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Pennsylvania Bulletin  
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## March 31, 2001 (Pages 1669-1834)

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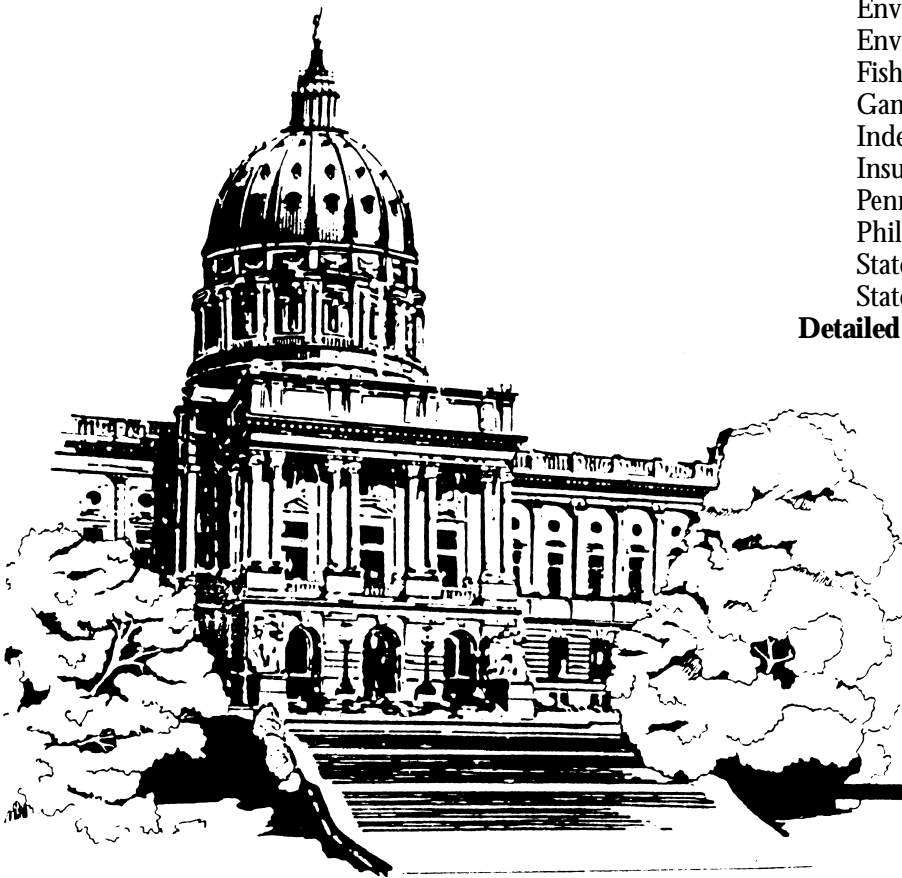
# PENNSYLVANIA BULLETIN

Volume 31  
Saturday, March 31, 2001 • Harrisburg, Pa.  
Number 13  
Pages 1669—1834

**Agencies in this issue:**

The Courts  
Department of Agriculture  
Department of Banking  
Department of Environmental Protection  
Department of General Services  
Department of Health  
Department of Public Welfare  
Department of Transportation  
Environmental Hearing Board  
Environmental Quality Board  
Fish and Boat Commission  
Game Commission  
Independent Regulatory Review Commission  
Insurance Department  
Pennsylvania Public Utilities Commission  
Philadelphia Regional Port Authority  
State Architects Licensure Board  
State Employees' Retirement Board

**Detailed list of contents appears inside.**



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

**No. 316, March 2001**

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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*.

## **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.

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### 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.

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# 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 2001.

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# THE COURTS

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### PennDOT Appeals; Administrative Doc. No. 03 of 2001

*And Now*, this 9th day of March, 2001, *It Is Hereby Ordered and Decreed* that the Order issued on December 30, 1993, No. 04 Administrative Docket and March 17, 1994, No. 5 of 1994, amending Philadelphia Civil Rule No. \*1301, is further amended and supplemented as set forth hereunder.

Effective Friday, March 9, 2001, Appeals from decisions of the Pennsylvania Department of Transportation will be scheduled for disposition before a judge of the Municipal Court of Philadelphia who has been assigned to preside as a Judge of the Court of Common Pleas.

This Order is issued in accordance with the April 11, 1986, Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1, Phila. Civ. R. No. \*51 and Pa.R.C.P. No. 239, and shall become effective on March 9, 2001. As required by Pa.R.C.P. No. 239, the original Order shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the Administrative Judge of the Trial Division, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the regulation shall also be submitted to Legal Communications, Ltd., *The Legal Intelligence*, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

JOHN W. HERRON,  
*Administrative Judge, Trial Division*

[Pa.B. Doc. No. 01-536. Filed for public inspection March 30, 2001, 9:00 a.m.]

### PHILADELPHIA COUNTY

#### SEPTA Strike; Administrative Doc. 04 of 2001

##### Order

*And Now*, this 13th day of March, 2001, it is hereby *Ordered and Decreed* that, in the event of a strike by SEPTA employees, all SEPTA counsel are excused from attending all Court ordered events for the duration of the strike and four (4) days after it ends;

Any Order issued against SEPTA shall be stayed for the duration of the strike and twenty (20) days thereafter;

No default judgments for failure to answer a Complaint or comply with a discovery Order will be issued for the duration of the strike and twenty (20) days thereafter;

Following resolution of the strike, civil case managers will be assigned to review every Case Management Order involving SEPTA as a party and they shall advance event dates as appropriate and reissue the Case Management Order without the necessity of counsel appearing; and

Following resolution of the strike, the Civil Judicial Team Leaders will reschedule all settlement conferences, pretrials and trials which were continued by reason of the strike.

*By the Court*

JOHN W. HERRON,  
*Administrative Judge, Trial Division*

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. ★51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to American Lawyer Media, *The Legal Intelligence*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's website at <http://courts.phila.gov>.

[Pa.B. Doc. No. 01-537. Filed for public inspection March 30, 2001, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### LAWRENCE COUNTY

#### Domestic Relations Section Fee Schedule

##### Rule L1910.4. Domestic Relations Section Fee Schedule.

(1) The fees set forth in the following fee schedule shall be assessed when applicable, as taxable costs, upon the appropriate parties in the various causes of action and matters filed with the Lawrence County Domestic Relations Section.

(2) None of the fees set forth in the fee schedule shall be required to be paid in advance.

(3) Any fee may be imposed upon any party at the time of the support conference or at any time during the life of the cause of action or matter before the Court.

(4) All fees shall be assessed, collected, and administered by the Domestic Relations Section.

##### *Domestic Relations Section Fee Schedule*

Opening a Judgment	\$ 40.00
Appeal to Appellant Court	\$ 50.00
Warrant	\$ 16.00
Case Audits	Fee determined by Court Order
Certified Orders	\$ 5.00
Commencement of an Action	\$ 50.00
Computer Print-Out (per page)	\$ 2.00

Contempt Proceeding Preparation	\$160.00
Contempt Petition & Order	\$ 50.00
Appeal DeNovo	\$ 40.00
DRS Annual Administrative Fee For Obligor	\$ 25.00
Guideline Calculations	\$ 10.00
Incarceration & Milage Fee	\$ 40.00
Judicial Computer Fee	\$ 5.00
Judgments	\$ 54.00
Lien Searches (Per Name)	\$ 10.00
Ancillary Motion/Petition	\$ 10.00
Non-Sufficient Funds Fee	\$ 40.00
Ancillary Order	\$ 10.00
Personal Service & Mileage Rate	\$ 30.00
PIN Replacement Fee	\$ 8.00
Recommended Support Order	\$ 50.00
Sentencing Petition	\$100.00
Sentencing Order	\$ 40.00
Scheduling Blood Test for Non-DRS Cases	\$ 65.00
Stop Payment Check Fee	\$ 40.00
Ancillary Support Agreement	\$ 20.00
Photocopies (Per Page)	\$ .80

[Pa.B. Doc. No. 01-538. Filed for public inspection March 30, 2001, 9:00 a.m.]

## WASHINGTON COUNTY

### Local Rules of Court Governing Support; No. 2001-1

#### Order

And Now, this 9<sup>th</sup> day of March, 2001; *It Is Hereby Ordered* that the Washington County Local Civil Rules of Court governing Support be adopted as follows and that all previous Washington County Local Rules of Court governing Support be rescinded.

This amendment shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

DEBBIE O'DELL SENECA,  
Judge

#### SUPPORT

##### L-411.2. Non-Appearance by Parties.

[Rescinded as the subject matter is now covered by Pennsylvania Rule of Civil Procedure 1910.11 and 1910.12].

##### L-1012-1. Entry of Appearance.

All counsel shall file a Praecept for Appearance with the Domestic Relations Section Docket Clerk which includes the attorney's name, business address, telephone number and Supreme Court identification number. This appearance must be typed or legibly handwritten. If counsel fails to enter his or her appearance as prescribed by this Rule, he or she shall not be entitled to receive copies of orders, notices or other record matters.

##### L-1012-2. Withdrawal of Appearance.

Following entry of a final order from the matter for which counsel entered his or her appearance as set forth in L-1012-1, counsel may withdraw his or her appearance by filing of record a form as prescribed by the Domestic Relations Section for this purpose and without order of court. Any attorney filing this form shall certify that he or she has sent a copy of his or her withdrawal to his or her client before the Docket Clerk shall accept the withdrawal for filing.

##### L-1910.4. Fees.

(a) The Domestic Relations Section, in addition to any other fees imposed by these rules, shall impose and collect filing and service fees as prescribed by administrative order, *as amended*.

(b) Any fee imposed by this Rule shall not be collected from a party otherwise obligated by these rules to pay such a fee in the following circumstances:

(1) Where the party has been granted leave by the Court to proceed *in forma pauperis*;

(2) Where the Hearing Officer or the Court finds that the party is financially unable to pay;

(3) Where the party is a recipient of cash assistance from any state's Department of Public Welfare;

(4) Where any action requiring a fee is taken by the IV-D Attorney; or

(5) Where the Court otherwise directs.

(c) No fee shall be charged for any continuance granted under Rule L-1910.5(a)(1). A fee shall be charged for continuances under L-1910.5(a)(2).

##### L-1910-5. Continuances.

(a) Continuances of any matter scheduled before either a Conference Officer or a Hearing Officer shall only be granted as follows:

(1) For requests for continuances made 15 days or more before the scheduled conference or hearing date, the moving party must place his or her request in writing to the Intake Department Supervisor. All requests for continuance under this section shall include written consent from both parties to the continuance. The party requesting the continuance is responsible for notifying all interested parties of the rescheduled date and time of the conference and/or hearing.

(2) Requests for continuances of any conference or hearing which are made 14 days or less before the scheduled conference or hearing date shall only be granted by order of court.

(b) A fee shall be charged for continuances as prescribed by Rule L-1910.4 and no continuance shall be granted without payment of any required fee, unless waived by the Court or the Domestic Relations Section for good cause shown.

##### L-1910.10-1. Hearing Procedure.

(a) The alternative hearing procedure of Pa.R.C.P. 1910.12 is adopted in all actions for support through the Domestic Relations Section.

(b) If the parties are unable to reach an agreement during the support conference, the procedures of Pa.R.C.P. 1910.12(b)(1) shall be followed and an interim

order of support entered pending hearing before the Hearing Officer.

(c) Subject to the provisions of Rule L-1910.4(b), a party wishing to confirm and preserve a scheduled *de novo* hearing before the Hearing Officer shall pay costs in the amount of \$50.00 to the Domestic Relations Section within ten (10) days of the mailing of the interim order. Failure to pay such costs shall result in any scheduled hearing being administratively cancelled and the interim order being made final.

(d) When interim orders which are served upon the parties by mail, the Domestic Relations Section shall add three (3) days to the "mail date" appearing on the face of the order and the ten (10) day period shall run from that "mail date" for the purposes of Pa.R.C.P. 1910.12.

#### **L-1910.10-2. Alimony Pendente Lite.**

(a) If the parties to a support action have filed a Complaint in Divorce in which a claim is raised for alimony pendente lite, the Hearing Officer may hear the alimony pendente lite claim at the request of either party, provided however, that both a Master in divorce has been appointed and the Master's fee has been paid to the Prothonotary. Counsel requesting the hearing of an alimony pendente lite claim by the Hearing Officer shall provide documentary evidence of this appointment and payment of the fee to the Hearing Officer.

(b) If the Hearing Officer proceeds under this Rule and hears a claim for alimony pendente lite, the party moving for hearing of this claim by the Hearing Officer shall file with the Domestic Relations Section Docket Clerk a copy of the Complaint in Divorce raising the issue of alimony pendente lite within three (3) days of the hearing before the Hearing Officer. If the Complaint in Divorce is not filed within this time, the Recommendation of the Hearing Officer shall not be issued until a copy of the Complaint is properly filed.

#### **L-1910.11(c). Exhibits.**

[Rescinded].

#### **L-1910.12-1. Office Conference.**

[Rescinded due to the 1997 revisions to the Pennsylvania Rules of Civil Procedure].

#### **L-1910.12-1. Exceptions.**

(a) Where the parties to a support action are not given a copy of the Recommendation of the Hearing Officer at the conclusion of the hearing and notice of the Recommendation is given by mail to the parties and/or counsel of record, the Domestic Relations Section shall add three (3) days to the report date appearing on the face of the Recommendation prior to mailing. The 10 day period for the filing of exceptions prescribed by Pa.R.C.P. 1910.12(f) shall run from the Date of Report written on the Recommendation.

(b) All exceptions must be in writing and shall be filed with the Domestic Relations Section Docket Clerk. Any party filing exceptions shall provide an original and two (2) copies when filing. Further, the party filing exceptions shall provide to the Docket Clerk a receipt indicating that the \$50.00 deposit required by subsection (d) of this rule has been paid (subject to the provisions of Rule L-1910.4(b)) unless an attorney filing the exceptions on behalf of the party certifies in writing that no transcript is required.

(c) The party filing exceptions shall serve both opposing counsel and the opposing party with copies of the exceptions by the end of the next business day following the filing of the exceptions.

(d) Any party filing exceptions shall order from the court reporter the transcript of testimony unless the attorney for the party filing exceptions certifies in writing that the transcript is not required. Any party ordering the transcript shall pay a deposit of \$50.00 with the court reporter before the transcript is prepared. The deposit shall be applied against the total cost of the transcript. The Domestic Relations Judge will not be provided with a copy of the transcript unless the same has been ordered and paid for in full by a party or counsel.

(e) Briefs in support and in opposition to the exceptions shall be filed with the Domestic Relations Section Docket Clerk not later than the dates directed in the order of court setting the argument date on the exceptions. Each party filing a brief shall serve a copy of the brief on the opposing party and counsel not later than the end of the next business day following the filing of the brief with the Domestic Relations Section Docket Clerk. Every brief filed with the Domestic Relations Section Docket Clerk shall contain an original and one (1) copy.

(f) If the party filing exceptions fails to file a brief in support of those exceptions by the designated filing date, the responding party shall not be required to file a brief in opposition to those exceptions, but may file a brief if desired. However, if the responding party has filed exceptions in response to the other party's exceptions filing, the responding party shall file a brief in support of those cross or counter exceptions by the date directed in the argument notice.

#### **L-1910.17-1. Administrative Service Fee.**

Except as provided herein, every order of support shall require the payment of a \$25.00 annual administrative service fee to the Domestic Relations Section. This fee shall be charged to the defendant in a support action processed through the Domestic Relations Section. This fee shall be charged on any case in which the defendant is under an order of support of at least \$50.00 per month, in either a single or multiple support action. This fee shall be paid by the defendant only once yearly regardless of the number of cases involved. Only those defendants who have an active support order as of April 15 of that year shall be charged this fee. Payment shall be due within 45 days of the date of the mailing of the fee notice and shall be paid directly to the Domestic Relations Section and not to the Pennsylvania Support Collections and Disbursement Unit (SCDU). This fee shall be in addition to the amount of support which the defendant is ordered to pay.

#### **L-1910.17-2. Consent Support Orders.**

(a) All consent support orders shall be prepared on current forms provided by the Domestic Relations Section in conformance with the Pennsylvania Child Support Enforcement System (PACES). Consent support orders prepared on forms other than the current form shall not be accepted for filing by the Domestic Relations Section Docket Clerk.

(b) The order must be clear and concise and shall adhere to both procedural and substantive statutory and case law requirements.

(c) If a support action has not yet been initiated for the case for which the consent support order is being filed, the consent support order shall include along with filing the current intake information sheet and a properly completed Complaint for support and shall also include the appropriate filing fee.

#### **L-1910.17-3. Marriage Settlement Agreements.**

In existing support cases where a marriage settlement agreement is signed following the entry of the support order which modifies the terms of the current support obligation, counsel for either party shall file a motion with the Court to incorporate the marriage settlement agreement into a Domestic Relations Order. The order prepared incorporating the marriage settlement agreement shall conform to the current consent support order used by the Domestic Relations Section, as set forth in Rule L-1910.17-2.

#### **L-1910.17-4. Stipulations before the Divorce Master.**

In existing support cases where the parties enter into a stipulation before the Divorce Master following the entry of the support order which modifies the terms of the current support obligation, counsel for either party shall file the stipulation with the Domestic Relations Section. Upon filing of this stipulation, a new order of support in conformance with that stipulation shall be drafted by the Domestic Relations Section and forwarded to the Court for entry.

#### **L-1910.19. Support Order Modification.**

(a) A filing fee as set forth in Rule L-1910.4 shall be charged for all petitions to modify an order of support. This fee shall be assessed against the party filing the petition to modify, except as provided in Rule L-1910.4(b). The petitioner shall file an original and three (3) copies of the petition with the Domestic Relations Section Docket Clerk.

(b) The Domestic Relations Section shall not accept for filing a petition which seeks any of the following without leave of court:

- (1) To decrease an order of \$50.00 or less;
- (2) To modify an order that is on appeal to the court pursuant to a recommended order; or,
- (3) To modify an order which has been entered within the past six (6) months.

(c) The Domestic Relations Section shall provide notice of the refusal to the party seeking the modification.

(d) A party who's petition has been refused must personally present to the Domestic Relations Judge a motion to permit the filing of the modification, on forms provided by the Domestic Relations Section. Notice of presentment of the motion must be given to the opposing party in accordance with L-200.5(e).

(e) If leave of court is granted to file the petition for modification, the date of the first attempted filing shall be used as the filing date.

#### **L-1910.22. Attachment of Income.**

[Rescinded due to 1997 amendments to the Pennsylvania Rules of Civil Procedure].

#### **L-1920.4. Service.**

[Rescinded].

[Pa.B. Doc. No. 01-539. Filed for public inspection March 30, 2001, 9:00 a.m.]

## **SUPREME COURT**

### **Schedule of Holidays for Year 2002 for Staffs of the Appellate Courts and the Administrative Office of Pennsylvania Courts; No. 229 Judicial Administration Doc. No. 1**

#### **Order**

*Per Curiam:*

*And Now*, this 19th day of March, 2001, it is hereby ordered that the following paid holidays for calendar year 2002 will be observed on the dates specified below by all employees of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 1, 2002	New Year's Day
January 21, 2002	Martin Luther King, Jr. Day (Observed)
February 18, 2002	Presidents' Day (Observed)
March 29, 2002	Good Friday
May 27, 2002	Memorial Day (Observed)
July 4, 2002	Independence Day
September 2, 2002	Labor Day
October 14, 2002	Columbus Day (Observed)
November 5, 2002	Election Day
November 11, 2002	Veterans Day
November 28, 2002	Thanksgiving Day
November 29, 2002	Day After Thanksgiving
December 25, 2002	Christmas Day

[Pa.B. Doc. No. 01-540. Filed for public inspection March 30, 2001, 9:00 a.m.]

### **Sessions of the Supreme Court of Pennsylvania for the Year 2002; No. 127 Appellate Court Rules Doc. No. 1**

#### **Order**

*Per Curiam:*

*And Now*, this 9th day of March, 2001, it is ordered that the argument/administrative sessions of the Supreme Court of Pennsylvania shall be held in the year 2002 as follows:

Philadelphia	February 4 through February 8
Pittsburgh	March 4 through March 8
Harrisburg	April 29 through May 3
Philadelphia (Administrative Session)	June 4

Pittsburgh	September 9 through September 13
Philadelphia	October 21 through October 25
Harrisburg	November 18 through November 22
Pittsburgh (Administrative Session)	December 4

Additional argument/administrative sessions may be scheduled as the Court deems necessary.

[Pa.B. Doc. No. 01-541. Filed for public inspection March 30, 2001, 9:00 a.m.]

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# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

#### [7 PA. CODE CH. 21]

#### Dog Shelters—Rest Boards and Vinyl Coated Wire

The Department of Agriculture (Department), under the Dog Law (act) (3 P. S. §§ 459-101—459-1202), amends § 21.24 (relating to shelters).

#### *Authority*

The Department has the power and authority to adopt this amendment. This authority includes:

(1) The general duty to implement the policy of the act in section 101 of the act (3 P. S. § 459-101) which states this in an act "... relating to dogs, regulating the keeping of dogs; providing for the licensing of ... kennels. ..." and "... providing for the protection of dogs ..." The Department has a duty to assure the proper and humane care of dogs kept in captivity.

(2) The specific authority conferred by section 207(b) of the act (3 P. S. § 459-207(b)), which confers upon the Department the power to promulgate regulations regarding the maintenance of kennels. It states, "(A)ll kennels shall be maintained in a sanitary and humane condition in accordance with standards and sanitary codes promulgated by the secretary."

#### *Need for the Amendment*

Current § 21.24(d) became effective April 12, 1996. The current regulation requires kennels that house dogs in a primary enclosure with wire flooring to provide a solid draft free resting surface to allow the dogs to rest comfortably. The regulation was originally enacted to protect the health and safety of dogs, assure their humane treatment and to bring the Department into closer compliance with the Federal regulations regarding the sheltering of dogs in kennels.

The Department vigorously enforced the regulation and all kennels with wire or mesh flooring were brought into compliance with the rest board requirements. However, the Department soon began receiving complaints concerning the health of dogs deteriorating due to fecal matter and urine collecting on the rest boards. It was impossible for kennel owners to keep the rest boards sanitized at all times, thus creating unsanitary conditions for the dogs. Illness and disease were occurring at a higher rate with rest boards in place than had occurred prior to the enactment of the regulations requiring rest boards. In addition, the Federal regulations were changed, setting aside the rest board requirement.

This amendment will allow for the removal of rest boards, which will address the safety and health issues that have arisen subsequent to their use. At the same time, the amendment addresses the comfort, safety and humane treatment of the dogs by requiring that a dog may be sheltered in a primary enclosure having metal strand flooring provided the metal strand flooring is coated with a vinyl type coating. The coated metal strand flooring shall be kept in good repair and be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated metal strand flooring shall be of sufficient diameter (gauge) to provide a

completely rigid floor area sufficient to support the weight of dog housed in the enclosure so that the metal strand floor does not bend or sag from the weight of the dog. The amendment requires a kennel owner to install vinyl coated metal strand flooring before removing any rest boards. Kennel owners may keep rest boards in place, but will still be required to install vinyl coated metal strand flooring meeting the standards of the regulation and will be required to keep the rest boards sanitized.

This amendment is intended to update the Department's policy regarding the sheltering of dogs in kennels. This amendment is consistent with the Department's duties under the act. In addition, the amendment is very similar, although slightly more stringent than, the Federal regulations regarding the sheltering of dogs in kennels, which are set forth in 9 CFR 3.6(a)(xii) (relating to primary enclosures). In the interest of continuing to carry out the policy of the act, to assure the health, safety and humane treatment of dogs, the Department adopts this amendment to effectuate the changes referred to in this Preamble. In summary, the Department is satisfied there is a need for the amendment, and that it is consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

#### *Comments*

Notice of proposed rulemaking was published at 30 Pa.B. 3660 (July 22, 2000), and provided for a 30-day public comment period. In accordance with section 902 of the act (3 P. S. § 459-902) the Department held a public hearing on October 12, 2000, with regard to the amendment. Notice of the public hearing was published at 30 Pa.B. 5152 (October 7, 2000). In addition, commentators, Dog Law Advisory Board (Board) members and other interested parties, such as those who normally attend the public meetings of the Board were notified of the public hearing by regular mail. An official record of the public hearing is available for public inspection.

Comments were received from the Independent Regulatory Review Commission (IRRC); the Honorable Stewart J. Greenleaf; the Honorable Noah W. Wenger; Johnna L. Seeton, Chairperson, Pennsylvania Legislative Animal Network; Dotsie Keith, Legislative Chairperson, Pennsylvania Federation of Dog Clubs and Anne Irwin, President, Federated Humane Societies of Pennsylvania.

*Comment:* IRRC commented regarding the minimum standards for wire flooring. IRRC had six concerns related to the reasonableness, clarity and consistency with existing regulations of the proposed requirements for wire flooring.

First, IRRC commented the proposed amendment requires the use of vinyl-coated flooring in primary enclosures if a kennel removes rest boards. IRRC noted that the Federal regulation in 9 CFR 3.6 allows for the removal of rest boards and requires that the flooring be "constructed of metal strands greater than 1/8 of an inch in diameter (9 gauge) or be coated with a material such as plastic or fiberglass." IRRC suggested that rather than write a different regulation, the Department should consider incorporating the Federal regulations by reference.

IRRC's second comment relating to the minimum standards for wire flooring concerned the recommendations of four commentators that the regulation should include a minimum standard of greater than 1/8 of an inch in

diameter for vinyl-coated metal strands. IIRC specifically commented that such a standard would exceed the Federal regulations, which does not require a coating for strands greater than 1/8 of an inch in diameter. IIRC questioned whether the Department had a compelling reason that justified exceeding the minimum standards of the Federal regulations.

IIRC's third comment with regard to the minimum standards for wire flooring concerned the clarity of the regulation. IIRC stated that § 21.24(d) is a long subsection (containing seven sentences) and that four of the sentences contain six requirements relating to minimum standards for metal strand flooring. IIRC suggested these requirements would be "... easier to understand if they were set forth clearly as a list in the proposed regulation."

IIRC's fourth comment concerning the minimum standards for wire flooring concerned clarity as well. Section 21.24(d) states that the metal strand flooring shall provide a "rigid floor area" that "does not bend or sag." IIRC questioned whether any deviation from a straight line would constitute a sag and whether the floor must be completely rigid, or if some degree of variation or flex is allowable. IIRC commented the Department should clarify this requirement.

IIRC's fifth comment related to clarifying the language regarding a draft free area. IIRC suggested the Department should clarify whether this provision applied to the entire primary enclosure or only part of the enclosure area or an attached area accessible to the dog.

