officers shall be reported with the renewal of club license on forms furnished by the Board upon request. Change of club manager or steward shall be reported with the renewal of club license and at license validation on forms furnished by the Board upon request.

[ (c) ] (d) Change of officer forms for [ the ] club licensees shall be accompanied by a fee of \$40. When a background investigation is conducted to obtain or verify information regarding a club change of officer, an additional fee of \$60, for a total fee of \$100, will be assessed. Change of officer forms for changes of corporate officers other than clubs shall be accompanied by a fee of \$200 when the change of officer does not constitute a change in majority/controlling interest. If the change of corporate officer does constitute a change in majority/controlling interest, fees will be assessed in accordance with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A).

**CHAPTER 7. TRANSFER, EXTENSION, SURRENDER AND EXCHANGE OF LICENSES**

**Subchapter A. TRANSFER OF LICENSES**

**§ 7.7. Approval of a transfer of license.**

\* \* \* \* \*

(c) Immediately upon approval of a transfer of license, the authority of the original licensee to continue the operation of the licensed business and to sell liquor or malt or brewed beverages shall cease, and responsibility for operation of the licensed business and the sale of liquor or malt or brewed beverages in conformity with the Liquor Code and this title rests with the transferee regardless of whether or not actual conveyance of the assets of the business to transferee has taken place.

**CHAPTER 13. PROMOTION**

**Subchapter C. SOLICITATION FOR THE PURCHASE OF ALCOHOLIC BEVERAGES**

**§ 13.102. Discount pricing practices.**

\* \* \* \* \*

(b) *Exceptions.* Nothing in subsection (a) prohibits:

(1) [ The offering of alcoholic beverages with a meal package.

(2) ] The sale or serving, or both, of an unlimited or indefinite amount of liquor, wine or malt or brewed beverages for a fixed price for catered events which have been arranged at least [ 48 ] 24 hours in advance.

[ (3) ] (2) \*\*\*

**CHAPTER 15. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE REGARDING MATTERS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGE**

**Subchapter D. FORMAL PROCEEDINGS**

**§ 15.42. Waiver of hearing or appeal.**

(a) The licensee may waive a hearing on the citation and the right to appeal from the adjudication. The waiver shall advise the licensee of the potential penalty for all counts. [ A club or corporation licensee shall include with a waiver a resolution authorizing specific officers empowered to execute the waiver. ]

\* \* \* \* \*

[Pa.B. Doc. No. 97-1663. Filed for public inspection October 17, 1997, 9:00 a.m.]

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# STATEMENTS OF POLICY

## Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 60]

Telecommunications Service

The Department of Revenue (Department) has adopted a statement of policy under the authority contained in § 3.2 (relating to statements of policy) regarding telecommunications services, to read as set forth in Annex A.

This statement of policy adds § 60.20 (relating to telecommunications service) and shall take effect upon publication in the *Pennsylvania Bulletin*.

The Department is setting forth its interpretation of the 1991 statutory changes set forth in sections 201(m), 202(c) and 204(5) of the Tax Reform Code of 1971 (TRC) (72 P. S. §§ 7201(m), 7202(c) and 7204(5)) regarding telephone, telegraph and telecommunication services. This statement of policy is the result of an ongoing dialogue with numerous companies within the telecommunications industry.

Subsection (a) defines numerous terms used in § 60.20. Subsection (b) provides the scope of taxation effective October 1, 1991. Subsection (c) details the effect the service address has on the taxation of various telecommunication services.

Subsection (d) provides examples of telecommunication services exempt from tax. Subsection (e) explains that the purchase of a telecommunications service for resale occurs if the purchaser does not use the telecommunications service itself but rather resells it in the ordinary course of business. The subsection also provides examples of exempt sales for resale.

Subsection (f) provides that, to the extent tax is due on the purchase of an international or interstate telecommunication service, a credit will be granted for taxes legally due and paid to another jurisdiction, if the other jurisdiction grants similar credit for taxes paid to the Commonwealth. Provisions relating to local sales and use tax are addressed in subsection (g). Subsection (h) provides that the purchase, use, lease, repair or maintenance of telecommunications equipment and supplies, such as telephones and wires, is subject to Sales and Use Tax, unless the purchaser is entitled to claim an exclusion under § 32.21, § 32.22 or § 32.34 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions; sales to the United States Government or within areas subject to the jurisdiction of the Federal Government; and public utilities).

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Department 281061, Harrisburg, PA, 17128-1061.

ROBERT A. JUDGE, Sr.,  
Secretary

**Fiscal Note:** 15-396. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 60. SALES AND USE TAX  
PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 60.20. Telecommunications service.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Airtime*—A component of a telecommunications service that is charged on a basis that reflects the time span of the communication.

*Basic local telephone service*—The provision of an access line and dial tone, to a fixed location, for purposes of sending or receiving a telecommunication service within a local calling area, regardless of whether the purchaser has limited or unlimited access to a private or a party line. The term also includes installation service, providing and restoring access lines, touch tone service, 911 service and telecommunications relay service.

*Cell site*—The geographic area covered by receiving and transmitting equipment that provides cellular mobile telecommunications service directly to or from a subscriber.

*Channel*—A pathway for the transmission of information between a sending point and a receiving point.

*Commercial use*—The use or consumption other than a residential use.

*Enhanced telecommunication services*—

(i) Services, offered over a telecommunications network, which employ computer processing applications that include one or more of the following:

(A) Acts on the format, content, code, protocol or similar aspects of the purchaser's transmitted information.

(B) Provides the purchaser additional, different or restructured information.

(C) Involves the purchaser's interaction with stored information.

(ii) Examples of enhanced telecommunication services include electronic publishing, Internet access, voice mail and electronic mail services. Services utilizing any of the computer processing applications in subparagraph (i) solely for the management, control or operation of a telecommunications system or the management of a telecommunications service is not an enhanced telecommunication service.

*International telecommunications service*—A telecommunications service that either originates in this Commonwealth and terminates outside the United States, or originates outside the United States and terminates in this Commonwealth.

*Interstate telecommunications service*—A telecommunications service that either originates in this Commonwealth and terminates in another state, or originates in another state and terminates in this Commonwealth.

*IntraState telecommunications service*—A telecommunications service that originates and terminates within this Commonwealth, regardless of routing.

*Private line*—A dedicated, nontraffic sensitive telecommunications service for a single purchaser that entitles the purchaser to the exclusive or priority use of a communications channel, or group of channels, between specified locations.

*Residential use*—The use or consumption within that portion of a structure used as a home, dwelling, private residence, condominium, housing cooperative, prefabricated building, camper, summer home, motor home or similar place of abode. The term includes the use or consumption by a condominium association or housing cooperative association that acts on behalf of residents who use the condominium or housing cooperative units as their personal residences. The term does not include the use or consumption of a telecommunications service for commercial purposes at a purchaser's private residence.

*Subscriber line charge*—An access charge paid directly by the purchaser of a telephone service to a local exchange carrier to defray the cost of providing local exchange access.

*Telecommunications service*—

(i) Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form, which affect or are intended to affect meaningful communications by electronic or electromagnetic means by means of wire, cable, satellite, light waves, microwaves, radio waves or other transmission media.

(ii) Except as provided in subparagraph (iii), the term includes all types of telecommunication transmissions such as:

- (A) Local, toll or wide-area telephone service.
- (B) Private line service.
- (C) Telegraph service.
- (D) Radio repeater service.
- (E) Wireless communication service.
- (F) Personal communications system (PCS) service.
- (G) Cellular mobile telecommunication service.
- (H) Specialized mobile radio service.
- (I) Stationary two-way radio service.
- (J) Paging service.

(iii) The term does not include:

- (A) Subscriber charges for access to a video dial tone system.
- (B) Charges to video programmers for the transport of video programming.
- (C) Enhanced telecommunication services.

*Video dial tone service*—A common carrier service for the transport of a video programming service to a subscriber.

*Video programming service*—Video or information programming, whether in digital or analog format, that is provided by a cable television operator, or is of the type that would generally be considered comparable to programming provided by a cable television operator, and upon which the cable television operator pays a franchise fee. The term does not include on-line, interactive information services to the extent that access to these services

is accomplished through use of a dial-up or telephone line, or a wireless or direct-to-home satellite transmission.

(b) *Scope.*

(1) *General.* Effective October 1, 1991, the sale at retail or use of an international or interstate telecommunications service charged to a service address in this Commonwealth or an intraState telecommunications service is subject to tax.

(2) *Purchase price.* The total amount charged for an international, interstate or intraState telecommunications service is taxable, regardless of whether the charge is based upon a flat rate or a message unit rate.

(3) *Private line service.* If the telecommunications service is a private line service, both of the following charges are taxable:

(i) Charges imposed for each channel termination point in this Commonwealth.

(ii) Charges for that portion of the channel within this Commonwealth determined by mileage or other reasonable method.

(4) *Ancillary services.* Services that are ancillary to the provision of telecommunication services are taxable, such as directory assistance service, the connection or disconnection of telecommunications services or equipment, call forwarding, caller identification and call waiting.

(5) *Prepaid telephone calling cards.* The sale of prepaid telephone calling cards, which allow the holders of the cards to use a predetermined number of minutes or set dollar amount of a telecommunications service, are not subject to Pennsylvania Sales Tax. The sale of the cards are considered to be the sale of a right to future telecommunication services and not a sale of tangible personal property. Once a telecommunications service that originates within this Commonwealth is made with the use of a prepaid telephone calling card, the call is subject to tax as a telecommunications service.

(i) The purchase price subject to tax is the consideration for the telecommunication service that is charged by the telecommunication service provider. This consideration is the value, expressed in terms of money, of the units or minutes that are reduced from the card upon each use. The tax shall be remitted to the Department by the telecommunications service provider.

(ii) The telecommunications provider or other entity that sells the debit cards is the consumer of the plastic or paper cards. Because the cards are not tangible personal property purchased for resale, the telecommunications provider or other entity shall pay tax upon its purchase of the cards.

(iii) The rules pertaining to debit cards under this subsection apply whether the card is transferred to a retail customer for consideration or as part of a promotional program.

(6) *Internet access.* Service charges associated with the provision of Internet access by an Internet or on-line service provider, including flat rate monthly, installation and hourly charges, are considered enhanced telecommunication charges and are not subject to sales and use tax. Telecommunication charges incurred by an Internet service provider to deliver Internet access to its subscribers are subject to tax. Local, toll or long distance telephone charges incurred by a subscriber to transmit signals from a computer to the Internet service provider are subject to tax, subject to the exceptions listed in subsection (d).

(c) *Service address.*

(1) If telecommunications equipment is designed to originate or receive a telecommunications service at a fixed location, the service address is the location of the equipment from which the purchaser originates or receives the telecommunications service. The following are examples involving a service address at a fixed location:

(i) Bruce calls New York from his home telephone located in this Commonwealth. Because Bruce's telephone is designed to originate a telecommunications service at a fixed location in this Commonwealth, the service address is in this Commonwealth. Because the telephone call also originates in this Commonwealth, the telecommunications service is subject to Pennsylvania Sales and Use Tax.

(ii) Jonathan places a collect call from New Jersey to Mary's home phone in this Commonwealth. Because it is a collect call, Mary is the purchaser of the telecommunications service. Because Mary's telephone is designed to receive a telecommunications service at a fixed location in this Commonwealth, the service address is in this Commonwealth. The collect call is subject to Pennsylvania Sales and Use Tax because it is received in this Commonwealth and its service address is in this Commonwealth.

(2) If telecommunications service equipment is designed to originate or receive a telecommunications service at a mobile location, the service address is the subscriber's primary use of the telecommunications equipment as defined by telephone number, authorization code or location in this Commonwealth where bills are sent. If the mobile telephone switching office or similar facility first receiving the telecommunication is outside the subscriber's assigned service area (that is, the subscriber is "roaming"), the service address is deemed to be the location of that mobile telephone switching office or similar facility. In the case of airtime service, a mobile telecommunications service provider may elect to define service address as being the location of the initial cell site used by the service provider's customer to originate the call or, if the customer receives a call, the cell site that connects the call to the receiver. The following are examples involving a service address at a mobile location:

(i) Cara, a Pennsylvania resident, purchases a paging service that covers Pennsylvania, New York and New Jersey. To activate the paging service, the paging service provider has antennas located throughout the tristate area that emit a signal corresponding to Cara's pager. Cara's pager is activated while she is attending a conference in New York City. Cara's service address is defined as her billing address in this Commonwealth because her pager is designed to receive a telecommunications service from a mobile location. The paging service originates in this Commonwealth because the paging service provider's signals originate from antennas located in this Commonwealth. Because the service originates in this Commonwealth and is charged to a service address in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(ii) Janis, a Pennsylvania resident, calls Newark, New Jersey from her cellular telephone while driving through Scranton, Pennsylvania, which is within her assigned cellular telephone service area. The cellular telephone service provider sends Janis's phone bills to her residence in this Commonwealth. Accordingly, the service address is deemed to be Janis's billing address. Because the call originates in this Commonwealth and the service address is in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(iii) Katie, a Pennsylvania resident, calls New York from her cellular telephone while driving through Maine,

which is outside her assigned cellular telephone service area. Accordingly, the service address is defined as the mobile telephone switching office in Maine that transmits the signal. Because the service address is in Maine and the telecommunication originates and terminates outside this Commonwealth, the call is not subject to Pennsylvania Sales and Use Tax.

(iv) Mike, a New York resident, calls Ohio from his cellular telephone while driving through this Commonwealth, which is outside his assigned cellular telephone service area. Accordingly, the service address is defined as the mobile telephone switching office in this Commonwealth that transmits the signal. Because the service originates in this Commonwealth, and the service address is deemed to be in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(v) Joe, a resident of Valley Forge, Pennsylvania, calls his office in Philadelphia, Pennsylvania, from his cellular telephone while driving in Cherry Hill, New Jersey. The call originates and terminates within his assigned cellular mobile telephone service area, which encompasses both this Commonwealth and New Jersey. Joe's service provider elects to use the cell site method for determining service address and determines that the initial cell site used to originate the call was located in Cherry Hill, New Jersey. Although Joe's cellular telephone call terminated in this Commonwealth and his billing address is in this Commonwealth, the call is not subject to Pennsylvania sales tax, because the location of the call's service address, under the cell site method, is in New Jersey.

(3) The service address of an intraState telecommunications service is deemed to be in this Commonwealth regardless of how or where billed or paid.

*Example:* Gregg places a call from Philadelphia, Pennsylvania to Scranton, Pennsylvania. He charges the call to a third party located outside this Commonwealth. Because the call originates and is received in this Commonwealth, the entire charge is taxable. The fact that Gregg charges the call to a third party located outside this Commonwealth is irrelevant.

(4) If the charge for an international or interstate telecommunications service is paid by a credit or payment mechanism that does not relate to a service address, such as a debit or credit card, or when the service is charged to equipment at a location that does not constitute a service address, the service address is deemed to be the location at which the telecommunications service originated.

(i) *Example:* Jack calls Massachusetts from a pay telephone located in this Commonwealth and uses his prepaid telephone debit card to pay for the call. Because a prepaid telephone debit card is not related to a service address, the service address is deemed to be this Commonwealth, the origination of the call. Because the call also originates in this Commonwealth, the charge is subject to Pennsylvania Sales and Use Tax.

(ii) *Example:* John calls New York from a telephone in this Commonwealth and charges the call to his calling card, a credit payment mechanism related to his home telephone in Florida. Because the telecommunications service was charged to equipment at a location that did not constitute a service address from which the call either originated or terminated, the service address is deemed to be this Commonwealth, the origination of the call. Therefore, because the call originates in this Commonwealth, it is subject to Pennsylvania Sales and Use Tax.

(5) The service address of a private line telecommunications service is deemed to be in this Commonwealth to

the extent that charges for the service are attributed to this Commonwealth under subsection (b)(4).

(d) *Exemptions from tax.* The following telecommunication services are exempt from tax:

(1) Basic local telephone service purchased directly by the purchaser solely for the purchaser's own residential use.

(2) Subscriber line charges purchased directly by the purchaser solely for the purchaser's own residential use.

(3) Telegrams paid for in cash at a telegraph office.

(4) Sales for resale of a telecommunications service as described in subsection (e).

(5) A telecommunications service purchased by a charitable organization as defined under § 32.1 (relating to definitions) that holds an exemption number issued by the Department under § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and non-profit educational institutions) and satisfies the requirements for a tax-exempt purchase under § 32.21.

(6) A telecommunications service purchased by a governmental entity as defined in § 32.22 or § 32.23 (relating to sales to the United States Government or within areas subject to the jurisdiction of the Federal Government; and sales to the Commonwealth or its political subdivisions and sales by the Commonwealth and its political subdivisions).

(7) A telecommunications service that is predominately used directly in manufacturing, processing, public utility, farming, dairying, agriculture, horticulture or floriculture, as defined in § 32.1.

(8) A telephone call paid for by inserting money into a telephone that accepts a direct deposit of money to operate.

(9) A telecommunications service purchased by an entity otherwise exempt from Pennsylvania Sales and Use Tax under any Federal or State law not enumerated in this subsection.

(e) *Resale exemption.*

(1) *Purchase for resale.* The purchase of a telecommunications service for resale occurs if the purchaser does not use the telecommunications service itself but rather resells the telecommunications service in the ordinary course of business. A purchase for resale does not occur when an enhanced telecommunication services provider acquires telecommunications services, regardless of whether the cost of the telecommunications services is separately stated on the invoice to the enhanced telecommunication service provider's customer.

(2) *Examples:*

(i) A guest at a hotel places a long distance telephone call. The call is handled through the hotel's switchboard. The guest is charged \$5 per minute and the guest's bill separately states this charge. The hotel may claim the resale exemption on the charge for the guest's call that it receives from the long distance telephone company providing service to the hotel.

(ii) A university purchases telecommunications services in bulk and then resells these services to individual students, faculty members or other retail purchasers. The university may claim the resale exemption on its pur-

chase of the telecommunication service that is resold to retail purchasers.

(iii) Interexchange telephone company IXC pays access charges to local exchange telephone company LEC for switched access service so that it may place a customer's long distance telephone call. IXC may claim resale on the access charge.

(iv) ISP, an Internet service provider, purchases telecommunication services to provide Internet access to its customers. Because ISP renders an enhanced telecommunication service, it cannot claim resale upon its purchase of telecommunication services that it uses to provide its enhanced service.

(v) XYZ Co. is an information services provider located in this Commonwealth that sells sports gambling information for \$5 per minute to customers who access the information through a "900" telephone number. XYZ Co. purchased the "900" telephone number from a long distance telephone company for a flat monthly fee of \$2,000. Although the \$5 per minute fee is listed on the customer's telephone bill, this charge does not represent the customer's charge for the "900" telephone call. Instead, the \$5 per minute charge represents the purchase price of XYZ Co.'s sports gambling information retrieved by means of the "900" telephone number. XYZ Co. cannot claim resale upon its purchase of its \$2,000 per month "900" telephone number because it is using this telecommunication service to render its sports information service. Accordingly, XYZ Co. shall pay Sales Tax upon its purchase of the "900" telephone number because the calls terminate in this Commonwealth and are charged to XYZ Co.'s service address in this Commonwealth.

(f) *Credits against tax.*

(1) To the extent that tax is due on the purchase of an international or interstate telecommunications service, a credit will be granted for taxes that were legally due and paid to another jurisdiction, if the other jurisdiction grants a similar credit for taxes paid to the Department. A credit cannot exceed the amount of tax owed to the Department on the same transaction.

(2) Credits against local tax will be applied in accordance with § 60.16 (relating to local sales, use and hotel occupancy tax).

(g) *Local sales and use tax.*

(1) A telecommunications service provider shall collect and remit local tax if the telecommunications service is provided to a service address in a county or other local jurisdiction that has enacted a local tax.

(2) In the case of airtime service, a cellular mobile telecommunications service provider may elect to use the cell site method for determining the service address as being in a county or other local jurisdiction that has enacted a local tax in a manner similar to that described in subsection (c)(2).

(h) *Telecommunications equipment and supplies.* The purchase, use, lease, repair or maintenance of telecommunications equipment and supplies, such as telephones and wires, is subject to Sales and Use Tax, unless the purchaser is entitled to claim an exclusion under the provisions of § 32.21, § 32.22 or § 32.34 (relating to public utilities).

[Pa.B. Doc. No. 97-1664. Filed for public inspection October 17, 1997, 9:00 a.m.]

# NOTICES

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearings

The Delaware River Basin Commission (Commission) will hold a public hearing on Wednesday, October 22, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 7 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, NJ.

In addition to the subjects listed which are scheduled for public hearing at the business meeting, the Commission will also address the following: minutes of the September 24, 1997 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; consideration of Jefferson Township Sewer Authority Doc. No. D-97-6 CP; a resolution to establish a Monitoring Advisory Committee; a status report on proposed amendments to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania; and public dialogue.

The subjects of the hearing will be as follows:

*Current Expense and Capital Budgets.* A proposed current expense budget for the fiscal year beginning July 1, 1998, in the aggregate amount of \$3,737,000 and a capital budget reflecting revenues of \$2,302,500 and expenditures of \$2,155,500. Copies of the current expense and capital budgets are available from the Commission on request by contacting Richard C. Gore at (609) 883-9500 ext. 201.

*A Proposal to Adopt the 1998 Water Resources Program.* A proposal that the 1996-1997 Water Resources Program and the activities, programs, initiatives, concerns, projections and proposals identified and set forth therein be extended and adopted as the 1998 Water Resources Program and that a staff report of progress during 1997 in completing elements of the program and policies in the 1996-1997 Water Resources Program be made a part thereof, in accordance with the requirements of section 13.2 of the Delaware River Basin Compact.

*Applications for Approval of the Following Projects Under Article 10.3, Article 11 and/or section 3.8 of the Compact:*

1. *Town of Milton. D-83-22 CP Renewal 2.* An application for the renewal of a groundwater withdrawal project to supply up to 10 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 2, 3, 4 and 5. Commission approval on August 12, 1992 was limited to 5 years. The applicant requests that the total withdrawal from all wells remain limited to 10 mg/30 days. The project is located in the Town of Milton, Sussex County, Delaware.

2. *New Jersey-American Water Company. D-90-89 CP Renewal.* An application for the renewal of a groundwater withdrawal project to supply up to 15 mg/30 days of water to the applicant's Belvidere System from Well Nos. 1 and 2. Commission approval on August 12, 1992 was limited to 5 years. The applicant requests that the total withdrawal from all wells remain limited to 15 mg/30 days. The project is located in White Township, Warren County, New Jersey.

3. *Borough of Glassboro. D-96-54 CP.* An application for approval of a groundwater withdrawal project to supply water to the applicant's distribution system from previously approved Well Nos. 2 through 7 and new Well Nos. 8 and 9, to increase the existing withdrawal limit of 25.92 mg/30 days from all Cohansey wells to 75.8 mg/30 days, and to increase the total allocation from all wells of 88.7 mg/30 days to 105 mg/30 days. The project is located in Glassboro Township, Gloucester County, New Jersey.

4. *London Grove Township Municipal Authority. D-97-27 CP.* An application for approval of a new 0.243 million gallons per day (mgd) (average monthly design capacity) spray irrigation discharge project to serve the Inniscone residential development in London Grove Township as well as a portion of Avondale Borough, and to provide golf course irrigation in London Grove Township, Chester County, PA. Secondary treatment will be provided by lined aerated lagoons prior to tertiary filtration and chlorine disinfection and discharge to either a 47-acre spray irrigation disposal area or for irrigation of a 72-acre golf course area. The project is located in the East Branch White Clay Creek watershed but no stream discharge is proposed.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Contact Thomas L. Brand at (609) 883-9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883-9500 ext. 203 prior to the hearing.

### *Other Scheduled Hearing*

By earlier notice, the Commission announced that it will hold a public hearing to receive comments on proposed amendments to its *Administrative Manual—Rules of Practice and Procedure* which are intended to delete obsolete provisions, to clarify certain provisions of the rules and better inform the signatory parties, applicants and the general public with regard to the Commission's practices and procedures. The proposed revisions conform the rules to existing Commission interpretations and practices.

The public hearing will be held on October 22, 1997 beginning at 3 p.m. and continuing until 5 p.m., as long as there are people present wishing to testify. The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, NJ. The deadline for inclusion of written comments in the hearing record will be announced at the hearing. Copies of the full text of the proposed amendments to the *Administrative Manual—Rules of Practice and Procedure* may be obtained by contacting Susan M. Weisman at (609) 883-9500 ext. 203. Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed amendments should be submitted to the Secretary at the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628.

SUSAN M. WEISMAN,  
Secretary

[Pa.B. Doc. No. 97-1665. Filed for public inspection October 17, 1997, 9:00 a.m.]