IIRC's sixth comment with regard to the minimum standards for wire flooring was that the amendment should be consistent with the Federal regulations and use the words "metal strands" instead of "wire."

*Response:* With regard to IIRC's first comment related to the minimum standards for wire flooring, the Department believes that it cannot merely reference the Federal regulation in 9 CFR 3.6. The Department has been working for 3 years with the Board, members of the regulated community and other interested persons regarding the proposed amendment. The Department even established a special Rest Board Committee (Committee) to discuss the current proposed amendment. During those discussions the most heated debate was with regard to the removal of the rest boards. A compromise was eventually struck leading to an agreement to allow for the removal of rest boards, so long as all primary enclosures having wire flooring would be required to have coated wire flooring. The Department realizes the amended regulation would be more stringent than the current Federal regulation, which allows metal strand flooring to be uncoated, so long as it is 1/8 of an inch in diameter. However, given the compromise struck between the parties interested in and affected by the proposed amendment, the Department is unable to reference the Federal regulation in its entirety and feels it would be confusing to reference only part of the Federal regulation or attempt to explain an exception to the Federal regulation. In addition, the vinyl coating does add additional protection for the dog and thereby creates a more healthy and humane environment for the dog. As an additional point of clarity, as these regulations have progressed it has become apparent that the groups commenting on the proposed amendments would prefer that the words "wire flooring," which is in the current regulation, be replaced with the words "metal strand" or "metal rod." The Depart-

ment addresses this issue in its response to IIRC's second comment regarding minimum standards for wire flooring.

In response to IIRC's second comment regarding the minimum standards for wire flooring, after consideration of the official comments, a public meeting on the matter and consideration of testimony entered into the record at a public hearing held to discuss the proposed amendment, the Department finds no compelling reason to exceed the standards of the Federal regulation by requiring all coated metal strands to be greater than 1/8 inch in diameter. The Department holds this belief for the following reasons:

(1) The amendment requires the coated metal strand flooring "... must be constructed of sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dog(s) housed in the enclosure such that the metal strand floor does not bend or sag from the weight of the dog(s)." The commentators reason for requesting the use of the term "metal rod" was because "metal rod" denotes a metal strand that is greater than 1/8 of an inch. The commentators believe that by requiring the metal strands to be greater than 1/8 of an inch the coated metal strand flooring is guaranteed not to bend or sag, or will be less likely to bend or sag and therefore provide a more rigid surface for the dog. The language of the amended regulation addresses the commentators concerns regarding a completely rigid surface by stating the diameter of the metal strand must be of sufficient diameter (gauge) that it provides a rigid surface and does not allow the metal strand floor to bend or sag under the weight of the dog. There is a zero tolerance for bending or sagging no matter the size or number of dogs contained in the enclosure. In addition, for the Department to require both greater than 1/8 of an inch and a metal strand of sufficient diameter (gauge) to assure a rigid surface that does not bend or sag would be redundant and could lead to problems with enforcement (that is, the question which standard is it?).

(2) Requiring all coated metal strand flooring to be 1/8 inch or greater in diameter would lead to enforcement problems, greater expense and much more time spent inspecting each individual kennel and prosecuting each violation and would not add any benefit that the current language of the regulation does not already address. It would be impossible for the Department to determine, with a coated metal strand, whether the metal strand itself is 1/8 of an inch or greater in diameter without destroying the vinyl coating on the metal strand. The coating on the metal strand would then have to be replaced in order to be in compliance with the regulations. In addition, the Department, to enforce a violation, would have to test all of the enclosures having coated metal strands. The dog law wardens would have to carry metal gauges and those gauges would have to be calibrated and certified as accurate. The accuracy would have to be proven when prosecuting each violation.

(3) Metal strands of 1/8 inch or greater do not guarantee the strength of a metal strand floor. Many factors, such as the construction or pattern of the metal strand flooring, the tensile strength of the material used in the metal strand flooring and the number of welds, determines the actual strength and rigidity of a metal strand floor. The current language of the regulation is broad enough to allow the Department to require stronger metal strand flooring be used in any primary enclosure where the current metal strand flooring is not of sufficient strength to support the weight of the dog with out



bending or sagging. The Department, under the current language, does not have to prove diameter (gauge), tensile strength or improper metal strand floor construction in order to enforce a violation.

(4) The amendment would be much more stringent than the Federal regulation and would place an undue burden on the regulated community. The Department will however change the phrase "wire flooring" to "metal strand flooring" throughout the amendment. The Department does this in response to comments in the proposed stage, testimony at a public hearing and to make the Department's regulations more consistent with the Federal regulation.

In response to IRRC's third comment concerning the clarity of the amendment and suggesting the Department set forth the six requirements of the section in a list, the Department has reformatted the section and listed the requirements.

In response to IRRC's fourth comment questioning whether any deviation from a straight line would constitute a sag and whether the metal strand floor must be completely rigid, or if some degree of variation or flex is allowable, the Department's response is that the flooring shall be completely rigid and no bend or sag is allowed. Although the Department believes that the current language of the regulation does denote that no bending or sagging is allowed and the language is consistent with and at least as comprehensive as the Federal regulation in 9 CFR 3.6(a)(2)(xii), the Department will add the word "completely" before the word "rigid" to the language of the amendment.

IRRC's fifth comment related to clarifying the language regarding a draft free area. IRRC suggested the Department should clarify whether this provision applied to the entire primary enclosure or only part of the enclosure area or an attached area accessible to the dog. The draft free area does not apply to the entire primary enclosure. The draft free area provided must be large enough to house all of the occupants of the primary enclosure at the same time and its purpose is to protect the dogs from inclement weather. The Department has added the language "... draft free area that protects the dog(s) from inclement weather and is large enough to hold all occupants...". The Department believes this language along with the current language of the amendment is sufficiently clear.

IRRC's sixth comment with regard to the minimum standards for wire flooring was that the amendment should be consistent with the Federal regulation and use the words "metal strands" instead of "wire." The Department agrees and has changed the word "wire" to "metal strand" throughout the amendment.

*Comment:* IRRC commented regarding the optional rest board requirement in § 21.24(d). The requirement states "... the solid resting surface shall be constructed of impervious material." IRRC commented this provision lacks sufficient detail in two ways: (1) § 21.24(d) should require that rest boards, if used, shall be kept sanitized; and (2) The Department should clarify what types of material are considered to be "impervious." IRRC suggested the Department should state that rest boards, if used, shall be kept sanitary or should reference the sanitation requirements of § 21.29 (relating to sanitation). In addition, IRRC suggested the Department should include examples of impervious materials in the amendment or reference the definition of "impervious surface" in the Federal regulations in 9 CFR 1.1 (relating to definitions).

*Response:* The Department agrees with IRRC's comment and has added language that references the sanitary requirements in § 21.29. In addition, the Department has added language that explains that rest boards shall be constructed of a material that is impervious to "... water or moisture...".

*Comment:* IRRC commented with regard to four commentators' suggestion that the amendment continue to require a rest board to ensure adequate protection for small dogs, puppies and toy breeds. The commentator's concerns were that the rest boards are a guarantee of a comfortable and safe place to walk or stand for small dogs. IRRC had the following three questions related to this concern:

(1) Is there a certain type of mesh construction for vinyl-coated metal strand flooring that will provide the same or similar protection as a rest board.

(2) If there is, should the regulation specifically require this type of metal strand flooring for enclosures that house small breeds or breeding dogs and their offspring.

(3) If not, should the regulation continue to require rest boards in the enclosures for these dogs?

*Response:* The Department considered the suggestions of the commentators and decided there should be no specific requirement to provide rest boards for small dogs, puppies and toy breeds. The Department reached this conclusion based on the following reasons:

(1) The language would be inconsistent with the Federal regulation and would be inconsistent with the very reason the United States Department of Agriculture (USDA) and this Department decided to rescind the rest board requirement. The USDA and the Department decided to rescind the rest board requirement based on information that rest boards were causing an increase in health problems and disease among dogs. Dogs were lying in or coming in contact with their own urine and feces, as well as that of other dogs. This exposure was causing health problems and exposing dogs to potentially fatal diseases such as parvo virus. To require rest boards for certain breeds or types of dogs would defeat the very purpose of the amendment.

(2) The language of the current regulation protects small dogs, puppies and toy breeds. The metal strand flooring shall be of construction "... that it does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog." In addition, the dog shall be provided with a draft free area that protects them from inclement weather. These measures are intended to promote a healthy, safe, comfortable and humane environment for the dog.

(3) The mesh construction currently being used by kennels has shown itself to be protective of the dog's feet and does not otherwise cause injury to the dog.

(4) The kennel owners shall use the appropriately sized mesh construction metal strand flooring to assure the dog's feet do not pass through the openings and to assure the safety and health of the dog no matter what the size of the dog. A violation of this can lead to prosecution by the Department.

(5) There is no one construction pattern or sized opening that will assure the health and safety of all dogs, no matter their size or breed. Even the same breed of dog grows at different rates and grows to be different sizes. It is impossible to set a standard size opening or pattern of construction for each individual dog breed or type.

(6) The language of the amendment is broad enough to allow flexibility as new patterns or designs of metal strand flooring are introduced into the market place, but still allow for enforcement if metal strand flooring injures a dog in any manner.

(7) The size of the opening, the pattern or construction of the metal strand flooring shall account not only for the size of the dog and the dog's feet but shall also be of sufficient size or construction to allow the feces of the dog to pass through the openings. To require a small opening or tight mesh construction (to simulate a rest board) would lead to the same sanitation and health problems that were presented by the rest board requirement.

(8) To carve out the exception for small dogs, puppies and toy breeds, very specific definitions of breed, size of dog, paw size and age at which each individual breed of dog ceases to be a puppy would have to be formulated. This would lead to an increase in cost of enforcement and a decrease in the efficiency of enforcement. The requirement would add a myriad of extraneous factors which the Department would have to prove in order to successfully prosecute a violation. In addition, the requirement would be more stringent than the Federal regulations.

Given the reasons delineated, the Department believes that the requirement would not lead to an improvement in the health, safety or comfort of dogs sheltered in a primary enclosure having metal strand flooring and that there is no compelling reason to place an additional burden on the regulated community.

*Comment:* The Pennsylvania Legislative Animal Network (PLAN), the Pennsylvania Federation of Dog Clubs (PFDC), the Federated Humane Societies of Pennsylvania (FSHP) and the Honorable Senator Stewart J. Greenleaf all commented on and made suggestion regarding the following three issues:

(1) Change the word "wire" through out § 21.24(d) to "metal strand" or "metal rod." PLAN commented that this would be consistent with the Federal Animal Welfare Act and the coinciding regulations in 9 CFR 3.6(a)(2)(xii).

(2) Rest boards should be required for small puppies and toy breeds.

(3) The Department should set a minimum diameter (gauge) for the coated metal strand flooring. Three of these commentators suggested the minimum diameter (gauge) should be 1/8 inch or greater. The commentators required the metal strands to be vinyl coated no matter what the diameter (gauge) of the metal stands.

*Response:* In response to the first comment, the Department agrees with changing the word "wire" to "metal strand" to be consistent with the Federal regulation. The Department has changed the word "wire" to "metal strand" throughout the amendment.

In response to the second comment, the Department disagrees with carving out an exception for small dogs, puppies and toy breeds for the following reasons:

(1) The language would be inconsistent with the Federal regulation and would be inconsistent with the very reason the USDA and the Department decided to rescind the rest board requirement. The USDA and the Department decided to rescind the rest board requirement based on information that rest boards were causing an increase in health problems and disease among dogs. Dogs were lying in, or coming in contact with, their own urine and feces, as well as that of other dogs. This exposure was causing health problems and exposing dogs to potentially

fatal diseases such as parvo virus. To require rest boards for certain breeds or types of dogs would defeat the very purpose of the amendment.

(2) The language of the current regulation protects small dogs, puppies and toy breeds. The metal strand flooring shall be of construction "... that it does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog." In addition, the dog shall be provided with a draft free area that protects them from inclement weather. These measures are intended to promote a healthy, safe, comfortable and humane environment for the dog.

(3) The mesh construction currently being used by kennels has shown itself to be protective of the dog's feet and does not otherwise cause injury to the dog.

(4) The kennel owners shall use the appropriately sized mesh construction metal strand flooring to assure the dog's feet do not pass through the openings and to assure the safety and health of the dog no matter what the size of the dog. A violation of this can lead to prosecution by the Department.

(5) There is no one construction pattern or sized opening that will assure the health and safety of all dogs no matter their size or breed. Even the same breed of dog grows at different rates and grows to be different sizes. It is impossible to set a standard size opening or pattern of construction for each individual dog breed or type.

(6) The language of the amendment is broad enough to allow flexibility as new patterns or designs of metal strand flooring are introduced into the market place, but still allow for enforcement if metal strand flooring injures a dog in any manner.

(7) The size of the opening, the pattern or construction of the metal strand flooring must account not only for the size of the dog and the dog's feet but shall also be of sufficient size or construction to allow the feces of the dog to pass through the openings. To require a small opening or tight mesh construction (to simulate a rest board) would lead to the same sanitation and health problems that were presented by the rest board requirement.

(8) To carve out the exception for small dogs, puppies and toy breeds very specific definitions of breed, size of dog, paw size and age at which each individual breed of dog ceases to be a puppy would have to be formulated. This would lead to an increase in cost of enforcement and a decrease in the efficiency of enforcement. That requirement would add a myriad of extraneous factors which the Department would have to prove to successfully prosecute a violation. In addition, that requirement would be more stringent than the Federal regulations.

Given the reasons delineated, the Department believes that that requirement would not lead to an improvement in the health, safety or comfort of dogs sheltered in a primary enclosure having metal strand flooring and that there is no compelling reason to place that additional burden on the regulated community.

In response to the third comment, after consideration of the official comments, a public meeting on the matter and consideration of testimony entered into the record at a public hearing held to discuss the proposed amendments, the Department finds no compelling reason to exceed the standards of the Federal regulation by requiring the coated metal strands to be greater than 1/8 inch in diameter. The Department holds this belief for the following reasons:

(1) The amendment requires the coated metal strand flooring to "... be constructed of sufficient diameter

(gauge) to provide a completely rigid floor area sufficient to support the weight of dog housed in the enclosure such that the metal strand flooring does not bend or sag for the weight of the dog." The commentators reason for requesting the use of the term "metal rod" was because metal rod denotes a metal strand that is greater than 1/8 of an inch. The commentators believe that by requiring the metal strands to be greater than 1/8 of an inch, the coated metal strand flooring is guaranteed not to bend or sag, or will be less likely to bend or sag and therefore provide a more rigid surface for the dog. The language of the amended regulation addresses the commentators concerns regarding a rigid surface by stating the diameter of the metal strand must be of sufficient diameter (gauge) that it provides a rigid surface and does not allow the metal strand floor to bend or sag under the weight of the dog. There is a zero tolerance for bending or sagging, no matter the size or number of dogs contained in the enclosure. In addition, for the Department to require both greater than 1/8 of an inch and a metal strand of sufficient diameter (gauge) to assure a rigid surface that does not bend or sag would be redundant and could lead to problems with enforcement (that is, the question which standard is it?).

(2) Requiring all coated metal strand flooring to be 1/8 inch or greater in diameter would lead to enforcement problems, greater expense and much more time spent inspecting each individual kennel and prosecuting each violation and would not add any benefit that the current language of the regulation does not already address. It would be impossible for the Department to determine, with a coated metal strand, whether the metal strand itself is 1/8 of an inch or greater in diameter without destroying the vinyl coating on the metal strand. The coating on the metal strand would then have to be replaced to be in compliance with the regulations. In addition, the Department to enforce a violation would have to test all of the enclosures having coated metal strands. The dog law wardens would have to carry metal gauges and those gauges would have to be calibrated and certified as accurate. The accuracy would have to be proven when prosecuting each violation.

(3) Metal strands of 1/8 inch or greater do not guarantee the strength of a metal strand floor. Many factors, such as the construction or pattern of the metal strand flooring, the tensile strength of the material used in the metal strand flooring and the number of welds, determines the actual strength and rigidity of a metal strand floor. The current language of the regulation is broad enough to allow the Department to require stronger metal strand flooring be used in any primary enclosure where the current metal strand flooring is not of sufficient strength to support the weight of the dog without bending or sagging. The Department, under the current language, does not have to prove diameter (gauge), tensile strength or improper metal strand structure to enforce a violation.

(4) The amendment would be much more stringent than the Federal regulation and would place an undue burden on the regulated community.

The Department will however change the phrase "wire flooring" to "metal strand flooring" throughout the amendment. The Department does this in response to comments in the proposed stage, testimony at a public hearing and to make the Department's regulation more consistent with the Federal regulation.

*Comment:* PLAN and PFDC both expressed concern that neither the Committee nor the Board had been given

an opportunity to review the final-form regulation before it was printed in the *Pennsylvania Bulletin*.

*Response:* This amendment has been under review and discussion for 3 years. The Department formed the Committee to find a solution to the problems caused by the use of rest boards and to try to forge a compromise on the issue of rescinding the rest board requirement. The topic was discussed at numerous meetings of the Board and the Committee. During an August 1999, meeting of the Board, the proposed language of the amendment was read and the Department believed the language was agreed to by members of the Board and Committee. The Department then published notice of the proposed rulemaking at 30 Pa.B. 3660. At the time of publication, the Department was unaware of the disagreement with regard to using the word "metal strand" or "metal rod" instead of "wire" and with regard to the demand to specify a specific diameter (gauge) of the metal strand. The Department, subsequent to publication of the proposed rulemaking, held another public meeting on the proposed rulemaking and a public hearing on the matter. The Department has considered the input received in the official comments to the proposed rulemaking and at the public meeting and hearing on the proposed rulemaking.

*Comment:* The FSHP commented that except for the issues of changing the word "wire" to "metal strand" or "metal rod," delineating a specific diameter (gauge) for the "metal strand" and continuing to require rest boards for small dogs, puppies and toy breeds, that the other language in the proposed amendment seemed to reflect the concerns of the Committee, particularly the requirement that the wire or rod be coated and that the floors be strong enough so they do not sag.

*Response:* The Department appreciates the support of the FSHP with regard to the other language contained in the amendment. The Department has changed the word "wire" to "metal strand" throughout the final-form regulation. In addition, the Department has already set forth and responded to the FSHP's comments regarding delineating a specific diameter (gauge) for the metal strand flooring and its concerns regarding continuing to require rest boards for small dogs, puppies and toy breeds.

*Comment:* The PFDC had the following comments with regard to the proposed amendment.

The PFDC's first comment was that mandated use of rest boards was to be eliminated.

The PFDC's second comment relates to the minimum standards for kennels using raised flooring in pens. The PFDC stated, "(A) dog may be sheltered in a primary enclosure on a rod floor where metal strands have a diameter greater than 1/8. All metal flooring shall be of a rod mesh or slatted construction and must be plastic coated, and constructed so the dog's feet shall not be allowed to pass through any opening in the floor and may not otherwise cause injury to the dog. It shall be kept in good repair and shall not sag or bend. The spaces between rods must be either round, square or rectangular in configuration. Support members under a raised kennel floor must be constructed of a material that is impervious to moisture and of a shape that will not impede the passage of feces or urine. Flat support surfaces under a raised floor are not permitted." This comment went on to state a definition of "wire" and a definition of "rod." Wire was defined as, "(A) metal strand that has a diameter equal to or less than 1/8." Rod was defined as, "(A) metal strand that has a diameter greater than 1/8 inch." The

comment states, "1/8 is the demarcation that the metal working industry uses between welded wire and welded rod."

The PFDC's third comment was that the Committee was shown samples of coated rod material and felt that requiring this would greatly improve living conditions for the dogs housed on this sturdy and easily cleaned flooring. The PFDC goes on to state the use of this type of flooring was the only reason they agreed to the removal of the current mandated rest boards.

The fourth comment relates to the PFDC's concerns for small puppies and toy breeds of dogs. The PFDC states these dogs would have difficulty balancing on this surface (it is presumed they mean a wire surface) and could be easily injured. The PFDC therefore believes rest boards should continue to be mandated for small puppies and toy breeds. They further comment that the rest boards provided "...should be large enough for all of the dogs in the pen to lay on, made of a material that is easily cleaned and kept free of urine and feces."

Along with these comments, the PFDC included a glossary of terms that is too large to include in this document. The PFDC did not reference the source of this glossary.

*Response:* The Department has already set forth and responded to the parts of the PFDC's comments related to changing the term "wire" to "metal rod," requiring all metal rod to be 1/8 inch or greater in diameter (gauge) and continuing to require rest boards for small puppies and toy breeds.

With regard to the PFDC's first comment that the amendment was supposed to eliminate the mandated use of rest boards, the Department agrees. The amendment does eliminate the mandated use of rest boards. However, the amendment does not make the continued use of rest boards unlawful. Kennels may continue to use rest boards so long as those rest boards are kept in a sanitary condition in accordance with § 21.29.

In response to the PFDC's comment that "...the spaces between rods must be either round, square or rectangular in configuration," the Department disagrees with this language because it is unnecessary, does not allow flexibility for future developments in metal strand floor construction, creates possible enforcement barriers and, without presenting any evidence, excludes all other designs or patterns which may or may not cause harm to a dog's paws or otherwise cause injury to the dog. The current language of the regulation does not allow a construction that would hurt the paws of a dog or otherwise cause injury to a dog. This language allows the Department to take enforcement action with regard to any pattern of metal strand flooring that causes injury to the dog. The Department only has to prove the flooring caused actual injury or harm. The Department has no compelling reason or evidence to suggest that all patterns of flooring other than round, square or rectangular cause injury or harm to dogs and therefore should be excluded from use.

The Department does not agree with adding the PFDC's language regarding support members under a raised kennel floor. This section of the kennel regulations should not be looked at in a vacuum. Section 21.29 requires that primary enclosures shall be kept in a sanitary condition and cleaned as often as is necessary to prevent an accumulation of debris, excreta or a disease hazard. Urine or feces accumulating on a support surface shall be cleaned at least once daily or as often as

necessary to prevent accumulation of the excreta or a disease hazard. Flat support surfaces under a raised floor do provide for the most rigid and comfortable surface for the dogs. In addition, round support surfaces would create a rounded uneven floor surface on which the dog would have to stand or walk. Requiring the regulated industry to change all the supports under primary enclosures to meet the requirements espoused by the PFDC would impose a huge cost on the industry and may or may not lead to a more comfortable and healthy environment for the dogs.

In response to the PFDC's comment regarding mandating use of a certain type of flooring which was presented to them at a meeting, the Department disagrees with mandating a specific metal strand flooring. Some kennels will use the type of flooring shown, however there are situations where that type of flooring would not be needed or warranted. The amendment addresses the commentators' concern that the floor be rigid and in addition, allows the necessary flexibility for a kennel owner to use the type of metal strand floor that best fits the size and weight of the dog or dogs in the enclosure. Because dogs come in all different sizes and weights, requiring one type of flooring could lead to less humane and safe conditions for dogs.

*Comment:* The Honorable Senator Stewart J. Greenleaf commented the proposed amendment appears to represent a step backward in the Department's effort to protect animals from inhumane living conditions. The Honorable Senator Greenleaf further commented that he had spoken to members of the Committee and that they had indicated there was a compromise struck between members representing animal welfare interests and members of the Amish community engaged in dog breeding. Under the compromise, rest boards would no longer be mandated so long as wire were eliminated. The Honorable Senator Greenleaf goes on to note the proposed amendment retains wire but eliminates rest boards. The Honorable Senator Greenleaf questioned whether this is a drafting error or misunderstanding and states he sincerely hopes this is corrected to reflect the Department's commitment to the protection of dogs. The Honorable Senator Greenleaf suggested that "...wire bottom cages should be eliminated in favor of coated metal rod flooring of a diameter (greater than 1/8 inch) that will provide comfort for standing dogs of all sizes, and that rest boards should be retained for small dogs and toy breeds." The Honorable Senator Greenleaf further suggested that if wire continues to be allowed, rest boards should remain mandated for dogs of all sizes.

*Response:* The Department agrees with the Honorable Senator Greenleaf's suggestion that the word "wire" should be replaced. The Department has replaced the word "wire" with "metal strand" and the amendment does require all metal strand flooring to be coated. However, for the reasons stated previously, the Department does not agree with the Honorable Senator Greenleaf's suggestions that a minimum diameter (gauge) for the metal strand flooring should be set forth in the amendment or that rest boards should be retained for small dogs and toy breeds.

*Comment:* The Honorable Senator Noah W. Wenger commented that the proposed amendment would "...make Pennsylvania's regulations consistent with the same changes recently made in Federal regulations." He further commented that the amendment were originally enacted to protect the health and safety of dogs and assure their humane treatment and that it has become

apparent that rest boards are difficult to keep sanitized at all times, thereby creating a health hazard for dogs. The Honorable Senator Wenger stated he agreed with the Department's proposal to require all metal strand flooring to be vinyl coated and of sufficient diameter so that the floor will not sag or bend. The Honorable Senator Wenger acknowledged the many concerns expressed over this regulation, but, stated he knows the Department will consider them. Therefore, after evaluating the proposed changes, the Honorable Senator Wenger had no objections to them and encouraged IRRC to review the rulemaking favorably.

*Response:* The Department appreciates the support of the Honorable Senator Wenger. The Department has taken the comments into consideration and has made a number of changes to the proposed amendment based on those comments.

*Comment:* As noted previously, the Department, in accordance with section 902 of the act (3 P. S. § 459-902), held a public hearing on October 12, 2000, with regard to the amendment. Testimony was taken and written comments were accepted and made part of the record. Following is a list of commentators, their affiliations and a brief synopsis of their testimony.

1. A representative of the American Boarding Kennel Association (ABKA) expressed her concerns that the amended regulation required all kennels to install coated metal strand flooring. Later in the hearing, she added testimony regarding the structure (size) of the metal strand flooring. In her testimony, she stated that the size of a dogs feces does not normally exceed the diameter of their leg or their foot. She suggested the Department put wording in the regulation stating the diameter of the metal strand flooring (meaning the spacing of the metal strands and the mesh construction) must be consistent with the breed of the dog.

2. A representative of the Humane Society of Harrisburg expressed her concurrence with the written testimony submitted by a representative of the FHSP. The FHSP was also an official commentator with regard to the proposed amendment. The FHSP's written testimony asserted that the regulation should be consistent with the Federal regulation and specifically stated the term "metal strand" should be used throughout the regulation. In addition, the FHSP stated the regulation "...needs to be understandable and enforceable in the field, so that inclusion of a diameter for the metal strand could be a problem." The FHSP's major concern was that the language of the regulation be clear with regard to the mesh and construction of the metal strand flooring in order to assure the size and type of construction is such that it will not cause injury to dogs or puppies of any size or allow their feet to pass through the openings.

3. A representative for PLAN, who is also a member of the Board, offered testimony on the amendment. PLAN was an official commentator with regard to the proposed amendment. Their comments regarding the proposed amendment are listed in this Preamble. PLAN's testimony expressed their concerns regarding the construction of the metal strand flooring. PLAN was concerned that metal strand flooring which was constructed in a manner to prevent the paws of small toy breeds from passing through the metal strand flooring, would also prevent feces and urine from passing through the metal strand flooring. PLAN was concerned this would result in the same health problems caused by rest boards. In addition, the PLAN representative read the written testimony submitted by the PFDC into the record.

4. As noted previously, the PFDC submitted written testimony for the hearing. The PFDC was an official commentator with regard to the proposed regulation. Their comments regarding the proposed amendment are listed in this Preamble. The PFDC's written testimony presented essentially the same comments and concerns expressed in their official comments. The written testimony expressed concern that if rest boards were removed the dogs would have no solid surface, outside the dog boxes or buildings on which to rest. In addition, the PFDC testified the configuration of the floor was a concern to them. The PFDC believes the configuration of the floor for each size of dog, from 1 and 2 pound puppies and small breeds to Great Danes, should be set forth and defined in the regulation. The PFDC testified that it now believes the Department should, "... consider the needs of dogs kept in dog boxes and write rules as to how to best protect them from the elements in all seasons and every kind of weather, especially if now we are going to remove the outside rest boards." The PFDC asked the Department to delay any further action on this amendment and to reconvene Committee, "... in order to give all interested parties the opportunity to address their concerns before these rules become final."

5. Dr. Knauff, a member of the Board and Chairperson of the Committee, representing the research facilities, testified with regard to the regulation. Dr. Knauff testified the rest board requirement was originally added to the amendment to be consistent with the Federal regulation in this area. He went on to state that the USDA, eventually repealed the rest board requirement because they found the rest boards were detrimental to the animals. The dogs would defecate and urinate on the rest boards. The rest boards would not allow the fecal matter or urine to pass through the bottom of the cage and therefore the dogs were laying and standing in the urine and fecal matter, which led to numerous health problems. In addition, many rest boards were made of rubber (because it is impervious to moisture) and kennel owners found that the dogs were eating the rest boards. This led to various health and safety problems. He testified that coated metal strand flooring can be easily cleaned and sanitized with a power sprayer and that his experience indicated dogs have no aversion to resting on a rigid metal strand floor that is properly coated and maintained. Dr. Knauff further testified that the passage of the dog's feet through the coated metal strand flooring has nothing to do with the rest board issue and that the amendment already stated the animal's feet may not pass through the opening in the metal strand flooring, regardless of the material from which it is made. Dr. Knauff testified the Committee had been discussing these issues for 2 years and that given the evidence regarding the health and safety problems presented by the use of rest boards he would not advise the Department to continue to require the mandatory use of rest boards. He stated this was the recommendation of the Committee. Dr. Knauff added testimony later stating that he believed concerns with regard to the size of the spacing between the metal strands or the mesh construction had already been addressed by the amendment.

6. A kennel owner and board member of the Professional Pet Breeders Association testified. He testified that he was at all the meetings (Board and Committee) and thought there was an agreement that rest boards could be removed so long as they were replaced with vinyl or plastic coated strands. He further testified the use of rest boards at his kennel has resulted in dogs resting in their own urine and feces and causes health concerns for the

dogs and people handling the dogs. He agreed with the current language of the regulation, which allows the use of rest boards (because he would like to leave them in for some of his dogs) but does not mandate their use.

7. A representative for the Commercial Breeders, who is a kennel owner and also served on the Committee, testified with regard to the regulation. The representative testified the Committee had been discussing this matter for 2 to 3 years and he believed the paramount issue is the health of the dogs and puppies in the pet shops and kennels. He testified dogs in his kennel often seem to prefer the vinyl coated flooring to a solid surface and that many of the dogs use the vinyl coated flooring as a rest area and the solid resting surface as a toilet. With regard to the health of the dogs he testified it is nearly impossible to keep the solid surface (rest board) clean and sanitized at all times. To do so would require people watching the dogs 24 hours-a-day. This leads to various health problems, such as skin problems and sore feet because of the acidity of the urine. In addition, he testified the State's mandatory rest board requirement has created an inconsistency between the State's regulations and the Federal regulations. This inconsistency creates problems for the kennel owners because they shall disregard Federal regulations and recommendations to comply with the State's current regulations. The representative recommended the removal of the mandatory rest board requirement and the addition of the language which provides for a better surface for the animals (that is, vinyl coated metal strand flooring that is rigid and does not sag or bend).

8. A kennel owner commented the rest boards do create a sanitation problem and result in the dogs sitting or resting in their own urine and feces. She testified she is concerned for her dogs and that is why the regulation is important to her.

9. A representative for pet shops, who is also a member of the Dog Law Board and the Committee, testified with regard to the regulation. He testified the rest board requirement should be removed from the Dog Law regulations and agreed with the language mandating vinyl coated metal strand flooring. He emphasized that installing the flooring would be costly to the kennel industry and that it represented a compromise the industry was willing to make, so long as the mandatory rest board requirement currently in place was repealed. He stated it is his experience that dogs sometimes prefer to rest on the coated metal strand flooring as opposed to the rest board. In addition, he opined the regulation as written presents a necessary compromise in some cases between feces or the feet of a dog passing through the metal strand flooring. His conclusion was that the rigid metal strand flooring requirement represented a healthier and safer alternative to rest boards. The representative operates a pet shop and his primary enclosures have metal strand flooring in them. He contended there are no current health or safety problems related to the raising of dogs on metal strand flooring. The representative read a letter from a licensed veterinarian of this Commonwealth stating that in the last 25 years, the veterinarian had not seen or treated one case of injury to a dogs paws at his pet shop. The letter went on to state that since the pet shop had started using the mandated rest boards, the cleanliness and sanitation of the animals and the facility had been compromised. Even with near constant care, the feces and urine of the dogs accumulate on the rest boards. The letter stated this enhances the chances for spreading intestinal parasitic disease and severe life threatening contagious diseases such as parvo virus. In addition, the

representative stated the USDA had studied the health and safety problems presented by rest boards and had removed the rest board requirement from their regulations. The representative testified, "(I)n my experience I have learned that it (the rest board requirement) is putting dogs in danger and the resting boards should be removed as soon as possible." The representative also commented with regard to the the PFDC's testimony that the regulation should be delayed. He stated that as a member of the Committee, he had been discussing the issues raised by this regulatory change since 1997, and that during that time the health of dogs has continued to be jeopardized by the rest board requirement and that he believed the regulation had to be put on a "fast track."

10. The Board member representing the Pennsylvania Veterinary Medical Association (PVMA) offered written testimony regarding the regulation. In its written testimony, the PVMA stated it supported the regulation as proposed so long as the Department substitutes the words "metal strand" for the word "wire" throughout the regulation. The written testimony went on to state, "(R)esting boards promote unsanitary conditions which promote the spread of infectious disease . . . and . . . coated metal strand material available for cages . . . is appropriate and acceptable for the health of dogs."

*Response:* Following is the Department's response to the testimony of each commentator at the public hearing:

1. The Department does not intend, and the language of the amendment does not require, kennels to install coated metal strand flooring. The amendment is intended to address only those kennels that currently have or subsequently install metal strand flooring in the primary enclosure sheltering the dog. The amendment sets the standard for shelters using metal strand flooring in their primary enclosures. With regard to the suggestion, the Department should develop language which states the size of the opening in the metal strand flooring should be consistent with the breed of dog, the Department believes the amendment already addresses that issue and that to add the language "consistent with the breed of dog" would only add ambiguity and confusion to the regulation and make it more difficult to enforce.

2. The Department agrees with this testimony. The Department has replaced all references to "wire flooring" with the term "coated metal strand flooring." In addition, the Department believes the language of the final-form regulation does protect dogs (including puppies) of all size with regard to the type and construction of the metal strand flooring required. The amendment states, "(T)he metal strand flooring must be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog." Section 2 of the act defines the word "dog" in such a manner as to include puppies.

3 and 4. With regard to the testimony offered by commentators 3 and 4 (PLAN and PFDC), the Department has considered this testimony and the official comments previously offered by these commentators and for reasons expressed in the Department's previous response to PLAN's and PFDC's official comments on the proposed rulemaking, the Department believes the final-form regulation addresses their concerns. In addition, the Department disagrees with PFDC's suggestion that the Department delay further action on the amendment. The Department has worked on this amendment for 3 years. During that time the Department established the Committee and held numerous public meetings of both the Committee and the Board to discuss this amendment.

Over that 3-year period, the Department has received advise and input from the regulated community, industry members, dog clubs, humane society groups and other interested parties. The Department has considered all of the input and believes this amendment addresses the primary concerns of the groups and more importantly carries out the duty of the Department to provide for the safe, healthy and humane care of dogs in this Commonwealth. In addition, the language of the final-form regulation is consistent with the language of the Federal regulations.

5 through 10. With regard to the testimony offered by commentators 5 through 10, the Department has considered the testimony and believes the final-form regulation addresses the commentator's concerns.

#### *Fiscal impact*

##### *Commonwealth*

The final-form regulation will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The final-form regulation will not require any additional paperwork or impose any additional workload on the Department.

##### *Political Subdivisions*

The final-form regulation will impose no costs and have no fiscal impact upon political subdivisions.

##### *Private Sector*

The final-form regulation will impose additional costs on the segment of the regulated community that houses dogs in primary enclosures that have metal strand flooring. That segment of the regulated community will be required to install coated metal stand flooring which complies with the provisions of the amended regulation. Approximately 450 State licensed kennels will be required to comply with this regulatory change. The majority of kennel owners that house dogs in primary enclosures with metal strand flooring, already have a coated metal strand floor of such a diameter and gauge as to bring them into compliance with this regulation. In addition, they will benefit through the lower cost of operation associated with lower rates of disease and morbidity and the removal of the rest boards will lower the cost and time associated with sanitizing the rest boards and the primary enclosures. It should be noted that the regulated community requested amendments be made to this final-form regulation and is supportive of the final-form regulation as amended.

##### *General Public*

The final-form regulation will impose no costs and have no fiscal impact on the general public. The general public should benefit from the final-form regulation because animals will be healthier and safer and there should be a reduced cost to the industry.

#### *Paperwork Requirements*

The final-form regulation will not result in an appreciable increase of paperwork. The Department has already developed the appropriate forms and procedures to administer the final-form regulation.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Richard Hess (717) 787-4833.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 10, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 3660, to IRRC and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing this final-form regulation, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-form regulation was deemed approved by the House and Senate Committees on February 20, 2001. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulation.

#### *Findings*

The Department finds that:

(1) Public notice of its intention to adopt the regulation encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and their attendant regulations in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to the regulation in response to comments received do not enlarge the purpose of the proposed amendment published at 30 Pa.B. 3660.

(4) A public hearing was held as required by section 902 of the Dog Law.

(5) The modifications that were made to this amendment in response to testimony presented at the public hearing do not enlarge the purpose of the proposed regulations published at 30 Pa.B. 3660.

(6) The adoption of the amendment in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

#### *Order*

The Department, acting under authority of the authorizing statute, orders the following:

(a) The regulations of the Department, 7 Pa. Code Chapter 21, are amended by amending § 21.24 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, JR.,  
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

**Fiscal Note:** Fiscal Note 2-132 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART II. DOG LAW ENFORCEMENT BUREAU**

**CHAPTER 21. GENERAL PROVISIONS; KENNELS; LICENSURE; DOG-CAUSED DAMAGES**

**KENNELS—PRIMARY ENCLOSURES**

**§ 21.24. Shelters.**

(a) Dogs shall be provided access to shelter which protects them against inclement weather, preserves their body heat and keeps them dry. Housing facilities for dogs shall be constructed to provide for the health and comfort of the animals.

(b) Shelter shall be provided for dogs kept outdoors. Sufficient clean bedding material or other means of protection from the weather shall be provided.

(c) If dog houses with tethers are used as primary enclosures for dogs kept outdoors, the tethers used shall be placed or attached so that they cannot become entangled with other objects or come into physical contact with other dogs in the housing facility, and to allow the dog to roam to the full range of the tether. The tether shall be of a type commonly used for the size dog involved and shall be attached to the dog by means of a well-fitted collar that will not cause trauma or injury to the dog. The tether shall be at least three times the length of the dog as measured from the tip of its nose to the base of its tail and allow the dog convenient access to the dog house and food or water container.

(d) A dog may be sheltered in a primary enclosure having metal strand flooring provided the following conditions are met:

(1) The metal strand flooring is coated with a vinyl type coating.

(2) The coated metal strand flooring shall be kept in good repair.

(3) The coated metal strand flooring shall be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog.

(4) The coated metal strand flooring shall be constructed of sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dogs housed in the enclosure so that the metal strand floor does not bend or sag from the weight of the dogs.

(5) The dogs shall be provided with a draft free area that protects the dogs from inclement weather and is large enough to hold all the occupants of the primary enclosure at the same time comfortably.

(e) Coated metal strand flooring shall be installed by June 29, 2001. Coated metal strand flooring shall be installed prior to the removal of a solid resting surface. If a solid resting surface is provided, the solid resting surface shall be constructed of material that is impervious to water or moisture and shall be kept in a sanitary condition in accordance with § 21.29 (relating to sanitation).

(f) A dog may not be housed on a temporary or permanent basis in a drum or barrel dog house, regard-

less of the material of which the drum or barrel is constructed.

[Pa.B. Doc. No. 01-542. Filed for public inspection March 30, 2001, 9:00 a.m.]

**DEPARTMENT OF AGRICULTURE**

**[7 PA. CODE CH. 130c]**

**Sustainable Agriculture Loan and Grant Programs**

The Department of Agriculture (Department) adopts Chapter 130c (relating to sustainable agriculture programs) required or authorized under the Sustainable Agriculture Act (act) (3 P. S. §§ 2101—2117).

*Authority*

The Department has the power and authority to adopt these regulations. This authority includes:

(1) General authority to adopt rules and regulations under the act and upon expiration of the 2 year period in which the act can be administered through guidelines, to promulgate, adopt and publish regulations, as necessary for the implementation of the act as set forth in section 15 of the act (3 P. S. § 2115).

(2) The general duty to establish a program to promote the practice of sustainable agriculture under section 4(a) of the act (3 P. S. § 2104(a)).

(3) The specific duties in section 4(b)(3) and (6) of the act, to distribute funds appropriated by the General Assembly and received from other sources for loan and grant programs and to administer loan and grant programs and issue loans and grants from the funds appropriated by the General Assembly and awarded by the Board of Sustainable Agriculture (Board).

(4) The duty and authority to establish a sustainable agriculture loan program under section 8 of the act (3 P. S. § 2108).

(5) The duty to establish a sustainable agriculture grant program and an alternative crop grant program under section 12 of the act (3 P. S. § 2112).

*Need for the Regulations*

The regulations delineate the objectives of the loan and grant programs and the general conditions for obtaining a sustainable agriculture loan or grant. In addition, the regulations establish submission, processing and review procedures, eligibility and evaluation criteria, notification and recordkeeping requirements and enforcement mechanisms for the sustainable agriculture loan program, the sustainable agriculture grant program and the alternative crop grant program. These regulations notify the regulated community of the expectations of the Board, the review criteria utilized and the requirements for a loan or grant application. In addition, they assure fair and impartial review of all loan and grant applications.

The regulations are specifically required by section 15 of the act (3 P. S. § 2115). This requirement is referenced in this Preamble, under the "Authority" heading.

These regulations and the programs established under them will make money and resources available to farmers who practice sustainable agriculture techniques. Sustainable agriculture emphasizes farm practices which are ecologically beneficial, ensure and improve the quality of the soil and water for future generations and make the best use of on-farm resources thereby eliminating or



reducing the need for off-farm inputs, such as fertilizers and pesticides. The techniques allow for more profitable farming and conserve valuable resources and open space for future generations. Therefore, the regulations should ultimately benefit both the farming community and the general public.

In summary, the Department is satisfied there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

#### *Comments*

Notice of proposed rulemaking was published at 29 Pa.B. 1496 (March 20, 1999), and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC) and the Chesapeake Bay Foundation.

*Comment:* IRRC suggested changes regarding several definitions in § 130c.2. (relating to definitions). The first suggestion concerned the definition of "Executive Director" and noted that the regulatory definition was inconsistent with the definition in section 5 of the act (3 P. S. § 2105). IRRC stated, "Section 5(1) (3 P. S. § 2105(1)) of the Act states that the Executive Director will evaluate loan and grant applications submitted to the board (Board of Sustainable Agriculture)." The definition in the regulation limited the Executive Director to evaluating loan applications only.

*Response:* The Department agrees with this comment and has implemented the suggested revision in the final-form regulations in § 130c.5 (relating to duties of the Executive Director).

*Comment:* IRRC suggested that the substantive provisions contained in the regulation's definition of "Executive Director" would more appropriately be placed in a new section, in the substantive portion of the regulations, after § 130c.4 (relating to conflict of interest).

*Response:* The Department agrees that placing the duties of the Executive Director in a substantive portion of the regulations is more appropriate than delineating those duties in the definitions section of the regulations. The change will add clarity to the regulations. Therefore, the Department has added a new § 130c.5, and renumbered the subsequent sections to reflect this change.

*Comment:* IRRC suggested that because the statutory and regulatory definitions of "nonprofit educational institution" and "sustainable agriculture" are virtually identical there is no need to repeat or include the entire definition of each phrase in the regulations. IRRC suggested that the regulation should reference the statutory definition.

*Response:* The Department believes these definitions are important definitions for the regulated community and the interested public. Placing these definitions in the regulations promote clarity for the regulated community by enhancing the ease of understanding and compliance with the regulations. Requiring the regulated community or the interested public to return to the act to find the definitions to understand the meaning of these two terms is unnecessary. Printing the definitions in the regulations as opposed to referencing the statutory definitions adds clarity to the regulations and is not inconsistent with the statutory provisions.

*Comment:* IRRC noted that the Department had included a definition of "pesticide" in the regulations, but

then had used the terms "herbicide" and "insecticide" throughout the substantive provisions of the regulations. In addition, IRRC noted, the terms "herbicide" and "insecticide," not "pesticide" are used in section 10(b)(6) of the act (3 P. S. § 2110(b)(6)). IRRC suggested the term "pesticide" should be deleted or the terms "herbicide" and "insecticide" should be replaced by "pesticide."

*Response:* The Department agrees the terms "herbicide" and "insecticide" should be replaced by the term "pesticide." As IRRC noted in its comment, the definition of "pesticide" includes herbicide and insecticide. The Department added the definition of "pesticide" to the regulations, because "herbicide" and "insecticide"—while used in section 10 (b)(6) of the act—were not defined. The Department felt the addition of the term "pesticide" would enhance the clarity of the regulations. However, the Department had not replaced the terms "herbicide" and "insecticide" in the regulations. References to "herbicide" or "insecticide" have been changed to "pesticide." In addition, because the definition of "pesticide" includes the terms "defoliant," "desiccant" and "plant regulator" definitions of each of these terms have been added to the regulations.

*Comment:* IRRC pointed out an error in § 130c.5. The section contained references to §§ 130.16 and 130.36. The references should have been to §§ 130c.16 and 130c.36.

*Response:* The Department agrees with this comment. The Legislative Reference Bureau caught this typographical error as well and it has been corrected. It should be noted that § 130c.5 has been changed to § 130c.6. This change was necessitated by the addition of a new § 130c.5.

*Comment:* IRRC commented that while §§ 130c.15 and 130c.35 (relating to submission of grant application) require loan and grant applications to be submitted on forms prepared by the Board, neither these sections nor the regulation informed applicants where and how to obtain the appropriate forms.

*Response:* The Department agrees that the information would add clarity to the regulations. The Department has revised §§ 130c.15 and 130c.35 to include an address and phone number from which forms and information can be obtained.

*Comment:* IRRC provided two comments with regard to §§ 130c.16 and 130c.36 (relating to processing of grant application). The first comment concerns the filing deadlines set forth in the previously referenced sections. IRRC opined that while §§ 130c.16 and 130c.36 delineated filing deadlines, they failed to reference the 90-day period for Board action on applications as prescribed by § 130c.5 (now § 130c.6). IRRC suggested a reference be included for purposes of clarity. The second comment regarding §§ 130c.16 and 130c.36 was related to assuring proper notice be given to applicants, whose applications were determined to be incomplete or inaccurate by the Executive Director. IRRC suggested the Department add language clarifying that the notice will be in writing to the applicants and inform the applicant of the deficiencies in the application and that the applicant has 30 days to respond to the request for additional information.

*Response:* With regard to the first comment, the Department agrees that referencing the 90-day period for Board review in § 130c.5 (now § 130c.6) will add clarity to the regulations. The Department has added language to both sections which reference § 130c.5 (now § 130c.6). With regard to the second comment, the Department believes that the previous language was sufficient regard-

ing notice. However, in an attempt to further clarify the notice provision and the actions the Executive Director may take upon determining an application is incomplete or contains inaccurate information, the Department has added language which states that this notice will be in writing and inform the applicant of the additional data needed and the 30 day time limit for response.

*Comment:* The Chesapeake Bay Foundation commented that the Sustainable Agriculture Program must have adequate funding to be successful. They suggested that producers cannot afford loan programs and that the Department should provide funding by way of grant programs instead. In addition, the Chesapeake Bay Foundation opined that, "(R)eliance on a revolving fund makes monies uncertain from year to year and indicates a lack of commitment by the Department."

*Response:* Section 7 of the act (3 P. S. § 2107) creates the Sustainable Agriculture Fund (Fund). Section 7 states, "(T)he fund shall receive all revenues and appropriations and pay all costs, except administrative expenses, related to the sustainable agriculture program." The Department can only use moneys appropriated to and revenues deposited in the Fund to pay for loan and grant programs under the act. Appropriations to the Fund will be determined by the Legislature, not by the Department. The Department will determine the most appropriate use of Fund moneys for sustainable agriculture programs. Regarding the "revolving fund" referred to in the comment, section 9 of the act (3 P. S. § 2109) creates a Revolving Loan Account (Account). The Account is to be funded by appropriations made by the General Assembly and interest earned on the account and from loan repayments. The Department cannot create or do through regulations that which the Legislature does not give it power to do under the act. In addition, section 7 of the act states that, "(S)ustainable agriculture loans and grants and alternative crop grants shall be made to the extent funds are made available" and it goes on to set forth sources from which funds may be obtained. The Department will work to obtain funding for the Sustainable Agriculture Loan and Grants programs from the appropriate sources.

#### *Fiscal Impact*

##### *Commonwealth*

The final-form regulations will not have a fiscal impact upon the Commonwealth. The act requires that any moneys appropriated to the Fund be used solely for the cost of administering the loan and grants programs. The Department may not use any moneys appropriated to the Fund for administrative expenses. The Department has personnel in place to assist in administering the sustainable agriculture grant and alternative crop grant programs and to enforce provisions of the act. Administration of a loan program under the act may create a need for additional employees. This need will be driven by the act and funding provided under the act, rather than by the final-form regulations.

##### *Political Subdivisions*

The final-form regulations will not impose any direct fiscal impact upon political subdivisions.

##### *Private Sector*

The final-form regulations will not have any direct fiscal impact on the private sector except for possible positive effects with regard to their fiscal impact on the Commonwealth. The act and these regulations are intended to have a positive fiscal impact on the Common-

wealth, through increased return on investment to the producer/farmer, increased soil and water quality and other ecological benefits, which accrue from reducing or eliminating the need for fertilizers and pesticides.

#### *General Public*

The final-form regulations will impose no costs and have no fiscal impact upon the general public. The general public may benefit from the decreased use of pesticides and fertilizers and the increased soil and water quality these regulations seek to promote.

#### *Paperwork Requirements*

The final-form regulations will result in increased paperwork requirements of the recipients of sustainable agriculture loans and grants and alternative crop grants. The recipients of the loans and grants will be required to keep detailed records of all sustainable agriculture activities and projects undertaken using the loan or grant moneys. The Department will incur increased paperwork requirements through tracking and recordkeeping requirements and review of applications related to the sustainable agriculture loan program, the sustainable agriculture grant program and the alternative crop grant program.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Lyle Forer, Director, (717) 772-5203.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 5, 1999, the Department submitted a copy of the notice of proposed rulemaking published at 29 Pa.B. 1496, to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on February 20, 2001. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulations.

#### *Findings*

The Department finds that:

(1) Public notice of its intention to adopt the regulations encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and their attendant regulations in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to these final-form regulations in response to comments received do not enlarge the purpose of the proposed regulation published at 29 Pa.B. 1496.

(4) The adoption of the final-form regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Department, acting under authority of the authorizing statute, orders that:

(a) The new regulations of the Department, 7 Pa. Code, are amended by adding §§ 130c.1—130c.9, 130c.11—130c.19 and 130c.39 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,  
Secretary

(*Editor's note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

**Fiscal Note:** Fiscal Note 2-115 remains valid for the final adoption of the subject regulations.

### Annex A

## TITLE 7. AGRICULTURE

### PART V. BUREAU OF PLANT INDUSTRY

#### CHAPTER 130c. SUSTAINABLE AGRICULTURE PROGRAMS

##### Subch.

- A. GENERAL PROVISIONS
- B. SUSTAINABLE AGRICULTURE LOAN PROGRAM
- C. SUSTAINABLE AGRICULTURE GRANT PROGRAMS AND ALTERNATIVE CROP GRANT PROGRAMS

#### Subchapter A. GENERAL PROVISIONS

##### Sec.

- 130c.1. Objectives.
- 130c.2. Definitions.
- 130c.3. Records.
- 130c.4. Conflict of interest.
- 130c.5. Duties of the Executive Director.
- 130c.6. Notice of disposition of application.
- 130c.7. Loan or grant cancellation.
- 130c.8. Right of recovery.
- 130c.9. Deficits.

#### § 130c.1. Objectives.

The purpose of the act is to:

(1) Establish a program for sustainable agriculture practices and to create the Board.

(2) Define the powers and duties of the Department and the Board.

(3) Provide for sustainable agriculture loan and grant programs and an alternative crop grant program.

(4) Provide for funding.

#### § 130c.2. Definitions.

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

*Act*—The Sustainable Agriculture Act (3 P. S. §§ 2101—2117).

*Agricultural activity or farming*—The commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products or fruits and other horticultural products.