## DEPARTMENT OF AGRICULTURE

### Application Period for Farm Safety and Occupational Health Grant Program

The Department of Agriculture (Department) announces the opening of the application period for funding from the Farm Safety and Occupational Health (FSOH) Grant Program for FY 98. Grant applications will be accepted at the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Room G-13, Harrisburg, PA 17110-9408, from October 15, 1997 to January 30, 1998. Applications must be postmarked by January 30, 1998, to be considered for funding.

The FSOH Program was created by the General Assembly through the passage of the Farm Safety and Occupational Health Act (act) (3 P. S. §§ 1901—1915) effective February 10, 1995. The program is funded through a specific appropriation provided for in the act. For program guidelines, see the Farm Safety and Occupational Health Grant Program Statement of Policy published at 7 Pa. Code Ch. 138g.

The Farm Safety and Occupational Health Grant Program will award financial assistance, of up to \$2,500, to Statewide farm organizations, volunteer fire companies, ambulance services and rescue squads within this Commonwealth that wish to develop and deliver farm safety, occupational health and emergency response programs. The applications will be evaluated using criteria set forth in the Statement of Policy.

#### *Obtaining Applications*

Applications are available upon request by contacting Shiree Hunter at the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-7204 or by fax (717) 783-3275.

For further assistance, contact John Tacelosky, Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5217.

SAMUEL E. HAYES, Jr.,  
*Secretary*

[Pa.B. Doc. No. 97-1666. Filed for public inspection October 17, 1997, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending October 7, 1997.

#### BANKING INSTITUTIONS

##### Foreign Bank Organization Offices

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-1-97	Allied Irish Banks, p.l.c. Bancentre, Ballsbridge Dublin 4, Ireland	1703 Weatherstone Dr. Paoli Chester County	Opened

##### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-1-97	First Sterling Bank, Devon, and Prime Bank, a savings bank, Philadelphia Surviving Institution—First Sterling Bank, Devon, with a change in corporate title and location to "Prime Bank," Philadelphia	Devon	Effective
	<i>Branch Acquired Via Merger:</i> 80 West Lancaster Avenue Devon Chester County		
10-3-97	Ambassador Bank of the Commonwealth, Allentown, and Wibur Savings Bank, Bethlehem Surviving Institution—Ambassador Bank of the Commonwealth, Allentown	Allentown	Effective

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
	<i>Branch Acquired Via Merger:</i> 231 East Broad Street Bethlehem Northampton County		

**Branch Applications**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-16-97	Mid-State Bank and Trust Company Altoona Blair County	Mobile Branch to be operated at various locations throughout Bedford, Blair, Centre, Clearfield and Huntingdon Counties	Opened
9-30-97	PeoplesBank Glen Rock York County	Normandie Ridge 1700 Normandie Drive West Manchester Twp. York County (Limited Service Facility)	Opened
10-3-97	The York Bank and Trust Company York York County	Weis Market 1800 Roosevelt Ave. York York County	Approved
10-6-97	First Commonwealth Bank Indiana Indiana County	The Landings First Floor, Ste. 7 Harmar Township Allegheny County	Approved
10-6-97	Woodlands Bank Williamsport Lycoming County	618 West Southern Ave. South Williamsport Lycoming County	Approved

**Voluntary Dissolutions**

<i>Date</i>	<i>Name of Bank</i>	<i>Action</i>
10-1-97	FTC Liquidating Bank Carlisle Cumberland County	Certificate of Election for voluntary dissolution filed. Effective as of opening of business October 1, 1997.

**SAVINGS ASSOCIATIONS****Branch Applications**

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
10-6-97	East Stroudsburg Savings Association Stroudsburg Monroe County	Mr. Z's Supermarket U. S. Highway 209 and Weir Lake Road Chestnuthill Township Monroe County	Filed

**CREDIT UNIONS****Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
10-1-97	Delco Postal Credit Union, Upper Darby, and Wolfe-Baron State Credit Union, Philadelphia Surviving Institution—Delco Postal Credit Union, Upper Darby	Upper Darby	Effective
10-6-97	Rhawnhurst Federal Credit Union, Philadelphia, and Lt. Milton Kelkey Credit Union, Philadelphia Surviving Institution—Rhawnhurst Federal Credit Union, Philadelphia	Philadelphia	Effective

## Articles of Amendment

<i>Date</i>	<i>Name of Credit Union</i>	<i>Purpose</i>	<i>Action</i>
10-1-97	Delco Postal Credit Union Upper Darby Delaware County	To provide for a change in Article 8 of the Articles of Incorporation.	Approved and Effective

RICHARD C. RISHEL,  
*Secretary*

[Pa.B. Doc. No. 97-1667. Filed for public inspection October 17, 1997, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

#### APPLICATIONS

### APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

#### [National Pollution Discharge Elimination System Program (NPDES)]

#### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

#### (Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards and regulations the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Field Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Managers will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the Field Office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

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#### Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.

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*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**PA 0061841.** Industrial waste, SIC: 4941, **Pennsylvania American Water Co.**, 20 East Union Street, Wilkes-Barre, PA 18701.

This proposed action is for renewal of an NPDES permit to discharge treated process wastewater into Racket Brook, in Carbondale Township, **Lackawanna County**.

The receiving stream is classified for the following uses: cold water fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply (PWS) considered during the evaluation is Susquehanna Steam Electric Station intake on North Branch of the Susquehanna River, at Salem Township, Luzerne County.



The proposed effluent limits for Outfall 001 based on a design flow of .01 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	
Aluminum	4	8	
Manganese	1	2	
Total Iron	2	4	
pH		6.0—9.0 at all times	

The EPA waiver is in effect.

**PA 0062553.** Industrial waste, SIC: 4941, **Pennsylvania American Water Co.**, 20 East Union Street, Wilkes-Barre, PA 18701.

This proposed action is for renewal of an NPDES permit to discharge treated process wastewater into Big Wapwallopen Creek in Fairview Township, **Luzerne County**.

The receiving stream is classified for the following uses: cold water fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply (PWS) considered during the evaluation is the Danville Borough Water Supply on North Branch of the Susquehanna River.

The proposed effluent limits for Outfall 001 based on a design flow of .031 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Aluminum	2.4	4.8	
Manganese	1.0	2.0	
Total Iron	2.0	4.0	
Total Suspended Solids	30	60	
pH	6.0—9.0 su at all times		

The EPA waiver is in effect.

**PA 0053911.** Sewerage, **East Bangor Municipal Authority**, P. O. Box 325, East Bangor, PA 18013.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into Brushy Meadow Creek in East Bangor Borough, **Northampton County**.

The receiving stream is classified for the following uses: warm water, trout stocking fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply (PWS) considered during the evaluation is City of Easton Water Treatment Plant, Delaware River.

The proposed effluent limits for Outfall 001 based on a design flow of .1 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Weekly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	20	30	40
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	4		8
(11-1 to 4-30)	12		24
Dissolved Oxygen	a minimum of 5 mg/l at all times		
Fecal Coliform	200/100 ml as a geometric mean		
pH	6.0—9.0 standard units at all times		
Total Residual Chlorine			
(1st month through 36th month)	monitor and report		
(37th month through expiration)	.38		.9

The EPA waiver is in effect.

**PA 0046272.** Sewerage, **Porter Tower Joint Municipal Authority**, 326 East Grand Avenue, Tower City, PA 17980.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into Wisconisco Creek in Porter Township, **Schuylkill County**.

The receiving stream is classified for the following uses: warm water fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply (PWS) considered during the evaluation is Dauphin Consolidated Water Supply Company on the Susquehanna River.

The proposed effluent limits for Outfall 001 based on a design flow of .43 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
Dissolved Oxygen	a minimum of 5 mg/l at all times		
Fecal Coliform	200/100 ml as a geometric mean		
(5-1 to 9-30)	2,000/100 ml as a geometric mean		
(10-1 to 4-30)	6.0—9.0 standard units at all times		
pH			
Total Residual Chlorine	monitor and report		
(1st month through 24th month)	1.0		
(25th month through expiration date)	2.0		

The EPA waiver is in effect.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA 0032069.** Sewage, **St. Francis College**, P. O. Box 600, Loretto, PA 15940-0600.

This application is for renewal of an NPDES permit to discharge treated sewage from St. Francis College STP in Loretto Borough, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Clearfield Creek, which are classified as a cold water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the PA American Water Company on the West Branch Susquehanna River near Milton.

*Outfall 001:* existing discharge, design flow of 0.318 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>				
(5-1 to 10-31)	20	30		40
(11-1 to 4-30)	25	38		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	2.5	3.8		5.0
(11-1 to 4-30)	6.4	9.6		12.8
Fecal Coliform	200/100 ml as a geometric mean			
(5-1 to 9-30)	2,500/100 ml as a geometric mean			
(10-1 to 4-30)				
Total Residual Chlorine	monitor and report			
(1st month—36th month)	0.15			
(37th month—expiration)	0.48			
Dissolved Oxygen	not less than 6.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA 0111201.** Sewage, **Carrolltown Borough Municipal Authority**, P. O. Box 37, Carrolltown, PA 15722.

This application is for renewal of an NPDES permit to discharge treated sewage from Carrolltown Borough Sewage Treatment Plant in Carrolltown Borough, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Little Chest Creek, which are classified as a cold water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Clearfield Municipal Water Authority.

*Outfall 001:* existing discharge, design flow of .20 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	38		50
Suspended Solids	30	45		60

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
Ammonia Nitrogen (5-1 to 10-31)	2.0	3.0		4.0
(11-1 to 4-30)	3.3	5.0		6.6
Copper	.0118		.0236	.0295
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine (1st month—36th month)	monitor and report			
(37th month—expiration)	.023			.076
Dissolved Oxygen	not less than 6.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

*Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.*

**PA 0000213.** Industrial waste, SIC: 4941, **PA American Water Company**, Kane Treatment Plant, Route 321 North, Kane, PA 16735.

This application is for renewal of an NPDES permit to discharge filter backwash from water treatment to Hubert Run in Wetmore Township, **McKean County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is Emlenton Water Company on the Allegheny River located at Emlenton, approximately 105 miles below point of discharge.

The proposed discharge limits for Outfall No. 001, based on a design flow of 0.038 mgd, are:

Parameter	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)		monitor and report	
Aluminum	1	2	2.5
Total Iron	2	4	5
Manganese	1	2	2.5
TSS	30	60	75
Total Residual Chlorine (Final Limit)	0.95	X	2.2
pH	6.0—9.0 at all times		

The EPA waiver is in effect.

### Stormwater Individual

The following parties have applied for NPDES permits to allow the discharge of stormwater from an industrial site into the surface waters of this Commonwealth. The Department of Environmental Protection (Department) has made a tentative determination to issue these permits and proposes to issue them subject to effluent limitations, and monitoring and reporting requirements.

The EPA, Region III, Regional Administrator has waived the right to review or object to these proposed permit actions under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permits are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding these applications and proposed permit actions. Comments should include the name, address and telephone number of the writer and a brief statement to inform the Field Office of the basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and related documents, proposed effluent limitations and special conditions, comments received and other information are on the Department's file. The documents may be inspected at, or a copy requested from, the Field Office that has been indicated above the application notice.

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PAS202203	Nicholson Steam Trap 12 Oregon St. P. O. Box 113 Wilkes-Barre, PA 18773	Luzerne Wilkes-Barre	Susquehanna River	
PAS802210	Pocono Mtns. Mun. Airport Authority Pocono Mtns. Airport Coolbaugh Township Monroe County	Monroe Coolbaugh Twp.	Red Run	
PAS202204	Instrument Specialties Co. P. O. Box A Delaware Water Gap, PA 18327	Monroe Delaware Water Gap Bor.	Cherry Creek	
PAS802211	Roadway Express, Inc. Rt. 715 South Tannersville, PA 18372	Monroe Pocono and Jackson Twps.	Reeders Run and Unnamed Trib. to Pocono Creek Brodhead Creek	
PAS232203	Diversity Corp. 880 Crowe Rd. E. Stroudsburg, PA 18301-1198	Monroe E. Stroudsburg Bor.		
PAS802209	Nationwide Equipment 5224 Oak View Dr. Allentown, PA 18104	Lehigh Upper Macungie	Little Lehigh	
PAS212201	Eastern Industries 4401 Camp Mtg. Rd. Suite 200 Center Valley, PA 18034-9454	Lehigh Allentown	Little Lehigh	

**DISCHARGE OF CONTROLLED INDUSTRIAL  
WASTE AND SEWERAGE WASTEWATER  
Applications under the Pennsylvania Clean  
Streams Law  
(Part II Permits)**

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department).

Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed; and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest or protests. Each commenter will be notified in writing of the time and place if a hearing or conference concerning the plan or action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

**Industrial waste and sewerage applications under  
The Clean Streams Law (35 P. S. §§ 691.1—  
691.1001).**

*Southwest Regional Office: Water Management Program  
Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-  
4745, (412) 442-4000.*

**A. 0297409.** Sewerage, **Donald H. Cuzzo**, P. O. Box 426, Pittsburgh, PA 15230. Application for the construction and operation of a Single Residence Sewage Treatment Plant located in the Borough of Franklin Park, **Allegheny County** to serve the Cuzzo residence.

**A. 0497405.** Sewerage, **Mary Louise Thomas**, 143 Florence Road, New Brighton, PA 15066. Application for the construction and operation of a Single Residence Sewage Treatment Plant located in the Township of Daugherty, **Beaver County** to serve the Thomas residence.

**A. 6397403.** Sewerage, **John Prokell**, R. D. 1, Box 551, New Alexandria, PA 15670. Application for the construction and operation of a Single Residence Sewage Treatment Plant located in the Township of Amwell, **Washington County** to serve the Prokell residence.

**LAND RECYCLING AND ENVIRONMENTAL  
REMEDICATION**

**Under Act 2, 1995**

**Preamble 1**

**Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 302 and 303 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment of the receipt of any notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate identifies a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background or Statewide health standard to remediate a site must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department must provide a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

For further information concerning the content of a Notice of Intent to Remediate, contact the Department's Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Artco Corp.**, Hatfield Township, **Montgomery County**. Douglas H. Samak, American Analytical and Environmental, Inc., 738 Front St., Catasauqua, PA 18032, has submitted a Notice of Intent to Remediate site soil contaminated with lead. The applicant proposes to remediate the site to meet the Statewide health standard.

*Northeast Regional Field Office, Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**Pennsylvania Power & Light Company (PP&L)—Distribution pole No. 56534N44726 (Davis Street)**, City of Scranton, **Lackawanna County**. PP&L, Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101 has submitted a Notice of Intent to Remediate concerning the remediation of site soils found to be contaminated with PCBs (polychlorinated

biphenyls). The applicant proposes to remediate the site to meet the Statewide human health standard.

**Pennsylvania Power & Light Company (PP&L)—Distribution pole No. 57546N46758 (Delaware Street)**, City of Scranton, **Lackawanna County**. PP&L, Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101 has submitted a Notice of Intent to Remediate concerning the remediation of site soils found to be contaminated with PCBs (polychlorinated biphenyls). The applicant proposes to remediate the site to meet the Statewide human health standard.

**Pennsylvania Power & Light Company (PP&L)—Distribution pole No. 51714N39508 (Wilkes Lane)**, City of Wilkes-Barre, **Luzerne County**. PP&L, Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101 has submitted a Notice of Intent to Remediate concerning the remediation of site soils found to be contaminated with PCBs (polychlorinated biphenyls). The applicant proposes to remediate the site to meet the Statewide human health standard.

**Pennsylvania Power & Light Company (PP&L)—Distribution pole No. 51701N39518 (North Empire Street)**, City of Wilkes-Barre, **Luzerne County**. PP&L, Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101 has submitted a Notice of Intent to Remediate concerning the remediation of site soils found to be contaminated with PCBs (polychlorinated biphenyls). The applicant proposes to remediate the site to meet the Statewide human health standard.

**Bethlehem Economic Development Company—Former Union Station Plaza**, City of Bethlehem, **Northampton County**. Marlin D. Hunsberger, Project Geologist with National Environmental Technologies Corporation, 2840 W. Clymer Avenue, P. O. Box 204, Telford, PA 18969-0204 has submitted a Notice of Intent to Remediate (on behalf of his client, Bethlehem Economic Development Company, 10 East Church Street, Bethlehem, PA 18018) concerning the remediation of site soils suspected to be contaminated with petroleum hydrocarbons and polyaromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide human health standard.

*Southcentral Regional Office, Environmental Cleanup Program Manager, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4592.*

**ELCO USA**, Smithfield Township, **Huntingdon County**. AVX Corporation, 801 17th Avenue South, P. O. Box 867, Myrtle Beach, SC 29578, has submitted a Notice of Intent to Remediate site soils contaminated with BTEX and solvents to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Huntingdon Daily News* on September 29, 1997.

*Northwest Regional Office, Craig Lobins, Acting Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.*

**Mahoning Hardware and Implement Company**, Borough of Punxsutawney, **Jefferson County**. 116-120 Indiana Street has submitted a Notice of Intent to Remediate soil. The site has been found to be contaminated with BTEX. The applicant proposes to remediate the site to meet the Statewide health standard.

**LAND RECYCLING AND ENVIRONMENTAL  
REMEDICATION**

**Under Act 2, 1995**

**Preamble 2**

**Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use a site-specific standard or who intend to remediate a site in a Special Industrial Area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific cleanup standard, in whole or in part, and for sites determined to be located in Special Industrial Areas. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area by the person conducting remediation. For the sites identified, a municipality may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period a municipality may request that the person identified, as the remediator of a site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of a site. For further information concerning the content of a Notice of Intent to Remediate, contact the Department's Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay service at 1 (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**AFI-I, LP**, City of Philadelphia, **County of Philadelphia**. Max J. Sandler, Sandler & Associates, P. O. Box 239, Ewan, NJ, 08025, has submitted a Notice of Intent to Remediate site soil contaminated with BTEX and petroleum hydrocarbons and groundwater with undeter-

mined contaminants. The applicant proposes to remediate the site to meet site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Daily News* on September 15, 1997.

**Penn Terminals, Inc.**, Eddystone Borough, **Delaware County**. William Y. Potter, P. G., 550 Pinetown Road, Ft. Washington, PA 19034, has submitted a Notice of Intent to Remediate site soil contaminated with lead and heavy metals. The applicant proposes to remediate the site to meet site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Delaware County Daily Times* on September 16, 1997.

*Northeast Regional Field Office, Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**ICI Explosives USA, Inc.—Energetic Materials Facility**, Walker Township, **Schuylkill County**. Daria L. Killinger, Counsel, ICI Explosives USA, Inc., P. O. Box 271, Tamaqua, PA 18252 has submitted a Notice of Intent to Remediate concerning the remediation of site soils and groundwater which have become contaminated with petroleum hydrocarbons, lead and other metals. The applicant proposes to remediate the site to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lehigh Valley Times-News* on September 19, 1997.

*Southcentral Regional office, Environmental Cleanup Program Manager, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4592.*

**OSRAM Sylvania Products, Inc.**, West Manchester Township, **York County**. OSRAM Sylvania Products, Inc., 1128 Roosevelt Avenue, York, PA 17404 has submitted a Notice of Intent to Remediate site soils contaminated with solvents. The applicant proposed to remediate the site to meet the site-specific standard.

**ELCO USA**, Smithfield Township, **Huntingdon County**. AVX Corporation, 801 17th Avenue South, P. O. Box 867, Myrtle Beach, SC 29578 has submitted a Notice of Intent to Remediate site soils contaminated with heavy metals, groundwater contaminated with solvents and BTEX, and surface water and sediment contaminated with solvents to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Huntingdon Daily News* on September 29, 1997.

**W. R. Meadows, Inc.**, West Manchester Township, **York County**. W. R. Meadows, Inc., 390 River Ridge Drive, Elgin, IL 60121, has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with PHCs. The applicant proposes to remediate the site to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *York Daily Record* on September 29, 1997.

**J & S Properties, Inc.** Site, formerly H & H Appliance and Puritan Cleaners, City of Altoona, **Blair County**. Earth Sciences Consultants, Inc., One Triangle Drive, Export, PA 15632, has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with solvents. The applicant proposes to remediate the site to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Altoona Mirror* on October 5, 1997.

**Pine Terrace Apartments**, Hamburg Borough, **Berks County**. M. Domer Leibensperger, 65 South Fourth

Street, Hamburg, PA 19526, has submitted a Notice of Intent to Remediate site soils contaminated with lead. The applicant proposes to remediate the site to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Reading Eagle Times* on October 3, 1997.

*Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager; 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.*

**Pennzoil Products Company** (54th Street Terminal), City of Pittsburgh, **Allegheny County**. David Soza, Pennzoil Products Company, P. O. Box 2967, Houston, TX 77252 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with solvents. The applicant proposes to remediate the site to meet a site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Pittsburgh Post Gazette* on September 4, 1997.

**Latrobe Plastic Company**, Derry Township, **Westmoreland County**. Larry Wallisch, Latrobe Plastic Company, Loyalhanna Industrial Park, New Latrobe/Derry Road, Loyalhanna, PA 15661 has submitted a Notice of Intent to Remediate groundwater contaminated with solvents. The applicant proposes to remediate the site to meet a site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Latrobe Bulletin* on November 20, 1996.

**ARCO Chemical Company, Beaver Valley Plant** (including: Over the Hill Tank Farm, Raccoon Creek, West Lanfield, Dravo Quarry, East Lanfield, phthalic anhydride, Central Plant, Styrene II) Potter Township, **Beaver County**. Thomas J. Walsh, 3801 West Chester Pike, Newtown Square, PA 19073 has submitted a Notice of Intent to Remediate soil, groundwater and sediment contaminated with heavy metals, BTEX, PHCs, PAHs and C8+HC. The applicant proposes to remediate the site to meet a site-specific and Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Beaver County Times* on September 10, 1997.

## SOLID AND HAZARDOUS WASTE

### PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE

#### INFECTIOUS OR CHEMOTHERAPEUTIC WASTE

**Applications received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Clean Harbors Environmental Services, Inc.**, 1501 Washington Street, Braintree, MA 02184; Joseph J. Chiapponi, Compliance Specialist; application received October 3, 1997.

## AIR POLLUTION OPERATING PERMITS

### Operating Permit applications received under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

*Southcentral Regional Office, Air Quality Program, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4587.*

**ER-06-5004: Baldwin Hardware Corporation** (P. O. Box 15048, Reading, PA 19612) for 18 tons of Volatile Organic Compounds ERCs resulting from the shut down of sources in Reading, **Berks County**.

**ER-06-5028: Schrock Cabinet Company** (4900 Key Tower, 127 Public Square, Cleveland, OH 44114-1304) for 95.5 tons of Volatile Organic Compounds ERCs resulting from the shutdown of sources in Ontelaunee Township, **Berks County**.

**21-2013B: Fry Communications, Incorporated** (800 West Church Road, Mechanicsburg, PA 17055) for two nonheatset presses located in Plant No. 1 in Mechanicsburg Borough, **Cumberland County**.

**31-310-004B: New Enterprise Stone and Lime Co., Inc.** (P. O. Box 77, New Enterprise, PA 16664) for a limestone crushing plant controlled by water sprays and a fabric filter at their Orbisonia Quarry in Cromwell Township, **Huntingdon County**. The source is subject to 40 CFR 60, Subpart OOO, Standards of Performance for New Stationary Sources.

**67-320-026: GTY, Inc.** (2075 Loucks Road, York, PA 17404) for the operation of two printing presses located at the facility located in West Manchester Township, **York County**.

*Northcentral Regional Office, Air Quality Program, 200 Pine Street, Williamsport, PA 17701, (717) 327-3637.*

**19-302-030: Blue Falcon Forge, Inc.** (P. O. Box 188, Berwick, PA 18603) for the operation of a natural gas/No. 2 fuel oil fired boiler in Berwick Borough, **Columbia County**.

*Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**OP-65-00064: Latronics Corporation** (1001 Lloyd Avenue, Latrobe, PA 15650) for their facility in Unity Township, **Westmoreland County**. Permit conditions cover all equipment located at the facility. Maximum allowable annual emissions (after control) are established at less than 8 tons of Trichloroethylene HAP emissions.

**PA-04-684A: Beaver Valley Aggregates, Inc.** (1150 Brodhead Road, Monaca, PA 15061) for a slag processing plant at its Aliquippa Site in Hopewell Township, **Beaver County**.

**65-313-013: Sony Display Device** (1001 Technology Drive, Mt. Pleasant, PA 15666) for an acid fume scrubber on the deionized water regeneration system at its Pittsburgh Manufacturing Center in Mt. Pleasant Township, **Westmoreland County**.

**PA-65-865A: Sony Chemicals Corporation of America** (1001 Technology Drive, Mt. Pleasant, PA 15666) for a rotary R & D Coater at its Pittsburgh Manufacturing Center in Mt. Pleasant Township, **Westmoreland County**.