*Alternative crop*—Crops not normally grown on an annual or rotational basis in this Commonwealth. The term may include crops used to replenish soil nutrients, crops used for animal or human consumption or crops used to reduce reliance on fuel, agricultural chemicals or synthetic fertilizer.

*Applicant*—A farm enterprise applying for a loan or grant.

*Beneficial insects*—Insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial to farming.

*Board*—The Board of Sustainable Agriculture.

*Corporate farm*—A corporation formed for the purpose of engaging in agricultural activity or farming which is not a family farm corporation.

*Creditworthy*—The ability to pay debts as they become due, to offer sufficient security and collateral and having no history of any previous default on loans specified in § 130c.14(g) (relating to general conditions).

*Defoliant*—A substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

*Department*—The Department of Agriculture of the Commonwealth.

*Desiccant*—Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

*Executive Director*—The person appointed by the Secretary to advise the Board.

*Family farm corporation*—A corporation formed for the purpose of farming in which the majority of the voting stock is held by and the majority of the stockholders are natural persons or their spouses or other persons related to the natural persons or their spouses and at least one of the majority stockholders is residing on or actively operating or managing the farm and none of the stockholders of which are corporations.

*Family farm partnership*—A general partnership entered into for the purpose of farming, having no more than three unrelated members and having at least one member residing on or actively operating or managing the farm.

*Farm enterprise*—A natural person, family farm corporation, family farm partnership engaged in farming or a corporate farm or nonprofit educational institution.

*Farmland*—Land in this Commonwealth that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

*Fund*—A fund created by section 7 of the act (3 P. S. § 2107) and established by the Department which shall receive all revenues and appropriations, allowed under the act. The Fund shall pay all costs, except administrative expenses, related to the Program. The Funds shall also contain the revolving loan account created by section 9 of the act (3 P. S. § 2109).

*Individual*—A natural person, meaning a single person as distinguished from a group or class, and as distinguished from a partnership, corporation or association.

*Nonprofit educational institution*—A State-owned or State-related college or university in this Commonwealth or a nonprofit organization, association or group in this Commonwealth which:

(i) Has demonstrated a capacity to conduct agricultural research or education programs.

(ii) Has experience in research or education in sustainable agricultural practices.

(iii) Qualifies as a nonprofit organization under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)).

**Pest**—An insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator of the Environmental Protection Agency declares to be a pest under section 25(c)(1) of the Federal Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136w(1)).

**Pesticide**—An insecticide or herbicide having the following characteristics:

(i) A substance or mixture of substances intended for preventing, destroying, repelling or mitigating a pest.

(ii) A substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

**Plant regulator**—A substance or mixture of substances intended, through physiological action, for accelerating or altering the behavior of plants or the produce thereof. The term does not include substances to the extent that they are intended as plant soil amendments. The term does not include nutrient mixtures or soil amendments that are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

**Program**—The Sustainable Agriculture Loan or Grant Program or the Alternative Crop Grant Program.

**Project**—A specific plan set forth on a loan or grant application submitted under the act and this chapter, describing sustainable agriculture or alternative crop practices to be implemented using loan or grant funds received under that application.

**Secretary**—The Secretary of Agriculture of the Commonwealth or a designee.

**Sustainable agriculture**—An integrated system of plant and animal production practices having a site-specific application that will over the long term:

(i) Satisfy human food and fiber needs.

(ii) Enhance environmental quality and the natural resource base upon which the agricultural economy depends.

(iii) Make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls.

(iv) Sustain the economic viability of farm operations.

(v) Enhance the quality of life for farmers and society as a whole.

#### § 130c.3. Records.

(a) A recipient of grant or loan funds under the act and this chapter shall maintain books, records and other evidence pertinent to expenditures and costs incurred in connection with the sustainable agriculture project to which those funds are applied. The books and records shall be maintained according to generally accepted accounting principles.

(b) Financial records, supporting documents, statistical records and other records pertaining to any loan or grant made under the act shall be retained by the recipient for 3 years following the year in which the loan or grant expires.

(c) The records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agents.

#### § 130c.4. Conflict of interest.

A member of the Board may apply for a sustainable agriculture loan or grant or an alternative crop grant provided all decisions regarding the loan or grant application are subject to section 3(j) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(j) and if the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

#### § 130c.5. Duties of the Executive Director.

The Executive Director's duties shall include:

(1) *Review and evaluation.* The Executive Director will review and evaluate loan and grant applications submitted to the Board.

(2) *Research.* The Executive Director will identify sustainable agriculture practices.

(3) *Integration and coordination.* The Executive Director will integrate and coordinate sustainable agriculture activities and education.

(4) *Development.* The Executive Secretary will develop information systems which integrate and utilize the experience and expertise farmers, agribusiness and specialists.

(5) *Promotion.* The Executive Secretary will promote sustainable agriculture practices.

#### § 130c.6. Notice of disposition of application.

The Board will provide an applicant written notice of the acceptance or rejection of the application by mailing a notice within 90 days of receipt of the application. If the application is incomplete, the Board will follow the action prescribed by § 130c.16 or § 130c.36 (relating to processing of loan application).

#### § 130c.7. Loan or grant cancellation.

A sustainable agriculture loan or grant or an alternative crop grant may be canceled by the Secretary upon a determination that the funds are not being spent or utilized in accordance with the act, the loan or grant agreement or this chapter.

#### § 130c.8. Right of recovery.

The Department has the right to make a claim for and receive from the loan or grant recipient monies not expended in accordance with the act, the loan or grant agreement or this chapter. When a loan or grant recipient defaults, the Department has the right to make a claim for and receive from the loan or grant recipient the principal balance of the loan and interest incurred to date. Payment shall be due within 60 days of the written demand.

#### § 130c.9. Deficits.

The Department's financial obligation is limited to the amount of the sustainable agriculture loan or grant or the

alternative crop grant. The Department is not responsible for funding cost overruns incurred by loan or grant recipients.

### **Subchapter B. SUSTAINABLE AGRICULTURE LOAN PROGRAM**

*Sec.*

- 130c.11. Objective.
- 130c.12. Funding.
- 130c.13. Amount of loan.
- 130c.14. General conditions.
- 130c.15. Submission of application.
- 130c.16. Processing of applications.
- 130c.17. Applicant eligibility.
- 130c.18. Review of a loan application.
- 130c.19. Eligible uses.

#### **§ 130c.11. Objective.**

This subchapter establishes the requirements and procedures of the Program, under which an applicant may receive a loan to implement farming practices that emphasize sustainable agriculture in this Commonwealth.

#### **§ 130c.12. Funding.**

Sustainable agriculture loans shall be made to the extent funds are made available in the revolving loan account. The revolving loan account, created under section 9 of the act (3 P. S. § 2109), shall be used to fund all sustainable agriculture loans. The revolving loan account shall be funded by appropriations made by the General Assembly and interest earned on the account and interest from loan repayment.

#### **§ 130c.13. Amount of loan.**

The maximum amount of a loan is \$15,000 for farm enterprises which are not corporate farms and \$25,000 for corporate farms.

#### **§ 130c.14. General conditions.**

(a) *Interest rates.* The interest rate on any loan will be calculated using simple interest at the percentage rate equal to the Federal Reserve discount rate at the time the loan was made.

(b) *Term of loan and rate of payment.* The term of the loan may not be greater than the useful life of the project, which shall be defined in the loan agreement. The term of the loan may not exceed 7 years. Payments shall be made monthly, quarterly or semiannually, as determined by the Board.

(c) *Security.*

(1) *Requirement.* The Board will secure each loan before distributing the loan proceeds and its lien position may not be less than a second position as to liens on real estate and equipment connected with the farm operation. A loan shall be fully secured and no part of the loan may be unsecured.

(2) *Valuation of collateral.* Real estate security shall be valued on the basis of resale value, taking into account any liens or encumbrances on the land.

(3) *Additional security.* The Board may require other and additional security as it deems just and reasonable, including personal liability promissory notes with confessions of judgment, judgment notes, additional collateral, insurance and guarantees.

(d) *Sale of real or personal property.* If the recipient sells real or personal property connected with the project which is subject to a lien in favor of the Department or Board the principal balance of the loan and interest incurred to date shall immediately become due and payable.

(e) *Verification.* Within 3 months of the project completion date specified in the loan agreement, the recipient shall submit to the Department a final report which includes written receipts, records and any other pertinent documentation evidencing the total amount of the costs incurred and expenditures associated with the project. At the same time, the recipient shall also submit a narrative report describing the effectiveness of the project, the results obtained, the experience gained and the personal knowledge acquired.

(f) *Failure to verify.* If the required receipts, records and documentation are not submitted within the 3-month period or a portion of loan proceeds are unaccounted for, the Secretary may demand the recipient repay the entire principal balance of the loan or a lesser amount and interest incurred to date. Payment shall be due within 60 days of the written demand.

(g) *Loan agreement.* A recipient shall sign a loan agreement setting forth the term and amount of the loan, a repayment schedule and other terms or conditions as the Department may reasonably require.

(h) *Previous default.* A loan will not be made under this chapter to an applicant who has previously defaulted on a loan made, guaranteed or insured by the Commonwealth, the Federal Government or by the government of another state.

(i) *Default.* A recipient who fails to abide by the terms of the act, the loan agreement or the rules in this chapter shall be in default. Additionally, a loan will be declared in default if the loan recipient fails to make the required payment within 30 days of the due date. When a loan recipient defaults, the Department may seek recovery of the loan funds as delineated in § 130c.8 (relating to right of recovery). A default may be waived by the Secretary, after consultation with the Board, in the event of a physical disability suffered by the recipient or other extenuating circumstances.

#### **§ 130c.15. Submission of application.**

An applicant desiring to be considered for a loan under this chapter shall submit to the Board, on a form prepared by the Board, an application for a loan. The completed application shall contain the information requested by the Board. Applications shall be postmarked by July 31 of each year. Loan applications may be obtained from:

Pennsylvania Department of Agriculture  
Bureau of Plant Industry  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
Telephone number: (717) 787-4843

#### **§ 130c.16. Processing of applications.**

(a) *Executive Director.* Upon receipt of an application for a sustainable agriculture loan and any required supporting documentation, the Executive Director will review this information for completeness and accuracy and submit it to the Board. As set forth in § 130c.6 (relating to notice of disposition of application) the Board will have 90 days to review and take action on an application. If the Executive Director determines the application is incomplete or inaccurate, final processing of the application may be discontinued and the Board will send a letter of rejection to the applicant or additional data may be requested. If additional data is requested, the Executive Director will notify the applicant of the additional data needed and the 30-day time period for response. Processing of the application will cease and the

90-day review period, in § 130c.6, will be tolled during the 30-day response period until the applicant supplies the requested data. If additional data has been requested, the Executive Director may terminate the processing of the application when the additional data is not supplied within 30 days of a written request.

(b) *Board.* The Board will review all complete applications and supporting documentation and have the power to accept, accept with special conditions or reject applications and issue loans in accordance with the general considerations and eligibility criteria of the act and this chapter.

**§ 130c.17. Applicant eligibility.**

(a) *Individuals.* To be eligible for a loan under this chapter, the applicant, if an individual, shall be:

(1) A resident of this Commonwealth or show sufficient evidence that he intends to become a resident.

(2) An active resident operator or resident manager of the farm.

(3) Sufficiently educated, trained or experienced to carry out the project and shall certify that he will participate in the project for the duration of the loan period.

(4) Able to prove and document that the farmland or farm enterprise for which the loan is acquired is located in this Commonwealth.

(5) Able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(6) Creditworthy.

(b) *Family farm partnership.* To be eligible for a loan under this chapter, if a family farm partnership, the applicant's principal operating or managing partners shall:

(1) Be residents of this Commonwealth or demonstrate they intend to become residents.

(2) Have no more than three unrelated members.

(3) Have at least one member residing on or actively operating or managing the farm.

(4) Demonstrate the applicant or the principal operating or managing partners thereof have sufficient education, training or experience to carry out the sustainable agriculture project proposed in the loan application and shall certify he will participate in the project for the duration of the loan period.

(5) Be able to prove and document that the farmland or farm enterprise for which the loan is acquired is located in this Commonwealth.

(6) Be able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(7) Be creditworthy.

(c) *Family farm corporation.* To be eligible for a loan under this chapter, the applicant, if a family farm corporation, shall meet the following requirements:

(1) The family farm corporation shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the family farm corporation shall be residents of this Commonwealth or show sufficient evidence that they intend to become residents.

(3) At least one of the majority stockholders of the family farm corporation shall reside on or actively operate or manage the farm.

(4) None of the shareholders of the family farm corporation may be corporations.

(5) The applicant or the principal operating or managing members or shareholders of the family farm corporation shall have sufficient education, training or experience to carry out the sustainable agriculture project proposed in the loan application and shall guarantee he or they will participate in the project for the duration of the loan period.

(6) The family farm corporation shall demonstrate that the farmland or farm enterprise for which the loan is acquired is located in this Commonwealth.

(7) The family farm corporation shall be able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(8) The family farm corporation shall be creditworthy.

(d) *Corporate farm.* To be eligible for a loan under this chapter, the applicant, if a corporate farm, shall meet the following requirements:

(1) The corporate farm shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the corporate farm shall have sufficient education, training or experience to carry out the sustainable agriculture project proposed in the loan application and shall guarantee the corporation will participate in the project for the duration of the loan agreement.

(3) The corporate farm shall demonstrate that the farm enterprise owns or leases farmland in this Commonwealth.

(4) The corporate farm shall be able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(5) The corporate farm shall be creditworthy.

(e) *Nonprofit educational institution.* A nonprofit educational institution is not eligible for a loan.

**§ 130c.18. Review of a loan application.**

(a) *Evaluation.* The Board will evaluate the application based on the applicant's eligibility as set forth in § 130c.17 (relating to applicant eligibility).

(b) *Ranking.* No single factor will be paramount. In rendering a decision, the Board will rank the application based on the following criteria:

(1) *Financial responsibility.* Financial responsibility reflecting the ability of the applicant to meet and satisfy all debt service as it becomes due and payable, continue farm operations and protect the Department against undue risk. The applicant's cash flow history, total assets con-

trolled, equity owned, contingent liabilities and history of earnings to date are significant measures of financial responsibility.

(2) *Collateral offered on available security.* The requirement of collateral and collateral taken shall reasonably protect the Department, provide the necessary control of equity and repayment and leave the applicant in a position to reasonably manage the farm operation. The applicant's ability to give the Department a first position in terms of a lien on collateral or to share a first position, will be given great weight.

(3) *Repayment capacity.* The relevant criminal and credit history and ratings of the applicant as determined from credit reporting services and other sources.

(4) *Tax obligations.* The payment to date of all tax obligations due and owing by the applicant to the Commonwealth or any political subdivisions thereof.

(5) *Projected use.* The manner in which loan proceeds will be utilized in furthering sustainable agriculture in this Commonwealth. This encompasses the goals of the project, its impact on agriculture, the environment and society, its ability to increase farm profitability and productivity, and the potential for success of the project.

(6) *Capital needs (amount of the loan).* The Board will look at the capital needs of the applicant in light of available funds.

(7) *Farming practices.* The intent to use practices that would improve soil fertility, lower the cost of production, cause the optimum and environmentally compatible use of off-farm inputs, such as chemical or synthetic fertilizers or pesticides, or otherwise promote sustainable agriculture. These practices are further explained and defined in § 130c.19 (relating to eligible uses).

(c) *Discretion.* The Board may exercise its judgment in reviewing applications and in determining the amount of each loan so that, where possible, the widest audience becomes acquainted with the principles of sustainable agriculture. This discretion may be exercised to assure loan funds are distributed to the maximum number of applicants and dispersed throughout this Commonwealth.

#### § 130c.19. Eligible uses.

(a) *Loan proceeds.* Proceeds from a loan made under this chapter shall be used by the loan recipient solely for eligible sustainable agriculture practices. Sustainable agriculture practices include agricultural practices which:

- (1) Are ecologically beneficial.
- (2) Improve and ensure the soil and water quality for future generations.
- (3) Enhance environmental quality and the natural resource base upon which the agricultural economy depends.
- (4) Make the most efficient use of nonrenewable resources.
- (5) Integrate natural biological cycles and controls, such as planting cover crops to defend against insects and weeds, using mechanical tillage to control weeds and relying on natural systems, such as biological controls and natural predators.
- (6) Ensure the optimum and environmentally compatible use of or eliminate the need for the purchase of off-farm inputs such as chemical or synthetic fertilizers and pesticides.

(7) Make the best use of on-farm labor and resources, such as using animal and plant manure to enrich soil.

(8) Sustain the economic viability of farm operations, by implementing practices which lower production costs.

(9) Enhance the quality of life for farmers and society.

(10) Satisfy human food and fiber needs.

(11) Emphasize planting a diverse array of crops and the production of alternative crops.

(b) *Ineligible use of proceeds.* Loan proceeds may not be used for any of the following purposes:

(1) To refinance a portion of the total project cost or any other existing loans or debts.

(2) To finance, fund or to use in a project outside the geographic boundaries of this Commonwealth.

(3) To purchase off-farm inputs, such as chemical or synthetic fertilizers and pesticides.

(4) To fund any educational or promotional program.

#### **Subchapter C. SUSTAINABLE AGRICULTURE GRANT PROGRAMS AND ALTERNATIVE CROP GRANT PROGRAMS**

*Sec.*

- |          |                                |
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#### **§ 130c.31. Objectives.**

This subchapter establishes the requirements and procedures of the Program and the Alternative Crop Grant Program, under which an applicant may receive grants that enable it to implement practices and develop programs which emphasize sustainable agriculture and the use of alternative crops to promote sustainable agriculture in this Commonwealth.

#### **§ 130c.32. Funding.**

Sustainable agriculture grants and alternative crop grants will be made to the extent funds are made available. The revenues and appropriations will be deposited in the Fund. All costs, except administrative expenses, related to the sustainable agriculture program will be paid from the Fund.

#### **§ 130c.33. Amount of grant.**

Grants may not exceed \$25,000 except as provided in this subchapter. An additional amount of up to \$25,000 may be granted if the applicant matches that additional amount dollar for dollar so that a single grant may not exceed \$50,000 in 1 calendar year.

#### **§ 130c.34. General conditions.**

(a) *Grant agreement.* The applicant shall sign a grant agreement setting forth the term and amount of the grant and other terms or conditions as the Department may reasonably require.

(b) *Verification.* Within 3 months of the project completion date specified in the grant agreement, the applicant shall submit to the Department a final report which includes written receipts, records and any other pertinent documentation evidencing the total amount of the costs incurred and expenditures associated with the project. At the same time, the applicant shall also submit a narrative

report describing the effectiveness of the project, the results obtained, the experience gained and the personal knowledge acquired.

(c) *Failure to verify.* If the required receipts, records and documentation are not submitted within the 3-month period or a portion of grant proceeds are unaccounted for, the Secretary may demand the applicant repay the entire principal balance of the grant or a lesser amount and interest incurred to date. The interest rate will be calculated using simple interest at the percentage rate equal to the Federal Reserve discount rate at the time the grant was made. Payment shall be due within 60 days of the written demand.

(d) *Default.* A recipient who fails to abide by the terms of the act, the grant agreement or this chapter shall be in default. When a grant recipient defaults, the Department may seek recovery of the grant funds as delineated in § 130c.8 (relating to right of recovery). A default may be waived by the Secretary, after consultation with the Board, in the event of a physical disability suffered by the recipient or other extenuating circumstances.

**§ 130c.35. Submission of application.**

(a) *Obtaining an application/deadline.* An applicant desiring to be considered for a grant under this chapter shall submit to the Board, on a form prepared by the Board, an application for a grant. The completed application shall contain the information requested by the Board. Applications shall be postmarked by July 31 of each year. Grant applications may be obtained from:

Pennsylvania Department of Agriculture  
Bureau of Plant Industry  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
Telephone number: (717) 787-4843

(b) *Limitations.* An applicant may submit applications, in the same year, under both the Sustainable Agriculture Grant Program and the Alternative Crop Grant Program. An applicant will not be awarded more than one grant in each calendar year and an applicant already possessing a grant will not be eligible to apply for any other grant under this chapter until the applicant's current grant is completed and the proper verification has been provided to the Board.

**§ 130c.36. Processing of application.**

(a) *Executive Director.* Upon receipt of an application for a sustainable agriculture grant or alternative crop grant and the required supporting documentation, the Executive Director will review this information for completeness and accuracy and submit it to the Board. As set forth in § 130c.6 (relating to notice of disposition of application), the Board has 90 days to review and take action on an application. If the Executive Director determines the application is incomplete or inaccurate, final processing of the application may be discontinued and the Board will send a letter of rejection to the applicant or additional data may be requested. If additional data is requested, the Executive Director will notify the applicant of the additional data needed and the 30-day time period for response. Processing of the application will cease and the 90-day review period, set forth in § 130c.6, will be tolled during the 30-day response period until the applicant supplies the requested data. If additional data has been requested, the Executive Director may terminate the processing of the application when the additional data is not supplied within 30 days of a written request.

(b) *Board.* The Board will review all complete applications and supporting documentation and will have the

power to accept, accept with special conditions or reject applications and issue grants in accordance with the general considerations and eligibility criteria of the act and this chapter.

**§ 130c.37. Applicant eligibility.**

(a) *Individuals.* To be eligible for a grant under this chapter, the applicant, if an individual, shall be:

(1) A resident of this Commonwealth or show sufficient evidence that he intends to become a resident.

(2) An active resident operator or resident manager of the farm.

(3) Sufficiently educated, trained or experienced to carry out the sustainable agriculture or alternative crop project proposed in the grant application and guarantee he will participate in the project for the duration of the grant period.

(4) Able to prove and document that the farmland or farm enterprise for which the grant is acquired is located in this Commonwealth.

(5) Able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(b) *Family farm partnership.* To be eligible for a grant under this chapter, the applicant, if a family farm partnership, the applicant's principle operating or managing partners shall:

(1) Be residents of this Commonwealth or demonstrate they intend to become residents.

(2) Have no more than three unrelated members.

(3) Have at least one member residing on or actively operating or managing the farm.

(4) Demonstrate the applicant or the principal operating or managing partners thereof have sufficient education, training or experience to carry out the sustainable agriculture or alternative crop project proposed in the grant application and guarantee he will participate in the project for the duration of the grant period.

(5) Be able to prove and document that the farmland or farm enterprise for which the grant is acquired is located in this Commonwealth.

(6) Be able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(c) *Family farm corporation.* To be eligible for a grant under this chapter, the applicant, if a family farm corporation, shall meet the following requirements:

(1) The family farm corporation shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the family farm corporation shall be residents of this Commonwealth or show sufficient evidence that they intend to become residents.

(3) At least one of the majority stockholders of the family farm corporation shall reside on or actively operate or manage the farm.



(4) None of the shareholders of the family farm corporation may be corporations.

(5) The applicant or the principal operating or managing members or shareholders of the family farm corporation shall have sufficient education, training or experience to carry out the sustainable agriculture or alternative crop project proposed in the grant application and shall guarantee the family farm corporation will participate in the project for the duration of the grant period.

(6) The family farm corporation shall demonstrate that the farmland or farm enterprise for which the grant is acquired, is located in this Commonwealth.

(7) The family farm corporation shall be able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(d) *Corporate farm.* To be eligible for a grant under this chapter, the applicant, if a corporate farm, shall meet the following requirements:

(1) The corporate farm shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the corporate farm shall have sufficient education, training or experience to carry out the sustainable agriculture or alternative crop project proposed in the grant application and shall guarantee the corporation will participate in the project for the duration of the grant agreement.

(3) The corporate farm shall demonstrate that the farm enterprise owns or leases farmland in this Commonwealth.

(4) The corporate farm shall be able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(e) *Nonprofit educational institution.* To be eligible for a grant under this chapter, the applicant, if a nonprofit educational institution, shall:

(1) Qualify as a nonprofit organization under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)).

(2) Be a State-owned or State-related college or university in this Commonwealth or any nonprofit organization, association or group in this Commonwealth.

(3) Have experience in research or education in sustainable agriculture practices.

(4) Have demonstrated a capacity to conduct agricultural research or education programs.

#### **§ 130c.38. Review of a grant application.**

(a) *Evaluation.* The Board will evaluate the application based on the applicant's eligibility as set forth in § 130c.37 (relating to applicant eligibility).

(b) *Ranking.* No single factor will be paramount. In rendering a decision, the Board will rank the application based on the following criteria:

(1) *Financial responsibility.* Financial responsibility reflecting the ability of the applicant to meet and satisfy all

debt service as it becomes due and payable, continue farm operations and protect the Department against undue risk. The applicant's cash flow history, total assets controlled, equity owned, contingent liabilities and history of earnings to date are significant measures of financial responsibility.

(2) *Applicant background.* The relevant criminal and credit history and ratings of the applicant as determined from credit reporting services and other sources.

(3) *Tax obligations.* The payment to date of all tax obligations due and owing by the applicant to the Commonwealth or any political subdivisions thereof.

(4) *Projected use.* The manner in which grant proceeds will be utilized in furthering sustainable agriculture in this Commonwealth. This encompasses the goals of the project, its impact on agriculture, the environment and society, its ability to increase farm profitability and productivity, and the project's potential for success.

(5) *Capital needs (amount of the grant).* The Board will look at the capital needs of the applicant in light of available funds.

(6) *Environment.* The environmental benefit.

(7) *Profitability.* The potential impact on farm profitability.

(8) *Technology.* The applicability of the techniques or technology to other farm enterprises.

(9) *Effectiveness.* The effectiveness of the project as a demonstration, where applicable.

(10) *Farming practices.* The intent to use practices that would improve soil fertility, lower the cost of production, cause the optimum and environmentally compatible use of off-farm inputs, such as chemical or synthetic fertilizers or pesticides, or otherwise promote sustainable agriculture. These practices are further explained and defined in § 130c.39 (relating to eligible uses).

(c) *Discretion.* The Board may exercise its judgment in reviewing applications and in determining the amount of each grant so that, when possible, the widest audience becomes acquainted with the principles of sustainable agriculture. This discretion may be exercised to assure grant funds are distributed to the maximum number of applicants and dispersed throughout this Commonwealth.

#### **§ 130c.39. Eligible uses.**

(a) *Grant proceeds.* Proceeds from a grant made under this chapter shall be used by the grant recipient for the practice or promotion of sustainable agriculture or for research or educational programs pertaining to the development of sustainable agriculture, or to adopt practices that emphasize the use of alternative crops. Sustainable agriculture practices include agricultural practices which:

(1) Are ecologically beneficial.

(2) Improve and ensure the soil and water quality for future generations.

(3) Enhance environmental quality and the natural resource base upon which the agricultural economy depends.

(4) Make the most efficient use of nonrenewable resources.