**PA-65-792A: Advanced Metallurgy, Inc.** (1003 Corporate Drive, Export, PA 15632) for a baghouse on the belt and brush sanders at its Plant 5 in Murrysville, **Westmoreland County**.

**PA-04-218A: NF & M International, Inc.** (1729 Pennsylvania Avenue, Monaca, PA 15061) for a fume scrubber on the pickling operation at its Manufacturing Division in Monaca Borough, **Beaver County**.

**OP-04-00445: Veka, Inc.** (100 Veka Drive, Fombell, PA 16123) for a rubber and plastic products process at its facility in Marion Township, **Beaver County**.

**OP-65-00467: Coal Loaders, Inc.** (P. O. Box 556, Ligonier, PA 15658) for a coal processing process at its Jubilee No. 1 facility in Derry Township, **Westmoreland County**.

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#### Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code § 127.521, notice is given that the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the following facilities. These facilities are major facilities subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F (relating to operating permit requirements) and G (relating to Title V operating permits).

Copies of the Title V application, proposed permit and other relevant information are available for public inspection and additional information may be obtained by contacting the regional office noted.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the persons submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of objections to the permit issuance and the relevant facts upon which the objections are based.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearings at least 30 days in advance of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

*Southeast Regional Office: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, Attn: Edward Brown, (610) 832-6242.*

**15-00037: McCorquodale Security Cards, Inc.—Exton Facility** (Corporate Center, 523 James Hance Court, Exton, PA 19341) in West Whiteland Township, **Chester County**. This facility is primarily engaged in a security card manufacturing process. The facility's major air emission sources are three lithographic and two screen presses which emit major levels of Volatile Organic Compounds (VOCs).

#### PLAN APPROVALS

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#### Plan Approval applications received under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

*Southcentral Regional Office, Air Quality Program, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4587.*

**05-399-005E: Bedford Reinforced Plastics, Inc.** (R. D. 2, Box 225, Bedford, PA 15522) for the modification of an existing fiberglass pultrusion operation in East St. Clair Township, **Bedford County**.

**38-318-030B: Supreme Mid-Atlantic Corp.** (P. O. Box 779, Jonestown, PA 17038) for the installation of a paint area at Plant No. 2 in Swatara Township, **Lebanon County**.

**38-318-035: Supreme Mid-Atlantic Corp.** (P. O. Box 779, Jonestown, PA 17038) for the installation of a lift gate painting operation at Plant No. 3 in West Lebanon Township, **Lebanon County**.

**67-309-070D: Global Stone PenRoc, Inc.** (P. O. Box 1967, York, PA 17405-1967) for the modification of a ball mill feed system at the West Filler Plant in West Manchester Township, **York County**. The modification is subject to Subpart 000, Standards of Performance for New Stationary Sources.

*Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**PA-26-119C: Anchor Glass Container Corporation** (4343 Anchor Plaza Parkway, Tampa, FL 33182) for the Number 2 Deco Lehr at their Plant 5 facility in South Connellsville Borough, **Fayette County**.

**PA-26-119B: Anchor Glass Container Corporation** (4343 Anchor Plaza Parkway, Tampa, FL 33182) for the Number 1 Deco Lehr at their Plant 5 facility in South Connellsville Borough, **Fayette County**.

**PA-65-898A: Three Rivers Pipeline Company** (3500 Park Lane, Pittsburgh, PA 15275) for a natural gas compressor at Sleepy Hollow Compressor Station in Salem Township, **Westmoreland County**.

**PA-26-472A: Assad Iron and Metal, Inc.** (P. O. Box 76, Brownsville, PA 15417) for a United AS-990 Sweat Furnace at its Brownsville Plant in Jefferson Township, **Fayette County**.

**PA-63-892A: Vesta Mining Company** (P. O. Box 409, Fredericktown, PA 15333) for a coal preparation plant at their facility in North Bethlehem Township, **Washington County**.

**PA-04-235A: Pennsylvania Power Company** (76 South Main Street, Akron, OH 44308) for a forced oxidation gypsum plant at their Bruce Mansfield facility in Shippingport Borough, **Beaver County**.

#### REASONABLY AVAILABLE CONTROL TECHNOLOGY

(RACT)

#### Proposed Revision to the State Implementation Plan for oxides of nitrogen and volatile organic compounds and Notice of Public Hearing

Approval of Reasonably Available Control Technology (RACT) plan for **Coastal Aluminum Rolling Mills, Inc.**, Williamsport, **Lycoming County**.

The Department of Environmental Protection (Department) has made a preliminary determination to approve a Reasonably Available Control Technology (RACT) plan and an amendment to the State Implementation Plan (SIP) for a coil coating and aluminum rolling facility owned and operated by Coastal Aluminum Rolling Mills, Inc. in the City of Williamsport, Lycoming County.

The proposed SIP revision does not adopt new regulations. It incorporates the provisions and requirements contained in the RACT approval for the facility to comply with current regulations.

The preliminary RACT determination, if finally approved, will result in the revision of Operating Permit No.



OP-41-0007 issued on March 20, 1996 and will be submitted to the United States Environmental Protection Agency (EPA) as a revision to Pennsylvania's State Implementation Plan.

The following is a summary of the preliminary RACT determination which the Department proposes to incorporate into Operating Permit No. OP-41-0007 for various ancillary operations associated with the facility's coal coating lines as a revision to the respective permit:

1) The combined volatile organic compound emissions from the coating solutions mixing area and associated cleanup operations (Mixing Building operations) shall not exceed 3 pounds per hour, 15 pounds per day or 2.7 tons in any 12 consecutive month period.

2) The combined volatile organic compound emissions from the coating solutions storage area, coating transfer operations, associated cleanup operations and coil coating line cleanup operations (Main Plant preparation and cleanup operations) shall not exceed 3 pounds per hour, 15 pounds per day or 2.7 tons in any 12 consecutive month period.

3) The combined volatile organic compound emissions from 21 natural gas-fired space and process heaters, all with heat inputs of less than 10,000,000 BTU per hour, shall not exceed 3 pounds per hour, 15 pounds per day or 2.7 tons in any 12 consecutive month period.

4) Rags used during the hand cleaning of coating line equipment with organic solvents shall be stored in closed containers prior to reuse or disposal and shall not be subjected to air drying or any other treatment process intended to intentionally promote the evaporative loss of organic solvent. All containers of volatile organic compound-containing materials shall remain closed when not in actual use.

The Department also proposes to revise a condition of Operating Permit No. OP-41-0007 which restricted the materials which could be used as coolant/lubricants on two aluminum cold rolling mills to allow the use of additional materials and to add a requirement to the respective permit which requires the performance of volatile organic compound testing on both rolling mills prior to the expiration of the permit.

One public hearing will be held for the purpose of receiving comments on the proposed operating permit revision and SIP revision. The hearing will be held on November 5, 1997 at 1 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA. The public is invited to comment on the proposal. Persons interested in commenting are invited to appear at the public hearing.

Persons wishing to present testimony at the hearing should contact Daniel Spadoni at (717) 327-3659 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to a maximum of 10 minutes per individual and two written copies of the oral testimony are requested. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Daniel Spadoni at (717) 327-3659 or the Pennsylvania AT&T relay service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Those unable to attend the hearing, but wishing to comment, should provide written comments to David

Aldenderfer, Air Quality Environmental Program Manager, Pennsylvania DEP, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448. Comments should be submitted by November 20, 1997.

All pertinent documents are available for review from 8 a.m. to 4 p.m. in the DEP Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling (717) 327-3693.

**Proposed Revision to the State Implementation Plan for Nitrogen Oxides (NO<sub>x</sub>); Approval of a Reasonably Available Control Technology Plan and Operating Permit; Public Hearing**

**Dauphin County**

The Department of Environmental Protection (Department) has made a preliminary determination to approve a Reasonably Available Control Technology (RACT) Plan and an amendment to the State Implementation Plan (SIP) for **Hershey Chocolate USA's** chocolate candy and confectionery manufacturing facility located in Derry Township, **Dauphin County**.

The proposed SIP revision does not adopt new regulations. It incorporates the provisions and requirements contained in RACT Operating Permit No. 22-2004A for the existing Hershey East Plant to comply with current regulations. Upon final approval, the operating permit will include emission limits, fuel usage restrictions, recordkeeping and reporting requirements for four boilers. The permit will also establish emission reduction credits (ERC) available to the company from the previous shutdown of one boiler and the curtailment of two of the remaining boilers.

An appointment to review the pertinent documents at the Southcentral Regional Office may be scheduled by contacting Mary DiSanto at (717) 540-5018 between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

A public hearing will be held for the purpose of receiving comments on the proposed operating permit and SIP revisions. The hearing will be held on October 20, 1997, at the Department's Southcentral Regional Office, One Ararat Boulevard, Harrisburg, PA 17110 from 1 p.m. until all scheduled comments on the proposed action are received.

Those wishing to comment are requested to contact Sandra Roderick at (717) 541-7969 at least 1 week in advance of the hearing to schedule their testimony. Commentators are requested to provide two written copies of their remarks at the time of the hearing. Oral testimony will be limited to a maximum of 10 minutes per individual. Organizations are requested to designate an individual to present testimony on behalf of the organization. Written comments may be submitted to Gary Lenz, Air Pollution Control Engineer, DEP, One Ararat Boulevard, Harrisburg, PA 17110 during the 30-day period following publication of this notice.

Persons with a disability who wish to attend the hearing scheduled for October 20, 1997, at the Department's Southcentral Regional Office and who require an auxiliary aid, service or other accommodations to participate in the proceedings, should contact Sandra Roderick directly at (717) 541-7969 or through the AT&T Rrelay Service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

## MINING

### APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

#### MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for the certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department of the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and

a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

#### *Coal Applications Received*

**32970202. Britt Energies, Inc.** (P. O. Box 515, Indiana, PA 15701), commencement, operation and restoration of a coal refuse reprocessing mine in Center and White Townships, **Indiana County**, affecting 47.8 acres, receiving stream Yellow Creek to Two Lick Creek to Conemaugh River, application received September 26, 1997.

**11960106. Major SMP Revision, M. B. Energy, Inc.** (P. O. Box 1319, Indiana, PA 15701-1319). This stream crossing variance is being proposed as an alternative access road into future mining areas. The approval of the crossing would eliminate the need for coal truck access off Township Road 428 (Mile Hill Road). The proposal is as follows: 1) Unnamed Tributary No. 15—to install and maintain a haul road stream crossing at a point 490 feet upstream from where the unnamed tributary intercepts Laurel Run. 2) Laurel Run—to install and maintain a haul road stream crossing at a point 2,000 feet upstream from Laurel Run's intersection with Township Road 423. 3) Unnamed Tributary No. 15—Variance to conduct support activities as necessary to install stream crossing of the said Tributary No. 15—beginning at a point 430 feet upstream from where the unnamed tributary intersects Laurel Run, then continuing upstream in a northerly direction a distance of 140 feet. 4) Laurel Run—Variance to conduct support activities as necessary to install a stream crossing on Laurel Run—beginning at a point 1,930 feet upstream from where Laurel Run intersects Township Road 423, thence continuing upstream in a northerly direction a distance of 100 feet in Jackson Township, **Cambria County**, affecting 309.3 acres, application received October 01, 1997.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

**26870202R. Carriage Mining, Inc.** (1406 Highview Drive, Greensburg, PA 15601). Renewal application received for continued operation and reclamation of a coal refuse reprocessing mine located in German Township, **Fayette County**. Receiving streams: Browns Run Watershed. Renewal application received: September 25, 1997.

**26910108R. Stash Mining Company** (P. O. Box 20, Waltersburg, PA 15488). Renewal application received for continued operation and reclamation of a bituminous surface mine located in Georges Township, **Fayette County**. Receiving streams: North Branch Browns Run Watershed. Renewal application received: September 30, 1997.

**03920110R. Thomas J. Smith, Inc.** (R. D. 1, Box 260D, Shelocta, PA 15774). Renewal application received for continued reclamation of a bituminous surface mine located in South Bend Township, **Armstrong County**. Receiving streams: Craig Run to Crooked Creek to the Allegheny River. Renewal application received: October 1, 1997.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**24970103. Energy Resources, Inc.** (P. O. Box 259, Brockway, PA 15824) Commencement, operation and restoration of a bituminous surface strip and auger operation in Fox and Horton Townships, **Elk County** affecting 312.0 acres. Receiving streams: Unnamed tributaries to

Brandy Camp Creek and Brandy Camp Creek; Unnamed tributaries to Benninger Run and Benninger Run and Boderocco Run. Application received September 24, 1997.

**33970110. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767) Commencement, operation and restoration of a bituminous surface strip and auger operation in Oliver Township, **Jefferson County** affecting 253.0 acres. Receiving Streams: Two unnamed tributaries to Big Run and an unnamed tributary to Little Sandy Creek. Application received September 26, 1997.

*McMurray District Office*

**03870701. TJS Mining, Inc.** (R. D. 1, Box 260D, Shelocta, PA 15774), to revise the permit for the CRD No. 2 Ext. in Plumcreek Township, **Armstrong County** to add 60.5 permit acres, Dutch Run. Application received July 28, 1997.

**56961302. K. B. Coal Co., Inc.** (P. O. Box 4091, Hidden Valley, PA 15502), to transfer the permit for the Miller Mine in Lincoln Township, **Somerset County**, from Dunamis Resource, Inc., add permit and Subsidence Control Plan Acres, and a postmining land use change, no additional discharges. Application received September 8, 1997.

**11841302. Trent Coal Co., Inc.** (1789 Stoystown Road, Friedens, PA 15541), to renew the permit for the Rice No. 2/Arrow No. 3 Mine in Portage and Summerhill Township, **Cambria County**, no additional discharges. Application received September 23, 1997.

**03841305. Keystone Coal Mining Corp.** (P. O. Box 729, Indiana, PA 15701), to revise the permit for the Emilie No. 1 and No. 2 in Plumcreek Township, **Armstrong County** to revise Subsidence Control Plan, no additional discharges. Application received September 23, 1997.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54851336R2. Summit Anthracite, Inc.** (R. R. 1, Box 12A, Klingerstown, PA 17941), renewal of an existing anthracite deep mine operation including NPDES Permit No. PA223328 in Porter and Frailey Townships, **Schuylkill County**, affecting 5.7 acres, receiving stream Good Spring Creek. Application received September 23, 1997.

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

*Large Noncoal Applications Received*

**31970301. U. S. Silica Company** (R. D. 1, Box 1885, Mapleton Depot, PA 17052), commencement, operation and restoration of bituminous strip mine in Brady Township, **Huntingdon County**, affecting 290.3 acres, receiving stream Mill Creek and Saddler Run, application received September 29, 1997.

## APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT ENCROACHMENTS

The following Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department).

In addition to permit applications, the Bureau of Dams, Waterways and Wetlands (BDWW) and the Regional Office Soils and Waterways Sections have assumed pri-

mary responsibility for processing requests for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)), for projects requiring both a Dam Safety and Encroachments Permit, and a United States Army Corps of Engineers (ACOE) permit. Section 401(a) of the Federal Water Pollution Control Act requires the State to certify that the involved projects will not violate the applicable provision of 33 U.S.C.A. §§ 1301—1303, 1306 and 1307, as well as relevant State requirements. Initial requests for 401 Certification will be published concurrently with the BDWW permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Safety or Encroachment Permit, or the approval of Environmental Assessments must submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the Bureau or Field Office indicated as the responsible office.

### Applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.

*Southeast Regional Office, Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E46-786. Encroachment. PA DOT**, District 6-0, 200 Radnor-Chester Rd., St. Davids, PA 19087. To replace an existing deteriorated bridge, spanning Bridge Road (SR 1015) over Skippack Creek (TSF), located immediately upstream of the boundary with Evansburg State Park. This bridge is a one-lane steel truss, 68 foot long single span structure, supported by stone abutments. The new bridge will be constructed at the same location, and includes reconstruction of bridge approaches. The proposed multiple stringer, composite steel deck bridge structure, having a 78-foot single span, and a minimum underclearance of 10.4 feet, will be supported by reinforced concrete abutments. The width of the proposed bridge, will be increased to 34-feet to accommodate two lane automobile traffic. The work will also include placing rock scour protection along abutment footings and wing walls. The bridge is located approximately 500 feet south of the intersection of Old Forty Foot Road (SR 1006) and Bridge Road (Collegeville, PA Quadrangle N: 19.9 inches; W: 0.4 inch) in Lower Salford and Towamencin Townships, **Montgomery County**.

*Northeast Regional Office, Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.*

**E35-276. Encroachment. Empire Sanitary Landfill, Inc.**, P. O. Box 28, Taylor, PA 18517, to fill in 3.86 acres of PEM/SS/FO Wetlands and to relocate approximately 4,300 feet of Saw Mill Creek with the construction of approximately 6,400 l. f. of channel change with work consisting of the construction of a trapezoidal channel, riprap bank stabilization, gabion basket channel lining and rock-lined plunge pools. The project is part of Area II modification for a soil stockpile/borrow area for future landfill expansion. The project is located on the northwest side of S. R. 3011 (Keyser Avenue) approximately 0.5 mile south of the intersection of S. R. 3011 and S. R. 0476 (Pennsylvania Turnpike, Northeast Extension) (Scranton, PA Quadrangle N: 3.5 inches; W: 16.7 inches) in Old Forge Borough, Taylor Borough and Ransom Township, **Lackawanna County**. (Baltimore District, Army Corps of Engineers).

**E40-479.** Encroachment. **Robert K. Mericle**, 600 Baltimore Drive, Wilkes-Barre, PA 18702. To place fill and/or excavate in 2.16 acres of open water and PEM wetlands for the purpose of constructing stormwater detention facilities and performing site grading associated with the construction of a commercial warehouse. The project is located on Lot No. 5, Hanover Street in the Hanover Industrial Park (Wilkes-Barre West, PA Quadrangle N: 13.5 inches; W: 8.5 inches) in Hanover Township, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers).

**E45-327.** Encroachment. **J. A. Snyder Entities, Inc.**, Route 611, Fountain Court, Bartonsville, PA 18321. To construct a portion of a parking lot within 0.47 acre of wetlands, and to construct and maintain a 15-inch stormwater outfall along Pocono Creek, for the purpose of constructing a commercial development, known as Fountain Springs West. The project is located on the west side of S. R. 0611, approximately 0.8 mile south of the intersection of S. R. 0611 and S. R. 0715 (Mount Pocono, PA Quadrangle N: 6.1 inches; W: 6.4 inches), in Pocono Township, **Monroe County** (Philadelphia District, U. S. Army Corps of Engineers).

**E45-337.** Encroachment. **Charles and Nancy Casey**, 2255 Rolling Hills Drive, Morgan Hill, CA 95037. To place fill in approximately 0.06 acre of PFO wetlands for the purpose of constructing a single-family dwelling on Lot 20 of Lake Naomi Estates Residential Subdivision. The project is located between Tanglewood Drive and Upper Tunkhannock Creek, approximately 0.2 mile north of S. R. 0940 (Pocono Pines, PA Quadrangle N: 21.2 inches; W: 7.5 inches) in Tobyhanna Township, **Monroe County** (Philadelphia District, Army Corps of Engineers).

**E45-338.** Encroachment. **Joseph S. Romagano**, 84 Run Valley Road, Conestoga, PA 17516. To place fill in a de minimis area of PFO wetlands less than or equal to 0.05 acre for the purpose of constructing a single family dwelling and driveway on Lot 64, Block 64, Section II of Arrowhead Lake Residential Subdivision. The project is located on the northeast side of North Arrowhead Lake, southwest of the intersection of Skippack Drive and North Arrow Drive (Thornhurst, PA Quadrangle N: 7.25 inches; W: 9.25 inches) in Coolbaugh Township, **Monroe County** (Philadelphia District, U. S. Army Corps of Engineers).

**E52-152.** Encroachment. **Drs. Peter A. Seitzman and Joseph A. Minola**, 18 East 77th Street, Apartment 1B, New York, NY 10021. To construct and maintain a covered pedestrian bridge having a span of 38 feet and an underclearance of 22.4 feet across the Bushkill Creek (EV). The bridge will be constructed at the site of a previous dam and will use the existing stone masonry abutments. This project is located on the west side of S. R. 1017 (Delaware Drive) next to the Millrift Museum in the Village of Millrift (Port Jervis North, NY-PA Quadrangle N: 6.55 inches; W: 16.55 inches) in Westfall Township, **Pike County** (Philadelphia District, Army Corps of Engineers).

**E58-224.** Encroachment. **Chester Grover**, R. R. 2, Box 231, New Milford, PA 18834. To maintain fill which has been placed in 3.47 acres of PEM wetlands within the drainage basin of Salt Lake Creek (HQ-CWF). The project is located approximately 200 feet west of S. R. 0011, north of the Great Bend Township-New Milford Township boundary (Great Bend, PA-NY Quadrangle N: 6.0 inches; W: 15.0 inches), in Great Bend Township, **Susquehanna County** (Baltimore District, U. S. Army Corps of Engineers).

*Southcentral Regional Office, Water Management Program, Soils and Waterways Section, One Ararat Boulevard, Room 126, Harrisburg, PA 17110, (717) 657-4590.*

**E06-501.** Encroachment. **Albert Eckart**, 724 Browns Lane, Croydon, PA 19021. To place precast concrete slabs on the surface of an existing bridge across the channel of Pine Creek at a point approximately 2,000 feet upstream of the District Township-Pike Township boundary line (Manatowny, PA Quadrangle N: 10.75 inches; W: 9.5 inches) in District Township, **Berks County**.

**E21-269.** Encroachment. **Larry Livingston**, 209 S. Norway St., Mechanicsburg, PA 17055. To maintain two units of steel steps along the left banks 100-year floodway of the Conodoguinet Creek in order to reach the left bank for fishing located about 1,500 feet west of the Sears Run Drive and Orrs Bridge Road intersection (Harrisburg West, PA Quadrangle N: 1.65 inches; W: 12.65 inches) in Hampden Township, **Cumberland County**.

**E22-373.** Encroachment. **Milton Hershey School**, Lawrence Davenport, Founders Hall, P. O. Box 830, Hershey, PA 17033. To restore the natural alignment of 2,400 feet of channel, to excavate an instream pond and to construct a bridge over the pond in the channel of a tributary to Spring Creek at a point upstream of Route 322 (Hershey, PA Quadrangle N: 4.0 inches; W: 16.7 inches) in Derry Township, **Dauphin County**.

**E36-639.** Encroachment. **Gary Friedman and J. Michael Young**, 1330 Creek Road and 1320 Creek Road, Lititz, PA 17543. To rehabilitate and maintain an existing bridge by removing the deck and center pier, with reinforcement and underpinning of both abutments and wingwalls. The bridge superstructure will be made of prestressed concrete box beams and have a span of 30.25 feet with an average underclearance of 6 feet across Lititz Run for private access to two residences located on the east side of Creek Road (Leola, PA Quadrangle N: 19.7 inches; W: 17.4 inches) in Manheim Township, **Lancaster County**.

**E38-116.** Encroachment. **County of Lebanon, Lebanon County Historical Society**, William Carpenter, 400 S. 8th Street, Lebanon, PA 17042. To perform restoration work on the Union Canal Tunnel portal (entrance) and remove sediment deposits from approximately 500 feet of existing canal to its original condition located on the north side of Tunnel Hill Road (SR 4002) (Lebanon, PA Quadrangle N: 18.2 inches; W: 12.0 inches) in North Lebanon Township, **Lebanon County**.

**E67-609.** Encroachment. **York County Rail/Trail Authority**, Gwen Loose, R. D. 8, Box 438A, York, PA 17403. To realign approximately 200 feet of stream channel and place riprap to stabilize the bed and banks of a tributary to South Branch Codorus Creek beginning upstream of rail/trail Bridge at M. P. 49.84 (West York, PA Quadrangle N: 1.8 inches; W: 1.5 inches) in North Codorus Township, **York County**.

**E67-610.** Encroachment. **Manchester Township Municipal Authority**, Delmar Hauck, 3289 Susquehanna Trail, York, PA 17402. To construct and maintain an 8-inch diameter (PVC) sanitary sewer main with manholes, crossing two tributaries to Codorus Creek and 350 feet of wetlands located along North George Street (SR 0181) (York Haven, PA Quadrangle N: 5 inches; W: 15 inches) in Manchester Township, **York County**.

**E67-611.** Encroachment. **York County Rail/Trail Authority**, Gwen Loose, R. D. 8, Box 438A, York, PA 17403. To fill 0.03 acre of wetlands for construction of a bicycle trail along the eastern side of railroad tracks, between

Church Street (SR 0214) for the Hanover Junction to Indian Rock Dam Road rail/trail project (Seven Valleys, PA Quadrangle N: 20.2 inches; W: 2.0 inches) in Seven Valleys Borough, **York County**.