(5) Integrate natural biological cycles and controls, such as planting cover crops to defend against insects and weeds, using mechanical tillage to control weeds and relying on natural systems, such as biological controls and natural predators.

(6) Ensure the optimum and environmentally compatible use of or eliminate the need for the purchase of off-farm inputs such as chemical or synthetic fertilizers and pesticides.

(7) Make the best use of on-farm labor and resources, such as using animal and plant manure to enrich soil.

(8) Sustain the economic viability of farm operations, by implementing practices which lower production costs.

(9) Enhance the quality of life for farmers and society.

(10) Satisfy human food and fiber needs.

(11) Emphasize planting a diverse array of crops and the production of alternative crops.

(12) Identify agricultural practices that maintain productivity and minimize environmental and farmland degradation.

(13) Develop, integrate and coordinate field experiments and on-farm research and educational efforts related to the practice of sustainable agriculture.

(14) Develop, integrate and coordinate new techniques and technologies which advance the field of sustainable agriculture.

(b) *Ineligible use of grant proceeds.* Grant proceeds may not be used for any of the following purposes:

(1) To refinance a portion of the total project cost or any other existing loan or debt.

(2) To finance, fund or to use in a project outside the geographic boundaries of this Commonwealth.

(3) To purchase off-farm inputs, such as chemical or synthetic fertilizers and pesticides.

(4) To fund any educational or promotional program which is not for the sole purpose of advancing the practice of sustainable agriculture.

[Pa.B. Doc. No. 01-543. Filed for public inspection March 30, 2001, 9:00 a.m.]

## DEPARTMENT OF AGRICULTURE

### [7 PA. CODE CHS. 137, 137a AND 137b]

#### Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act

The Department of Agriculture (Department) hereby rescinds the regulations in Chapter 137 (relating to preferential assessment of farmland and forest land), rescinds the interim regulations in Chapter 137a (relating to clean and green act—statement of policy) and adopts the regulations in Chapter 137b (relating to preferential assessment of farmland and forest land under the Clean and Green Act) to read as set forth in Annex A.

#### Authority

The Department has the power and authority to adopt these regulations. Section 11 of the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. § 5490.11), commonly referred to as the Clean and Green Act (act), requires the Department promulgate regulations necessary to promote the efficient, uniform, State-wide administration of the statute. In addition, section 12 of the act of December 12, 1998 (P. L. 1255, No. 156) (Act 156) amended the act to allow the Department to implement the interim regulations which are currently in Chapter 137a without proceeding through the regulatory promulgation process ordinarily required by law. It also

required the Department to replace this statement of policy with formal regulations by April 30, 2001.

#### *Need for the Regulations*

There is an immediate need for the regulations. As stated, Act 156 requires the Department to replace the current statement of policy with formal regulations by April 30, 2001. In addition, the regulations replace current outdated and inadequate regulations and help bring about uniform interpretation and application of the act throughout this Commonwealth.

In summary, the Department is satisfied that there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

#### *Comments*

Notice of proposed rulemaking was published at 30 Pa.B. 4573 (September 2, 2000) and provided for a 30-day public comment period.

Comments were received from the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees (Legislative Committees), Representative Italo S. Cappabianca, Representative Robert W. Godshall, the Independent Regulatory Review Commission (IRRC), the Clean and Green Committee of the Assessors' Association of Pennsylvania (Assessors' Committee), the Chief Assessor for the County of Sullivan (Sullivan County), the Chief Assessor and Solicitor for the County of Montgomery (Montgomery County), the Director of Legislation for the Pennsylvania State Association of Township Supervisors (PSATS), the Pennsylvania Farm Bureau (PFB) and Attorney John S. Halsted from Chester County (Attorney Halsted). In addition, the Assessors' Association of Pennsylvania (Assessors' Association) met with representatives of IRRC after the close of the public comment period, and forwarded several comments to IRRC as a result of that meeting.

Both the PFB and the Legislative Committees raised objections with respect to a version of the final-form regulations that were submitted to IRRC and the Legislative Committees in January 2001. As a result, the Department withdrew that version of the final-form regulations to consider the objections. Legislative Committee staff met with representatives of the PFB and drafted revisions, the substance of which are incorporated into the final-form regulations.

The Department greatly appreciates the effort and analysis the commentators devoted to the comments they offered. The Department also acknowledges the assistance of many of these commentators in helping to review and draft earlier versions of the proposed regulations.

A summary of the comments received by the Department, and the Department's response to each, follows:

*Comment:* The PSATS offered that the implementation of the revisions made to the act by Act 156 "... has the potential to dramatically reduce the (tax) revenue stream to counties, school districts and townships." The commentator also noted the PSATS membership adopted a resolution at its April 2000 State convention calling for "... a delay in implementation of Act 156 of 1998, and further, to require an examination of Act 156 of 1998 to determine the financial effects of the act on municipalities and make the necessary changes to relieve any financial strain inflicted upon them." The commentator also relayed the growing concern among townships regarding the "... potential loss of revenue from land that would

qualify for exemption under Act 156, but will never be used for agricultural purposes.”

*Response:* The Department is without authority to delay the final-form regulations. The act requires they be promulgated by April 30, 2001. The Department appreciates the concerns of the various taxing bodies that must deal with the preferential assessment of enrolled land within their particular jurisdictions.

*Comment:* Sullivan County offered several specific comments which are addressed as follows. In addition, it offered the general comment that the proposed regulations are an improvement over the prior regulations.

*Response:* The Department accepts the comment.

*Comment:* IRRC raised the general comment that the Department has not provided any estimate concerning the fiscal impact of these regulations on local government, and asked: “What will be the economic impact of this regulation on municipalities and school districts?”

*Response:* It must be emphasized that the final-form regulations implement the requirements of the act and that any financial impacts are the result of the statute, rather than the final-form regulations. It is not the final-form regulations that establish preferential assessment or require recalculation of preferential assessment in accordance with the most recent revisions to the act—it is the act itself that requires this. The Department simply cannot provide a good-faith estimate of the financial impact upon municipalities or school districts resulting from the implementation of the act.

*Comment:* Several comments were received with respect to proposed § 137b.1(b) (relating to purpose). Sullivan County quoted the last sentence of that subsection, which states it is the “. . . intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes.” The commentator asked whether it was the intention of the act to preserve open space, rather than preserve agricultural land.

The Legislative Committees, Representative Capabianca and IRRC were also critical of this provision, and recommended the entire final sentence of proposed § 137b.1(b) be deleted.

*Response:* The Department accepts these comments and has deleted the final sentence of proposed § 137b.1(b). The Department believes the statement of purpose set forth in proposed § 137b.1 is consistent with PA. CONST. art. 8, § 2. That section authorizes the Legislature to make special provisions for the taxation of forest, agricultural reserve and agricultural lands. This Constitutional authority is restated, in part, in the formal title of the act, which references the establishment of a procedure “. . . under which an owner may have land devoted to agricultural use, agricultural reserve use, or forest reserve use, valued for tax purposes at the value it has for such uses . . .”

*Comment:* Sullivan County also offered the following comment with respect to proposed § 137b.1: “. . . shouldn't those utilizing their properties as second or vacation homes be excluded from Clean and Green? Maybe there should be income guidelines for enrollment.”

*Response:* Although the Department understands the commentator's point, there is no statutory basis for the Department to discriminate against a person seeking to enroll agricultural, agricultural reserve or forest reserve land on the basis that the residential structure on that

land is a second home for the landowner, and for this reason declines to revise the regulation.

Similarly, the Department does not believe it could—in the absence of explicit statutory authority—establish a requirement that a tract of enrolled land generate a particular annual income from agricultural production as a prerequisite to enrollment.

*Comment:* PFB recommended the term “rate” in the first sentence of proposed § 137b.1(b) be replaced with the phrase “value for tax assessment purposes” or “tax assessment value.” PFB offered that this term would help readers understand the term is not referring to “millage rate,” but to the assessment value assigned by the county.

*Response:* The Department has implemented this recommendation in the final-form regulations, inserting the replacement phrase “value for tax assessment purposes.”

*Comment:* IRRC offered a general comment with respect to terms that are defined in section 2 of the act (72 P. S. § 5490.2) (relating to definitions) and repeated in proposed § 137b.2 (relating to definitions). It suggested that rather than repeating definitions from the act, the final-form regulations should simply replace the regulatory definition with a phrase such as “As defined in the Act.”

*Response:* Although IRRC's point is well-taken, the Department declines to implement the suggestion. The Department prefers to have the statutory definitions repeated in the final-form regulations. This approach will spare persons referring to the final-form regulations from having to cross-reference the regulation with the act to determine definitions of terms used throughout the final-form regulations.

*Comment:* The Assessors' Committee suggested the various terms used in subparagraph (i) of the definition of “agricultural commodity” in proposed § 137b.2 be separately defined. These terms include apicultural, aquacultural, horticultural, floricultural, silvicultural and viticultural.

*Response:* The Department declines to implement this suggestion in the final-form regulations.

*Comment:* The Assessors' Committee noted the use of the phrase “on farms” in subparagraphs (vi) and (vii) of the definition of “agricultural commodity” in proposed § 137b.2, and suggested the phrase “on the farms” be inserted in its place. The Assessors' Committee offered that the recommended change would make clear that, for purposes of the regulation, the production of agricultural commodities would have to occur on the enrolled farm.

*Response:* Although the commentator's point is well-taken, the Department declines to implement commentator's suggestion since the referenced definition is from section 2 of the act.

*Comment:* Sullivan County recommended the term “open space lands” be defined. The term is used in the definition of “agricultural reserve” in section 2 of the act. The commentator offered that, in the absence of a definition, the term might be interpreted as meaning wooded or field land that is free of any kind of improvement. The commentator further offered that in Sullivan County there are a number of private lake associations that own hundreds of wooded acres around their respective lakes “simply to keep away development.” The commentator asked whether this type of land might fit within the definition of “agricultural reserve.”

*Response:* The Department declines to include a definition of “open space lands” in the final-form regulations.

The Department notes the absence of a definition of this term in the act, and believes this suggests the term should be construed liberally.

As to the question of whether the referenced wooded acreage qualifies as "agricultural reserve" land, the Department is unable to provide an answer with the limited information before it, but notes the land might also qualify for preferential assessment as forest reserve land.

*Comment:* The Assessors' Committee reviewed the definitions of "capitalization rate" and "net return to land" in proposed § 137b.2, and suggested that if the effective tax rate is to be considered in calculating the "capitalization rate," then "real estate taxes" should be excluded from the calculation of operating expenses used in determining the "net return to land."

*Response:* The definitions of the terms "capitalization rate" and "net return to land" are repeated verbatim from section 2 of the act. Although the commentator's point is well-taken, the Department cannot change statutory definitions by regulation.

*Comment:* The Legislative Committees recommended the proposed definition of "contributory value of farm building" be revised to mirror the definition of that term in the act. It also suggested proposed subparagraphs (i) of that definition could be reworked into § 137b.54 (relating to calculating the contributory value of farm buildings).

Representative Cappabianca offered essentially the same comment as the Legislative Committees on this issue, and recommended the deletion of subparagraphs (i) and (ii) under this definition.

IRRC offered its agreement with the Legislative Committees' recommendation.

*Response:* The Department has revised the definition to mirror the definition appearing in section 2 of the act.

*Comment:* The Legislative Committees recommended the Department delete "a" from the definition of "enrolled land" in proposed § 137b.2.

*Response:* This recommendation is implemented in the final-form regulations.

*Comment:* The Legislative Committees recommended the definition of "forest reserve" in proposed § 137b.2 be made identical to the statutory definition of that term. The commentators further suggested the subject matter set forth in subparagraph (ii) of that proposed definition be moved to § 137b.14 (relating to forest reserve).

IRRC concurs with the Legislative Committees' recommendation in this regard.

*Response:* The recommendation is implemented in the final-form regulations.

*Comment:* The Legislative Committees, Representative Cappabianca and Representative Godshall took issue with the definition of "outdoor recreation" in proposed § 137b.2. The definition of "agricultural reserve" land in section 2 of the act requires that land be "... used for outdoor recreation or the enjoyment of scenic or natural beauty ..."

In its administration of the current regulations, the Department has repeatedly been presented with the question of whether certain activities on agricultural reserve land would constitute "outdoor recreation" for purposes of the act. The Department has consistently taken the position that "outdoor recreation" constitutes the passive use of the land, and should not entail the grading of the land, the establishment of athletic fields on

the land, the erection of structures, parking areas or permanent facilities on the land or the taking of any other action that effectively eliminates the possibility the land would, at some point, be used for agricultural production.

Although the Legislative Committees had not originally favored including a definition of "outdoor recreation" in the regulation, it has indicated it would agree to a revision of the proposed definition that would allow for athletic fields to be established on agricultural reserve land.

Representative Cappabianca took issue with subparagraphs (i) and (ii) of the definition, and noted that the "... examples provided by the department add further confusion and are more restrictive than the Act intended."

Along similar lines, the focus of the Representative Godshall's objection is the proposed language that would exclude "the use of the land for baseball, soccer fields, football fields, golf courses or similar uses" from being considered "outdoor recreation." Representative Godshall noted that many of the youth recreational baseball and soccer league fields in the district he serves are on enrolled agricultural reserve land. Representative Godshall further commented as follows:

... The owners of the land recognize the need of these youth leagues for fields and their financial inability to pay for such. As good citizens of the community, they are happy to allow such a use free of charge. Were the land to become ineligible for Clean and Green, I can assure you that these recreational areas would no longer be made available and literally thousands of kids would be thrown out into the streets.

I request that changes be made to these proposed regulation which allow for this passive, and at-no-charge, use of Clean and Green property. To do otherwise would result in either removal of large tracts from Clean and Green, or the loss of a large number of baseball and soccer fields used by volunteer recreation organizations. I do not believe either scenario is acceptable.

*Response:* Although the Department disagrees with the commentators, it has revised the definition in accordance with the commentators' suggestions. Ultimately, the Department accedes to the interpretation of Legislators as to the intent of the act.

*Comment:* The Legislative Committees recommended the definition of "roll-back tax" in proposed § 137b.2 be revised to read exactly as it appears in section 2 of the act. The Assessors' Committee noted this proposed definition did not include any reference to the requirement that a person liable for payment of roll-back taxes also pay interest on each year's roll-back taxes at the rate of 6% per annum. This language had appeared in earlier drafts of the proposed regulation that were circulated for review and comment.

IRRC concurs with the Legislative Committees' recommendation.

*Response:* The Department has implemented the Legislative Committees' recommendation.

In response to the comment offered by the Assessors' Committee, the Department agrees that it would be less cumbersome if the definition of "roll-back tax" included the required interest component. The definition, though, is repeated from section 2 of the act. The provision adding the interest component to roll-back taxes is found else-

where in section 5a of the act (72 P.S. § 5490.5a) (relating to responsibilities of the county assessor in general). Although the Department cannot change statutory definitions by regulation, the comment prompted a review of the document to ensure that the phrase "plus interest," or words to that effect, follow every reference to liability for roll-back taxes.

*Comment:* IRRC reviewed the definition of "rural enterprise incidental to the operational unit" in proposed § 137b.2. IRRC's entire comment follows:

This phrase is defined as a "commercial enterprise or venture." Section 8(d) of the Act refers to this activity as "direct commercial sales of agriculturally related products and activities or for a rural enterprise incidental to the operational unit." The definition should be amended to incorporate the language of the Act.

*Response:* The Department declines to implement this recommendation. The act does not define "rural enterprise incidental to the operational unit." The quoted statutory provision refers to "direct commercial sales of agriculturally related products and activities" and a "rural enterprise incidental to the operational unit" as two separate things, but defines neither. The Department believes its definition of "rural enterprise incidental to the operational unit" is not inconsistent with any provision of the act. Significantly, the Department notes that the Legislative Committees, which offered extensive comments throughout the process of drafting the proposed regulations and with respect to the proposed regulations itself, have not objected to the proposed definition.

*Comment:* The Legislative Committees objected to the use of the term "enrolled land" in the definitions of "separation" and "split-off" in proposed § 137b.2. The act uses the phrase "lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of this act" instead of "enrolled land."

IRRC recommended the referenced definitions mirror the definitions contained in the act.

*Response:* The Department has revised these definitions in response to the Legislative Committees' objection.

*Comment:* The Legislative Committees recommended the definition of "transfer" in proposed § 137b.2 be revised by eliminating the second sentence and deleting the word "contiguous" from the first sentence. The Legislative Committees offered that section 6(a.3) of the act (72 P.S. § 5490.6(a.3)) (relating to split-off, separation or transfer).

IRRC endorsed the Legislative Committees' recommendation.

The Assessors' Committee expressed its confusion with respect to this same definition, and requested an explanation.

*Response:* The recommendation has been implemented in the final-form regulations. The Department believes this revision makes the definition more clear.

*Comment:* The Legislative Committees and Representative Cappabianca recommended proposed § 137b.3(a) (relating to responsibilities of the Department) be revised to reflect that the Department would provide the referenced forms and use values by May 1 of each year.

*Response:* The recommendation has been implemented in the final-form regulations.

*Comment:* The Assessors' Committee reviewed proposed § 137b.3(a) and asked: "Is a statewide, uniform application anticipated or is every county on their own for its development?"

*Response:* The Department will develop and distribute the referenced forms, in accordance with § 137b.41 (relating to application forms and procedures) of the final-form regulations.

*Comment:* The Legislative Committees recommended a new subsection—subsection (c) be inserted in proposed § 137b.3 to provide that the Department would act as an educational and advisory resource on matters related to the administration and interpretation of the act. Representative Cappabianca endorsed this recommendation, as well.

*Response:* The Department has added a subsection describing its educational outreach role. The Department conducts an active educational outreach effort and answers questions posed by interested landowners, county assessors, legislators and others regarding the act. The subsection does not require the Department to issue legal opinions or act as a court in resolving questions that arise under the act or the final-form regulations.

*Comment:* IRRC suggested proposed § 137b.4 (relating to contacting the Department) be revised to include an e-mail address for use in contacting the Department.

*Response:* Although the Department agrees this is a good suggestion, the Department's current e-mail system does not have an e-mail address for the Bureau of Farmland Protection, the Bureau to which questions relating to the act or this chapter would be referred. Individual employees of the Department have e-mail addresses, and will make use of e-mail in responding to questions and requests.

*Comment:* The Legislative Committees suggested proposed § 137b.12 (relating to agricultural use) be revised to include the term "agricultural commodity," a term defined in section 2 of the act, rather than the undefined term "agricultural production."

IRRC offered its endorsement of the Legislative Committees' suggestion.

The Legislative Committees also suggested reference be made to the fact that agricultural use land may be enrolled in Federal soil conservation programs. This is specifically provided for in the definition of that term in section 2 of the act.

*Response:* The Legislative Committees' suggestion has been implemented in the final-form regulations.

*Comment:* Several comments were received with respect to proposed § 137b.13 (relating to agricultural reserve).

The Legislative Committees and Representative Cappabianca suggested the requirement that at least 60% of the land be comprised of soils falling with USDA-NRCS land capability classes I—VI be deleted, offering that this requirement exceeded the authority of the act. Both IRRC and Montgomery County offered essentially the same comment.

The Legislative Committees suggested the Department insert some reference to the fact that woodlots are considered part of agricultural reserve land. This reference is contained in the act, in the definition of "woodlot" in section 2 of the act.

*Response:* The suggestions of the commentators have been implemented in the final-form regulations.

*Comment:* The Legislative Committees and IRRC question whether the Department has authority under the act to impose the 25-cubic-foot-per-acre timber production capability requirement for forest reserve land in proposed § 137b.14.

*Response:* The Department has removed the referenced requirement from the final-form regulations.

*Comment:* IRRC suggested proposed § 137b.14 be revised by adding language from subparagraph (ii) of the definition of “forest reserve” in proposed § 137b.2. That language addresses land that is rented to another for the purpose of producing timber products.

The Legislative Committees offered a similar recommendation.

*Response:* The recommendations have been implemented in the final-form regulations.

*Comment:* IRRC recommended proposed § 137b.22 (relating to landowner may include or exclude from the application tracts described in separate deeds) be revised by adding references to the fact that individual adjoining tracts may be combined to meet the minimum eligibility requirements, and that a tract that does not meet these minimum requirements may receive preferential assessment if it adjoins an enrolled tract owned by the same landowner.

*Response:* The Department declines to implement this recommendation. The suggested additions already appear in the final-form regulations, in §§ 137b.19(1)(i) and 137b.23(a) (relating to multiple tracts on a single application; and land adjoining preferentially assessed land with common ownership is eligible).

Significantly, the Department notes that the Legislative Committees, which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself, offered no objection to proposed § 137b.22.

*Comment:* PFB recommended proposed § 137b.22 be revised by adding language affirming that a county assessor cannot deny an application for preferential assessment simply on the basis of the landowner’s decision to exclude a separately-deeded contiguous tract from the application, or deny an application on the basis that one of two or more contiguous tracts does not, by itself, meet the eligibility requirements for preferential assessment.

*Response:* The Department declines to implement this recommendation, since the basic subject matter of the recommended language is addressed in §§ 137b.19(1), 137b.21 (relating to exclusion of noncontiguous tract described in a single deed) and 137b.22.

*Comment:* The Legislative Committees recommended changing the title of proposed § 137b.24 (relating to ineligible land) to “ineligible land.”

*Response:* The Department has implemented this recommendation in the final-form regulations.

*Comment:* The Legislative Committees and Representative Cappabianca recommended the Department delete the sentence preceding the example in proposed § 137b.24, since the “. . . General Assembly determined eligibility requirements as stated in the act.”

Montgomery County offered a similar comment, stating that the now-deleted sentence was confusing.

IRRC also agreed with the commentators, noting that the ultimate determinants of eligibility for preferential assessment are the requirements and standards set forth in the act.

*Response:* The Department has implemented the recommendation of the Legislative Committees’, Representative Cappabianca and IRRC in the final-form regulations. This also provides Montgomery County the changes it requested.

*Comment:* The Legislative Committees suggested the language appearing in the example in proposed § 137b.24 prohibiting a county from requiring ineligible land to be surveyed-out or deeded as a prerequisite to consideration of the application be deleted and restated in the text of that section.

Montgomery County also found the referenced example confusing, and suggested the Department eliminate the reference to a tract being “surveyed-out” from the final-form regulation.

*Response:* The Department accepts these suggestions, and has implemented them in the final-form regulations.

*Comment:* The Legislative Committees offered several grammatical revisions to Examples 1 and 2 in proposed § 137b.26 (relating to land located in more than one tax district).

The Legislative Committees also suggested language in Example 2 indicating that an application would have to be filed in each county in which the land was located be deleted.

IRRC raised a similar concern with respect to Example 2, recommending it be made consistent with proposed § 137b.43 (relating to applications where subject land is located in more than one county).

*Response:* The requested revisions have been made in the final-form regulations.

*Comment:* The Legislative Committees “strongly recommended” proposed § 137b.27 (relating to assessment of ineligible land) be revised by deleting any reference to “buildings” in that section. The Legislative Committees offered that the inclusion of this word would be irrelevant and may cause misinterpretation of the act.

IRRC endorsed this recommendation.

*Response:* The recommendation has been implemented in the final-form regulations.

*Comment:* The Legislative Committees offered several comments with respect to proposed § 137b.41. Initially, the Legislative Committees suggested the “Clean and Green Valuation Application” and “Clean and Green Worksheet,” referenced in proposed § 137b.41(a) and (b), be attached to the final-form regulations.

IRRC offered an alternative to the inclusion of the referenced forms in an appendix to the regulation. IRRC suggested the final-form regulations set forth the type of information that will be requested on the referenced forms, rather than the forms themselves.

*Response:* The Department declines to implement the Legislative Committees’ suggestion. The Department would prefer to be able to make necessary revisions or corrections to these forms outside the regulatory promulgation process. The Department will provide copies of the referenced forms to all county assessors, and will also provide them revised versions of these forms when/if revisions occur.

With respect to IRRC’s alternative, the Department has revised the final-form regulations to indicate the type of information that will be required on the Clean and Green Valuation Application. The Department believes the Clean

and Green Worksheet is self-explanatory, and has not summarized it in the final-form regulations.

*Comment:* The Legislative Committees had no specific revisions to offer with respect to proposed § 137b.41(d), but noted that the required language set forth in that subsection, which is prescribed by section 4(c) of the act (72 P. S. § 5490.4(c)) (relating to applications for preferential treatment), does not appear in the Department's most recent draft of the application form.

*Response:* The application form has been revised to set forth this required language.

*Comment:* The Legislative Committees suggested that proposed § 137b.41(e) should be revised to make clear the requirement of section 3(e) of the act (72 P. S. § 5490.3(e)), which prohibits a county assessor from imposing conditions or requirements for eligibility for preferential assessment other than those prescribed by the act.

IRRC also offered a comment with respect to this subsection. IRRC suggested the subsection be revised to include examples of the types of information a county assessor might request, and require the county assessor to conduct a "completeness review" of the application within 30 days of receipt.

PFB offered a comment that was similar to one offered by IRRC. The PFB suggested this subsection be revised to designate various types of proof that would automatically be recognized as adequate proof for establishing eligibility for preferential assessment under each of the land use categories. The PFB also provided recommended language to accomplish this revision.

*Response:* The Department believes the referenced subsection does not authorize a county assessor to impose new or different eligibility requirements for preferential assessment under the act. The subsection does, though, afford a county assessor reasonable discretion to require that a landowner demonstrate that the land described in an application for preferential assessment meets the eligibility requirements prescribed by the act.

With respect to the comments offered by IRRC and the PFB, the Department declines to provide a list of examples of the type of information a county assessor might reasonably require. It has been the experience of the Department that when it provides such a list, a county assessor might either refuse to accept any documentation that is not contained on the list, or require a specific type of document on that list (such as a formal forestry management plan) in all instances.

The Department also declines to implement IRRC's suggestion that the final-form regulations require a county assessor to conduct a "completeness review" of an application within 30 days of receipt of the application. The act imposes in section 4, a general requirement that a county assessor process applications in a timely manner. The Department believes this is sufficient to require a county assessor to move an application along through the review process, and that further regulation is not necessary. In addition, the Department does not believe it has statutory authority to impose any sanction or adverse consequences upon a county assessor who failed to meet such a deadline.

*Comment:* The PFB suggested that proposed § 137b.41(f) be revised by deleting the requirement that signatures on an application for preferential assessment be notarized:

... We feel the added protection that the requirement for notarization of signature may potentially bring is not worth the actual aggravation the requirement will cause for landowners.

*Response:* Although the Department acknowledges that it might be inconvenient for an applicant to affix a notarized signature to an application for preferential assessment, it is also aware that county recorders of deeds will not file approved applications unless the applicant's signature is notarized. For this reason, the commentator's suggestion has not been implemented.

*Comment:* The Legislative Committees suggested the Department be certain that proposed § 137b.43 be revised, if necessary, to be consistent with the final-form version of § 137b.26 in terms of whether an application must be filed in each taxing district.

*Response:* The Department accepts this suggestion. The final-form versions of each of these sections reflect the application need only be filed in the jurisdiction in which the landowner pays property taxes.

*Comment:* The Legislative Committees suggested the title of proposed § 137b.46 (relating to fees of the county board for assessment appeals; recording fees; processing fees) be revised to indicate the section also describes recording fees, and to indicate a distinction between recording fees and processing fees.

The Legislative Committees renewed its earlier-stated position that: "... the intent of the General Assembly is that no fees, other than the initial processing and necessary recording fees, are to be imposed on a landowner." The commentator recommended the Department delete language that would allow a county assessor to charge a \$50 fee for processing changes other than those resulting from split-off, separation or transfer. The commentator also recommended a new subsection be added to state that a fee can not be charged if an application is denied.

IRRC recommended the final-form regulations make specific reference to those provisions of the act relating to fees. These provisions are in section 4(d)—(f) of the act.

*Response:* The Department has revised the title of this section in accordance with the Legislative Committees' recommendation, and has made the recommended deletions in the final-form regulations.

The Department has also added subsection (c), prohibiting the collection of a recording fee with respect to an application that is ultimately rejected. This is consistent with section 4(d) of the act.

With regard to the comment offered by IRRC, the Department has included the recommended statutory references in the final-form regulations.

*Comment:* PFB also offered a comment with respect to proposed § 137b.46(a). It recommended the following sentence be added at the end of that subsection, to cross-reference the governing section on recording fees: "The amount of recording fee that may be charged is subject to the limitations prescribed in § 137.82."

*Response:* The Department believes the regulatory provision is sufficiently clear and declines to implement PFB's recommendation in the final-form regulations.

*Comment:* The Legislative Committees recommended several minor grammatical revisions to proposed § 137b.51(b)(1), (c)(1) and (2) (relating to assessment procedures).

*Response:* These recommendations have been implemented in the final-form regulations.

*Comment:* The Assessors' Committee reviewed proposed § 137b.51(d), which describes the mathematical process by which preferential assessment is determined. The commentator recommended the provision be revised to reflect that the final number arrived at under the proposed formula should then be multiplied by the predetermined ratio in effect for the particular county to arrive at the assessment, to which the millage rate is then applied.

IRRC offered substantially the same comment, suggesting the term "established predetermined ratio," as set forth in section 102 of the General County Assessment Law (72 P. S. § 5020-102), be incorporated into the basic formula described in this section.

*Response:* The recommendations have been implemented in the final-form regulations.

*Comment:* The PFB reviewed proposed § 137b.51(e) and (f), which describe the option of county assessors to establish and use lower use values than those provided by the Department. The PFB noted that subsection (e) allows county assessors to use lower land use values for land use subcategories, while subsection (f) allows county assessors to use lower land use values for land use categories. The commentator recommended subsection (f) be revised to consistently use the term "land use subcategory" rather than "land use category."

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Assessors' Committee suggested proposed § 137b.52 (relating to duration of preferential assessment) be revised by deleting the final sentence of subsection (b) and deleting Examples (3) and (4). The commentator noted that there is no provision in the act allowing for the unilateral withdrawal from preferential assessment by a landowner. In short, preferential assessment ends when the use of the enrolled land is changed to something other than agricultural, agricultural reserve or forest reserve. The commentator believes the inclusion of the referenced provisions is not appropriate. The Assessors' Association offered substantially the same comment.

The substance of this comment was restated by the Legislative Committees. In addition, the Legislative Committees recommended the deletion of the final sentence of proposed § 137b.52(b) and Examples (1) and (2).

IRRC recommended the deletion of the final sentence of proposed § 137b.52(b) and Examples (3) and (4).

Sullivan County also offered its general disagreement with proposed § 137b.52(b).

Representative Cappabianca recommended the deletion of the final sentence of subsection (b), and the deletion of Examples (3) and (4) under that subsection.

Attorney Halsted noted that Example (3) did not indicate which "landowner" is liable for the payment of roll-back taxes plus interest.

Montgomery County also suggested the final-form regulations delete the proposed language relating to voluntary payment of roll-back taxes plus interest in advance of change-of-use. Representative Cappabianca endorsed Montgomery County's suggestion.

Both Montgomery County and Attorney Halsted offered comments in favor of allowing a landowner to voluntarily end preferential assessment without changing the use of the enrolled land. Attorney Halsted referenced a situation where an owner of enrolled land seeks to convey the

enrolled land for some use other than agricultural, agricultural reserve or forest reserve. Montgomery County offered the following:

... In any other covenant/contract, one party may voluntarily breach the covenant and bear the consequences. There should be a provision to allow the owner of a property enrolled in Act 319 to voluntarily request termination from Clean and Green. There is nothing in the Act to preclude this.

*Response:* The Department has deleted language describing the advance payment of roll-back taxes plus interest from the final-form regulations, in accordance with the suggestions offered by the Assessors' Committee, the Legislative Committees, IRRC, Montgomery County and Sullivan County. The Department notes that, as written, the proposed section did not allow a landowner to unilaterally terminate preferential assessment. Instead, it allowed a landowner to make advance payments toward the roll-back taxes and interest that would be due upon subsequent change to an ineligible use.

The Department has not implemented Attorney Halsted's suggestion or Montgomery County's suggestion that language be added to allow for the voluntary termination of preferential assessment without change of use of the enrolled land. The Department believes the section 4(b) of the act requires that preferential assessment continue until land use change takes place.

*Comment:* The PFB also offered extensive comments with respect to proposed § 137b.52(c) and (d). In summary, the PFB expressed concern that:

... the proposed regulations do not give sufficiently clear guidance on the effect of a change in use of one portion of enrolled land that triggers roll-back taxes, plus interest, on all of such land will have in terminating preferential assessment of the "remainder" that is not directly affected by the land use change.

The PFB takes the position that preferential assessment of enrolled land must end when roll-back taxes, plus interest, are due with respect to that enrolled land. If the land or some portion thereof remains eligible for preferential assessment, the landowner may reapply for preferential assessment. The PFB strongly recommended the proposed subsections be revised to state that preferential assessment of enrolled land is terminated when roll-back taxes plus interest, are triggered.

Following the Department's withdrawal of an earlier version of this final-form regulations, however, the PFB and Legislative Committee staff met and reached agreement as to the substance of the revisions appearing in § 137b.52 of the final-form regulations.

*Response:* The Department has revised proposed § 137b.52(c) and (d) to clarify that where a split-off occurs on some portion of enrolled land and roll-back tax liability is triggered on the entirety of the enrolled land as a result, the landowner may terminate preferential assessment of the entirety of the enrolled land by providing the county assessor the written notice of termination required under section 3(d) of the act. Where the landowner does not seek to terminate preferential assessment of the remaining land, and the remaining land continues to be eligible for preferential assessment, though, preferential assessment of the remaining land shall continue uninterrupted.

As stated, the revisions of the referenced subsections were drafted with the assistance of Legislative Committee staff and PFB.



*Comment:* The Legislative Committees offered several technical corrections to proposed § 137b.52(d), Examples (3) and (4).

IRRC also recommended these technical corrections.

*Response:* The technical corrections have been made in the final-form regulations.

*Comment:* Montgomery County reviewed proposed § 137b.52(e)(2), and suggested the provision was inconsistent with subsection (c) of this section and several provisions of sections 4(f)(2) and 6 of the act. The commentator suggested this entire subsection be deleted.

*Response:* The Department believes subsection (e)(2) describes the “maximum area” with respect to which a county may terminate preferential assessment under certain conditions, and is not inconsistent with subsection (c), as that subsection has been revised.

*Comment:* The Legislative Committees offered several technical corrections to proposed §§ 137b.52(e)(2)—(4) and (7)—(10) and (f).

*Response:* The technical corrections have been made in the final-form regulations.

*Comment:* The PFB recommended proposed § 137b.52(f) be revised by replacing the final sentence of that subsection. The commentator thought the final sentence was confusing, and recommended specific language for a replacement sentence.

*Response:* The Department declines to implement this recommendation in the final-form regulations. The Department believes the referenced sentence is clear and unambiguous, and that the recommended replacement sentence would not improve this subsection.

*Comment:* The Legislative Committees recommended the last sentence of proposed § 137b.52(g) be removed, as “. . . there is no authority within the law to make a distinction between contiguous tracts and non-contiguous tracts in the same application (see section 6(a.3) of the act).”

IRRC also questioned whether the act provided authority for this distinction.

IRRC also commented that the proposed subsection does not indicate who is responsible for roll-back taxes and interest, if there is a change of use of the land. IRRC suggested a reference be made to the provision of section 5490.6(a.3) of the act which states that: “The landowner changing the use of the land . . . shall be liable for the payment of roll-back taxes.”

*Response:* The Department has not added the reference to responsibility for roll-back taxes as suggested by IRRC, and believes this subject is adequately addressed elsewhere in the final-form regulations. The Department has implemented the Legislative Committees’ recommendation in the final-form regulations.

*Comment:* The PFB recommended the phrase “without a change to an ineligible use” be deleted from proposed § 137b.52(g). The commentator was concerned that this qualifier might be construed as making the conveyor of the transferred land responsible for the payment of roll-back taxes plus interest, rather than the person who acquires the land and changes it to an ineligible use.

*Response:* The recommendation has been implemented in the final-form regulations.

*Comment:* The Legislative Committees offered several comments with respect to proposed § 137b.53 (relating to calculation and recalculation of preferential assessment).

Several of these comments recommended minor technical revisions. The commentator also noted that an earlier proposed draft of this section had included a subsection specifying that a recalculation of preferential assessment in accordance with the methods described in this section would not constitute an illegal “spot assessment.” The commentator suggested this language be reinserted into the final-form regulations.

*Response:* The commentator’s recommended technical revisions have been implemented in the final-form regulations.

The Department declines to implement the recommendation to reinsert the conclusory statement that recalculation of preferential assessment is not “spot assessment.” The Department deleted this provision from an earlier draft in response to a commentator who noted that the provision was conclusory in nature and would not carry appreciable weight with a reviewing court.

*Comment:* IRRC suggested proposed § 137b.53(b) be revised to contain a description of the process for calculating the “base year” referenced in that subsection.

*Response:* The Department declines to implement this suggestion.

Significantly, the Department notes that the Assessors’ Committee, which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself, offered no comment recommending the final-form regulations contain an explanation of the process by which “base year” is to be calculated.

*Comment:* The Assessors’ Association expressed to IRRC that there appeared to be a conflict between proposed §§ 137b.53 and 137b.105 (relating to annual update of records). In particular, the commentator noted that proposed § 137b.53(b) affords a county assessor the option to recalculate preferential assessment each year or establish a base year. Proposed § 137b.105 requires an annual update of records.

The commentator also offered that the “options” afforded a county assessor under proposed § 137b.53(b) appear to be negated by subsections (c)—(f), which require recalculation of preferential assessments under certain circumstances.

*Response:* The Department disagrees with the commentator with respect to both comments. Proposed §§ 137b.53 and 137b.105 are not contradictory. The former affords a county assessor certain options. The latter requires that, if an option is exercised so as to make any of the information contained in the records referenced in that section inaccurate, the county assessor will correct those records at intervals of no greater than 1 year.

In addition, the provisions in § 137b.53(c)—(f) do not take away the options set forth in subsection (b) in the absence of the special circumstances described in each of those four subsections.

*Comment:* The PFB suggested proposed § 137b.53(b)(2) be clarified by adding the phrase “unless recalculation is required under subsection (c), (d), (e) or (f)” to the end of that paragraph.

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* IRRC raised several questions regarding proposed § 137b.53(g). IRRC requested the Department explain the statutory authority for this subsection, the

reason it is "optional" and the reason for the Department's selection of the "June 1, 1998" cut-off date.

*Response:* The referenced subsection has been deleted from the final-form regulations.

*Comment:* The Legislative Committees provided specific language it recommended be added to proposed § 137b.54, and offered the following comment in support of its recommendation:

This is the section where the clarification of the proposed definition of the term "contributory value of farm buildings" would be appropriate. Any attempt to extend the term further would allow for willful circumvention of the intent of the statutory definition and for lack of uniformity in administration by counties . . .

IRRC offered its concurrence with the Legislative Committees' recommendation.

*Response:* The Department has added the recommended language to the final-form regulations.

*Comment:* The PFB reviewed proposed § 137b.62 (relating to enrolled "agricultural use" land of less than 10 contiguous acres) and suggested the section be revised to designate specific documents that would automatically suffice to demonstrate eligibility of land for preferential assessment as "agricultural use" land. The suggested documents are consistent with those recommended by the PFB in its comment with respect to proposed § 137b.41(e).

*Response:* The Department declines to implement this suggestion, for the same basic reasons as offered in response to PFB's comment regarding proposed § 137b.41(e).

*Comment:* The Legislative Committees recommended Example (3) in proposed § 137b.62(c) be revised to refer to "production of an agricultural commodity" rather than the production of swine.

IRRC offered its concurrence with this recommendation.

*Response:* The Department agrees the recommended language is an improvement, and has added it to the final-form regulations.

*Comment:* Representative Cappabianca reviewed proposed § 137b.63 (relating to notice of change of application), and suggested the word "located" in subsection (a) be replaced with the phrase "preferentially assessed." The commentator believed this addressed the situation where a tract of enrolled land is located in more than one county.

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Department revised proposed §§ 137b.52 and 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act) in response to the recommendations of the Legislative Committees and the PFB. Since these revisions reference the responsibility of an owner of enrolled land to provide the county a notice of termination of preferential assessment under certain circumstances and describe events that might alter the acreage receiving preferential assessment, the Legislative Committees (through Committee staff) recommended proposed § 137b.63 be revised to more affirmatively state the obligations of the landowner with respect to terminating preferential assessment and cooperating with the county in keeping records current.

*Response:* In response to this recommendation, the Department has added a new subsection (c), and has redesigned proposed subsection (c) to be subsection (d).

*Comment:* The PFB also offered a comment with respect to proposed § 137b.63, suggesting subsection (b)(6) and (7) be deleted. The commentator did not see that requiring the information described in these paragraphs would provide any tangible benefit.

*Response:* The referenced subparagraphs have been deleted from the final-form regulations.

*Comment:* IRRC reviewed proposed § 137b.64(c) (relating to agricultural reserve land to be open to the public), noted the subsection allows for an owner of enrolled land to place reasonable restrictions on public access to agricultural reserve land and asked the Department to explain the legal basis for affording the landowner this discretion.

*Response:* The act does not specifically grant the landowner this discretion. Nor does it disallow it. The Department believes it reasonable to allow the landowner to place some practical restrictions on the uses to which agricultural reserve land may be put. For example, if agricultural reserve land adjoins residential structures, the landowner should be allowed to prohibit hunting within a reasonable distance of these residential structures. The Department is satisfied this subsection is a reasonable exercise of the Department's regulatory authority.

Significantly, the Department notes that the Legislative Committees, which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself, offered no objection to the proposed subsection.

*Comment:* The PFB also offered extensive comments with respect to proposed § 137b.64(c). In summary, the PFB believed the proposed subsection failed to provide any meaningful criteria for determining appropriate public uses of agricultural reserve land and failed to promote uniformity among counties. PFB also questioned the Department's use of the term "reasonable," and expressed that this term may encourage "discord, rather than uniformity" among counties. The PFB had, in the drafting of the proposed regulation, provided the Department language that would establish more specific criteria with respect to outdoor recreational activities on agricultural reserve land. The PFB renewed its request this language be incorporated into the final-form regulations.

*Response:* The Department appreciates the well-written language provided by the PFB, but declines to include this recommended language in the final-form regulations.

The Department does not believe it is necessary to promulgate detailed regulations on the subject of the appropriate public uses of agricultural reserve land. The referenced subsection provides a number of examples of restrictions that a landowner might impose with respect to such uses. The Department believes that, given the infinite combinations of circumstances involved in this area (hazards on the land, danger to the soil, public safety, various potential public uses, and the like), the best approach is to simply impose a broad standard of "reasonableness" and offer several examples of restrictions that might be reasonable.

The Department is mindful of the numerous comments made in opposition to the definition of "outdoor recreation" in proposed § 137b.2. That definition attempted to provide detailed guidance and examples as to the types of

activities that could be considered "outdoor recreation." The definition was revised in the final-form regulations in response to these comments. Details and examples were removed from the definition, primarily at the behest of commentators from the Legislature.

The Department will continue to monitor this issue once the final-form regulations is promulgated. If there appears to be a need for more specific regulations in this area, the Department will revisit this subsection.

*Comment:* The Legislative Committees recommended a minor grammatical revision to proposed § 137b.64(d).

*Response:* The recommendation has been implemented in the final-form regulations.

*Comment:* The Legislative Committees reviewed proposed § 137b.71 (relating to death of an owner of enrolled land) and suggested language be added to the Example in subsection (a) and Example (1) in subsection (b) to clarify that it would be necessary for successor landowners to file amended applications to reflect changes wrought by the death of a predecessor landowner. IRRC offered its concurrence with this suggestion.

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* Representative Cappabianca recommended proposed § 137b.71(a) be revised by adding language to clarify that preferential assessment ends on any portion of a tract of enrolled land that, through inheritance, no longer meets the minimum requirements for preferential assessment.

*Response:* The Department believes this subsection is clear and does not need to be revised. The subsection contains specific language indicating the circumstances under which "... preferential assessment shall terminate..." For this reason, the Department declines to implement the recommended revision.

*Comment:* The Legislative Committees recommended proposed § 137b.72(a)(1) (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) be clarified by deleting the rather cumbersome phrase at the end of that paragraph and replacing it with "the land."

*Response:* Although the Department agrees this paragraph can be clarified, it also believes the phrase "the land" is too general. Instead, the Department has inserted the phrase "the remaining land" into this paragraph. The Department's objective is to indicate that it is the land other than the land upon which the commercial enterprise is located that must remain capable of agricultural production and not the land upon which the commercial enterprise itself is located.

*Comment:* The Assessors' Association contacted IRRC with its suggestion that the final-form regulations clarify the meaning of "rural enterprise," as that term is used in proposed § 137b.72(a)(1).

*Response:* The Department declines to implement this suggestion. The Department does not believe it necessary to establish a rigid definition of "rural enterprise." The Department believes the intention of the act is to provide owners of enrolled land a limited (2-acre or less) opportunity to make commercial use of a portion of the enrolled land without subjecting the entirety of the land to roll-back taxes and interest or subjecting the entire tract to removal from preferential assessment. The referenced section makes clear that preferential assessment of the

commercial use portion of the land ends and roll-back taxes and interest are due with respect to that rural enterprise.

The Department also notes the Legislative Committees did not request or suggest a definition of "rural enterprise."

*Comment:* The Legislative Committees offered minor technical revisions with respect to proposed § 137b.73(a) and (g) (relating to wireless or cellular telecommunications facilities).

*Response:* These revisions have been made in the final-form regulation.

*Comment:* The Legislative Committees suggested the text of paragraph (6) of proposed § 137b.74(a) (relating to option to accept or forgive roll-back taxes in certain instances) be switched with the text of paragraph (7) to have these paragraphs in the same order as they appear in section 5490.8 of the act (relating to determination of amounts of taxes when use abandoned).

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Legislative Committees considered proposed § 137b.75 (relating to conveyance of enrolled land for use as a cemetery) and offered the following comment:

Once land is transferred for use as a cemetery there is no provision in the act (see § 8(e)(1)(i)) for the use of the land to change back to agricultural use, agricultural reserve or forest reserve. Furthermore, that land is no longer subject to preferential assessment, so reversion to one of the three eligible uses would require re-application to the program.

*Response:* The revisions recommended by the commentator have been implemented in the final-form regulations.

*Comment:* IRRC noted that proposed §§ 137b.75 and 137b.76 (relating to conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail) make use of the term "transfer" that is not consistent with the definition of that term in proposed § 137b.2. IRRC suggested the Department replace "transfer" with "convey" in these two sections. The PFB offered substantially the same comment as IRRC

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Legislative Committees offered several suggestions with respect to proposed § 137b.76. The commentator recommended subsection (a)(1) be revised to include a reference to an easement or right-of-way in the land, as well as a sale of the land itself. The commentator recommended subsection (a)(2) be revised by deleting the requirement a trail be "unpaved" and deleting the numerous examples provided in the proposed version of that paragraph. It also recommended several technical corrections to subsection (b).

*Response:* The commentator's recommendations have been implemented in the final-form regulations.

*Comment:* The PFB also reviewed proposed § 137b.76, and recommended the last sentence of subsection (b) be deleted. The commentator believes this sentence is not necessary, in light of the provisions of section 8(e)(1) and (2) of the act (72 P. S. § 5490.8(e)(1)). The PFB expressed concern this sentence might: "... be misread as requiring preferential assessment of the remaining portion of the land originally enrolled in Clean and Green to be terminated when the owner of the trail changes the use."

*Response:* The recommendation has been implemented in the final-form regulations.

*Comment:* Several comments were received with respect to proposed § 137b.81 (relating to general).

The Assessors' Committee suggested a phrase be added to indicate that where enrolled land no longer meets the criteria for preferential assessment and the landowner is liable for payment of roll-back taxes and interest, the property shall be removed from preferential assessment.

IRRC offered essentially the same comment.

The Legislative Committees offered general agreement with the comments raised by the PFB. It also offered a minor technical revision, and suggested the phrase "or uses the land for something other than agricultural use, agricultural reserve or forest reserve" be deleted as repetitive.

Representative Cappabianca suggested language be added to state that if enrolled land is changed to an ineligible use it shall lose its preferential assessment.

*Response:* The suggestions of Representative Cappabianca, IRRC and the Assessors' Committee have been implemented in the final-form regulations.

The PFB's suggestions have been implemented in the final-form regulation.

The Legislative Committees' suggestions have been implemented in the final-form regulations.

*Comment:* The Legislative Committees recommended proposed § 137b.82 be revised to clarify that the "2-3" acre lot size referenced in paragraph (1) refers to residential lots.

*Response:* The recommendation has been implemented in the final-form regulations.

*Comment:* The Legislative Committees suggested a minor technical revision to proposed § 137b.83 (relating to split-off that complies with section 6(a.1)(1)(i) of the act).

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Legislative Committees reviewed Example (2) in proposed § 137b.84 and expressed concern that the example might be read as requiring the payment of roll-back taxes twice with respect to the three 2-acre tracts described in that example, once at the time each tract is split-off and again when roll-back taxes are triggered with respect to the remaining 44-acre tract. The commentator also suggested a reference be made to the necessity of filing an amended application when split-off occurs.

*Response:* The Department agrees the example could be clarified, and has inserted language offered by the commentator into the final-form regulations. Although the reference to the fact that roll-back taxes would be due with respect to the entire 50-acre tract is ultimately accurate, the proposed example does not make clear that the roll-back taxes plus interest due with respect to each of the three 2-acre tracts referenced in the example would have been triggered at the time each of those tracts was split-off.

*Comment:* The PFB raised concerns regarding Examples (1) and (2) of proposed § 137b.84. The Legislative Committees suggested revisions to Example (2). Specifically, the PFB recommended each example be revised to reflect that where a split-off occurs, and the split-off does not comply with section 6(a.1)(1)(i) of the act, that split-off triggers liability for roll-back taxes plus interest

on all of the enrolled land and terminates preferential assessment on all the enrolled land. In such a situation, the PFB suggested the landowner should submit an amended application for preferential assessment of the remaining land which continues to meet the eligibility requirements for preferential assessment. The PFB provided language to implement its recommended revision.

The Legislative Committees suggested the phrase "upon the submission of an amended application" be added to the end of Example (2). Apparently, the commentator believes preferential assessment ends with respect to the "remainder" tract and that it must again be the subject of an application for preferential assessment.

Legislative Committee staff and representatives of the PFB subsequently met and assisted in drafting the language that appears in the referenced examples in the final-form regulations.

*Response:* This subject is addressed in detail earlier in this Preamble, in the comments/responses relating to proposed § 137b.52. As stated, Legislative Committee staff and the PFB assisted the Department in drafting the language that has been added to Examples (1) and (2) of § 137b.84 to address the commentators' concerns.

*Comment:* The Legislative Committees suggested a minor technical revision to proposed § 137b.85 (relating to split-off occurring through condemnation).

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Legislative Committees recommended a minor technical revision to proposed § 137b.86 (relating to split-off occurring through voluntary sale in lieu of condemnation), and the use of the term "convey" rather than "transfer" in that section.

*Response:* The recommendations have been implemented in the final-form regulations.

*Comment:* The Legislative Committees suggested several minor technical corrections to proposed § 137b.87 (relating to change in use of separated land occurring within 7 years of separation).

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Legislative Committees recommended several minor technical corrections to proposed § 137b.88 (relating to change of use of separated land occurring 7 years or more after separation).

*Response:* The recommendation has been implemented in the final-form regulations.

*Comment:* Several groups offered comment with respect to proposed § 137b.89 (relating to calculation of roll-back taxes). In particular, commentators voiced their opinions as to whether the interest to be paid on roll-back taxes should be simple interest or compound interest.

The Legislative Committees favored leaving the proposed provision unchanged, noting:

... We believe the way it appears in this proposed rule is correct (simple interest). While it might be interpreted either way, we believe the intent of the act at § 5.1 is to calculate simple interest, or compound interest would have been specifically indicated.

By contrast, the Assessors' Committee offered the following:

The statute clearly states that interest is at the rate of 6% per annum which is compound interest, it is not simple interest on the compounding balance.

The Assessors' Committee recommended substituting "compound" for "simple" in paragraph (2) and reworking the chart contained in that paragraph to reflect compound interest, and reworking Example 1 under paragraph (3) to reflect compound interest.

The Assessors' Association indicated that it was ultimately less interested in whether interest is to be simple or compound than it is in there being a single method defined so as to maintain uniformity.

*Response:* The Department believes there are legitimate arguments to be made on either side of the question of whether the act requires that the interest on roll-back taxes be simple interest or compound interest.