#### DAM SAFETY

*Central Office: Bureau of Waterways Engineering, 400 Market Street, 6th Floor; P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.*

**D22-096.** Dam. **Jacob's Creek Ltd.** (1106 Cocoa Avenue, Hershey, PA 17033). To construct, operate and maintain a dam across a Tributary to Jacobs Creek (WWF) on McCorkel Road approximately 800 feet from its intersection with Church Road for the purpose of providing stormwater detention for the proposed Jacobs Creek residential development.

### ACTIONS

## FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

#### (Part I Permits)

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, 400 Market Street, Second Floor, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audio tape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

### Industrial waste and sewerage actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Southcentral Regional Office: Regional Water Management Program Manager, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4590.*

**Permit No. 0597403.** Sewage. **Broad Top Township Board of Supervisors**, Box 57, Municipal Building, Defiance, PA 16633. To construct sewage treatment facilities in Broad Top Township, **Bedford County**.

**Permit No. 3897401.** Sewage. **John Whary**, 7557 Morningstar Avenue, Harrisburg, PA 17112. To construct sewage treatment facilities in Bethel Township, **Lebanon County**.

**Permit No. 2197410.** Sewage. **Carlisle Suburban Authority**, 240 Clearwater Drive, Carlisle, PA 17013. To construct sewers and appurtenances in North Middleton Township, **Cumberland County**.

**NPDES Permit No. PA0087343.** Sewerage. **Broad Top Township Board of Supervisors**, Box 57, Municipal Building, Defiance, PA 16633 is authorized to discharge from a facility located in Broad Top Township, **Bedford County** to the receiving waters named Sandy Run.

**NPDES Permit No. PAG043579.** Sewerage. **John Whary**, 7557 Morningstar Avenue, Harrisburg, PA 17112 is authorized to discharge from a facility located in Bethel Township, **Lebanon County** to the unnamed tributary to Monroe Creek.

**NPDES Permit No. PA0084565.** Sewerage. **East Prospect Borough Authority**, P. O. Box 203, East Prospect, PA 17317 is authorized to discharge from a facility located in Lower Windsor Township, **York County** to the receiving waters named Cabin Creek.

**NPDES Permit No. PA0024147.** Sewerage. **Cumberland Township Authority**, 1270 B Fairfield Road, Gettysburg, PA 17325 is authorized to discharge from a facility located in Cumberland Township, **Adams County** to the receiving waters named Willoughby Run.

**NPDES Permit No. PA0081744.** Sewerage. **York County Solid Waste Refuse Authority**, 2700 Blackbridge Road, York, PA 17402 is authorized to discharge from a facility located in Hopewell Township, **York County** to the receiving waters of an unnamed tributary to Rambo Run and an unnamed tributary to Ebaugh's Run.

**NPDES Permit No. PA0043567.** Sewerage. **York Springs Municipal Authority**, P. O. Box 175, York Springs, PA 17372 is authorized to discharge from a facility located in Huntingdon Township, **Adams County** to the receiving waters named Gardner Run.

*Southwest Regional Office, Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**NPDES Permit No. PA0024252-Amendment No. 1.** Industrial waste, **Sun Refining and Marketing Company**, Ten Penn Center, 1801 Market Street, Philadelphia, PA 19103-1699 is authorized to discharge from a facility located at Atlantic Delmont Marketing Terminal, Salem Township, **Westmoreland County**.

**NPDES Permit No. PA0096164-Amendment No. 1.** Sewage, **Thomas Guiher**, R. D. 6, Box 530, New Castle, PA 16101 is authorized to discharge from a facility located at Little Village Sewage Treatment Plant, Donegal Township, **Westmoreland County**.

**Permit No. 0297408.** Sewerage, **Adrienne Mueller**, 5713 Wesleyann Dr., Gibsonia, PA 15044. Construction of a Sewage Treatment Plant located in the Township of Richland, **Allegheny County** to serve the Mueller residence.

**Permit No. 2683406-A1.** Sewerage, **Fayette County Housing Authority**, 624 Pittsburgh Road, P. O. Box 1007, Uniontown, PA 15401. Replacement of Sewage

Treatment Plant Rehabilitation located in the Township of Washington, **Fayette County** to serve the Marion Villa.

*Northwest Regional Office, Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.*

**NPDES Permit No. PA9929122.** Sewage. **Saxonburg Area Authority**, 420 West Main Street, Saxonburg, PA 16056 is authorized to discharge from a facility located in Jefferson Township, **Butler County** to Thorn Creek.

**NPDES Permit No. PA0030031.** Sewage. **Kebert Enterprises, Inc.**, Kebert Industrial Park, R. D. 6, P. O. Box 418, Meadville, PA 16335 is authorized to discharge from a facility located in Greenwood Township, **Crawford County** to an unnamed tributary to Conneaut Outlet.

**WQM Permit No. 2597407.** Sewerage, **James P. Balich**, SRSTP, 9530 Old Waterford Rd., Erie, PA 16509. Construction of James P. Balich SRSTP located in Greene Township, **Erie County**.

**WQM Permit No. 3397403.** Sewage. **Snyder Township**, Arch Street Pump Station, P. O. Box 39, Brockway, PA 15824. This project is for the construction and operation of sewage treatment facilities in Snyder Township, **Jefferson County**.

**WQM Permit No. 6297407.** Sewage. **Tidioute Trading Post**, R. D. 1, Box 97-1A, Tidioute, PA 16351. This project is for the construction and operation of a small flow treatment facility to replace an existing malfunctioning onlot system in Limestone Township, **Warren County**.

**WQM Permit No. 1097407.** Sewage. **Breakneck Creek Regional Authority**, Oak Park Subdivision, 1166 Mars-Evans City Road, Mars, PA 16046. This project is for the construction of a pump station to connect the Oak Park Subdivision to their sanitary sewer collection system in Pine Township, **Allegheny County**.

**INDIVIDUAL PERMITS**

**(PAS)**

The following approvals for coverage under NPDES Individual Permit for Discharge of Stormwater from Construction Activities have been issued.

These actions of the Department of Environmental Protection (Department) may be appealed to the Environmental Hearing Board (Board), Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483, by an aggrieved person under The Environmental Hearing Board Act (35 P. S. § 7514); 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Appeals must be filed with the Board within 30 days from the date of this issue of the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Department's regulations governing practice and procedure before the Board may be obtained from the Board.

*Southeast Regional Office, Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAG10-G267	The Hankin Group 217 Constitution Drive P. O. Box G Exton, PA 19341	Upper Uwchlan Twp. Chester County	Shamona Creek
PAS10-G270	B and B Homes, Inc. P. O. Box 2019 West Chester, PA 19380	Upper Uwchlan Twp. Chester County	Tributary to Marsh Creek
PAS-10G274	Joseph A. Piccone, Inc. 501 Route 113 Chester Springs, PA 19425	Upper Uwchlan and West Vincent Townships Chester County	Unnamed Tributary to Birch Run

*Southcentral Regional Office, Water Management Program, Soils and Waterways Section, One Ararat Boulevard, Room 126, Harrisburg, PA 17110, (717) 657-4590.*

**PAS-10-0022.** Individual NPDES. **Conewago Valley Partnership**, 40 York Street, Hanover, PA 17331. To Implement an Erosion and Sedimentation Control Plan for residential development to be known as Conewago Valley Estates on 34.42 acres in Conewago Township, **Adams County**. The project is located east of Mt. Pleasant Road approximately 2,000 feet south of S. R. 0116 in McSherrystown (McSherrystown, PA Quadrangle N: 8.7 inches; W: 2.7 inches). Drainage will be to Plum Creek.

**PAS-10-H073.** Individual NPDES. **Shryle M. Diehl**, 205 East Yellow Breeches Road, Carlisle, PA 17013. To Implement an Erosion and Sedimentation Control Plan for a residential development called Maple Grove subdivision on 40 acres in Penn Township, **Cumberland County**. The project is located 3/4 mile north of Huntsdale Village (Dickinson, PA Quadrangle N: 20.93 inches; W: 7.4 inches). Drainage will be to Yellow Breeches Creek.

*Northwest Regional Office, Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS102304	Commodore Home Systems, Inc. 14221 Conneaut Lake Road Meadville, PA 16335	Crawford County Sadsbury Township	Conneaut Lake

**INDIVIDUAL PERMITS  
(PAR)**

The following parties have submitted Notices of Intent (NOIs) for Coverage under (1) General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania. The approval of coverage for land application of sewage sludge or residential septage under these general permits is

subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection approves the following coverages under the specified General Permit.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

*List of NPDES and/or other  
General Permit Type*

PAG-1	General Permit For Discharges From Stripper Oil Well Facilities
PAG-2	General Permit For Discharges of Stormwater From Construction Activities
PAG-3	General Permit For Discharges of Stormwater From Industrial Activities
PAG-4	General Permit For Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit For Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit For Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application
PAG-8	General Permit For Beneficial Use of Non-Exceptional Sewage Sludge By Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

*General Permit Type—PAG 1*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
President Township Venango County	6197001	North American Oil & Gas Drilling Co., Inc. 15882 Bailey Road Pleasantville, PA 16341	Pithole Creek	Northwest Regional Office Oil & Gas Mgmt. 230 Chestnut St. Meadville, PA 16335 (814) 332-6860

*General Permit Type—PAG 3*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Borough of S. Coatesville Chester County	PAR800076	Brandywine Valley Railroad Company 50 First Avenue Coatesville, PA 19320	West Branch Brandywine Creek	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
City of Coatesville Chester County	PAR600041	Luria Brothers South First Avenue Coatesville, PA 19320	Brandywine River	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
West Nantmeal Township Chester County	PAR800005	Eastern Waste Industries P. O. Box 1112 Honeybrook, PA 19344	No Outfall	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
City of Philadelphia Philadelphia County	PAR800080	ABF Freight System, Inc. 4000 Richmond Street Philadelphia, PA 19137	Delaware River	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130

## NOTICES

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<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Marlborough Township Montgomery County	PAR700010	Highway Materials, Inc. 1128 Crusher Road Perkiomenville, PA 18074	Unami Creek	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
West Chester Borough Chester County	PAR230057	Wyeth-Ayerst Laboratories 611 East Nield Street West Chester, PA 19382	Unnamed Tributary to Goose Creek	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Whitpain Township Montgomery County	PAR200029	Keystone Yarway Corporation 480 Norristown Road Blue Bell, PA 19422	Unnamed Tributary to Plymouth Creek	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Montgomery County Upper Gwynedd Twp.	PAR140009	Jefferson Smurfit Container Corporation of America 500 Church Road North Wales, PA 19454	Wissahickon Crk.	DEP Southeast Region Water Management Program Manager Lee Park, Ste. 6010, 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Montgomery County Horsham Twp.	PAR800077	Naval Air Station Joint Reserve Base—Willow Grove Code 20 Environmental Dept. Willow Grove, PA 19090	Little Neshaminy Crk.	DEP Southeast Region Water Management Program Manager Lee Park, Ste. 6010, 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bucks County Falls Twp.	PAR800078	Atlantic Marine Terminals Inc. USX Fairless Works Fairless Hills, PA 19030	Delaware River	DEP Southeast Region Water Management Program Manager Lee Park, Ste. 6010, 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bucks County Bristol Twp.	PAR210021	Universal Superabrasives, Inc. 130 West Wharten Road Bristol, PA 19007	Neshaminy Crk.	DEP Southeast Region Water Management Program Manager Lee Park, Ste. 6010, 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Montgomery County Hatfield Twp.	PAR800070	Ryder Student Transportation Service 3435 Trewigton Road Colmar, PA 18915	Neshaminy Crk.	DEP Southeast Region Water Management Program Manager Lee Park, Ste. 6010, 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Millcreek Twp. Erie County	PAR238307	Haysite Reinforced Plastics 5599 New Perry Highway Erie, PA 16509	Millcreek	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
North East Borough Erie County	PAR208321	Ridg-U-Rak, Inc. P. O. Box 150 North East, PA 16428	Sixteenmile Crk.	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942



<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Hermitage City Mercer County	PAR808336	CNF Transportation, Inc. 3240 Hillview Avenue Palo Alto, CA 94304	Shenango River	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Erie City Erie County	PAR808335	CNF Transportation, Inc. 3240 Hillview Avenue Palo Alto, CA 94304	Lake Erie	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Paint Twp. Clarion County	PAR228317	MacMillan Bloedel Clarion Limited Partnership 1 Fiberboard Avenue Shippensburg, PA 16254	Unnamed Tributary to Clarion River	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Shenango Twp. Lawrence County	PAR208338	Flowline Division of Markovitz Enterprises P. O. Box 7027 New Castle, PA 16107	Unnamed Tributary to Big Run	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Lafayette Twp. McKean County	PAR808337	Bradford Regional Airport Authority Star Route Box 176 Lewis Run, PA 16738	Kinzua Crk., Source to Wintergreen Run and East Branch Tunungwant Crk., Source	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Ridgway Twp. Elk County	PAR238315	General Chemical Corporation 90 East Halsey Road Parsippany, NJ 07054	Powers Run	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Barkeyville Boro. Venango County	PAR808365	Heath Oil Co. P. O. Box 941 Oil City, PA 16301	Wolf Crk. and Slippery Rock Crk.	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Big Run Borough Jefferson County	PAR118319	Star Iron Works, Inc. R. D. 3, Box 155 Punxsutawney, PA 15767	Big Run Crk. and Mahoning Crk. (Below Clover Run)	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Erie City Erie County	PAR208339	McInnes Steel Company 441 East Main Street Corry, PA 16407	Lake Erie	DEP Water Management Northwest Region 230 Chestnut St. Meadville, PA 16335 (814) 332-6942

*General Permit Type—PAG-4*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Allegheny County Richland Twp.	PAG046129	Adrienne Mueller 5713 Wesleyann Drive Gibsonia, PA 15044	Unnamed Tributary of Willow Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Foster Twp. McKean County	PAG048456	James Moore 2330 Fuller Rd. Burt, NY 14028	Unnamed Tributary to Foster Brook Crk.	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Glade Twp. Warren County	PAG048460	Susan A. Betts 20 Woods Rd. Warren, PA 16335	Unnamed Tributary of Hatch Run	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335 (814) 332-6942
Sugar Grove Boro. Warren County	PAG048455	Randy & Stacey Daugharthy 306 Jamestown St. Sugar Grove, PA 16350	Tributary to Stillwater Crk.	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335 (814) 332-6942

**SAFE DRINKING WATER****Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

*Southwest Regional Office, Regional Manager, Water Supply Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**Permit No. 0288509.** Public water supply. **Borough of Sharpsburg**, 1021 North Canal Street, Pittsburgh, PA 15215.

*Type of Facility:* Manganese removal facilities.

*Permit to Operate Issued:* September 25, 1997.

**Permit No. 5026452.** Public water supply. **H2O Pros, Inc.**, 3613 Main Street, Weirton, WV 26062.

*Type of Facility:* H2O Pros, Inc. Retail Water System.

*Permit to Construct Issued:* September 25, 1997.

**Permit No. 0296504-A1.** Public water supply. **Fox Chapel Authority**, 255 Alpha Drive, Pittsburgh, PA 15238-2944.

*Type of Facility:* New chemical feed, control valve and metering facility.

*Permit to Construct Issued:* September 25, 1997.

**LAND RECYCLING AND ENVIRONMENTAL REMEDIATION****Under Act 2, 1995  
Preamble 3****The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection to publish in

the *Pennsylvania Bulletin* a notice of submission of any final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed, and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program in the Department's Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final report:

*Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Hannes Property**, Buckingham Township, **Bucks County**. Mark Fortna, DelVal Soil & Environmental Consultants, Inc., Sky Run II, Suite A1, 4050 Skyron Dr., Doylestown, PA 18901, has submitted a Final Report concerning remediation of site soils and groundwater contaminated with BTEX and petroleum hydrocarbons. The report is intended to document remediation of the site to meet the Statewide health standard.

**Bond Shopping Center**, Upper Darby Township, **Delaware County**. Michael Gonshor, P. G., RT Environmental Services, Inc., 215 W. Church Rd., King of Prussia, PA 19406, has submitted a Final Report concerning remediation of site soils and groundwater contaminated with solvents. The report is intended to document

remediation of the site to meet the site-specific standard for soil and the Statewide health standard for groundwater.

*Northeast Regional Field Office, Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**Pennsylvania Power & Light Company (PP&L)—Distribution pole #63134S48433 (409 Union Street),** Whitehall Township, **Lehigh County.** PP&L, Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101 has submitted a Final Report concerning the remediation of site soils which became contaminated with PCBs (polychlorinated biphenyls). The report is intended to document remediation of the site to meet the Statewide human health standard.

*Southcentral Regional Office, Environmental Cleanup Manager, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4592.*

**Distribution Pole 25009S34460,** Penbrook Borough, **Dauphin County.** **Pennsylvania Power and Light,** Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

## SOLID AND HAZARDOUS WASTE

### LICENSE TO TRANSPORT HAZARDOUS WASTE

**Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.**

*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Advanced Environmental Technical Services, L.L.C.,** 3 Gold Mine Road, Flanders, NJ 07836; License No. **PA-AH 0500;** renewal license issued September 16, 1997.

**Colonial Metals, Co.,** P. O. Box 311, Columbia, PA 17512; License No. **PA-AH 0440;** renewal license issued October 2, 1997.

**Eaglebrook Transport of Ohio, Inc.,** 17877 St. Claire Avenue, Cleveland, OH 44110; License No. **PA-AH 0369;** renewal license issued September 22, 1997.

**Modern Transportation Services, Inc.,** 1612 Perry Highway, Portersville, PA 16051; License No. **PA-AH 0325;** renewal license issued September 29, 1997.

**Hazardous Waste Transporter License voluntarily terminated under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport hazardous waste.**

*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**BCTI Transportation, Inc.,** P. O. Box 2078, Pecos, TX 79772; License No. **PA-AH 0520;** license terminated September 26, 1997.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a hazardous waste treatment, storage or disposal facility.**

*Regional Office, Regional Solid Waste Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**Permit No. PAD000429589. Grows, Inc.,** Borden-town and New Ford Mill Road, Morrisville, PA 19067. This hazardous waste post closure permit modification is for continuing post closure monitoring at Grows Landfill located in Falls Township, **Bucks County.** Permit issued in the Southeast Regional Office on September 26, 1997.

### PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE

#### INFECTIOUS OR CHEMOTHERAPEUTIC WASTE

**Licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Mayer Enterprises, Inc.,** 18 Catherine Street, Shil-lington, PA 19607; License No. **PA-HC 0200;** license issued September 6, 1997.

**Superior Waste Services of Pennsylvania, Inc.,** R. D. 2, Box O, Brockway, PA 15824; License No. **PA-HC 0199;** license issued September 6, 1997.

**Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Sandford Motors, Inc.,** 1307 Pennsylvania Avenue, Morrisville, PA 19067; License No. **PA-HC 0122;** renewal license issued September 15, 1997.

## AIR POLLUTION

### OPERATING PERMITS

**Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northwest Regional Office, Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**20-303-003: Meadville Redi-Mix, Inc.** (R. D. 6, Meadville, PA 16335) for a concrete batch plant and dust collectors in Meadville, **Crawford County.**

**42-307-005: Kane Magnetics International** (700 Elk Ave., Kane, PA 16735) for a rotary calciner furnace in Kane, **McKean County**.

#### PLAN APPROVALS

**Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southcentral Regional Office, Air Quality Program, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4587.*

**06-310-026A: Pottstown Trap Rock Quarry, Inc.** (P. O. Box 196, Skippack, PA 19474) issued September 23, 1997, for the modification of the nonmetallic mineral crushing plant controlled by a wet suppression system in Douglass Township, **Berks County**. This source is subject to 40 CFR 60, Subpart 000, Standards of Performance for New Stationary Sources.

*Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**PA-65-889A: Allegheny Energy Resources, Inc.** (20 Stanwix Street, Suite 600, Pittsburgh, PA 15222) issued October 2, 1997, for an LFG recycling facility at its Valley Landfill Site in Penn Township, **Westmoreland County**.

*Northwest Regional Office, Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA-25-360A: The Electric Materials Co.** (P. O. Box 390, 45 Loomis St., North East, PA 16428) issued September 26, 1997, for an open top vapor degreaser in North East, **Erie County**.

**Plan Approval extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources or air cleaning devices.**

*Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**65-305-048: Koppers Industries, Inc.** (436 Seventh Avenue, Pittsburgh, PA 15229) issued on September 9, 1997, extended to December 14, 1997, for a pushing baghouse, a desulfurization unit, and an excess coke oven gas flare on the coke oven battery operations at its Monessen Coke Plant in Monessen, **Westmoreland County**.

**56-307-001E: FirstMiss Steel, Inc.** (Box 509, Holsopple, PA 15935) issued September 19, 1997, extended to February 1, 1998, for an electric arc furnace at its Stony Creek Plant facility in Quemahoning Borough, **Somerset County**.

**03-000-180: CNG Transmission Corporation** (445 West Main Street, P. O. Box 2450, Clarksburg, WV 26302) issued August 29, 1997, extended to February 1, 1998, for IC engines at their South Bend Station in South Bend Township, **Armstrong County**.

**65-309-033A: St. George Crystal, Ltd.** (P. O. Box 709, Jeannette, PA 15644) issued September 5, 1997, extended to January 31, 1998, for baghouses on the glass melting

furnace at their Jeannette Plant in Jeannette, **Westmoreland County**.

**PA-65-590A: Dormont Manufacturing Company** (6015 Enterprise Drive, Export, PA 15632) issued September 5, 1997, extended to January 31, 1998, for a cutting saw at its facility in Penn Township, **Westmoreland County**.

**56-305-050: Dunamis Resources, Inc.** (P. O. Box 846, Latrobe, PA 15650) issued September 5, 1997, extended to January 31, 1998, for a coal processing facility at Miller Mine/Quecreek No. 1 Mine in Jenner Township, **Somerset County**.

**63-307-023A: Lukens Steel Company** (P. O. Box 494, Washington, PA 15301) issued September 5, 1997, extended to November 30, 1997, for a baghouse on 2 electric arc furnaces (EAF) at its Houston Plant in Houston Borough, **Washington County**.

**65-305-049: Koppers Industries, Inc.** (436 Seventh Avenue, Pittsburgh, PA 15229) issued September 5, 1997, extended to December 14, 1997, for a benzene emissions recovery plant and ammonia still on their coke by-products recovery plant at their Monessen Coke Plant in Monessen, **Westmoreland County**.

**PA-65-800A: Columbia Gas Transmission Corporation** (P. O. Box 1273, Charleston, WV 25325) issued September 5, 1997, extended to January 1, 1998, for reciprocating engines at its Delmont Compressor Station facility in Salem Township, **Westmoreland County**.

**32-000-200: Indiana University of Pennsylvania** (425 Pratt Drive, Indiana, PA 15705) issued September 5, 1997, extended to January 1, 1998, for cleanburn combustion technology for the cogeneration facility at its S. W. Jack Cogeneration Plant in Indiana Borough, **Indiana County**.

**63-305-020A: Matt Canestrone Contracting, Inc.** (P. O. Box 234, Belle Vernon, PA 15012) issued September 5, 1997, extended to January 31, 1998, for a pebble lime loading/unloading facility at its facility in Donora Borough, **Washington County**.

**65-304-039: Tasman Development Company, Ltd.** (P. O. Box 81620, Pittsburgh, PA 15217) issued September 5, 1997, extended to November 15, 1997, for a sand removal and screening process at its Latrobe Plant facility in Latrobe Borough, **Westmoreland County**.

## MINING

### APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

#### MINING ACTIVITY ACTIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

*Coal Applications Issued*

**56920105.** Permit Renewal. **Sanner Energies, Inc.** (1179 Rockdale Road, Rockwood, PA 15557-6409), commencement, operation and restoration of a bituminous strip-auger mine in Southampton Township, **Somerset County**, affecting 100.2 acres, receiving stream unnamed tributaries to North Branch of Jennings Run, application received July 31, 1997, permit issued September 29, 1997.

**56960109.** **Croner, Inc.** (R. D. 4, Box 83-C, Berlin, PA 15530), commencement, operation and restoration of a bituminous strip mine in Brothersvalley Township, **Somerset County**, affecting 129.0 acres, receiving stream unnamed tributaries to Blue Lick Creek, application received August 29, 1996, permit issued September 29, 1997.

**32940106.** **Larry and Warren Weaver** (R. D. 1, Box 169, Smicksburg, PA 16256), permit revision to allow auger mining on the Lower Freeport and Upper Kittanning coal seams located in Rayne Township, **Indiana County**, affecting 46.0 acres, receiving streams two unnamed tributaries to Little Mahoning Creek, application received July 7, 1997, permit issued October 1, 1997.

**32970106.** **GLR Mining, Inc.** (P. O. Box 105, Clymer, PA 15728), commencement, operation and restoration of a bituminous strip-auger mine in Pine Township, **Indiana County**, affecting 92.5 acres, receiving stream unnamed tributaries to Leonard Run, unnamed tributary to Yellow Creek, application received April 17, 1997, permit issued October 1, 1997.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

**26920105.** **Twilight Industries, Division of U. S. Natural Resources, Inc.** (212 State Street, Belle Vernon, PA 15012). Permit revised to add 9 acres to an existing surface mining site located in Jefferson Township, **Fayette County**, now affecting 157.0 acres. Receiving streams unnamed tributaries to Washington Run to the Youghiogheny River and unnamed tributaries to Little Redstone Creek to the Monongahela River. Application received August 25, 1997. Revision issued October 1, 1997.

**02910102R.** **Robinson Coal Company** (P. O. Box 9347, Neville Island, PA 15225). Renewal issued for reclamation only of a bituminous surface mine located in North Fayette Township, **Allegheny County**, and Robinson Township, **Washington County**, affecting 280 acres. Receiving streams unnamed tributary to Little Raccoon Run and North Branch Robinson Run. Application received January 9, 1997. Renewal issued October 2, 1997.

**63860101R.** **Robinson Coal Company** (P. O. Box 9347, Neville Island, PA 15225). Renewal issued for reclamation only of a bituminous surface mine located in Robinson Township, **Washington County**, affecting 112.1 acres. Receiving streams unnamed tributary to Little Raccoon Run. Application received January 9, 1997. Renewal issued October 2, 1997.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**10950102.** **Amerikohl Mining, Inc.** (202 Sunset Drive, Butler, PA 16001), revision to an existing bituminous strip operation to change the postmining land use from forestland to pastureland/land occasionally cut for

hay on the John J. Wittmann and Jack Schweiger properties in Lancaster and Franklin Townships, **Butler and Beaver Counties**. Application received August 1, 1997. Permit issued September 30, 1997.

**10840126.** **BMB Management, Inc.** (R. D. 6, Friendship Plaza, Kittanning, PA 16201), renewal of an existing bituminous strip and tippel refuse disposal operation in Slippery Rock, Cherry, Brady and Clay Townships, **Butler County** affecting 210.8 acres. This renewal is issued for reclamation only. Receiving streams six unnamed tributaries to Glade Run and Blade Run. Application received August 1, 1997. Permit issued September 26, 1997.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54921301R.** **M & H Coal Company** (P. O. Box 559, Hegins, PA 17938), renewal of an existing anthracite deep mine operation in Frailey Township, **Schuylkill County**, affecting 8.7 acres, receiving stream Middle Creek. Renewal issued September 29, 1997.

**49871602T.** **Lenig & Kosmer Coal Washery** (R. R. 1, Box 250A, Shamokin, PA 17872), transfer of an existing preparation plant operation in West Cameron Township, **Northumberland County** affecting 3.6 acres, receiving stream none. Transfer issued October 3, 1997.

**54951302.** **H. L. & W. Coal Company** (14 Maple Street, Pine Grove, PA 17963), commencement, operation and restoration of an anthracite deep mine operation in Tremont Township, **Schuylkill County** affecting 6.4 acres, receiving stream Swatara Creek. Permit issued October 3, 1997.

*McMurray District Office*

**56841611.** **Intercarbon Coal Company**, c/o Nick Angell (230 Park Ave., New York, NY 10169), to renew the permit for the Intercarbon Prep Plant in Shade Township, **Somerset County**, no additional discharge. Permit issued September 16, 1997.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

*Noncoal Permits Issued*

**7674SM1C5.** **Pennsy Supply, Inc.** (1001 Paxton Street, Harrisburg, PA 17105), correction to an existing quarry operation and NPDES Permit #PA0613312 in South Lebanon and Jackson Townships, **Lebanon County**, affecting 461.1 acres, receiving stream Tulpehocken Creek. Correction issued September 29, 1997.

**7775SM8A3C3.** **John T. Dyer Quarry** (Div. of Warner Company, Box 188, Birdsboro, PA 19508), correction to an existing quarry operation in Robeson Township, **Berks County** affecting 310.0 acres, receiving stream Indian Corn Creek and Seidel Creek. Correction issued October 2, 1997.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

*General Small Noncoal Authorizations Returned*

**25960803.** **Greer & Jackson** (P. O. Box 32, Corry, PA 16407), commencement, operation and restoration of a small noncoal topsoil operation in the City of Corry, **Erie County** affecting 1.0 acre. Receiving streams none. Application received July 18, 1996. Authorization returned September 24, 1997.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

*General Small Noncoal Authorizations Granted*

**40970801. GEO Reclamation Co.** (185 Reliance Drive, Wilkes-Barre, PA 18702), commencement, operation and restoration of a small quarry operation in Plains and Wilkes-Barre Townships and Laurel Run Borough, **Luzerne County** affecting 1.0 acre, receiving stream none. Authorization granted September 29, 1997.

**66970803. Dale Kingston** (R. R. 2, Box 313, Mehoopany, PA 18629-9680), commencement, operation and restoration of a small bluestone quarry operation in Braintrim Township, **Wyoming County** affecting 3.0 acres, receiving stream none. Authorization granted October 2, 1997.

**58970855. Robert Cooley** (R. R. 2, Box 154, Kingsley, PA 18826), commencement, operation and restoration of a small bluestone quarry operation in Apolaco Township, **Susquehanna County** affecting 1.0 acre, receiving stream none. Authorization granted October 2, 1997.

## **ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT**

### **ENCROACHMENTS**

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment Approval, and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board, (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)), (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)**

*Northeast Regional Office, Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.*

**E40-466.** Encroachment. **Pennsylvania Department of Transportation**, Engineering District 4-0, P. O. Box 111, Scranton, PA 18501. To modify and maintain an existing reinforced concrete slab bridge across Toby

Creek, with work consisting of extending the downstream end of the structure by approximately 20 feet. The structure has a waterway opening of approximately 12.0 feet by 6.0 feet at the upstream end, and 12.0 feet by 7.5 feet at the downstream end, and is located on S. R. 0415, Section 301, Segment 0010, Offset 2069, approximately 0.5 mile northwest of the intersection of S. R. 0415 and S. R. 0309 (Kingston, PA Quadrangle N: 15.7 inches; W: 12.1 inches) in Dallas Borough, **Luzerne County**.

**E45-298.** Encroachment. **David Metzgar**, R. R. 1, Box 405, Lower Swiftwater Road, Cresco, PA 18326. To construct and maintain a private bridge having a single span of approximately 36 feet and an underclearance of 6.5 feet across Swiftwater Creek to provide access to a single family dwelling. The project is located on the southern side of S. R. 0314, approximately 0.5 mile southwest of its intersection with Township Road T588 (Mount Pocono, PA Quadrangle N: 16.9 inches; W: 6.6 inches) in Paradise Township, **Monroe County**.

*Southcentral Regional Office, Water Management Program, Soils and Waterways Section, One Ararat Boulevard, Room 126, Harrisburg, PA 17110, (717) 657-4590.*

**E01-180.** Encroachment. **Mt. Pleasant Township**, 1016 Beck Road, Gettysburg, PA 17325. To remove the existing structure and to construct and maintain a 16-foot × 5-foot, 2-inch concrete box culvert across Brush Run on Cedar Ridge Road (T-440) located about 0.8 mile north of Brush Run School (McSherrystown, PA Quadrangle N: 18.1 inches; W: 14.1 inches) in Mt. Pleasant Township, **Adams County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E28-243.** Encroachment. **Franklin County Commissioners**, John Hart, 157 Lincoln Way East, Chambersburg, PA 17201. To replace a previously collapsed bridge with a prestressed spread box beam bridge on a 90 degree skew with a width of 24 feet, span of 37 feet and minimum underclearance of 9.7 feet located on Keffer Road over Rocky Spring Branch and its tributary to Back Creek. Approximately 235 linear feet of Rocky Spring Branch will be regraded directly upstream and downstream of the structure (Chambersburg, PA Quadrangle N: 18.2 inches; W: 10.8 inches) in Hamilton Township, **Franklin County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E36-638.** Encroachment. **John Rautzahn**, PA Dept. of Transportation, Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103. To remove the existing structure, construct and maintain a prestressed adjacent box beam bridge having a clear span of 35.3 feet on a 65 degree skew with a minimum underclearance of 2.7 feet across Groff Creek on SR 0772, Section 007, Segment 0590, Offset 0000 (Leola, PA Quadrangle N: 20.7 inches; W: 12 inches) in West Earl Township, **Lancaster County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

*Northwest Regional Office, Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E10-265.** Encroachment. **Prime Hospitality, Inc.**, 700 Route 46 East, P. O. Box 2700, Fairfield, NJ 07007-2700. To remove an existing concrete box culvert and to construct and maintain a 100-foot long multiplate steel arch stream enclosure having a span of 20 feet and a rise of 7.5 feet in a tributary to Brush Creek and to fill a de

minimis wetland area for construction of an access road to a commercial development west of S. R. 19 approximately 3,000 feet south of S. R. 228 (Mars, PA Quadrangle N: 9.3 inches; W: 14.0 inches) located in Cranberry Township, **Butler County**.

**E10-268.** Encroachment. **Chicora Borough Sewer Authority**, P. O. Box 46, Chicora, PA 16025. To construct and maintain an 18-inch diameter stormwater outfall pipe with rock riprap outlet protection and a 12-inch diameter treated effluent outfall pipe with cement covered gabion basket reaeration cascade structure and rock riprap outlet protection along the right (west) bank of Buffalo Creek associated with construction of the Chicora Borough Wastewater Treatment Facility approximately 1,400 feet southeast of the intersection of S. R. 1019 and S. R. 1011 (Chicora, PA Quadrangle N: 12.35 inches; W: 15.3 inches) located in Donegal Township, **Butler County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E27-056.** Encroachment. **PA Department of Transportation**, District 1-0, 1140 Liberty Street, Franklin, PA 16323. To remove the existing bridge and to construct and maintain a 40-foot long reinforced concrete box culvert having a 14-foot wide by 6.7-foot high waterway opening in Slater Run on S. R. 1003, Segment 0030, Offset 0000 approximately 1.1 miles north of S. R. 62 (Lynch, PA Quadrangle N: 8.1 inches; W: 7.7 inches) located in Howe Township, **Forest County**.

**E42-249.** Encroachment. **Ceres Township Supervisors**, R. D. 2, Box 555C, Shinglehouse, PA 16748. To remove the existing bridge and to construct and maintain a steel I-beam bridge having a clear span of 20 feet and an underclearance of 4.7 feet across Kings Run on T-436 approximately 0.3 mile south of T-433 (Bullis Mills,

PA-NY Quadrangle N: 17.35 inches; W: 13.1 inches) in Ceres Township, **McKean County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E62-332.** Encroachment. **Tidioute Trading Post**, R. D. 1, Box 97-1A, Tidioute, PA 16351. To construct and maintain a 2 or 3-inch diameter PVC pipe outfall from a small flow sewage treatment facility and natural stone rip rap along the east bank of the Allegheny River approximately 200 feet west of the intersection of S. R. 62 and S. R. 337 (Tidioute, PA Quadrangle N: 10.0 inches; W: 5.5 inches) located in Limestone Township, **Warren County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

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## SPECIAL NOTICES

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### Certification to Perform Radon-Related Activities in Pennsylvania

In the month of September 1997 the Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Ronald Graves Amerispec Home Inspection Service-Wayne	303 W. Lancaster Ave. Suite 247 Wayne, PA 19087	Testing
George Basista	1515 County Line Road Mineral Ridge, OH 44440	Testing
Stephen Beloyan	P. O. Box L-201 Langhorne, PA 19047	Testing
Roger Wood Best Inspect, Inc.	1053 High Meadows Drive Gibsonia, PA 15044	Testing Laboratory
Michael Bradley HouseInspect	601 North Olive Street Media, PA 19063	Testing
Christopher Hunt	2115 Dunhill Drive Wilmington, DE 19810	Testing
Pamela Jankowski	107 South 8th Street Allentown, PA 18101	Testing
Fred Klein	1107 Knorr Street Philadelphia, PA 19111	Testing
Mid-State Inspection Service	1635-A East Pleasant Valley Blvd. Altoona, PA 16602	Testing
Thomas O'Hara	104 Spring Street Wilkes-Barre, PA 18702	Testing
Dominic Passante	P. O. Box 307 Mountain Top, PA 18707	Testing
George Prosser, Jr. Prosser Laboratories, Inc.	P. O. Box 118 Effort, PA 18330	Laboratory

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Radon Technology & Environmental	15 Union Hill Road West Conshohocken, PA 19428	Mitigation
Real Estate Radon Services, Inc.	1850 Hampstead Road Huntingdon Valley, PA 19006	Testing
Lance Schweizer	101 Locust Knoll Road Downingtown, PA 19335	Testing
Richard Tarnowski	263 Main Street Binghamton, NY 13905	Mitigation
Thomas Voelker	1500 Delaware Avenue Wyomissing, PA 19610	Testing Laboratory
Bill Brodhead WPB Enterprises, Inc.	2844 Slifer Valley Road Riegelsville, PA 18077	Mitigation Laboratory

[Pa.B. Doc. No. 97-1668. Filed for public inspection October 17, 1997, 9:00 a.m.]

### Availability of Technical Guidance

Technical guidance documents are on DEP's World Wide Web site (<http://www.dep.state.pa.us>) at the Public Participation Center. The "June 1997 Inventory" heading is the Governor's List of Non-regulatory Documents. The "Search the Inventory of Technical Guidance Documents" heading is a database of the Inventory. The "Final Documents" heading is the link to a menu of the various DEP bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to DEP's draft technical guidance documents.

DEP will be adding its revised documents to the Web throughout 1997.

#### *Ordering Paper Copies of DEP Technical Guidance*

Persons can order a bound paper copy of the latest Inventory or an unbound paper copy of any of the final documents listed on the Inventory by calling DEP at (717) 783-8727.

In addition, bound copies of some of DEP's documents are available as DEP publications. Persons should check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### *Changes to Technical Guidance Documents*

Here is the current list of recent changes. Persons who have any questions or comments about a particular document should call the contact person whose name and phone number is listed with each document. Persons who have questions or comments in general should call Jonathan Brightbill at (717) 783-8727.

#### *Final Technical Guidance—New Guidance*

DEP ID: 562-2112-504 Title: Blasting Complaint Protocol Description: Establishes a standard procedure to respond to blasting complaints promptly and satisfactorily. Effective Date: September 18, 1997 Page Length: 7 pages Location: Vol 12, Tab 34a Contact: Dottie Shellehammer at (717) 787-5103

DEP ID: 563-2113-660 Title: Coal Refuse Disposal—Site Selection Description: Explains in detail the site selection process which applies to new or expanded coal refuse disposal sites. Effective Date: September 30, 1997 Page Length: 12 pages Location: Vol 12, Tab 84a Contact: Evan Shuster at (717) 787-7846

#### *Final Technical Guidance—Minor Revision*

DEP ID: 563-2112-215 Title: Review of Accepted Coal Mining Activity Permit Applications Description: Establishes specific administrative procedures for accepting new permit applications. Effective Date: October 31, 1997 Page Length: 3 pages Location: Vol 12, Tab 54 Contact: Evan Shuster at (717) 787-7846

DEP ID: 563-2112-653 Title: Permitting Ventilation Boreholes for Underground Coal Mines Description: Properly recognizes the drilling of ventilation boreholes, also called methane bleeder holes and degasification boreholes, as a surface mining activity. Effective Date: October 1, 1997 Page Length: 5 pages Location: Vol 12, Tab 80 Contact: Evan Shuster at (717) 787-7846

DEP ID: 563-2504-405 Title: Anthracite Mine Operator's Emergency Bond Loan Description: Guidance to specify the procedures to be used for administering the A.E.B.L. fund. Effective Date: October 1, 1997 Page Length: 4 pages Location: Vol 12, Tab 62 Contact: Evan Shuster at (717) 787-7846

DEP ID: 563-2504-450 Title: Bond Adjustment/Release for Postmining Discharges Description: Interim policy to implement the 1992 and 1996 amendments to SMCRA which deal with bond releases on permits with postmining discharges. Effective Date: September 29, 1997 Page Length: 11 pages Location: Vol 12, Tab 68 Contact: Evan Shuster at (717) 787-7846

#### *Draft Technical Guidance—Substantial Revision*

DEP ID: 383-3310-209 Title: PADWIS Inventory Reports by PWSID Description: Guidance to retrieve and print computerized inventory data for individual public water systems under the Safe Drinking Water Program. Effective Date: November 15, 1997 Page Length: 25 pages Location: Vol 23, Tab 02 Contact: Joseph Hoffman at (717) 787-5017

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 97-1669. Filed for public inspection October 17, 1997, 9:00 a.m.]

### Mining and Reclamation Advisory Board; Meeting Notice

The Mining and Reclamation Advisory Board (MRAB) will meet on Thursday, October 23 and Friday, October



24, 1997, in the Four Points Sheraton, Greensburg, PA. The Regulation, Legislation and Technical committee will meet on Thursday morning at 10 a.m. Following the meeting there will be a tour of local mine sites. The full board meeting will take place on Friday beginning at 8:30 a.m.

Questions concerning the agenda can be directed to Rod Kelley at (717) 783-5338 or e-mail to Kelley.Rodney@a1.dep.state.pa.us. The agenda for this meeting will also be available through the Public Participation Center on DEP's World Wide Web site at <http://www.dep.state.pa.us>.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Rod Kelley directly at (717) 783-5338 or through the Pennsylvania AT & T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 97-1670. Filed for public inspection October 17, 1997, 9:00 a.m.]

## DEPARTMENT OF GENERAL SERVICES

### Design Professional Selections

The Selections Committee for the Department of General Services (Department) will meet to consider selections of Design Professionals for the following project:

**Project No. DGS 417-26**—Rehabilitation and Safety Equipment, Thaddeus Stevens State School of Technology, Lancaster, Lancaster County, PA. Construction Cost: \$457,000. The scope of work includes, but is not limited to, upgrade fire pull stations and panel boxes, install smoke detectors and expand master lock system in all buildings. Install air handling system for all vocational buildings and installation of safety devices on all equipment. Repair/replace floors and doors in Brenner Hall and Mellor Building.

#### Requirements and Information

##### *Project Program*

A Project Program, prepared by the Using Agency, for the above advertised project may be available and can be obtained upon request to the Selections Committee, Department of General Services, Room 104, 18th & Herr Streets, Harrisburg, PA 17125, (717) 783-8468.

##### *Instructions for Filing Application*

Professionals will not be considered by the Committee until all of the following requirements are met.

(a) Signed Revised 1994 Form 150, not more than 1 year old as of the deadline date stated in paragraph (d), must be filed with the Department for the requesting professional firm and the designated key consultants listed on the requesting professional firm's application (Form 150-S). All signatures on Form 150 must be original signatures. Consultants listed on the requesting professional firm's application (Form 150-S) shall be deemed to be designated key consultants. If these documents are not on file with the Department, the requesting professional firm must submit them with firm's application (Form 150-S). A photocopy of Form 150 with-

out an original signature of a principal of the firm is not acceptable. Revised 1994 Form 150, Architect/Engineer Questionnaire, may be obtained upon request to the Selections Committee, Department of General Services, Room 104, 18th & Herr Streets, Harrisburg, PA 17125, (717) 783-8468.

(b) The requesting professional firm shall obtain from each consultant listed in the requesting professional firm's application (Form 150-S) a signed letter of certification on the consultant's letterhead, attesting to the firm's consent to participate in the requesting professional firm's application (Form 150-S) for the specific project. Signed letters of certification from consultants are required and constitute a part of the requesting professional firm's application (Form 150-S) for the specific project. All signatures on letters of certification must be original signatures.

(c) The requesting professional firm must submit six signed copies of Revised 1994 Form 150-S, Specific Project Form, for each project herein advertised in which the firm is interested and qualified to perform. All signatures on Form 150-S must be original signatures. For architectural projects and, when appropriate, for engineering projects, the Professional shall supply photographs showing a maximum of two different views of each of the three projects described in Question 14, Page 5 of the application (Form 150-S). The requesting professional firm or Joint Venture members must be the Professional of Record for the projects described in Question 14, Page 5 of the application (Form 150-S). It is not acceptable to list work performed by key consultants. The identification and appropriate supportive information concerning each photograph shall include the name, project title, location and the name of the Professional of Record. Renderings and brochures will not be accepted in lieu of photographs. The photographs shall be attached to each copy of the application, (Form 150-S). The pages of each copy of revised 1994 Form 150-S must be stapled with photographs and consultant's letters of certification followed by photocopies of licenses of registered professionals included as the last section of the application. Do not bind the application (Form 150-S) in any way to any other documentation. Do not bind the application (Form 150-S) in a binder of any type. Revised 1994 Form 150-S may be obtained upon request to the Selections Committee, Department of General Services, Room 104, 18th and Herr Streets, Harrisburg, PA 17125, (717) 783-8468.

(d) A complete project submission, which consists of documents described in paragraphs (a), (b) and (c) above, must be received on or before the close of business (5 p.m.) Friday, October 31, 1997, and addressed to the Selections Committee, Department of General Services, Room 104, 18th & Herr Streets, Harrisburg, PA 17125. FAX applications are not acceptable.

Project submissions must be made on the current 1994 forms. Outdated forms are not acceptable.

(e) The Selections Committee may at its discretion establish interviews with any or all of the Professionals who have requested consideration for appointment as designer for the above projects. If an interview is required, the Professional will be notified by the Committee as to the date, time and location.

(f) Additional information, in writing, may be requested by the Committee as required.

*Additional Services—Indoor Air Quality Assessment Program and Hazardous Materials*

The Professional firm selected to design a project will be expected to perform and administer, when required by the Department as Additional Services, an Indoor Air Quality Assessment Program during Building or Renovation Commissioning and the sampling, testing, inspection and monitoring for removal of any asbestos, other hazardous waste or contaminants encountered during project design or construction, unless otherwise stated in the Scope.

The professional agrees to comply with the terms of the Agreement and specifically as it relates to the Professional Liability Insurance and the General Liability Insurance Requirements. The Selections Committee encourages responses from small firms, minority firms, women-owned firms and firms who have not previously performed State work, and will consider Joint Ventures, which will enable them to participate in this program.

All applications submitted are subject to review by the Selections Committee. The Selections Committee disclaims any liability whatsoever as to its review of the applications submitted and in formulating its recommendations for selection. All recommendations for selection made by the Committee shall be final under the Act of July 22, 1975, PL. 75 (No. 45).

GARY E. CROWELL,  
*Secretary*

[Pa.B. Doc. No. 97-1671. Filed for public inspection October 17, 1997, 9:00 a.m.]

## HOUSING FINANCE AGENCY

### Low-Income Housing Tax Credit Program; Public Hearing

The Housing Finance Agency (Agency) will conduct hearings in accordance with the Internal Revenue Code of 1986, as amended, to which all interested persons are invited. The Agency will conduct a public hearing at the following location:

<i>Location</i>	<i>Date</i>	<i>Time</i>
Harrisburg Pennsylvania Housing Finance Agency 2101 North Front Street	October 27, 1997	9 a.m.

#### *Purpose*

To solicit public comments concerning the proposed Pennsylvania 1998 Low-Income Housing Tax Credit Allocation Plan (Allocation Plan) for the Statewide distribution of the Federal low-income rental housing tax credits for projects to be placed-in-service after December 31, 1997.

The 1998 Allocation Plan contains changes and program amendments. A copy of the Allocation Plan may be requested through the Agency as noted. Interested persons are invited to submit written comments before or at the public hearing and to present oral comments at the public hearing regarding the Allocation Plan. Individuals desiring to comment on the Allocation Plan, but unable to attend the public hearing, should provide written comments prior to or at the public hearing. Persons with a disability who wish to attend the above hearing and require an auxiliary aid, service or other accommodation

should contact the Tax Credit Program at (717) 780-3948. Oral comments will only be accepted at the public hearing. Written comments and requests for a copy of the proposed Allocation Plan may be submitted to Manager, Tax Credit Program, Pennsylvania Housing Finance Agency, P. O. Box 8029, Harrisburg, PA 17105-8029, (717) 780-3948, TDB for Hearing Impaired: (717) 780-1869.

Persons who are planning on attending the public hearing, should contact the Agency at (717) 780-3948.

WILLIAM C. BOSTIC,  
*Executive Director*

[Pa.B. Doc. No. 97-1672. Filed for public inspection October 17, 1997, 9:00 a.m.]