The Department notes that, in addition to the comments offered in the formal comment periods for the proposed regulation, it solicited and received comments on this same issue with respect to earlier drafts of the proposed regulation. These comments showed a similar divergence of opinion. Those favoring the simple interest side of the argument included Dr. Robert S. Barr (President, 21st Century Appraisals), John Becker (Professor of Agricultural Economics and Law, Director of Research at the Agricultural Law Research and Education Center of the Dickinson School of Law, Pennsylvania State University) and commissioners or county assessors from Lehigh County, Mifflin County and Bradford County. Those favoring the compound interest side of the argument included following persons: members of Legislative Staff (offering informal comments, and not representing these comments as the final position of the Legislative Committees), a Clean and Green work group representing county assessors and the Chief Assessor for Montgomery County.

The Department acknowledges that the resolution of this question is a "close call." On balance, though, the Department is inclined to afford the Legislative Committees' position the greatest deference. For this reason the proposed section has not been revised in the final-form regulations.

*Comment:* The Legislative Committees suggested subsection (b)(2) of proposed § 137b.93 (relating to disposition of interest on roll-back taxes) be revised to include a reference to the "special roll-back account" described in section 8(b.2) of the act.

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Legislative Committees reviewed proposed § 137b.102 (relating to recordkeeping) and recommended "property record cards" be added as a reference to an appropriate location to record preferential assessment information, and that the final sentence of be deleted in order to "... conform with the specificity of the act ...".

IRRC offered its concurrence with the Legislative Committees' recommendation.

The PFB also took issue with the phrase "it deems appropriate" in the second sentence of this section, and suggested it be deleted.

*Response:* The recommendations have been implemented in the final-form regulations.

*Comment:* The Assessors' Committee considered proposed § 137b.105 and asked for clarification of whether

the provision mandates the annual reassessment of enrolled land and the annual calculation of new fair market values.

*Response:* The proposed section does not mandate the annual reassessment of enrolled land and the annual recalculation of fair market values. The section requires that records to be kept current.

*Comment:* The Legislative Committees suggested a minor technical correction to proposed § 137b.106 (relating to notification of change in preferential assessment status).

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* Several comments were received with respect to proposed § 137b.131 (relating to civil penalties).

Section 5b(a) of the act allows for the imposition of a civil penalty upon a person for: "... each violation of this act or any regulation promulgated under this act." The PFB raised the point that a civil penalty should not be imposed against a person who changes the use of enrolled land to some ineligible use. This change does not "violate" any provision of the act or the final-form regulations. The act does not prohibit the occurrence of such a change in use, it merely imposes roll-back tax consequences in the event certain land use changes occur. The PFB suggested language be added to this section to prohibit the assessment of civil penalties solely on the basis that the landowner performed some act that triggers responsibility for payment of roll-back taxes and interest.

Sullivan County offered a similar comment.

The Legislative Committees offered their general support for the comments offered by the PFB on this subject.

IRRC offered its concurrence with the comments of the Legislative Committees and the PFB.

*Response:* The Department agrees with the PFB and the other commentators on this subject and has added appropriate language to the final-form regulations.

*Comment:* IRRC suggested proposed § 137b.131(d) be revised to replace the phrase "timely notification" with a specific reference to the 10-day deadline set forth in subsection (b)(2).

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* IRRC suggested proposed § 137b.131(c) be revised to replace the phrase "10 days" with "10 calendar days" in order to make the regulatory language track with section 5b(b) of the act (72 P. S. § 5490.5b(b)).

*Response:* The suggestion has been implemented in the final-form regulations.

*Comment:* The Legislative Committees offered several general comments with respect to the proposed regulation.

The commentator noted that section 10 of the act (72 P. S. § 5490.10) (relating to renegotiation of open space agreements) allows for the renegotiation of certain "open space" agreements, at the option of the landowner, to make them conform to the preferential assessment requirements of the act.

The commentator also noted that section 5(c) of the act (72 P. S. § 5490.5(c)) imposes certain requirements on the State Tax Equalization Board (Board).

The commentator suggested the Department add new sections to the final-form regulations to address these subjects.

*Response:* The Department declines to implement the suggestion the final-form regulations address the renegotiation of "open space" agreements or the requirements imposed upon the Board. The sections of the act which address sections 10 and 5(c) respectively, are self-executing and there is nothing helpful the Department could add through regulation.

*Fiscal Impact*

*Commonwealth*

The final-form regulations will have no appreciable fiscal impact upon the Commonwealth.

*Political Subdivisions*

The final-form regulations will impose costs upon county governments. Counties are likely to incur expenses in recalculating preferential assessments as required under the act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the act accomplished by Act 156 may result in tax revenue shortfalls when collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

*Private Sector*

If the act, as amended by Act 156, results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers from the private sector (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

*General Public*

If the act, as amended by Act 156, results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to offset this tax revenue shortfall.

*Paperwork Requirements*

The final-form regulations are not expected to result in an appreciable increase in paperwork.

*Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Raymond C. Pickering, (717) 783-3167.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 2, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 4573 (September 2, 2000), to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

In preparing these final-form regulations, the Department has considered all comments received.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on March 7, 2001, these final-form

regulations were deemed approved by the House Agricultural and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulations.

*Findings*

The Department finds that:

(1) Public notice of its intention to adopt the regulations encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 30 Pa.B. 4573 (September 2, 2000).

(4) The adoption of the regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Department, acting under authority of the authorizing statute, orders the following:

(a) The regulations of the Department, 7 Pa. Code, are amended by adding §§ 137b.1—137b.4, 137b.11—137b.27, 137b.41—137b.46, 137b.51—137b.54, 137b.61—137b.64, 137b.71—137b.76, 137b.81—137b.93, 137b.101—137b.112, 137b.121, 137b.122 and 137b.131—137b.133; and by deleting §§ 137.1—137.12, 137.21—137.30, 137.41—137.46, 137.51—137.57, 137.61—137.70 and 137a.1—137a.24 to read as set forth in Annex A.

(b) The current interim regulations of the Department in Chapter 137a are hereby rescinded.

(c) New regulations of the Department are hereby established in Chapter 137b (relating to preferential assessment of farmland and forest land under the clean and green act), as set forth at Annex A.

(d) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(e) The Secretary of Agriculture shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(f) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,  
*Secretary*

**Fiscal Note:** Fiscal Note 2-133 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART V-C. FARMLAND AND FOREST LAND**

**CHAPTER 137. (Reserved)**

**§§ 137.1—137.12. (Reserved).**

**§§ 137.21—137.30. (Reserved).**

**§§ 137.41—137.46. (Reserved).**

**§§ 137.51—137.57. (Reserved).**

**§§ 137.61—137.70. (Reserved).**

**CHAPTER 137a. (Reserved)****§§ 137a.1—137a.24. (Reserved).****CHAPTER 137b. PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT****GENERAL PROVISIONS**

- Sec.  
 137b.1. Purpose.  
 137b.2. Definitions.  
 137b.3. Responsibilities of the Department.  
 137b.4. Contacting the Department.

**ELIGIBLE LAND**

- 137b.11. General.  
 137b.12. Agricultural use.  
 137b.13. Agricultural reserve.  
 137b.14. Forest reserve.  
 137b.15. Inclusion of farmstead land.  
 137b.16. Residence not required.  
 137b.17. Common ownership required.  
 137b.18. County-imposed eligibility requirements.  
 137b.19. Multiple tracts on a single application.  
 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.  
 137b.21. Exclusion of noncontiguous tract described in a single deed.  
 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.  
 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.  
 137b.24. Ineligible land.  
 137b.25. Multiple land use categories on a single application.  
 137b.26. Land located in more than one tax district.  
 137b.27. Assessment of ineligible land.

**APPLICATION PROCESS**

- 137b.41. Application forms and procedures.  
 137b.42. Deadline for submission of applications.  
 137b.43. Applications where subject land is located in more than one county.  
 137b.44. County processing of applications.  
 137b.45. Notice of qualification for preferential assessment.  
 137b.46. Fees of the county board for assessment appeals; recording fees; processing fees.

**PREFERENTIAL ASSESSMENT**

- 137b.51. Assessment procedures.  
 137b.52. Duration of preferential assessment.  
 137b.53. Calculation and recalculation of preferential assessment.  
 137b.54. Calculating the contributory value of farm buildings.

**OBLIGATIONS OF THE OWNER OF ENROLLED LAND**

- 137b.61. Transfer of enrolled land.  
 137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.  
 137b.63. Notice of change of application.  
 137b.64. Agricultural reserve land to be open to the public.

**IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT**

- 137b.71. Death of an owner of enrolled land.  
 137b.72. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.  
 137b.73. Wireless or cellular telecommunications facilities.  
 137b.74. Option to accept or forgive roll-back taxes in certain instances.  
 137b.75. Conveyance of enrolled land for use as a cemetery.  
 137b.76. Conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail.

**LIABILITY FOR ROLL-BACK TAXES**

- 137b.81. General.  
 137b.82. Split-off tract.  
 137b.83. Split-off that complies with section 6(a.1)(1)(i) of the act.  
 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act.  
 137b.85. Split-off occurring through condemnation.  
 137b.86. Split-off occurring through voluntary sale in lieu of condemnation.  
 137b.87. Change in use of separated land occurring within 7 years of separation.  
 137b.88. Change in use of separated land occurring 7 years or more after separation.  
 137b.89. Calculation of roll-back taxes.  
 137b.90. Due date for roll-back taxes.  
 137b.91. Liens for nonpayment of roll-back taxes.  
 137b.92. Time period within which roll-back taxes are to be calculated and notice mailed.  
 137b.93. Disposition of interest on roll-back taxes.

**DUTIES OF COUNTY ASSESSOR**

- 137b.101. General.  
 137b.102. Recordkeeping.  
 137b.103. Recording approved applications.  
 137b.104. Determining total use value.  
 137b.105. Annual update of records.  
 137b.106. Notification of change in preferential assessment status.  
 137b.107. Notification of change in factors affecting total assessment.  
 137b.108. Adjusting records to reflect split-off, separation or transfer.  
 137b.109. Enforcement and evidence gathering.  
 137b.110. Assessment of roll-back taxes.  
 137b.111. Record of tax millage.  
 137b.112. Submission of information to the Department.

**RECORDER OF DEEDS**

- 137b.121. Duty to record.  
 137b.122. Fees of the recorder of deeds.

**MISCELLANEOUS**

- 137b.131. Civil penalties.  
 137b.132. Distributing taxes and interest.  
 137b.133. Appealing a decision of the county assessor.

**GENERAL PROVISIONS****§ 137b.1. Purpose.**

(a) This chapter establishes procedures necessary for the uniform Statewide implementation of the act. The act provides for land devoted to agricultural use, agricultural reserve use or forest reserve use to be assessed at the value it has for that use rather than at fair market value. The intent of the act is to encourage the keeping of land in one of these uses.

(b) The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same value for tax assessment purposes as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is not enrolled land will be most noticeable when a county is reassessed.

**§ 137b.2. Definitions.**

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

*Act*—The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act.

*Agricultural commodity*—Any of the following:

(i) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.

(ii) Pasture.

(iii) Livestock and the products thereof.

(iv) Ranch-raised furbearing animals and the products thereof.

(v) Poultry and the products of poultry.

(vi) Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

(vii) Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

*Agricultural reserve*—

(i) Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty

and open to the public for that use, without charge or fee, on a nondiscriminatory basis.

(ii) The term includes any farmstead land on the tract.

*Agricultural use*—Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

(i) The term includes any farmstead land on the tract.

(ii) The term includes a woodlot.

(iii) The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.

*Assessment ratio or county's established predetermined ratio*—The ratio established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.

*Capitalization rate*—The percentage rate used to convert income to value, as determined by the most recent 5-year rolling average of 15-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's risk of investment and the effective tax rate.

*Class A beneficiaries for inheritance tax purposes*—The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, wife, widow, husband or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.

*Contiguous tract*—

(i) All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers.

(ii) The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

*Contributory value of farm building*—The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.

*County*—The county assessor, the county board of assessment or other county entity responsible to perform or administer a specific function under the act.

*Curtilage*—The land surrounding a residential structure and farm building used for a yard, driveway, onlot sewage system or access to any building on the tract.

*Department*—The Department of Agriculture of the Commonwealth.

*Enrolled land*—Land eligible for preferential assessment under an approved application for preferential assessment filed in accordance with the act.

*Fair market value*—The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell

would accept for the property, and which a willing and informed buyer who is under no obligation to buy would pay for the property.

*Farm building*—A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the Agricultural Area Security Law (3 P. S. §§ 901—915).

*Farmstead land*—Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.

*Forest reserve*—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. The term includes farmstead land on the tract.

*Income approach*—The method of valuation which uses a capitalization rate to convert annual net income to an estimate of present value. Present value is equal to the net annual return to land divided by the capitalization rate.

*Ineligible land*—Land which is not used for any of the three eligible uses (agricultural use, agricultural reserve or forest reserve) and therefore cannot receive use value assessment.

*Land use category*—Agricultural use, agricultural reserve or forest reserve.

*Land use subcategory*—A category of land in agricultural use, agricultural reserve or forest reserve, established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the act (72 P. S. §§ 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land.

*Net return to land*—Annual net income per acre after operating expenses are subtracted from gross income. The calculation of operating expenses does not include interest or principal payments.

*Normal assessment*—The total fair market value of buildings and ineligible land, as of the base year of assessment, on a tract multiplied by the assessment ratio.

*Outdoor recreation*—Passive recreational use of land that does not entail the erection of permanent structures or any change to the land which would render it incapable of being immediately converted to agricultural use.

*Pasture*—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes for consumption by livestock.

*Person*—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

*Preferential assessment*—The total use value of land qualifying for assessment under the act.

*Roll-back tax*—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the assessment authorized under the act and the taxes that would have been paid or payable had that land not been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

*Rural enterprise incidental to the operational unit*—A commercial enterprise or venture that is conducted within



2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the act (72 P. S. § 5490.8(d)) as a result of that commercial enterprise or venture.

*Separation*—A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the act, into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

*Split-off*—A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the act, into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the act.

*Tract*—

- (i) A lot, piece or parcel of land.
- (ii) The term does not refer to any precise dimension of land.

*Transfer*—A conveyance of all of the enrolled land described in a single application for preferential assessment under the act.

*USDA*—The United States Department of Agriculture.

*USDA-ERS*—The United States Department of Agriculture-Economic Research Service.

*USDA-NRCS*—The United States Department of Agriculture-Natural Resources Conservation Service.

*Woodlot*—An area of less than 10 acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.

#### **§ 137b.3. Responsibilities of the Department.**

(a) *General.* The Department's responsibilities are to provide the use values described in section 4.1 of the act (72 P. S. § 5490.4a) by May 1 of each year and to provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the act.

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to insure that the act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information will be collected through a survey form to be provided to county assessors by the Department no later than December 15 each year, and which county assessors shall complete and submit to the Department by January 31 of the following year.

(c) *Educational outreach.* The Department will conduct an educational outreach effort on matters related to the administration and interpretation of the act and this chapter.

#### **§ 137b.4. Contacting the Department.**

For purposes of this chapter, communications to the Department shall be directed to the following address:

Pennsylvania Department of Agriculture  
Bureau of Farmland Protection  
2301 North Cameron  
Street Harrisburg, PA 17110-9408  
Telephone: (717) 783-3167  
Facsimile: (717) 772-8798

### **ELIGIBLE LAND**

#### **§ 137b.11. General.**

Three types of land are eligible for preferential assessment under the act.

- (1) Land in agricultural use.
- (2) Land in agricultural reserve.
- (3) Land in forest reserve.

#### **§ 137b.12. Agricultural use.**

Land that is in agricultural use is eligible for preferential assessment under the act if it has been producing an agricultural commodity or has been devoted to a soil conservation program under an agreement with the Federal Government for at least 3 years preceding the application for preferential assessment, and is one of the following:

- (1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot).
- (2) Has an anticipated yearly gross income of at least \$2,000 from the production of an agricultural commodity.

#### **§ 137b.13. Agricultural reserve.**

Land that is in agricultural reserve is eligible for preferential assessment under the act if the land is comprised of 10 or more contiguous acres (including any farmstead land and any woodlot).

#### **§ 137b.14. Forest reserve.**

Land that is in forest reserve is eligible for preferential assessment under the act if presently stocked with trees and the land is comprised of 10 or more contiguous acres (including any farmstead land). Forest reserve land includes land that is rented to another person for the purpose of producing timber or other wood products.

#### **§ 137b.15. Inclusion of farmstead land.**

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land.

(b) Farmstead land shall be considered to be land that qualifies for preferential assessment under the act and this chapter.

#### **§ 137b.16. Residence not required.**

A county may not require that an applicant for preferential assessment under the act be a resident of the county or reside on the land with respect to which preferential assessment is sought.

#### **§ 137b.17. Common ownership required.**

A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

*Example 1:* Husband and wife are joint owners of two contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.

*Example 2:* Husband and wife are joint owners of a 100-acre tract of farmland. Husband and son are joint owners of a contiguous 100-acre tract of farmland. These two tracts may not be combined in a single application for preferential assessment.

**§ 137b.18. County-imposed eligibility requirements.**

A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 3 of the act (72 P. S. § 5490.3).

*Example:* A county may not require an owner of contiguous—but separately deeded—tracts of land to consolidate the tracts in a single deed or require any alteration of existing deeds as a condition of eligibility for preferential assessment.

**§ 137b.19. Multiple tracts on a single application.**

A landowner seeking preferential assessment under the act may include more than one tract in a single application for preferential assessment, regardless of whether the tracts on the application have separate deeds, are identified by separate tax parcel numbers or are otherwise distinct from each other.

(1) *Contiguous tracts.*

(i) A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not—if considered individually—qualify for preferential assessment.

(ii) If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

(2) *Noncontiguous tracts.* If any tract on a single application for preferential assessment is not contiguous to another tract described on that application, that individual tract shall—by itself—meet the use and minimum size requirements for eligibility.

**§ 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.**

A landowner may not apply for preferential assessment for less than the entire contiguous portion of land described in the deed applicable to a tract with respect to which preferential assessment is sought.

*Example 1:* A landowner owns a single, 100-acre tract of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The application may not be for less than the entire 100 acres.

*Example 2:* A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner's options are as follows:

- (1) Enroll the contiguous 50-acre tract.
- (2) Enroll the noncontiguous 50-acre tract.
- (3) Enroll both the contiguous 50-acre tract and the noncontiguous 50-acre tract.

The landowner does not have the option to enroll only one of the contiguous 50-acre tracts.

**§ 137b.21. Exclusion of noncontiguous tract described in a single deed.**

If two or more tracts of land are described in a single deed, a landowner seeking preferential assessment under the act may exclude from the application for preferential assessment any separately-described tract that is not contiguous to the tracts for which preferential assessment is sought.

*Example:* A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

**§ 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.**

If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment.

**§ 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.**

(a) *General.* A tract of land in agricultural use, agricultural reserve or forest reserve shall receive a preferential assessment under the act regardless of whether the tract meets the 10-contiguous-acres minimum acreage requirement or the \$2,000-per-year minimum anticipated gross income requirement, or both, established in section 3 of the act (72 P. S. § 5490.3) if the following occur:

(1) The landowner owns both the tract for which preferential assessment is sought and a contiguous tract of enrolled land.

(2) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the act and this chapter.

(b) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under subsection (a) shall trigger liability for roll-back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.

**§ 137b.24. Ineligible land.**

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the eligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land, and may not expand the boundaries beyond those identified in the initial application. A landowner will not be required, as a condition of county acceptance or approval of the application, to survey or redivide the tract so as to exclude the ineligible land.

*Example:* A landowner owns a 100-acre tract of land, 90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

**§ 137b.25. Multiple land use categories on a single application.**

An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the appli-

cant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

*Example:* A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 3 of the act (72 P.S. § 5490.3) for that land use category.

**§ 137b.26. Land located in more than one tax district.**

If land for which preferential assessment is sought lies in more than one taxing district, the county's determination as to whether the land meets applicable minimum acreage requirements for eligible land shall be made on the basis of the total contiguous acreage—without regard to the boundaries of the taxing districts in which the land is located.

*Example 1:* A landowner has a 100-acre tract of farmland—94 acres of which lie in Township A and 6 acres of which lie in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in two separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the act.

*Example 2:* A landowner has a 100-acre tract of farmland—94 acres of which lie in County A and 6 acres of which lie in County B. The landowner files an application seeking preferential assessment. The fact that the tract lies in two separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the act.

**§ 137b.27. Assessment of ineligible land.**

Land that is included in an application for preferential assessment under the act but is ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.

**APPLICATION PROCESS**

**§ 137b.41. Application forms and procedures.**

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" Form—a uniform preferential assessment application form developed by the Department. The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms. The following shall be required of an applicant on the Clean and Green Valuation Application Form:

(1) The name, address and telephone number of each landowner.

(2) A statement as to the form of ownership of the land (whether by an individual partnership, corporation, and the like . . .).

(3) A statement of whether the land is currently subject to a covenant for preservation of "open space" land in accordance with the act of January 13, 1966 (1965 P.L. 1292, No. 515) (16 P.S. §§ 11941—11947).

(4) A description of the location of the land, including the school district in which it is located.

(5) A designation of the land use category or categories (agricultural use, agricultural reserve and forest reserve) with respect to which preferential assessment is sought, and information that might reasonably be required to confirm that the land falls within the land use category with respect to which preferential assessment is sought.

(6) Other information that might be reasonably required on the application form to confirm the location and ownership of the land, the land use category or categories of the land and whether the land is, in fact, eligible for preferential assessment.

(7) The signation of all of the owners of the land.

(b) *Application form and worksheets.* A landowner seeking to apply for preferential assessment under the act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department will provide an initial supply of these forms to a county upon request.

(c) *Obtaining an application and reviewing this chapter.* A landowner seeking preferential assessment under the act may obtain an application form and required worksheets from the county board of assessment office. A county assessor shall retain a copy of this chapter at the county board of assessment office, and shall make this copy available for inspection by any applicant or prospective applicant.

(d) *Required language.* An application for preferential assessment shall contain the following statement:

The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes and interest under the act in 72 P.S. § 5490.5a may be due for a change in use of the land, a change in ownership of a portion of the land, or any type of division or conveyance of the land.

(e) *Additional information.* A county assessor may require an applicant to provide additional information or documentation necessary to substantiate that the land is eligible for preferential assessment. A county assessor requiring additional information shall notify the applicant in writing and shall clearly state in the notice the reasons why the application or other information or documentation submitted by the applicant is insufficient to substantiate eligibility, and shall identify the particular information the county assessor requests to substantiate eligibility.

(f) *Signature of all landowners required.* An application for preferential assessment may not be accepted by a county if it does not bear the notarized signature of all of the owners of the land described in the application.

**§ 137b.42. Deadline for submission of applications.**

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by June 1. If the application is approved by the county assessor, preferential assessment shall be effective as of the commence-

ment of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

*Example 1:* A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

*Example 2:* A landowner applies for preferential assessment on or after June 2, 2001, but not later than June 1, 2002. The application is subsequently approved. The application deadline is June 1, 2002. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2003.

(b) *Exception: years in which a county implements countywide reassessment.* In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the final order of the county board for assessment appeals or by October 15 of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.

**§ 137b.43. Applications where subject land is located in more than one county.**

If a landowner seeks to enroll a tract of land for preferential assessment under the act, and the tract is located in more than one county, the landowner shall file the application with the county assessor in the county to which the landowner pays property taxes.

**§ 137b.44. County processing of applications.**

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

*Example 1:* An application for preferential assessment is filed on or before June 1, 2001. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2002 (the calendar year immediately following the application deadline).

*Example 2:* An application for preferential assessment is filed at some point from June 2, 2001, through June 1, 2002. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2003 (the calendar year immediately following the application deadline).

**§ 137b.45. Notice of qualification for preferential assessment.**

A county assessor shall provide an applicant for preferential assessment under the act with written notification of whether the land described in that application qualifies for that preferential assessment or fails to meet the qualifications for preferential assessment.

**§ 137b.46. Fees of the county board for assessment appeals; recording fees; processing fees.**

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than \$50

for processing an application for preferential assessment under the act. This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge a fee for amending an initial application for preferential assessment.

(c) *Recording fees.* A recording fee may not be assessed if an application for preferential assessment is not approved.

**PREFERENTIAL ASSESSMENT**

**§ 137b.51. Assessment procedures.**

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Determining use values and land use subcategories.*

(1) *Agricultural use and agricultural reserve.* In calculating appropriate county-specific agricultural use values and agricultural reserve use values, and land use subcategories, the Department will consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at the Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources the Department deems appropriate. In determining county-specific agricultural use and agricultural reserve use values, the Department will use the income approach for asset valuation.

(2) *Forest reserve.* In calculating appropriate county-specific forest reserve use values and land use subcategories, the Department will consult with the Bureau of Forestry of the Department of Conservation and Natural Resources.

(c) *County assessor to determine total use value.*

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use and agricultural reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, adding these products and multiplying the total by the county's

established predetermined ratio. The Department will establish land use subcategories as part of the procedure to establish use values.

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for land use subcategories, and the use values for some—but not all—of these land use subcategories are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use subcategory, without regard to whether it was provided by the Department or established by the county assessor.

#### **§ 137b.52. Duration of preferential assessment.**

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two land use categories.

*Example:* A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).

(b) *No termination of preferential assessment without change of use.* An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event—the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve—that terminates preferential assessment and triggers liability for roll-back taxes and interest.

(c) *Split-offs, separations, transfers and other events.* Split-offs that meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P.S. § 5490.6(a.1)(1)(i)), separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by

the landowner and which continues to meet the requirements of section 3 of the act (72 P.S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the act (72 P.S. § 5490.6(b.1)) and § 137b.73 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)—(7) of the act (72 P.S. § 5490.8(b)(1)—(7)), for the purposes described in that section, and § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(e) of the act and § 137b.75 (relating to conveyance of enrolled land for use as a cemetery).

(7) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(e) of the act and § 137b.76 (relating to conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the act and § 137b.71 (relating to death of an owner of enrolled land).

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment. The landowner may terminate preferential assessment on enrolled land subject to roll-back taxes by submitting written notice under section 3(d) of the act (72 P.S. § 5490.3(d)).

*Example 1:* A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits off a tract of no more than 2 acres and that 2-acre tract is used for a residential dwelling as described in section 6(a.1)(1)(i) of the act and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive preferential assessment, the 98-acre tract shall continue to receive preferential assessment. Also, roll-back taxes and interest would be due with respect to the 2-acre tract.

*Example 2:* Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits off a 2-acre tract and sells it to

Landowner B, with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the act. Roll-back taxes and interest are due with respect to the 2-acre tract. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes and interest with respect to the entire 100-acre tract (under section 6(a.1) of the act). Landowner A has no liability for any of the roll-back taxes and interest which were triggered and are owed by Landowner B as a result of the conversion of the 2-acre tract to commercial use. If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment.

*Example 3:* Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section 3 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive preferential assessment.