## HUMAN RELATIONS COMMISSION

### Public Hearing Opinion

The Human Relations Commission, under section 7(o) of the Pennsylvania Human Relations Act (P. L. 744, No. 222) announces the publication of the stipulations of fact, findings of fact, conclusions of law, final decision and order, made after a public hearing under section 9(e)—(g) of the Act, in the following consolidated cases:

*Gerald Barber; James L. Haley, Jr., The Estate of Julius Harper; Richard Hill and James Y. Ali v. Mt. Airy Bethesda Manor, Inc.*; Doc. Nos. E55783, E55785, E55786, E55787, E55789 (Pennsylvania Human Relations Commission, September 30, 1997); Religion-based (Islam), refusal to hire; Ruling for Respondent, 9-0 decision; 27 pages.

The final order in the above-listed consolidated cases are subject to appeal to Commonwealth Court, and if appealed are subject to being affirmed, reversed or modified, in whole or part.

A copy of the opinion listed in this notice may be obtained by mailing a request indicating the opinions desired, accompanied by a check or money order in the amount of 10 cents per page (the number of pages in the opinion is set forth at the end of the case listing), to Laura J. Treaster, Information Director, Pennsylvania Human Relations Commission, 101 South Second Street, Suite 300, Harrisburg, PA 17101. The check or money order should be made payable to the "Commonwealth of Pennsylvania."

HOMER C. FLOYD,  
*Executive Director*

[Pa.B. Doc. No. 97-1673. Filed for public inspection October 17, 1997, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Notice of Filing of Final-Form Rulemakings

The Independent Regulatory Review Commission received, on the dates indicated, the following final-form regulations for review. The regulations will be considered

within 30 days of their receipt at a public meeting of the Commission. To obtain the date and time of the meeting, interested parties may contact the office of the Commission at (717) 783-5417. To obtain a copy of the regulation, interested parties should contact the agency promulgating the regulation.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
#7-312	Environmental Quality Board Great Lakes Initiative (GLI)	10/7/97
#7-313	Environmental Quality Board Air Quality—RBI 1	10/7/97

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 97-1674. Filed for public inspection October 17, 1997, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Acquisition

Fenix Financial Group, Inc., has filed an application to acquire 100% of the issued and outstanding stock of The Green Tree Insurance Company from Main Street America Financial Corporation. The filing was made under the requirements set forth under the Insurance Holding Company Act, 40 P. S. § 991.1402 et seq. Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed, and a concise statement with sufficient detail and relevant facts to inform the Insurance Department of the exact basis of the statement. Written statements should be directed to Carolyn Smith, Insurance Company Licensing Specialist, Pennsylvania Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1675. Filed for public inspection October 17, 1997, 9:00 a.m.]

### Application and Request for Conversion of a Mutual Insurance Corporation to a Stock Insurance Corporation

Allegheny Mutual Casualty Company filed an application to convert from a mutual insurance corporation to a stock insurance corporation, under the Mutual-to-Stock Conversion Act, 40 P. S. § 911 et seq. Persons wishing to comment on the grounds of public or private interest to the issuance of the Department's order approving the conversion are invited to submit a written statement to the Insurance Department within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone

number of the interested party, identification of the application to which the statement is addressed, and a concise statement with sufficient detail and relevant facts to inform the Insurance Department of the exact basis of the statement. Written statements should be directed to Carolyn Smith, Insurance Company Licensing Specialist, Pennsylvania Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1676. Filed for public inspection October 17, 1997, 9:00 a.m.]

### Highmark Blue Cross Blue Shield; Rate Hearing for Direct Pay Medical Surgical Programs and Medicare Supplement/Security 65 Programs Plans A, B, C and H; Filing Nos. 1-CPE-97-HBCBS, 1-DPMS-97-HI, 1-NMM-97-HBCBS, 1-DPCM-97-HI and 1-65S-97-HBCBS

Highmark Blue Cross Blue Shield has requested approval to increase the premium rates for the above listed filings. The requested premium rate increases vary by filing. These filings were previously published for public comment in the *Pennsylvania Bulletin*. See 27 Pa.B. 4882—4883 (September 20, 1997).

A public informational hearing on these rate filings has been scheduled for:

*Date:* Wednesday, November 5, 1997

*Time:* 10 a.m.

*Location:* Greentree Marriott, 101 Marriott Drive (Parkway West, Exit 4—Greentree/Crafton exit), Pittsburgh, PA

Anyone wishing to testify about these filings may contact the Office of Rate and Policy Regulation at the address and phone number below to schedule to testify at this hearing. Individuals may also appear at the hearing without advance notice and will be afforded the opportunity to testify after all individuals scheduled in advance have testified. Testimony will be limited to no more than a 10 minute presentation. The Department requests that individuals provide a written copy of their testimony the day of the hearing.

Copies of the filings are available for public inspection, by appointment, during normal business hours at the Insurance Department's offices in Harrisburg, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions and objections about these filings to: Highmark Rate Hearing, Pennsylvania Insurance Department, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 787-4192 by November 12, 1997.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1677. Filed for public inspection October 17, 1997, 9:00 a.m.]

**Independence Blue Cross and Pennsylvania Blue Shield and QCC Insurance Company; Rate Hearing for Non-Group Basic/Special Care, Major Medical and Personal Choice Programs and Non-Group and Small Group Medicare Supplement/Security 65 Programs Plans A, B, C and H; Filing Nos. 8-P-97, 9-P-97, 10-P-97, QCC-1/97, 1-DPMS-97-HI and 1-DPCM-97-HI**

Independence Blue Cross and Pennsylvania Blue Shield and QCC Insurance Company have requested approval to increase the premium rates for the above listed filings. The requested premium rate increases vary by filing. These filings were previously published for public comment in the *Pennsylvania Bulletin*. See 27 Pa.B. 4599—4600 (September 6, 1997) and 27 Pa.B. 4882—4883 (September 20, 1997).

A public informational hearing on these rate filings has been scheduled for:

*Date:* Friday, November 14, 1997

*Time:* 10 a.m.

*Location:* Holiday Inn—Midtown, Terrace Ballroom (7th floor), 1305-11 Walnut Street, Philadelphia, PA

Anyone wishing to testify about these filings may contact the Office of Rate and Policy Regulation at the address and phone number below to schedule to testify at this hearing. Individuals may also appear at the hearing without advance notice and will be afforded the opportunity to testify after all individuals scheduled in advance have testified. Testimony will be limited to no more than a 10 minute presentation. The Department requests that individuals provide a written copy of their testimony the day of the hearing.

Copies of the filings are available for public inspection, by appointment, during normal business hours at the Insurance Department's offices in Harrisburg and Philadelphia.

Interested parties are invited to submit written comments, suggestions and objections about these filings to: IBC Rate Hearing, Pennsylvania Insurance Department, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 787-4192 by November 21, 1997.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1678. Filed for public inspection October 17, 1997, 9:00 a.m.]

**Medical Professional Liability Catastrophe Loss Fund; Surcharge Filing**

The Medical Professional Liability Catastrophe Loss Fund has filed for a 69% surcharge under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006), commonly known as Act 111, as amended by Act 135 of 1996. The surcharge would be based on the prevailing primary premium for each health care provider. The prevailing primary premium would be determined using the schedule of approved Joint Underwriting Association (JUA) occurrence rates to be effective January 1, 1998. The surcharge applies to any new policies effective on or after January 1, 1998.

Copies of the rate filing will be available for public inspection during normal working hours at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit comments, suggestions or objections in writing to Nabila Audi, Actuary, Pennsylvania Insurance Department, Bureau of Property and Casualty Insurance, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1679. Filed for public inspection October 17, 1997, 9:00 a.m.]

**Review Procedure Hearings; Cancellation or Refusal of Insurance**

The following insurer has requested a hearing, as authorized by section 9(a) of the act of June 5, 1968 (P. L. 140, No. 78) (40 P. S. § 1008.9(a)) in connection with the company's termination of the insured's automobile policies.

The hearings will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Erie Insurance Exchange; file no. 97-121-05744; Douglas C. McLaughlin; doc. no. P97-09-039; November 12, 1997, at 11 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files, documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The insured must bring any evidence which the insured may want to offer at the hearing. The hearing will be held in accordance with the requirements of sections 9 and 10 of the act (40 P. S. §§ 1008.9 and 1008.10) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1680. Filed for public inspection October 17, 1997, 9:00 a.m.]

**Review Procedure Hearings; Cancellation or Refusal of Insurance**

The following insureds have requested a hearing, as authorized by section 9(a) of the act of June 5, 1968 (P. L.

140, No. 78) (40 P. S. § 1008.9(a)) in connection with their company's termination of the insured's automobile policies.

The hearings will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Miller, Dean and Nancy; file no. 97-198-04772; The Fidelity & Casualty Ins. Co. of NY; doc. no. P97-09-040; November 12, 1997, at 1 p.m.;

Appeal of Cohen, Jack and Kathy; file no. 97-188-05078; General Accident Ins. Co. of America; doc. no. P97-09-038; November 18, 1997, at 9 a.m.;

Appeal of Hawkins, Winston; file no. 97-198-05106; Allstate Insurance Company; doc. no. P97-09-037; November 18, 1997, at 10 a.m.;

Appeal of Townsend, Herbert E. Jr.; file no. 97-121-6043; Erie Insurance Exchange; doc. no. P97-10-005; November 19, 1997, at 10 a.m.;

Appeal of Weise, Kenneth E.; file no. 97-215-34517; Kansas City Fire & Marine Ins. Co.; doc. no. PH97-10-006; November 19, 1997, at 11 a.m.;

Appeal of Woods, Terrance M. and Robin; file no. 97-215-33978; Progressive Insurance Company; doc. no. PH97-10-010; November 19, 1997, at 1 p.m.;

Appeal of Smith, Mark and Elizabeth; file no. 97-215-34516; TICO Insurance Company; doc. no. PH97-10-007; November 19, 1997, at 2 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files, documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The insured must bring any evidence which the insured may want to offer at the hearing. The hearing will be held in accordance with the requirements of sections 9 and 10 of the act (40 P. S. §§ 1008.9 and 1008.10) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1681. Filed for public inspection October 17, 1997, 9:00 a.m.]

### Review Procedure Hearings under The Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of The Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their company's termination of the insured's policies.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Pennebaker, Kenneth C. and Karen L.; file no. 97-198-03695; State Farm Fire and Casualty Company; doc. no. P97-09-036; November 15, 1997, 11 a.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and other necessary evidence. The insured must bring all documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); section 8 of The Unfair Insurance Practices Act (40 P. S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e) (relating to appeal procedures). Under 31 Pa. Code § 59.7(e)(5), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 97-1682. Filed for public inspection October 17, 1997, 9:00 a.m.]

## LEGISLATIVE REFERENCE BUREAU

### Documents Filed But Not Published

The Legislative Reference Bureau accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of Bulletin). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no such documents have been received. For questions concerning or copies of documents filed, but not published, please call (717) 783-1530.

#### *Executive Board*

Resolution #CB-97-240, Dated, September 23, 1997. The Commonwealth of Pennsylvania entered into a Memorandum of Understanding with the Pennsylvania Association of State Mental Hospital Physicians, on August 22, 1997; the Memorandum encompasses approximately 50 professional employees in the First Level Supervisory Physicians and Related Occupations Unit, certified by the Pennsylvania Labor Relations Board in Case No. PERA-R-2374-C.

Resolution #CB-97-241, Dated, September 23, 1997. The Commonwealth of Pennsylvania entered into a Collective Bargaining Agreement with the Pennsylvania Association of State Mental Hospital Physicians, on August 22, 1997; the Agreement encompasses approximately 270 professional employees in the Nonsupervisory Physicians and Related Occupations Unit, certified by the Pennsylvania Labor Relations Board in Case No. PERA-R-1630-C. Governor's Office

Manual M205.2—Meeting Room Facilities—Revision No. 1—Dated September 9, 1997.

Management Directive No. 310.19—Accounting for Disbursements of Funds for Interagency Agreements, Memorandums of Understanding, and Notifications of Subgrant; Accounting for the Subgranting of Federal, Federal Matching Funds, of Federal, Federal Matching Funds, or State Funds Between Commonwealth Agencies, Amended September 4, 1997.

Management Directive No. 315.16—Payment of Annuity Medical and Hospital Benefits—Amended September 10, 1997.

Management Directive No. 325.5—Single Audit Costs—State Level—Amended September 15, 1997.

Management Directive No. 325.9—Processing Audit of Federal Pass-Through-Funds—Amended September 8, 1997.

Administrative Circular No. 97-30—1998-99 Program Guidelines, Dated, August 29, 1997.

GARY R. HOFFMAN,  
*Director,*  
*Pennsylvania Bulletin*

[Pa.B. Doc. No. 97-1683. Filed for public inspection October 17, 1997, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Petition of the Pennsylvania Independent Telco Coalition for Designation as Eligible Telecommunications Carriers for Universal Service Purposes under Section 214(e) of the Telecommunications Act of 1996 and Sections 54.201—54.207 of the Rules of the Federal Communications Commission; Doc. Nos. P-00971264 and I-00990035**

On October 1, 1997, the Pennsylvania Independent Telco Coalition (Petitioner) submitted a petition with the Pennsylvania Public Utility Commission (Commission) seeking designation as an Eligible Telecommunications Carrier (ETC) under section 214(e) of the Federal Telecommunications Act of 1996 (TA-96) and sections 54.201—54.207 of the Rules of the Federal Communications Commission (Commission). The Petitioner consists of rural local exchange companies (rural LECs) under 47 U.S.C.A. §§ 153(37)(B)—(D) of the TA-96. The Petitioner seeks ETC designation in order to continue receiving Federal interstate funding for universal services purposes. The Petitioner claims that an abrupt end to this interstate funding could result in upward pressure on rates with a resulting reduction in the number of rural telephone customers. The Petition claims that prompt

action is necessary by December 31, 1997, in order to continue the uninterrupted receipt of Federal universal service monies.

After a careful review of the Petition in light of the competition envisioned by the TA-96 and Chapter 30 of the Pennsylvania Public Utility Code, the Commission believes that the solicitation of public comment is appropriate.

Consequently, the Commission is providing this public notice with a deadline for comments and reply comments. The deadline for comments shall be 7 calendar days following publication in the *Pennsylvania Bulletin*. The deadline for reply comments shall be 14 days following publication in the *Pennsylvania Bulletin*. These deadlines are established in light of the importance alleged in the Petition.

A copy of the Petition is available from the Office of the Prothonotary, Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. A copy of any comment or reply comment must reference Doc. No. P-00971264 and Doc. No. I-00970035. Public inquiries should be directed to Doc. No. P-00971264.

The contact person at the Commission is Joseph K. Witmer, Assistant Counsel, Law Bureau (717) 787-3663 or Shirley Leming, Regulatory Coordinator, (717) 772-4597.

JAMES J. MCNULTY,  
*Acting Secretary*

[Pa.B. Doc. No. 97-1684. Filed for public inspection October 17, 1997, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission (Commission). Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before November 10, 1997 as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

**Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.**

**A-00114286. Bertline's Cab Co.** (304 East Bertsch Street, Lansford, Carbon County, PA 18232), a corporation of the Commonwealth of Pennsylvania—persons, in paratransit service, between points in the county of Carbon, and from points in said county, to points within an airline distance of 5 statute miles of the limits of the county of Carbon, and return; which is to be a transfer of the rights authorized under the certificate issued at A-00079143, F. 6, Am-B to Harrisburg Taxicab & Baggage Co., t/a Yellow Cab, a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions. *Attorney:* John Fullerton, 212 Locust Court, Suite 500, Harrisburg, PA 17101.

**A-00114308. Ronald Anthony, Royal Transit** (#5 Wissahickon Lane, city and county of Philadelphia, PA 19119)—persons, in group and party service, between points in the counties of Philadelphia, Bucks, Delaware, Chester and Montgomery, and from points in said counties, to points in Pennsylvania, and return.

**A-00114308, Folder 2. Ronald Anthony, Royal Transit** (#5 Wissahickon Lane, Philadelphia, Philadelphia County, PA 19119)—persons in airport transfer service, from points in the counties of Philadelphia, Bucks, Delaware, Chester and Montgomery, to the Philadelphia International Airport located in the city and county of Philadelphia and the township of Tinicum, Delaware County; the Allentown-Bethlehem-Easton International Airport located in the township of Hanover, Lehigh County, and the Greater Pittsburgh International Airport located in Moon Township.

**AA-00114314. Max E. Falisec, t/a Falisec Transportation** (Route 286, R. D. 1, Box 644, Clymer, Indiana County, PA 15728)—persons, in paratransit service, between points in the counties of Indiana and Clearfield, and from points in said counties, to points in Pennsylvania, and vice versa. *Attorney:* Edwin M. Clark, Jr., 832 Philadelphia Street, Indiana, PA 15701.

**A-00114322. Bernadette Marie Angerson, t/d/b/a Valley Area Taxi** (420 Hickory Street, Peckville, Lackawanna County, PA 18452)—persons, upon call or demand, in Peckville, Blakely, Sturgis, Eynon, Jessup, Throop, Dunmore, Archbald, Jermyn and Dickson City, all in Lackawanna County.

**Applications of the following for amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under each application.**

**A-00104504, F. 5, Am-A. Krapf's Coaches, Inc.** (1060 Saunders Lane, West Chester, Chester County, Pa. 19380), a corporation of the Commonwealth of Pennsylvania—persons in limousine service between points in the county of Chester, and from points in the said county, to points in Pennsylvania, and return; subject to the following condition: That the service herein authorized is limited to the use of stretch-type limousines: *So as to permit* the transportation of persons in limousine service, between points in the county of Chester, and within an airline distance of 35 statute miles of the limits of said county, and from points in the said territory to points in Pennsylvania, and return. *Attorney:* Patricia Armstrong, PO Box 9500, Harrisburg, PA 17108-9500.

**A-00008508, Folder 10, Am-C. Penn Highway Transit Co.** (1530 Commerce Drive, Lancaster, Lancaster County, PA 17602-2732), a corporation of the Commonwealth of Pennsylvania, inter alia—groups and parties of persons and persons on special excursions and tours or sight-seeing trips, from points in the county of Lancaster, to points in Pennsylvania and return, excluding transportation from points in the boroughs of Adamstown, Terre Hill and Marietta, and the townships of Brecknock, Caernarvon, Mount Joy, East Donegal, West Donegal and Conoy, and that part of the township of East Earl, located east of Highway Route 897: *so as to permit* the transportation of persons, in group and party service, for H. Michael Strite and Catherine K. Strite, copts., t/a Colonial Tour and Travel, between points in the counties of Berks, Dauphin, Lancaster and York, and from points in said counties, to points in Pennsylvania, and vice versa; subject to the following condition: That no right, power or

privilege is granted to originate service in the county of Lebanon or in the township of Derry, Dauphin County. *Attorney:* James D. Campbell, Jr., 3631 North Front Street, Harrisburg, PA 17110.

#### **Motor Carrier Applications—Property, Excluding Household Goods in Use**

The following applications for the authority to transport property, excluding household goods in use, between points in Pennsylvania, have been filed with the Pennsylvania Public Utility Commission. Public comment to these applications may be filed, in writing with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 on or before November 3, 1997.

- A-00114246 John Ainey  
940 West Kingston Drive, Atlanta, GA  
30342
- A-00114247 Troy M. Green, t/d/b/a Magnum Excavating  
1930 Forest Inn Road, Palmerton, PA  
18071
- A-00114320 Terry L. Walter  
R. D. 3, Box 330, Mt. Pleasant, PA 15666
- A-00114321 Stacey McClain  
P. O. Box 585, Tunkhannock, PA 18657
- A-00114323 Michael L. Gaw, t/d/b/a Michael Gaw Trucking  
R.R. 1, Box 711, Herndon, PA 17830
- A-00114324 Minutemen Express, Inc.  
31 Iroquois Drive, Royersford, PA 19468;  
J. Michael Considine, Jr., 113 West Chestnut Street, West Chester, PA 19380
- A-00114325 Lester Hylton, t/d/b/a Hylton Delivery Service  
2301 Railroad Street, Lebanon, PA 17042

JAMES J. MCNULTY,  
*Acting Secretary*

#### **Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. J. P. Services, Inc.; Doc. No. A-00109538C97**

##### **Complaint**

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania, empowered to regulate motor carriers and brokers within this Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That J. P. Services, Inc., respondent, maintains a principal place of business at 705-F Lakeview Plaza Boulevard, Worthington, OH 43085-4779.
2. That all times relevant to this Complaint, respondent held a certificate of public convenience issued by this Commission at Application Docket No. A-00109538.
3. That pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, and 52 Pa. Code Chapter 32; respondent is required to maintain evidence of current insurance on file with this Commission.
4. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance and cargo insurance, in violation of the Public Utility Code and regulations cited in Paragraph 3 of this complaint.

5. That as a result of failure to maintain evidence of current insurance on file with this Commission, the Bureau of Transportation and Safety Prosecutory Staff requests that the Commission revoke respondent's certificate of public convenience or order such other remedy as the Commission may deem to be appropriate.

*Wherefore*, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke the certificate of public convenience held by J. P. Services, Inc. at Docket No. A-00109538, for failure to maintain current evidence of insurance on file with the Commission or order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,  
Joseph W. Farrell  
Director, Bureau of Transportation  
and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Allyn B. Carey, t/d/b/a Carey Transport; Doc. No. A-00107766C97**

### Complaint

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania, empowered to regulate motor carriers and brokers within this Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Allyn B. Carey, t/d/b/a Carey Transport, respondent, maintains a principal place of business at R. D. 1, Box 128-A, Montrose, PA 18801.

2. That all times relevant to this Complaint, respondent held a certificate of public convenience issued by this Commission at Application Docket No. A-00107766.

3. That pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, and 52 Pa. Code Chapter 32; respondent is required to maintain evidence of current insurance on file with this Commission.

4. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance and cargo insurance, in violation of the Public Utility Code and regulations cited in Paragraph 3 of this complaint.

5. That as a result of failure to maintain evidence of current insurance on file with this Commission, the Bureau of Transportation and Safety Prosecutory Staff requests that the Commission revoke respondent's certificate of public convenience or order such other remedy as the Commission may deem to be appropriate.

*Wherefore*, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke the certificate of public convenience held by Allyn B. Carey, t/d/b/a Carey Transport at Docket No. A-00107766, for failure to maintain current evidence of insurance on file with the Commission or order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,  
Joseph W. Farrell  
Director, Bureau of Transportation  
and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. C & J Travel & Leasing, Inc.; Doc. No. A-00103741C97**

### Complaint

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania, empowered to regulate motor carriers and brokers within this Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That C & J Travel & Leasing, Inc., respondent, maintains a principal place of business at 248 Ritter Road South, Sewickley, PA 15143.

2. That all times relevant to this Complaint, respondent held a brokerage license issued by this Commission at Application Docket No. A-00103741.

3. That pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, and 52 Pa. Code Chapter 32; respondent is required to maintain evidence of current insurance on file with this Commission.

4. That respondent has failed to maintain evidence of surety, in violation of the Public Utility Code and regulations cited in Paragraph 3 of this complaint.

5. That as a result of failure to maintain evidence of current insurance on file with this Commission, the Bureau of Transportation and Safety Prosecutory Staff requests that the Commission revoke respondent's brokerage license or order such other remedy as the Commission may deem to be appropriate.

*Wherefore* the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke the brokerage license held by C & J Travel & Leasing, Inc. at Docket No. A-00103741, for failure to maintain current evidence of insurance on file with the Commission or order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,  
Joseph W. Farrell  
Director, Bureau of Transportation  
and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Priority Freight Systems, Inc.; Doc. No. A-00111739C97**

### Complaint

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania, empowered to regulate motor carriers and brokers within this Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section



701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Priority Freight Systems, Inc., respondent, maintains a principal place of business at 1256 Industrial Parkway, Brunswick, OH 44212.

2. That all times relevant to this Complaint, respondent held a certificate of public convenience issued by this Commission at Application Docket No. A-00111739.

3. That pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, and 52 Pa. Code Chapter 32; respondent is required to maintain evidence of current insurance on file with this Commission.

4. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance and cargo insurance, in violation of the Public Utility Code and regulations cited in Paragraph 3 of this complaint.

5. That as a result of failure to maintain evidence of current insurance on file with this Commission, the Bureau of Transportation and Safety Prosecutory Staff requests that the Commission revoke respondent's certificate of public convenience or order such other remedy as the Commission may deem to be appropriate.

*Wherefore*, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke the certificate of public convenience held by Priority Freight Systems, Inc. at Docket No. A-00111739, for failure to maintain current evidence of insurance on file with the Commission or order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,  
Joseph W. Farrell  
Director, Bureau of Transportation  
and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Timothy G. Gigiotti, t/d/b/a Valley Taxi; Doc. No. A-00103736C97**

#### **Complaint**

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania, empowered to regulate motor carriers and brokers within this Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Timothy G. Gigiotti, t/d/b/a Valley Taxi, respondent, maintains a principal place of business at P. O. Box 579, Bradford, PA 16701.

2. That all times relevant to this Complaint, respondent held a certificate of public convenience issued by this Commission at Application Docket No. A-00103736, F. 3.

3. That pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, and 52 Pa. Code Chapter 32; respondent is required to maintain evidence of current insurance on file with this Commission.

4. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance, in

violation of the Public Utility Code and regulations cited in Paragraph 3 of this complaint.

5. That as a result of failure to maintain evidence of current insurance on file with this Commission, the Bureau of Transportation and Safety Prosecutory Staff requests that the Commission revoke respondent's certificate of public convenience or order such other remedy as the Commission may deem to be appropriate.

*Wherefore*, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke the certificate of public convenience held by Timothy G. Gigiotti, t/d/b/a Valley Taxi at Docket No. A-00103736, F. 3, for failure to maintain current evidence of insurance on file with the Commission or order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,  
Joseph W. Farrell  
Director, Bureau of Transportation  
and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Keethan Macon; Doc. No. A-00109461C97**

#### **Complaint**

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania, empowered to regulate motor carriers and brokers within this Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Keethan Macon, respondent, maintains a principal place of business at 20 Slocum Avenue, Christiana, PA 17509.

2. That all times relevant to this Complaint, respondent held a certificate of public convenience issued by this Commission at Application Docket No. A-00109461.

3. That pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, and 52 Pa. Code Chapter 32; respondent is required to maintain evidence of current insurance on file with this Commission.

4. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance, in violation of the Public Utility Code and regulations cited in Paragraph 3 of this complaint.

5. That as a result of failure to maintain evidence of current insurance on file with this Commission, the Bureau of Transportation and Safety Prosecutory Staff requests that the Commission revoke respondent's certificate of public convenience or order such other remedy as the Commission may deem to be appropriate.

*Wherefore*, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke the certificate of public convenience held by Keethan Macon at Docket No. A-00109461, for failure to maintain current evidence of insurance on file with the

Commission or order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,  
Joseph W. Farrell  
Director, Bureau of Transportation  
and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

[Pa.B. Doc. No. 97-1685. Filed for public inspection October 17, 1997, 9:00 a.m.]

## PHILADELPHIA REGIONAL PORT AUTHORITY

### Request for Proposals

The Philadelphia Regional Port Authority (PRPA) will accept sealed proposals for Project #9623.1, Bulkhead Repairs at Pier 179 North, Tioga Marine Terminal, until 2 p.m. on Thursday, November 6, 1997. The bid documents can be obtained from the Procurement Administrator, PRPA, 210 W. Washington Square, 8th Floor, Philadelphia, PA 19106, (215) 928-9100 and will be available 10/21/97. The cost of the bid document is \$35 (includes 7% PA sales tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractor will be required to comply with all applicable equal opportunity laws and regulations.

Mandatory prebid job site meeting will be held Thursday, October 30, 1997, 10 a.m. at the job site, Delaware Ave. & Pier 179 North, Philadelphia, PA 19134 (Entrance by Tioga Street Gate).

JAMES T. MCDERMOTT,  
*Executive Director*

[Pa.B. Doc. No. 97-1686. Filed for public inspection October 17, 1997, 9:00 a.m.]

## PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

### Hearings Scheduled

Hearings have been scheduled, as authorized by 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code), in connection with the Public School Employees' Retirement System's denial of Claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg, PA 17101:

November 5, 1997	Thomas Gilroy (Change of Option)	10 a.m.
	Gregory Weems (Change of Option)	1 p.m.
	Lloyd S. Seaman (Change of Option)	2:30 p.m.

November 5, 1997	Thomas Gilroy (Change of Option)	10 a.m.
November 6, 1997	Gladys Mendel (Change of Option)	10 a.m.
	William E. Busche (Change of Option)	1 p.m.
November 7, 1997	William A. Maguire (D) (Reelection of Retirement Option)	10:30 a.m.

Persons with a disability who wish to attend the above-listed hearings and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact Arthur J. Granito, Assistant Executive Director, at (717) 783-5613 to discuss how the Public School Employees' Retirement System may best accommodate their needs.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 22 Pa. Code § 201.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

JAMES A. PERRY,  
*Secretary*

[Pa.B. Doc. No. 97-1687. Filed for public inspection October 17, 1997, 9:00 a.m.]

## STATE BOARD FOR CERTIFICATION OF SEWAGE TREATMENT PLANT AND WATERWORKS OPERATORS

### Meetings to Discuss Amendments to the Sewage Treatment Plant and Waterworks Operators Cer- tification Law

The Certification Board is proposing to amend the Sewage Treatment Plant & Waterworks Operators Certification Act, of November 18, 1968, P. L. 1052, No. 322. The Board would like to offer all certified operators and other interested individuals the opportunity to participate in this process and to offer comments on the draft legislation. A schedule of meeting dates and locations is listed. These meetings provide an opportunity to discuss the proposed amendments with members of the Board, the Department of Environmental Protection (DEP) and others who are interested in the water and wastewater certification program in this state.

*No pre-registration is required to attend the meetings.* Persons who need additional information about the meetings, should call DEP at (717) 783-8059. Persons who wish to submit written comments to the Board, should forward them to the above address by December 31, 1997.

1. November 17, 1997, Monday—Northampton Community College, Bethlehem, PA, 7 p.m.—9 p.m., Rt. 22, West Plaza Center, Room 261.

2. November 20, 1997, Thursday—Sheraton, Cranberry Twp, Mars, PA, 7 p.m.—9 p.m.

3. November 24, 1997, Monday—Penn State Campus, Middletown, PA, 7 p.m.—9 p.m., Capital Union Building Student Center.

4. November 25, 1997, Tuesday—Days Inn, State College, PA, 7 p.m.—9 p.m.

Persons with a disability who require accommodation to participate in these public meetings, should contact the Board at (717)787-5236 or through PA AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Board may accommodate their needs.

ROBERT A. CROKER,  
*Chairperson*

[Pa.B. Doc. No. 97-1688. Filed for public inspection October 17, 1997, 9:00 a.m.]

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## TURNPIKE COMMISSION

### Request for Bids

The Turnpike Commission is requesting sealed bids for:

HVAC and General Repairs at North Somerset Service Plaza, Somerset County. Mandatory Site Inspection: October 27, 1997, at 10:30 a.m. at North Somerset Service Plaza, Milepost 112,37 Westbound, Somerset County. Open Date: November 10, 1997, at 11 a.m.

FAX Relay Service, 2-year Contract. Open Date: October 28, 1997, at 11 a.m.

Bids will be received by the Purchasing Manager not later than the time indicated above. Bid proposal Forms and Conditions may be obtained, free of charge, by communicating with the Bid Clerk, Purchasing Department, (717) 939-9551, Ext. 2830.

JAMES F. MALONE, III,  
*Chairperson*

[Pa.B. Doc. No. 97-1689. Filed for public inspection October 17, 1997, 9:00 a.m.]

### Request for Proposals

Sealed Proposals will be received by Jeffrey L. Hess, Purchasing Manager, at the Administration Building, Harrisburg-East Interchange near Highspire, PA (Mailing Address: P. O. Box 67676, Harrisburg, PA 17106-7676) and publicly opened and read at the date and time indicated below for the following Contract:

**Contract No. 94-002-FS84-C.** Mon/Fayette Expressway, S. R. 0043, Section 52C1, Roadway Construction in Washington Co., PA

Bid Opening Date: November 18, 1997, 11 a.m.

Bid Surety: 5%

Plans, cross-sections, specifications and contract documents will be available and open for public inspection at the Administration Building. Copies may be purchased upon payment by check or P. O. Money Order (no cash) to the Pennsylvania Turnpike Commission. Attention: Secretary-Treasurer's Office, P. O. Box 67676, Harrisburg, PA 17106-7676. Selection of the desired materials shall be by the following designations with proper respective remittance (do not add sales tax): A) Construction Plans including roadway, structures and subsurface profiles—\$80; B) Cross Sections—\$175; C) Specifications and Contract Bid Documents—\$25; Total package—\$280. No refund for any reason will be made for plans, specifications and contract documents.

A Prequalification Certification and Maximum Capacity Rating assigned by the Prequalification Committee of the Pennsylvania Department of Transportation is a necessary prerequisite for bidding on this project.

A mandatory prebid meeting for the project will be held on October 29, 1997, beginning at 10 a.m., at the field office of the project's Construction Manager, Trumbull Corporation, 600 Park Avenue, Monongahela, PA 15063, (412) 258-9234.

Contact the Purchasing Manager for listing of other locations where plans and specs can be inspected.

JAMES F. MALONE, III,  
*Chairperson*

[Pa.B. Doc. No. 97-1690. Filed for public inspection October 17, 1997, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

**EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.**

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employes and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

### Reader's Guide

## Legal Services & Consultation—26

- ① Service Code Identification Number
- ② Commodity/Supply or Contract Identification No.
- ③ Contract Information
- ④ Department
- ⑤ Location
- ⑥ Duration
- ⑦ (For Commodities: Contact: Vendor Services Section 717-787-2199 or 717-787-4705)

### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.  
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, "Frequently Asked Questions About State Contracts," explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania State Treasury  
 Room G13 Finance Building  
 Harrisburg, PA 17120  
 717-787-2990  
 1-800-252-4700

BARBARA HAFER,  
*State Treasurer*

**Online Subscriptions At <http://www.statecontracts.com> 1-800-334-1429 x340**

### Commodities

- 5306-01** Annual Contract—Aluminum sign bolts, nuts and washers.  
**Department:** All Using Agencies  
**Location:** Various Locations  
**Duration:** 02/01—01/31  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 5610-36** Annual Contract—Bituminous material, plant mixed, District 1-12.  
**Department:** Transportation  
**Location:** Various Locations  
**Duration:** 02/01—01/31  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 5680-02** Annual Contract—Highway inlet boxes, grates and frames (DOT).  
**Department:** Transportation  
**Location:** Various Locations  
**Duration:** 01/01—12/31  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 6250-01** Annual Contract—Ballasts/fluorescent, HID and electronic solid state.  
**Department:** All Using Agencies  
**Location:** Various Locations  
**Duration:** 02/01—01/31  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 6790-01** Annual Contract—Finger print supplies.  
**Department:** All Using Agencies  
**Location:** Various Locations  
**Duration:** 10/01—09/30  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 6810-04** Annual Contract—Chemicals, mine water treatment.  
**Department:** All Using Agencies  
**Location:** Various Locations  
**Duration:** 03/01—02/28  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 7520-10** Annual Contract—Wastebaskets, desk trays/organizers.  
**Department:** All Using Agencies  
**Location:** Various Locations  
**Duration:** 02/01—01/31  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 7810-01** Annual Contract—Recreation equipment.  
**Department:** All Using Agencies  
**Location:** Various Locations  
**Duration:** 02/01—01/31  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 8305-03** Annual Contract—Textiles (CI).  
**Department:** Correctional Industries  
**Location:** Various Locations  
**Duration:** 05/01—04/30  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1336117** Building and construction material—1 complete job door entry device (pedestrian sallyport) furnish materials and attach/make operational (install) to create a pedestrian sallyport in the school.  
**Department:** Corrections  
**Location:** Waynesburg, Greene County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1329357** Laboratory instruments and equipment—1 lot one NOx analyzer, one S02 analyzer.  
**Department:** Environmental Protection  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1382227** Marine equipment and supplies—2 each fish hauling tanks, 1,200 gallon, 7 compartment tanks.  
**Department:** Fish and Boat Commission  
**Location:** Bellefonte, Centre County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 8504100** Metal bars, sheets and shapes—720 square foot flooring open, steel bridge, Type TR-5 inch depth; open steel beam bridge flooring Type Tr.  
**Department:** Transportation  
**Location:** Mifflintown, Juniata County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1249217** Motor vehicles, trailers and cycles—1 each 1998 model converted van type wheelchair/passenger vehicle.  
**Department:** Public Welfare  
**Location:** Danville, Montour County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1254217** Motor vehicles, trailers and cycles—1 each 1998 model converted van type wheelchair/passenger vehicle.  
**Department:** Public Welfare  
**Location:** Ebensburg, Cambria County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1278217** Motor vehicles, trailers and cycles—1 each 1998 model converted van type wheelchair/passenger vehicle.  
**Department:** Public Welfare  
**Location:** White Haven, Luzerne County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1280117** Motor vehicles, trailers and cycles—2 each 1998 model compact enclosed type 4x4 truck paint color first choice blue; second choice white.  
**Department:** Corrections  
**Location:** Camp Hill, Cumberland County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199
- 1323227** Motor vehicles, trailers and cycles—1 each 1998 model mid-size sedan.  
**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**1344117** Packing material—176M containers, spiral cans; spiral wound composite container w/convolute label applied; 3 plies, 12" Kraft; Pencor scouring powder, 003" clay coated two sides; convolute style 8 out labels strip paint. ED 2 colors with over varnish, unvarnished edge; PVA type; Weatherchem 3" diameter.

**Department:** Correctional Industries  
**Location:** Huntingdon, Huntingdon County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**1341157** Paper and printing—240M STD-929 time and attendance record, 3 part snap set overall size 8 1/2 x 14 5/8, size with stubs/detached; 8 1/2 x 14 12 lb. paper, packaged, 100 sets/pack.

**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**1353187** Paper and printing—400M RSL-275A (Rev 3-95) Instant Game Bill of Lading/all-in-one transparent mailer.

**Department:** Revenue  
**Location:** Middletown, Dauphin County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**7313920** Paper and printing—12.5M PLCB-228 white Kraft window "License Enclosed" booklet envelope 8-3/4 x 11-1/2" printed green, with diamond first class border prints two sides.

**Department:** Liquor Control  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**1339117** Textiles—150,000 yards bleached sheeting, per PCID Spec. 1021, salvage two sides, width 54"; color snow white (Pantone Textile Color No. 11-0602 TP).

**Department:** Correctional Industries  
**Location:** Huntingdon, Huntingdon County, PA  
**Duration:** FY 97/98  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

## SERVICES

### Construction—09

**DGS 553-30** Project title: Bath Area Renovation in Unit VII, Building Nos. 5 and 7. Brief description: Renovation of existing gang style toilets and bathrooms, storage rooms and janitor closets into new private single occupant toilet and bathrooms, including HVAC, plumbing and electrical. In addition, the abatement of lead base and asbestos components. General, HVAC, plumbing and electrical construction. Plans deposit: \$50 per set. Payable to: Stanley H. Womack Associates, Architects. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: Stanley H. Womack Associates Architects, 160 South Progress Avenue, Suite 2C, Harrisburg, PA 19103, (717) 541-5200. Bid date: Wednesday, November 12, 1997 at 2 p.m.

**Department:** General Services  
**Location:** Selinsgrove Center, Selinsgrove, Snyder County, PA  
**Duration:** 126 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 553-31** Project title: Bath Area Renovation in Unit IV, Building Nos. 22, 23, 24 and 25. Brief description: Renovation of existing gang style toilets and bathrooms into new individualized toilets and baths including partitions, plumbing, HVAC and electrical work. Also, abatement of lead base and asbestos components affecting the work. General, HVAC, plumbing and electrical construction. Plans deposit: \$50 per set. Payable to: Stanley H. Womack Associates, Architects. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: Stanley H. Womack Associates Architects, 160 South Progress Avenue, Suite 2C, Harrisburg, PA 19103, (717) 541-5200. Bid date: Wednesday, November 12, 1997 at 2 p.m.

**Department:** General Services  
**Location:** Selinsgrove Center, Selinsgrove, Snyder County, PA  
**Duration:** 126 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 572-22** Project title: Demolition and Replacement of Ash Silo and Coal Bunker. Brief description: Replace existing with a new ash storage silo system and new coal storage bunker in the Power Plant. General construction. Plans deposit: \$75. Payable to: Peter F. Loftus Division, Eichleay Engineers, Inc. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: Peter F. Loftus Division, Eichleay Engineers, Inc., 6585 Penn Avenue, Pittsburgh, PA 15206, (412) 363-9000. Bid date: Wednesday, November 5, 1997 at 2 p.m.

**Department:** General Services  
**Location:** State Correctional Institution, Huntingdon, Huntingdon County, PA  
**Duration:** 95 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 573-19 Phase 5** Project title: Reconstruction, Renovation and Upgrading (Main Gated Addition/Renovation). Brief description: Work consists of demolition of the existing guard house and guest house on the existing campus and construction of a new gate and Admission/Intake Building. General, HVAC, plumbing, electrical and prison equipment construction. Plans deposit: \$150 per set. Payable to: L. Robert Kimball & Associates. Refundable upon return of plans and specification in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: L. Robert Kimball & Associates, 615 W. Highland Avenue, Box 1000, Ebensburg, PA 15931, (814) 472-7700. Bid date: Wednesday, November 5, 1997 at 2 p.m. Prebid conference has been scheduled for Friday, October 22, 1997 at 11 a.m. Meet at Main Gate, State Correctional Institution, Camp Hill, PA. Contact Bill Goodlander, (717) 737-4531. All contractors who have secured contract documents are invited and urged to attend this prebid conference.

**Department:** General Services  
**Location:** State Correctional Institution, Camp Hill, Cumberland County, PA  
**Duration:** 390 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

### Engineering Services—14

**ESU 405-P577** East Stroudsburg University seeks professional services for feasibility study regarding construction of a new 5,000 net square foot to 7,000 net square foot building. Contact Ann Zaffuto at (717) 422-3595 for package and for special accommodations. Closing date is December 2, 1997 at 3 p.m. Limited to firms within 150 miles of Campus. MBE/WBE firms invited to participate.

**Department:** State System of Higher Education  
**Location:** East Stroudsburg University, East Stroudsburg, PA 18301  
**Duration:** 1 year  
**Contact:** Ann Zaffuto, (717) 422-3595

### Food—19

**B-37 through B-48** Bread, white, no pork products, Wonder bread not acceptable. Average monthly usage, 35,000 loaves. Rolls—hamburger 1,200 dozen, hot dog—1,200 dozen, steak—1,200 dozen. To include any other related products as needed. To be bid out on a monthly basis.

**Department:** Corrections  
**Location:** State Correctional Institution Graterford, P. O. Box 246, off Route 29, Graterford, PA 19426-0246  
**Duration:** One year  
**Contact:** Kelly Richardson, (610) 489-4151, ext. 2429

**B-169 through B-180** Pastry to include Danish, muffins, donuts, cupcakes and any other related products. To be bid out on a monthly basis.

**Department:** Corrections  
**Location:** State Correctional Institution Graterford, P. O. Box 246, off Route 29, Graterford, PA 19426-0246  
**Duration:** One year  
**Contact:** Kelly Richardson, (610) 489-4151, ext. 2429

**F-198** Contractor will provide fresh fruit and vegetables to the State Correctional Institution at Mahanoy, 301 Morea Road, Schuylkill County, Mahanoy Township, Frackville, PA. Bids and awards to be done weekly, bi-weekly or monthly basis at the discretion of the agency. Bid package to be requested in writing to the Purchasing Agent of the institution.

**Department:** Corrections  
**Location:** State Correctional Institution at Mahanoy, 301 Morea Road, Frackville, PA 17932  
**Duration:** January 1, 1998 to December 31, 1998  
**Contact:** Ann M. Gavala, Purchasing Agent II, (717) 773-2158

**F-298** Vendor will provide food stuffs including, but not limited to, meat; poultry; seafood; bakery; dairy; frozen vegetable and fruit products to the State Correctional Institution at Mahanoy, 301 Morea Road, Schuylkill County, Mahanoy Township, Frackville, PA. Bids and awards will be done weekly, bi-weekly or monthly at the discretion of the agency. Requests for bid package to be made in writing to the Purchasing Agent of the institution.

**Department:** Corrections  
**Location:** State Correctional Institution at Mahanoy, 301 Morea Road, Frackville, PA 17932  
**Duration:** January 1, 1998 to December 31, 1998  
**Contact:** Ann M. Gavala, Purchasing Agent II, (717) 773-2158

**LBP-97-034** Milk: whole, 2%, skim and lactaid. To be delivered as needed. Quantities, specifications and delivery dates may be obtained from the Northeastern Veterans Center.

**Department:** Military and Veterans Affairs  
**Location:** Northeastern Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213  
**Duration:** January 1, 1998 through December 31, 1998  
**Contact:** Joseph Libums, Purchasing Agent II, (717) 961-4318

**ML-008** The Hiram G. Andrews Center will be inviting bids for the procurement of milk and cream. Deliveries are required 3 days per week: Monday, Wednesday, Friday; hours: 6 a.m. to 7 a.m. Quantity requirements available from facility.

**Department:** Labor and Industry  
**Location:** Hiram G. Andrews Center, 727 Goucher Street, Johnstown, Cambria County, PA 15905  
**Duration:** January 1, 1998—December 31, 1998  
**Contact:** R. D. Robinson, Purchasing Agent II, (814) 255-8210

## Fuel Related Services—20

**0882-128** Removal of one underground fuel tank and associated underground piping, and the like. Contractor shall furnish all labor, materials and equipment and perform all operations for removing one 2,500 gallon underground fuel tank and associated underground piping, and the like in accordance with all State, county and local regulations and to obtain all permits as may be required by the tank site at Carbaugh Run Dam located at the South Mountain Restoration Center. Additional specifications and conditions and agreements may be obtained by contacting the center.

**Department:** Public Welfare  
**Location:** South Mountain Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261  
**Duration:** March 1, 1998 through June 30, 1998  
**Contact:** Cathy J. Tarquino, Purchasing Agent, (717) 749-4030

## HVAC—22

**CL-479** Install Water Line, Stadium, Clarion University of the State System of Higher Education is soliciting bids for installation of approximately 500 feet of 8" water line to service the athletic fields at Memorial Stadium. Work to be accomplished in Spring, 1998. Prebid meeting: 10 a.m., November 4, 1997. Bids due: 1:30 p.m., December 4, 1997; Public bid opening: 1:30 p.m., December 5, 1997.

**Department:** State System of Higher Education  
**Location:** Clarion University, Clarion, Clarion County, PA  
**Duration:** 60 days from Notice to Proceed  
**Contact:** Judy McAninch, Contract Manager, (814) 226-2240

## Mailing Services—28

**SP 302870** Pick up materials from 333 Market Street, 14th Floor, Harrisburg, PA and perform services on vendor's premises. Fold computer-printed form; name and address portion of form must show through a window envelope. Insert three pieces (computer-printed form, pre-folded single sheet document and a business reply envelope) into approximately 87,000 window envelopes. Insert four pieces (computer-printed form, two pre-folded single sheet documents and a business reply envelope) into approximately 45,000 window envelopes. Total weight will not exceed one ounce; seal window envelopes. Presort by machine and meter First Class. Deliver to Post Office. Price per piece is to include postage. Turnaround time is 48 hours after pick-up. Security must be maintained since material is confidential. Vendor must have insurance coverage for fire, theft and reconstruction costs for any accident.

**Department:** Education  
**Location:** Bureau of Information Systems, 333 Market Street, 14th Floor, Harrisburg, PA  
**Duration:** March 01, 1998 through February 28, 1999  
**Contact:** Kathy Rickert, (717) 787-7194

## Medical Services—29

**5158** Psychiatrist—professional medical work in the specialized care and treatment of the physically ill and/or mentally disabled. Psychiatric duties include interviewing patients, reviewing patients' records, writing physician's orders, writing progress notes, consulting with other physicians and treatment team staff, holding treatment team meetings, preparing reports and forms in accordance with current regulations and JCAHO standards.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 01, 1998—June 30, 2002  
**Contact:** Linda J. Zoskey, (412) 459-4547

**5160** Contractor to furnish professional consultative radiologist services by providing approximately 12 hours of annual consulting services and the reading and interpreting of x-rays performed by in-house x-ray personnel as required on a daily basis. Radiologist must be licensed in the State of Pennsylvania and certified by the American Board of Radiology.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 01, 1998—June 30, 2002  
**Contact:** Linda J. Zoskey, (412) 459-4547

**PT-008** The Hiram G. Andrews Center is soliciting bids for licensed physical therapist services to provide coverage when the facility's physical therapist is absent. The normal operating hours are on a Monday through Friday basis between the hours of 8 a.m. to 4:30 p.m. This will not be a contract of employment.

**Department:** Labor and Industry  
**Location:** Hiram G. Andrews Center, 727 Goucher Street, Johnstown, Cambria County, PA 15905  
**Duration:** July 1, 1998 to June 30, 2001 with renewal option not to exceed two 1-year periods  
**Contact:** Robert D. Robinson, Purchasing Agent II, (814) 255-8210

### Property Maintenance—33

**030-0291** Roadside mowing on Interstate and primary traffic routes in District 3-0. Contractor to provide all equipment, labor, material and traffic control to complete contract according to bid specifications. Job to be bid on a road mile and additional acres as directed basis. Payment will be made lump sum on a per cycle, per county basis. All requests for bid packages must be received via FAX at (717) 368-4343 (Attn: Lyndon Mink).

**Department:** Transportation  
**Location:** Columbia, Lycoming, Montour, Northumberland, and Union Counties, PA  
**Duration:** 1 year/two 2-year renewals  
**Contact:** Lyndon B. Mink, (717) 368-4224

**304-07417** The contractor will furnish all labor, equipment, materials and supervision to pile, load and haul snow away on a will-call basis to a dumpsite provided by the Commonwealth. The contractor must be available 24 hours a day, 7 days a week, including all legal holidays, to provide the above, from various areas around the Capitol Complex and outlying areas.

**Department:** General Services  
**Location:** Buildings and Grounds, Capitol Complex and outlying areas, Harrisburg, PA 17125  
**Duration:** November 14, 1997 through June 30, 1998  
**Contact:** Dennis Rydberg, (717) 787-5616

### Real Estate Services—35

**20A** Appraisal of State Owned Property—Commonwealth of Pennsylvania. Department of General Services, will accept bids for the appraisal for fair market value of parcel of land at Oakdale Secure Treatment Facility located in South Fayette Township, Allegheny County. Bidding packets are due by November 6, 1997. Solicitation No.: 20.

**Department:** General Services  
**Location:** Real Estate, 505 North Office Building, Harrisburg, PA 17105  
**Duration:** Indeterminate 1997-98  
**Contact:** Lloyd D. Colegrove, (717) 772-0538

**010326** Provide professional appraisal services for various types of properties on projects located in Engineering District 1-0; these projects being located in Erie County to include S. R. 4034-A50, 4034-A51 and 0019-A03, and Mercer County to include S. R. 0018-A01. The Appraiser must be Generally State Certified and be currently on the Department's Prequalified Fee Appraiser and Consultant List.

**Department:** Transportation  
**Location:** PennDOT District Office, 1140 Liberty Street, Franklin, PA 16323  
**Duration:** November 03, 1997—November 02, 2002  
**Contact:** William R. Pixley, Chief Appraiser, (814) 437-4203

### Sanitation—36

**2-2-00027** This service shall consist of the collection of refuse and trash from Pennsylvania Department of Transportation, District 2-2, Corner of Washington Avenue and Hall Street, Hyde, PA. Two 6-yard dumpsters and personnel shall be provided by the contractor to meet the collection schedule of twice a week. Contractor shall provide proper disposal at landfill or facilities approved by the Department of Environmental Protection. This is a 1-year contract. By mutual consent of the Commonwealth and the Contractor, this contract shall be renewable for four 1-year renewals.

**Department:** Transportation  
**Location:** District 0220, Corner of Washington Avenue and Hall Street, Hyde, PA 16843-0245  
**Duration:** January 01, 1998 through December 31, 1998  
**Contact:** Debbie Swank, (814) 765-0524

### Miscellaneous—39

**Project No. 97-06** "Audit of Issuing Agents and Authorized Messengers." The objective of this project is to have issuing agents and messengers work audited; to confirm the accuracy and completeness of individual vehicle information; to assure proper issuance of temporary registrations; and to assure compliance with the rules of the Department's Regulations for messengers and issuing agents. Detailed requirements and an RFP are available upon request. FAX requests to Mary Sharp at (717) 783-7971.

**Department:** Transportation  
**Location:** Bureau of Office Services, 8th Floor, 555 Walnut Street, Forum Place, Harrisburg, PA  
**Duration:** 36 months, with a 2-year optional renewal  
**Contact:** Mary Sharp, (717) 787-2491

**BOA-97/98-001** The Office of the Budget is issuing a Request for Proposal (RFP) to perform a quality control review (QCR) of the audit area of Comptroller Operations, Office of the Budget for the period July 1, 1996 to June 30, 1997. For the QCR, the selected firm must use a quality control review program, which meets the requirements cited in Chapter 3, Paragraph 3.34 of the Government Auditing Standards (1994 Revision).

**Department:** Office of the Budget  
**Location:** Primary offices in Harrisburg  
**Duration:** Until the engagement completion date which shall be defined in the contract  
**Contact:** Harvey C. Eckert, Deputy Secretary for Comptroller Operations, (717) 787-6496

**C-102217** Provide an editor of a quarterly tabloid newsletter for the Wild Resource Conservation Fund.

**Department:** Conservation and Natural Resources  
**Location:** Wild Resource Conservation Fund, Harrisburg, PA  
**Duration:** Through December 31, 2002  
**Contact:** Cory Gaiski, (717) 783-0760

**E-1221** Remove and dispose of transformers and dielectric mineral oil fluid from both Embreeville and Pennhurst Centers. In addition, the specifications include the sampling and analyzing of seven pole transformers located at the Pennhurst Center to determine the PCB concentrations and the disposal option for these pole transformers. To receive specifications, submit FAX to Beverly O. Epting, Hamburg Center, Hamburg, PA 19526, FAX (610) 562-6025.

**Department:** Public Welfare  
**Location:** Hamburg Center, Hamburg, PA 19526  
**Duration:** January 1, 1998—June 30, 1998  
**Contact:** Beverly O. Epting, Purchasing Agent, (610) 562-6034



**97-Tiondwell** Sale of approximately 5.4 acres located along Traffic Route 62 near the Tionesta Fish Culture Station in Forest County. The site contains a one-story seven-room dwelling and garage. Bids will be accepted until Friday, November 14, 1997 at 2:30 p.m. and must be on approved forms. Bid documents can be obtained from Kathi Tibbott, Purchasing Agent, by calling (814) 359-5131 (8 a.m. to 4 p.m.). A bid proposal guaranty will be required of all bids.

**Department:** Fish and Boat Commission  
**Location:** R. D. 1, Route 62 North, Tionesta, PA 16353  
**Duration:** Indeterminate 1997-98  
**Contact:** Kathi Tibbott, Purchasing Agent, (814) 359-5131

**RFP No. AQ1997PEV** To complete an evaluation of the effectiveness of air quality programs adopted to implement the Federal Clean Air Act and prepare a report including recommendations for changes to the program.

**Department:** Environmental Protection  
**Location:** Bureau of Air Quality, 400 Market Street, 12th Floor, Harrisburg, PA 17105-8468  
**Duration:** Terminates May 30, 1998  
**Contact:** Karen Matter, (717) 772-3359

[Pa.B. Doc. No. 97-1691. Filed for public inspection October 17, 1997, 9:00 a.m.]

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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,  
*Secretary*

## Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract #	Awarded On	To	In the Amount Of
0089-04	10/15/97	Moore Business Forms	103,480.00
1036157-01	10/01/97	Seco Therma Systems	218,645.00
1117357-01	09/30/97	Tekran, Inc.	5,465.00
1138207-01	10/02/97	Starr Uniform	39,200.00
1202157-01	10/01/97	Hirtech, Inc.	149,867.00
1206207-01	09/30/97	Camtrack South, Inc.	16,250.00
1215217-01	10/03/97	Dixon-Shane Drug Co.	30,492.90
1216137-01	10/02/97	International Autopen Co.	3,180.00
1217157-01	10/02/97	Whitesides Of Cambridge, Inc.	18,845.00
1219157-01	09/30/97	Eastman Kodak	6,047.00
1235217-01	10/03/97	Dixon-Shane Drug Co.	17,354.12
1236127-01	09/30/97	Oles Envelope Corp.	9,700.00
1242157-01	10/02/97	Schick Enterprises	21,411.84
1245117-01	10/02/97	J. Lorber Company	15,200.00
1247217-01	10/03/97	Bellco Drug Corp.	84,702.90
1256217-01	10/03/97	Abbott Laboratories	13,843.84
1262117-01	10/02/97	McGregor Architectural Iron Co., Inc.	29,965.00
1276217-01	10/03/97	Dixon-Shane Drug Co.	30,492.90
1284217-01	10/03/97	Bellco Drug Corp.	26,760.00
3825-01	10/01/97	Old Dominion Brush Co.	262,621.20
3825-01	10/01/97	Keystone Plastics, Inc.	540.00
3825-01	10/01/97	United Rotary Brush Corp.	6,516.84
5999-01	10/02/97	Graybar Electric Co., Inc.	10,000.00
5999-01	10/02/97	Billows/Schneck	70,000.00
5999-01	10/02/97	Dauphin Electric	5,000.00

Requisition or Contract #	Awarded On	To	In the Amount Of
5999-01	10/02/97	Wesco Distribution, Inc.	110,000.00
6606-05 Supplement No. 1	10/06/97	Life Technologies, Inc.	50,000.00
6606-05 Supplement No. 1	10/06/97	Dionex Corp.	50,000.00
6810-07	10/15/97	Co-Products	5,446.20
6810-07	10/15/97	Harvey Salt Company	65,865.62
6810-07	10/15/97	Continental Salt, Inc.	76,617.85
6810-07	10/15/97	Oceanport Industries	39,873.87
6810-07	10/15/97	Cargill Salt Incorporated	17,714.00
6810-07	10/15/97	Rochez Brothers, Inc.	33,636.32
7313860-01	10/01/97	Samual Moore Associates	76,017.39
8151340-01	10/02/97	Midstate Truck Bodies And Equipment, Inc.	30,450.00
8158690-01	09/30/97	US Bridge/Div. of Ohio Bridge Corp.	19,263.20
8503960-01	10/02/97	Wojanis Supply Co., Inc.	41,800.00
8970370-01	10/02/97	K & H Ford, Inc.	173,164.00
8970480-01	10/01/97	Regester Chevrolet, Inc.	443,546.00
8970510-01	10/02/97	Cleveland Brothers Equipment Co., Inc.	112,592.00
8970770-01	10/02/97	Horizon Signal Technologies	60,000.00
8970810-01	10/02/97	Sanders Power Equip. Co.	17,795.00
8970830-01	10/02/97	Keystone Airgas, Inc.	8,750.00

GARY E. CROWELL,  
Secretary

[Pa.B. Doc. No. 97-1692. Filed for public inspection October 17, 1997, 9:00 a.m.]

# STATEMENTS POLICY

## Title 16—COMMUNITY AFFAIRS

### HUMAN RELATIONS COMMISSION

[16 PA. CODE CH. 45]

#### Housing Accommodations/Commercial Property

The Human Relations Commission (Commission) has adopted the following guidelines and statement of policy, relating to advertising, to read as set forth in Annex A. In compliance with and under the authority of Act 34 of 1997, the guidelines and statement of policy, are not be subject to review under section 205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P. S. § 1205) and shall be effective for a period not to exceed 2 years from the effective date of Act 34, which is August 24, 1997, and shall serve as proposed rulemaking. On or before the expiration of the 2-year period, all the guidelines and statement of policy shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

The purpose of these guidelines and statement of policy is to advise the public of words, phrases, symbols and the like which are impermissible under the Pennsylvania Human Relations Act (act) (43 P. S. §§ 951—963) when used in housing advertisements. In addition, they are a guide to advertisers and publishers in their efforts to insure that housing advertisements published or caused to be published by them do not violate the act. These guidelines and statement of policy also contain examples of types of conduct which constitute reasonable efforts to comply with the advertising provisions of the act so that a finding of knowing and willful violation of the those portions of the act is precluded.

#### *Fiscal Impact*

The Commission believes that the guidelines and statement of policy will result in no additional cost to the Commission or to the general public. Any additional costs which arise were created by the act and not the guidelines and statement of policy.

#### *Paperwork Requirements*

No additional, routine paperwork will be required by the new guidelines and statement of policy.

#### *Effective Date*

The guidelines and statement of policy shall take effect upon publication in the *Pennsylvania Bulletin*.

#### *Contact Person*

Persons wishing to submit comments regarding the guidelines and statement of policy may submit them in writing to Nancy L. Gippert, Assistant Chief Counsel, Human Relations Commission, 101 South Second Street, Suite 300, P.O. Box 3145, Harrisburg, PA 17101.

HOMER C. FLOYD,  
*Executive Director*

*(Editor's Note:* The regulations of the Human Relations Commission, 16 Pa. Code Chapter 45, are amended by adding a statement of policy in §§ 45.101—45.103,

45.121—45.126, 45.141, 45.142 and 45.151—45.154 to read as set forth in Annex A.)

**Fiscal Note:** 52-5. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 16. COMMUNITY AFFAIRS

#### PART II. GOVERNOR'S OFFICE

#### Subpart A. HUMAN RELATIONS COMMISSION

#### CHAPTER 45. HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY

#### Subchapter B. HOUSING ADVERTISEMENTS—GUIDELINES AND STATEMENT OF POLICY

#### GENERAL

#### § 45.101. Purpose.

(a) The purpose of this subchapter is to advise the public of words, phrases, symbols and the like which are impermissible under the act when used in advertisements for housing accommodations or commercial property.

(b) This subchapter also contains examples of types of conduct which constitute reasonable efforts to comply with the advertising provisions of the act so that a finding of knowing and willful violation of those portions of the act by the advertiser is precluded.

(c) The act states that it is an unlawful discriminatory practice to:

Print, publish or circulate any statement or advertisement

(i) relating to the sale, lease or acquisition of any housing accommodation or commercial property or the loan of money whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance or any housing accommodation or commercial property which indicates any preference limitation, specification or discrimination based upon race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability or because of the handicap or disability of an individual with whom the person is known to have a relationship or association, or

(ii) relating to the sale, lease or acquisition of any housing accommodation or commercial property which indicates any preference, limitation, specification or discrimination based on the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals. 43 P. S. § 955(h)(5)

#### § 45.102. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, which are identical to those found in section 4 of the act (43 P. S. § 954):

*Advertisement* or *advertising*—See 43 P. S. § 954(3)

*Advertiser*—See 43 P. S. § 954(aa).

*Housing accommodation*—See 43 P. S. § 954(i).

*Housing for older persons*—See 43 P. S. § 954(w).

*Person*—See 43 P. S. § 954(a).

*Personal residence*—See 43 P.S. § 954(k). This term applies to any “person” as defined in this section.

**§ 45.103. General rules.**

(a) This subchapter does not contain every possible word and phrase that may violate the act. The purpose of this subchapter is to provide as complete a list as possible and to provide guidance on how to recognize the type of language that may be violative of the act. There are many commonly understood and offensive words and phrases that are used to describe groups of people. While the Commission has no intention of attempting to list all of these words and phrases, they are not to be used in housing advertisements.

(b) The general rule, which will help ensure that classified advertisements meet the requirements of the act and all fair housing laws is: “Always describe property; never describe people.”

**GUIDELINES AND STATEMENT OF POLICY BY PROTECTED CLASS**

**§ 45.121. Protected class.**

Sections 45.122—45.126 are broken down by words and phrases which may indicate a preference, limitation, specification or discrimination for a particular protected class when used in connection with an ad involving a real estate transaction.

**§ 45.122. Race/color/national origin.**

(a) Real estate advertisements should state no discriminatory preference or limitation on account of race, color or national origin. Use of words describing the current or potential residents or the neighbors or neighborhood in racial or ethnic terms will create liability under the act.

(b) White, black, brown, yellow, red or any color used to describe a person or group of people shall be avoided in order not to indicate a preference or discrimination. The use of a color for any other reason, for example to describe property, is permitted.

(c) For the same reason, the use of a nationality or race in referring to an individual in relation to any real estate transaction, for example, Caucasian, Negroid, Chinese, Asian immigrant, French, Hawaiian, Arab, Oriental, African-American, Irish, and the like, is prohibited. The use of these words to describe property, for example, french doors or oriental rugs, is permitted.

(d) So that a preference is not shown for a particular nationality or race, the use of landmarks or organizational locations which are indicative of a particular nationality or race should be avoided, unless all of these landmarks in the area are noted. For example, if proximity to a specific place of worship commonly associated with a particular ethnic group is noted as a directional landmark, reference should be made to all other nearby comparable facilities of interest to other groups.

(e) Code words, in certain contexts, have historically been used to signal whites that a neighborhood is restricted to whites. Phrases such as “restricted,” “exclusive” or “traditional” are terms that depending upon the common understanding in the geographical area of that area may be intended to be discriminatory and should be avoided in classified advertisements.

(f) Some words or phrases can be “code words,” which, based upon past practices, connote neighborhoods of a certain race or ethnic group or in which certain races or ethnic groups are not welcome. For example, an ad stating that a property was right next to a specifically

named country club that has historically barred minorities from membership would signal both minorities and nonminorities of a segregated neighborhood. Because well known segregated sites tend to be local—a comprehensive list is impossible. Local advertisers are aware of the localities and should avoid their use in describing locations in classified advertisements.

**§ 45.123. Familial status/age.**

(a) The most common area in which problems occur in classified advertising is that of familial status. Unless the property is “housing for older persons,” as defined by section 4(w) of the act (43 P.S. § 953(w)), it is unlawful to discriminate against families with children in the household or based upon age (40 years of age or older). Thus, phrases which note a preference for adults, couples or singles or families without children, or use colloquialisms to imply the same thing, for example, “empty nesters” or “honeymooners” are unlawful.

(b) The number of children allowed should not be listed, although the number or size, or both, of rooms or bedrooms, or both, is permissible. (Describe the property, not the people). While the act allows the landlord to establish reasonable occupancy standards, the standards shall be applied in a nondiscriminatory manner and may not violate the Federal Fair Housing Act (42 U.S.C.A. §§ 3601—3619 and 3631).

(c) A classified ad may indicate that a housing complex meets the requirements for “housing for older persons.” A publisher may reasonably rely on the advertiser’s representations. However, if the complex does not, in fact, meet the requirements, the complex and the person or organization who placed the advertisement will be liable. If a publisher reasonably relied on those representations, the publisher would not be liable.

**§ 45.124. Disability.**

It is acceptable to describe housing as accessible to persons with disabilities. It is not acceptable to attempt to limit the housing to certain persons by stating that it is not accessible.

**§ 45.125. Religion.**

Advertisements should not contain either an explicit or implicit preference, limitation or discrimination on account of religion, for example, “Christian home,” “no Jews.” In general, the use of religious landmarks may indicate a preference and should be avoided. For example, “near parochial school” or near “a temple,” may signal a preference in the real estate transaction for a person of that specific faith.

**§ 45.126. Sex.**

Advertisements should not contain an explicit preference, limitation or discrimination on account of sex. However, Act 34 of 1997, which amended the act, an advertisement for the rental or leasing of housing accommodations in a single-sex dormitory or rooms in one’s personal residence in which common living are shared may indicate a preference, limitation or discrimination on account of sex.

**LIST OF WORDS OR PHRASES TO AVOID**

**§ 45.141. List.**

The list of words in § 45.142 (relating to words to be avoided) does not contain every possible word and phrase that may violate the act. The purpose of the list is to provide as complete a list as possible. For example, while many nationalities, types of disabilities and races are mentioned, the list is not inclusive. Any word indicating

ancestry, race, color, religion or disability is equally prohibited in the context of real estate advertisements. The list will provide guidance on how to recognize the type of language that may be violative of the act. When the context of the word or phrase is key to its possible unlawful meaning that will be noted.

**§ 45.142. Words to be avoided.**

(a) The following words should be avoided:

Able-bodied

Adult—If the housing is “housing for older persons” as defined by the Federal Fair Housing Act (42 U.S.C.A. §§ 3601—3619 and 3631) and the act, it is appropriate to say so. However, the term “adult” is not appropriate as this word implies a restriction different than 55 years of age or older or 62 years of age or older, which are the two types of housing for older persons allowed as “housing for older persons.” Any other restrictions based upon age or which have a disparate impact upon families with children will violate the age or familial status provisions of the act. See the definitions of housing for older persons in section 4(w) of the act.

African-American

Asian

American

Ancestry (any)

Black

Blind

Buddhist

Catholic

Caucasian

Chicano/Chicana

Child/children—Restrictions, unless “housing for older persons.”

Chinese

Christian

Church, near

Color—Any when used to describe a person.

Colored

Couple

Crippled

Deaf

Disability (any)—It is acceptable to describe housing as accessible to persons with disabilities. It is not acceptable to attempt to limit the housing to certain persons by stating that it is not accessible.

Disabled

Empty nester

Ethnic neighborhood

Ethnic group (any)

Foreigners

Handicapped

Hindi

Hispanic

Ideal for .. (a type of person)

Immigrants

Independently, capable of living

Indian

Integrated

Interracial

Irish

Jew/Jewish

Latino/Latina

Mentally handicapped, ill, retarded

Mexican-American

Middle Eastern(er)

Minority

Mixed community

Mormon

Moslem

Mosque, near

Muslim

Nationality (any)

Newlyweds

Parish, near

Perfect for (a type of person)

Polish

Prefer (a type of person)

Protestant

Puerto Rican

Race (any, when used to describe a person)

Religion (any, when used to describe persons)

Retarded

Retired persons, retirees—If it is “housing for older persons,” use that phrase, as many people who are retired may not qualify for housing for older persons while many people still working may in fact be eligible for housing for older persons.

Segregated

Senior (Use “housing for older persons”)—See note under adult and retired persons. Many people who do not consider themselves senior may be eligible for housing for older persons.

Suitable for

Synagogue, near

Temple, near

White

Young

Youthful

(b) Any of the words in subsection (a) may be used if they are part of an address. For example, Poplar Church Road, Luther an Street, Churchville, Black Ridge or Indian Hills, and the like, are permissible.

**ADVERTISEMENTS**

**§ 45.151. Examples of unlawful advertisements.**

Following are some examples of phrases in classified housing advertisements for which complaints have been filed and are considered in violation of the act.

(1) *Familial status.* For example, "adult atmosphere," "mature adults preferred," "great for retired couple or couple just starting out," "no kids, pets okay," "perfect for empty nesters," "couples only," "separate building for adults," "1 or 2 adults," "adult/family sections," "ideal for singles," "adult community," "responsible young adults in a quiet senior citizen community," "suitable for one or two adults."

(2) *Sex.* For example, "males only need apply," "professional male preferred," "perfect for single female."

(3) *Religion.* For example, "Surround yourself with Christians."

**§ 45.152. Exemptions which do not apply to advertising.**

There are situations which are exempt from coverage under the act. For example, the act has no jurisdiction over cases involving the rental of an owner occupied duplex. However, under both the act and the Federal Fair Housing Act (42 U.S.C.A. §§ 3601—3619 and 3631), it is unlawful to advertise any discrimination. Therefore, it is unlawful to advertise no blacks, no children, or any of the other words or phrases described in § 45.151 (relating to examples of unlawful advertisements), even for an exempt property.

**§ 45.153. What constitutes good faith efforts on the part of advertisers?**

Under section 9.1 of the act (43 P. S. § 959.1):

(c) An advertiser who knowingly and wilfully violates this act may be penalized under section [95] 9(f)(2) and (f.1). It shall be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated this act if an advertiser has either:

(1) attempted, in good faith, to comply with the list and specific examples of impermissible housing advertisements described in subsection (b); or

(2) complied with an interpretation of the Commission or its personnel concerning what constitutes appropriate housing advertisements.

It shall also be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated this act if an advertiser has made reasonable efforts in good faith to comply with this act.

(1) As to an advertisement for "housing for older persons," a person shall have acted in good faith if the housing provider has provided the advertiser a signed written statement which states that the facility or community complies with the requirements of the housing for older persons exemption and the advertiser has no actual knowledge that the facility or community is not actually eligible for such exemption.

(2) If the word or phrase complained of is in compliance with the list in § 45.151 (relating to examples of unlawful advertisements) and is not, on its face, discriminatory within the context of the advertisement, the advertiser shall be deemed to have acted in good faith.

(3) If the advertiser is told by a Commission staff person that the language complained of is legal, within the same context in which the advertiser requested the opinion from the staff person, the advertiser will be deemed to have acted in good faith. This advice will be reduced to writing by the staff person and provided to the advertiser and maintained on file in the Commission office.

**§ 45.154. Questions regarding advertisements.**

Questions regarding advertisements shall be directed to the Housing Director (717) 783-8274 or Assistant Chief Counsel of the Housing Division (717) 783-8132 in Room 300, Executive House, 101 South Second Street, Harrisburg, Pennsylvania 17105-2125 (e-mail "Raymond W. Cartwright" (phrc@paonline.com)). Text Telephone (717) 787-4087, Fax (717) 772-4340.

[Pa.B. Doc. No. 97-1693. Filed for public inspection October 17, 1997, 9:00 a.m.]