*Example 4:* Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes and interest with respect to the entire 100-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

*Example 5:* Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes on his 25-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

(e) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

(1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the land so split-off.

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 3 of the act, all land enrolled under the application for preferential assessment.

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommu-

nications in accordance with section 6(b.1) of the act and § 137b.73 (relating to wireless or cellular telecommunications facilities), the land so leased.

(5) In the case of condemnation, the land so condemned.

(6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)–(7) of the act in accordance with the requirements in those paragraphs, the land so sold or conveyed.

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 the land so used for those purposes.

(8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137b.75 the land so transferred.

(9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137b.76 (relating to death of an owner of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail), the land so transferred.

(10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the act and § 137b.71 the portion that fails to meet the requirements for preferential assessment in section 3 of the act.

(f) *Termination of preferential assessment on erroneously-enrolled land.* If a county assessor erroneously allowed the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the act provide the landowner written notice that preferential assessment is to be terminated. The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner does not trigger the imposition of roll-back taxes.

#### **§ 137b.53. Calculation and recalculation of preferential assessment.**

(a) *New values each year.* As described in § 137b.51 (relating to assessment procedures), the Department will determine the land use subcategories and provide to a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Option of county assessor in calculation of preferential assessment.* A county assessor shall calculate the preferential assessment of enrolled land using one of the following methods:

(1) Calculate the preferential assessment of all of the enrolled land in the county each year.

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in

calculating the preferential assessment of enrolled land in the county, unless recalculation is required under subsection (c), (d), (e) or (f).

(c) *Required recalculation of preferential assessment if current assessment is based upon use values higher than those provided by the Department.* A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor.

*Example 1:* All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are lower than the use values provided by the Department. The county has the option of either continuing to assess all enrolled land using its lower use values or recalculating the preferential assessment of all enrolled land using the use values provided by the Department.

*Example 2:* All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are higher than the use values provided by the Department. The county shall recalculate the preferential assessment of all enrolled land using either the use values provided by the Department or lower use values determined by the county assessor.

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51.

*Example:* In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.

(e) *Required recalculation of preferential assessment if contributory value of farm buildings has not been used in determining preferential assessment of land in agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land if the earlier calculation did not consider the contributory value of any farm buildings on that land. This recalculation shall be accomplished in accordance with § 137b.51.

(f) *Required recalculation of preferential assessment in countywide reassessment.* If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values and land use subcategories provided by the Department.

#### **§ 137b.54. Calculating the contributory value of farm buildings.**

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land. The method of calculating the contributory value of a farm building shall be a method based upon the fair market

comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

### **OBLIGATIONS OF THE OWNER OF ENROLLED LAND**

#### **§ 137b.61. Transfer of enrolled land.**

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgments required under section 4(c) of the act (72 P. S. § 5490.4(c)).

#### **§ 137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.**

(a) *Demonstration of anticipated yearly gross income from agricultural production.* If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least \$2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.

(b) *Annual requirement; circumstances beyond the landowner's control.* The \$2,000 anticipated annual gross income requirement referenced in this section shall be met each year, unless circumstances beyond the landowner's control are the cause of the requirement not being met.

#### *(c) Examples.*

*Example 1:* A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. Although the landowner reasonably anticipated production well above the \$2,000 minimum production requirement in a particular year, and represented that to the county assessor, a drought, hailstorm or blight causes the orchard's production to drop below \$2,000 that year. Preferential assessment of the orchard shall continue.

*Example 2:* A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. A plant disease destroys the fruit trees. Although the landowner replants the orchard, it will take several years for gross income from agricultural production from that orchard to meet the \$2,000 requirement. Preferential assessment of the orchard shall continue.

*Example 3:* A landowner owns 8 acres of enrolled land. The tract generates over \$2,000 in gross annual income from production of an agricultural commodity. The landowner ceases the production of that particular agricultural commodity and does not begin producing another agricultural commodity on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable

for roll-back taxes and interest, and preferential assessment shall terminate.

**§ 137b.63. Notice of change of application.**

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is preferentially assessed at least 30 days' advance written notice of any of the following:

(1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.

(2) A change in ownership with respect to the enrolled land or any portion of the land.

(3) Any type of division, conveyance, transfer, separation or split-off of the enrolled land.

(b) *Contents of notice.* The notice described in subsection (a) shall include the following information:

(1) The name and address of any person to whom the land is being conveyed, granted or donated.

(2) The date of the proposed transfer, separation or split-off.

(3) The amount of land to be transferred, separated or split-off.

(4) The present use of the land to be transferred, separated or split-off.

(5) The date of the original application for preferential assessment under the act.

(6) The tax parcel number.

(c) *Landowner's responsibility to provide notice of termination of preferential assessment.* An owner of enrolled land shall provide the county assessor of the county in which the land is preferentially assessed with advance written notice of termination of preferential assessment, under § 137b.52(d) (relating to duration of preferential assessment) or § 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act). The notice shall include the following information:

(1) The name and address of the landowner.

(2) Information sufficient to identify the property with respect to which preferential assessment is to be terminated. This may include tax parcel numbers, deed descriptions, references to the place of recording of the initial application for preferential assessment or similar information.

(3) The date upon which preferential assessment is to be terminated.

(d) *Landowner's duty to notify.* As stated in § 137b.41(d) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation described in subsection (a).

**§ 137b.64. Agricultural reserve land to be open to the public.**

(a) *General.* An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this requirement.

(b) *Actual use by public not required.* Enrolled land that is enrolled as agricultural reserve land need not

actually be used by the public for the purposes described in subsection (a) to continue to receive a preferential assessment. It shall, however, be available for use for those purposes.

(c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and be acceptable to the county assessor.

(e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.

**IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT**

**§ 137b.71. Death of an owner of enrolled land.**

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.

*Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B—75 acres. Landowner C—2 acres. Landowner D—23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment. Landowners B and D must file amended applications.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and



the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes and interest with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.

*Example 1:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues on each tract, and the landowners must file amended applications.

*Example 2:* Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes and interest with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

**§ 137b.72. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.**

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes and interest, if both of the following apply to the commercial activity or rural enterprise:

(1) The commercial activity or rural enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on the remainder of the enrolled land.

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.

(b) *Roll-back taxes and status of preferential assessment.* If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, the 2-acre-or-less tract shall be subject to roll-back taxes and interest, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

**§ 137b.73. Wireless or cellular telecommunications facilities.**

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if the following conditions are satisfied:

- (1) The tract so leased does not exceed 1/2 acre.
- (2) The tract does not have more than one communication tower located upon it.
- (3) The tract is accessible.
- (4) The tract is neither conveyed nor subdivided. A lease is not considered a subdivision.

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes and interest upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular telecommunications use for any reason other than the applicant's failure to strictly comply with permit application procedures.

**§ 137b.74. Option to accept or forgive roll-back taxes in certain instances.**

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

- (1) A school district.
- (2) A municipality.
- (3) A county.
- (4) A volunteer fire company.
- (5) A volunteer ambulance service.

(6) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land

is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.

(7) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

(b) *No option to forgive interest on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may not forgive interest due on roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the entities or for any of the uses described in subsection (a)(1)—(7). That interest shall be distributed in accordance with section 8(b.1) of the act (72 P. S. § 5490.8(b.1)).

**§ 137b.75. Conveyance of enrolled land for use as a cemetery.**

(a) *Conveyances.* If an owner of enrolled land sells, donates or otherwise conveys any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve after the conveyance, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the conveyed portion of the enrolled land or the remainder of the enrolled land.

*Example:* A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or conveys the land for use other than as a cemetery, the nonprofit corporation shall be required to pay roll-back taxes and interest on that land.

*Example:* Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use. The nonprofit corporation owes roll-back taxes and interest with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.

**§ 137b.76. Conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail.**

(a) *Conveyances.* If an owner of enrolled land sells, donates or otherwise conveys any portion of the enrolled land, or conveys an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred

and roll-back taxes will not be assessed with respect to either the conveyed portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

- (1) The land, or an easement or right-of-way in the land, is conveyed to a nonprofit corporation.
- (2) The conveyed land is used as a trail for nonmotorized passive recreational use.
- (3) The conveyed land does not exceed 20 feet in width.
- (4) The conveyed land is available to the public for use without charge.
- (5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.

*Example:* A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)—(5) and section 8(e) of the act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)—(4) or section 8(e) of the act (72 P. S. § 5490.8(e)), the nonprofit corporation shall be required to pay roll-back taxes and interest on that land.

*Example:* A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)—(4) or section 8(e) of the act. The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)—(4) or section 8(e) of the act. Under these facts, roll-back taxes and interest are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

**LIABILITY FOR ROLL-BACK TAXES**

**§ 137b.81. General.**

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), that landowner shall be responsible for the payment of roll-back taxes and interest, and preferential assessment shall end on that portion of the enrolled land which fails to meet the requirements of section 3 of the act. The owner of enrolled land will not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract.

**§ 137b.82. Split-off tract.**

When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S.

§ 5490.6(a.1)(1)), roll-back taxes and interest are only due with respect to the split-off tract, and are not due with respect to the remainder:

(1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum residential lot size of 2—3 acres.

(2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed.

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.

**§ 137b.83. Split-off that complies with section 6(a.1)(1)(i) of the act.**

If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P.S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes and interest with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated. If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act (72 P.S. § 5490.3), no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.

*Example:* Landowner owns 50 acres of enrolled land. Landowner splits off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes and interest on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of section 3 of the act (72 P.S. § 5490.3).

**§ 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act.**

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P.S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes and interest with respect to all of the enrolled land.

*Example 1:* Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes and interest on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract, unless the landowner terminates preferential assessment under section 3(d) of the act (72 P.S. § 5490.3(d)).

*Example 2:* Landowner owns 50 acres of enrolled land. Landowner splits off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the act. Under these facts, the aggregate total of

split-off land could not exceed 5 acres. The landowner owes roll-back taxes and interest on the remaining 44-acre tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that 44-acre tract, unless the landowner terminates preferential assessment under section 3(d) of the act.

**§ 137b.85. Split-off occurring through condemnation.**

If any portion of a tract of enrolled land is condemned, the condemnation will not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P.S. § 5490.3), preferential assessment shall continue with respect to that condemned portion or remainder.

**§ 137b.86. Split-off occurring through voluntary sale in lieu of condemnation.**

If any portion of a tract of enrolled land is—in lieu of requiring the condemnation process to proceed—voluntarily conveyed by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation, the conveyance will not trigger liability for roll-back taxes on either the split-off portion of the enrolled land or the remainder. If the split-off portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P.S. § 5490.3), preferential assessment shall continue with respect to that split-off portion or remainder.

**§ 137b.87. Change in use of separated land occurring within 7 years of separation.**

If enrolled land undergoes separation, and one of the tracts created through separation is converted to a use other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 3 of the act (72 P.S. § 5490.3), the owner of the ineligible tract owes roll-back taxes and interest with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

*Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Six years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes and interest with respect to the entire 100-acre tract. Landowner A's 50-acre tract continues to receive preferential assessment, and preferential assessment of Landowner B's 50-acre tract ends.

**§ 137b.88. Change in use of separated land occurring 7 years or more after separation.**

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest re-

serve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes and interest with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

*Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Eight years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes and interest with respect to the 50-acre tract which he has converted to ineligible use. Landowner A's 50-acre tract continues to receive preferential assessment, and preferential assessment of Landowner B's 50-acre tract ends.

**§ 137b.89. Calculation of roll-back taxes.**

A county assessor shall calculate roll-back taxes using the following formula:

(1) If preferential assessment has been in effect for 7 tax years or more, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the 6 tax years immediately preceding the current tax year. If preferential assessment has been in effect for less than 7 tax years, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the tax years in which the enrolled land was preferentially assessed.

(2) With respect to each of these sums, multiply that sum by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

<i>Year</i>	<i>Factor</i>
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12
3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

(3) Add the individual products obtained under Step (2). The sum equals total roll-back taxes, including simple interest at 6% per annum on each year's roll-back taxes.

*Example 1:* Landowner's liability for roll-back taxes is triggered on July 1, 7 or more tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and in each of the 6 tax years preceding the current tax year, in accordance with this section. The county assessor determines the appropriate sum to be \$2,000 in each full year, and prorates this sum with respect to the current tax year.

<i>Year</i>	<i>Amount Multiplied by Factor</i>
Current Tax Year	\$1,000 x 1.00 = \$1,000
1 Tax Year Prior	\$2,000 x 1.06 = \$2,120
2 Tax Years Prior	\$2,000 x 1.12 = \$2,240
3 Tax Years Prior	\$2,000 x 1.18 = \$2,360

<i>Year</i>	<i>Amount Multiplied by Factor</i>
4 Tax Years Prior	\$2,000 x 1.24 = \$2,480
5 Tax Years Prior	\$2,000 x 1.30 = \$2,600
6 Tax Years Prior	\$2,000 x 1.36 = \$2,720
TOTAL ROLL-BACK TAXES, WITH INTEREST:	\$15,520

*Example 2:* Landowner's liability for roll-back taxes is triggered on July 1, less than 7 tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and each of the tax years since preferential assessment began, in accordance with this section. The county assessor determines the appropriate sum to be \$2,000 in each of these years. The county assessor would calculate roll-back taxes and interest in accordance with the chart set forth in Example 1, calculating for only those tax years in which preferential assessment occurred.

**§ 137b.90. Due date for roll-back taxes.**

If roll-back taxes and interest are owed, they are due on the day of the change in use or other event triggering liability for those roll-back taxes.

**§ 137b.91. Liens for nonpayment of roll-back taxes.**

The county can refer a claim for unpaid roll-back taxes and interest to the county's tax claim bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.

**§ 137b.92. Time period within which roll-back taxes are to be calculated and notice mailed.**

(a) *General.* A county assessor shall calculate the roll-back taxes and interest, and mail notice of these roll-back taxes to the affected landowner, within 5 days of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.

(b) *Notice of change of application.* If a county assessor receives a "notice of change of application" described in § 137b.63 (relating to notice of change of application), and that notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.

**§ 137b.93. Disposition of interest on roll-back taxes.**

(a) *"Eligible county" explained.* A county is an "eligible county" under the Agricultural Area Security Law (3 P. S. §§ 901—915), and for purposes of this chapter, if it has an agricultural conservation easement purchase program that has been approved by the State Agricultural Land Preservation Board in accordance with that statute.

(b) *Disposition in an eligible county.*

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the

eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

(2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, at its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located, when using the funding from the special roll-back account.

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

#### **DUTIES OF COUNTY ASSESSORS**

##### **§ 137b.101. General.**

A county assessor shall perform all the duties prescribed by the act and this chapter. The county assessor has the major responsibility for administration of the act.

##### **§ 137b.102. Recordkeeping.**

A county assessor shall indicate on property record cards, assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land.

##### **§ 137b.103. Recording approved applications.**

A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.

##### **§ 137b.104. Determining total use value.**

A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.

##### **§ 137b.105. Annual update of records.**

A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. This subsection does not require that a county assessor recalculate the preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.

##### **§ 137b.106. Notification of change in preferential assessment status.**

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to preferential assessment status. This written notice shall apprise the land-

owner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

##### **§ 137b.107. Notification of change in factors affecting total assessment.**

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the base year fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change.

##### **§ 137b.108. Adjusting records to reflect split-off, separation or transfer.**

(a) A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.52 (relating to duration of preferential assessment).

(b) A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.

##### **§ 137b.109. Enforcement and evidence gathering.**

The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

##### **§ 137b.110. Assessment of roll-back taxes.**

A county assessor shall calculate, assess and file claims with the county's tax claim bureau for roll-back taxes and interest owed under the act.

##### **§ 137b.111. Record of tax millage.**

A county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year.

##### **§ 137b.112. Submission of information to the Department.**

A county assessor will compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department).

#### **RECORDER OF DEEDS**

##### **§ 137b.121. Duty to record.**

A recorder of deeds shall record approved applications for preferential assessment in a preferential assessment docket, and record changes of land use triggering the imposition of roll-back taxes.

##### **§ 137b.122. Fees of the recorder of deeds.**

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged

unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

# MISCELLANEOUS

## § 137b.131. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than \$100 against a person for each violation of the act or this chapter. An action that triggers liability for roll-back taxes and interest does not, by itself, constitute a violation of the act or this chapter.

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.

(c) *Appeal hearing.* If notification of the intent to contest the civil penalty is given within the time frame described in subsection (b)(2), the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

(d) *Final civil penalty.* If, within 10 calendar days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

## § 137b.132. Distributing taxes and interest.

The county treasurer or tax claim bureau shall be responsible for the proper distribution of the taxes to the proper taxing authority (that is, political subdivision) and the proper distribution of interest in accordance with § 137b.93 (relating to disposition of interest on roll-back taxes).

## § 137b.133. Appealing a decision of the county assessor.

A landowner whose land is the subject of an application for preferential assessment under the act, or a political subdivision affected by the preferential assessment of that land may appeal a decision of the county assessor regarding the application and the method used to determine preferential assessments under the act. The landowner shall first appeal to the county board of assessment. After this board has made a decision, the landowner then has a right to appeal to the court of common pleas.

[Pa.B. Doc. No. 01-544. Filed for public inspection March 30, 2001, 9:00 a.m.]

# DEPARTMENT OF AGRICULTURE

## [7 PA. CODE CH. 138i]

### Farm Safety and Occupational Health Tuition Assistance Program

The Department of Agriculture (Department) adopts Chapter 138i (relating to Farm Safety and Occupational Health Tuition Assistance Program) authorized and required under the Farm Safety and Occupational Health Act (act) (3 P. S. §§ 1901—1915).

#### Authority

The Department has the power and authority to adopt these regulations. This authority includes:

(1) The general authority to adopt rules and regulations conferred by section 5 of the act (3 P. S. § 1905), which delineates the duties of the Secretary of Agriculture (Secretary) and directs the Secretary to "... adopt and promulgate any regulations which may be necessary to implement and administer the act."

(2) The specific authority conferred by section 6(a) of the act (3 P. S. § 1906(a)) which authorizes the Secretary to establish a grant program to provide tuition assistance to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production to attend farm safety and occupational health training and emergency response programs.

(3) The specific duty and authority as set forth in section 6(d) of the act, which requires the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

#### Need for the Regulations

The regulations delineate the objectives of the Farm Safety and Occupational Health Tuition Assistance Program (FSTAP) and establish the procedures governing the submission, processing and review of grant applications. In addition, the regulations set forth the documentation required to accompany the applications, eligibility criteria, criteria and verification, cancellation, notification and reporting requirements. The regulations assure fair and impartial review of FSTAP grant applications. These regulations establish a program which will make funds available to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production who attend farm safety and occupational health training and emergency response programs intended to facilitate avoidance and elimination of farming hazards. The Commonwealth's approximately 51,000 farms are the foundation of a \$35 billion industry, employing over 650,000 workers in farming and related services, food processing and food wholesale and retail sales. The National Safety Council reports Agriculture as this Nation's most hazardous industry with a work death rate 22% higher than the second most hazardous industry, mining and quarrying. Farming accounts for over 80% of Agriculture's injury toll. From 1990 through 1995 at least 249 Commonwealth citizens have lost their life to hazards associated with farming. The victims included 17 infants, toddlers and preschoolers—all under 5 years of age. Another 29 victims were at least 75 years of age. The oldest was 89 years old. In 1994, a Statewide survey showed one in every ten farm operations in this Commonwealth had at least one recordable work-related injury. Even more startling was that approximately 5% of those injuries resulted in some type of permanent disability to the victim. The numbers evidence the need for farm safety and occupational health pro-

grams. In 1994 alone, there were a total of 5,100 injuries and 250 permanent disability injuries related to farming. Therefore, the regulations should ultimately benefit both the farming community and the general public.

In summary, the Department is satisfied there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

#### *Comments*

Notice of proposed rulemaking was published at 30 Pa.B. 771 (February 12, 2000) and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Emergency Health Services Council.

*Comment:* IRRC commented that the phrase "the Secretary or a designee" had been used in various portions of the text of the regulations (§§ 138i.2., 138i.7., 138i.8 and 138i.10) and suggested the term "designee" should be defined.

*Response:* The Department made three changes to the final-form regulations with regard to this comment. First, the Department defined "designee" in § 138i.2 (relating to definitions). Second, the Department, in § 138i.2 redefined the term "Secretary" by adding "... or a designee" to the definition. Under those changes, the third change was to delete the phrase "or a designee" from all references to the Secretary, throughout the text of the regulations. The result of the three changes is that the regulations are easier to read and more concise and all references to the Secretary are now interpreted to mean the Secretary or whomever he appoints or assigns to carry out his duties under the regulations.

*Comment:* IRRC commented that the term "Board" in § 138i.2 and the term "Advisory Board" in the act both refer to the "Farm Safety and Occupational Health Advisory Board." They suggested that for consistency with the statute, the Department should replace the term "Board" with the term "Advisory Board."

*Response:* The Department agrees the terms in the regulations should be consistent with the terms in the act. The Department has changed the term "Board" to "Advisory Board" in § 138i.2. In addition, in the final-form regulations all references to "Board" have been changed to "Advisory Board."

*Comment:* IRRC commented that the definition of "farm laborer" was not consistent with other proposed chapters of the Department's regulations. Specifically, IRRC advised that with regard to the FSTAP the last sentence in the definition of "farm labor" read, in part: "... or a farm product as defined in 1 Pa.C.S. § 1991," but that in the Department's other two proposed Farm Safety and Occupational Health regulations the definition of "Farm labor" read: "... or any farm product as defined in 1 Pa.C.S. § 1991. IRRC suggested that for consistency the Department's regulations should use either "a" or "any" but not both, in this definition.

*Response:* The Department has no objection to this comment. The Department will use "a" and has made this change in all three of the Farm Safety and Occupational Health final-form regulations.

*Comment:* IRRC commented that the definition of "members of farm families," in § 138i.2 was confusing and that there was a conflict between plural and singular nouns in the definition. The definition included a phrase

"... collateral relation of the first degree..." IRRC found this confusing and suggested the Department replace the phrase with "nieces, nephews and grandchildren" and any others the Department would want included in the definition. In addition, IRRC commented that there was a conflict between plural and singular nouns in the term "members of farm families" and the first phrase of the definition which read: "Any son, daughter or spouse of a farmer..."

*Response:* The Department believes the phrase "collateral relation of the first degree" is specific and should remain in the definition. However, in response to IRRC's concern for clarity, the Department has added: "... (such as nieces, nephews and grandchildren)..." to the definition. We believe this should address the clarity issue while at the same time keeping the definition specific and narrow. With regard to IRRC's concern regarding a conflict between plural and singular nouns in the definition of "Members of farm families," the Department changed the phrase "Members of farm families" to "Members of farm family" and retained the singular form of the words "... son, daughter or spouse of a farmer..." in the definition. The Department believes this change is less confusing than amending the words in the definition to read "... sons, daughters and spouses of a farmer..."

*Comment:* IRRC commented that for clarity the contents of what was § 138i.8(c) (relating to notice of disposition of application) under the proposed regulations, should be moved to what was § 138i.6 (relating to processing of applications) under the proposed regulations. IRRC commented that alternatively the Department could create a new section captioned "Application requirements" following what was § 138i.6 under the proposed regulations.

*Response:* The Department agrees with this recommendation and has implemented the suggestion by moving what was § 138i.8(c) (relating to grant application requirements) under the proposed regulations, to what is now § 138i.5(b) in the final-form regulations. It should be noted that § 138i.5 in the final-form regulations still relates to applications and is the same as § 138i.6 under the proposed regulations. The section number was changed as a result of another suggestion by IRRC which required the Department to delete § 138i.1 (relating to authority) in the proposed regulations.

*Comment:* IRRC commented that § 138i.6(a) and (b) requires the applicants to compete and submit application forms provided by the Department, but the regulations do not list the basic information that will be required on the application form. IRRC suggested the Department should include basic information on the contents of the application form in this section.

*Response:* The Department knows of no requirement that an agency include a sample of an application form in the regulations. In addition, the Department will formulate and provide the application form to the applicant. The application form will notify the applicant of the information required. The Department also believes that the basic information needed on an application form is outlined in § 138i.5(b) of the final-form regulations and that further information as to content is supplied throughout the regulations such as § 138i.3 (relating to limitation on grants) and § 138i.6(d) regarding factors to be considered by the Department when reviewing a grant. Section 138i.6(b)(3) of the final-form regulations also sets forth a procedure for notifying applicants when a grant application is incomplete and provides additional time for the applicant to supply any missing information. There-

fore, the Department believes the final-form regulations are sufficiently specific and the applicant has sufficient notice with regard to the content of the application.

*Comment:* IRRC commented that what was § 138i.6(d) under the proposed regulations, was unclear as to its intent and should provide a specific cutoff time with regard to the acceptance of applications. IRRC suggested the Department should clarify the deadline in final-form regulations.

*Response:* The intent of the language of § 138i.6(d) was to allow the Department sufficient time to review and approve or disapprove an application for a tuition assistance grant and at the same time not impose a stringent deadline that would preclude potential grant recipients from receiving a tuition assistance grant. The Department was attempting to be as flexible as possible with this deadline because in many instances potential recipients of farm safety tuition assistance grants will have short notice with regard to the farm safety course for which they want to apply. In response to IRRC's concerns, the Department revised the language of this section (now § 138i.5(e)) to set the deadline at 30 days prior to the date of the project the applicant wishes to attend. In addition, in an attempt to remain flexible the Department added language allowing the Secretary to, "... approve an application submitted after this deadline if it is determined there is adequate time for a thorough review of the application and to issue a written approval to the applicant."

*Comment:* IRRC commented that subsection (a) (regarding review by the Secretary) of § 138i.7 (relating to review of applications) of the proposed regulations included three different topics and was long and potentially confusing. IRRC suggested the subsection should be broken down into outline form. In addition, IRRC commented that the section duplicates portions of §§ 138i.8. and 138i.10. IRRC asked the Department to clarify the purpose of § 138i.7(a) of the proposed regulations.

*Response:* The Department agrees that § 138i.7(a) would be easier to read and understand if it was broken down into outline form. Therefore, the Department has broken the subsection down in the final-form regulations. Because of other changes suggested by IRRC (deleting § 138i.1. relating to authority), § 138i.7, is now § 138i.6. in the final-form regulations. The Department has broken this section down into three subsections. Subsection (a) relating to "approval or denial," subsection (b) relating to "processing" of an application and subsection (c) relating to "Advisory Board" duties. In addition, subsection (b) has been subdivided into three paragraphs. Paragraph (1) states the Secretary will first review an application for completeness and accuracy; paragraph (2) relates to how the Secretary will process a complete and accurate application; and paragraph (3) relates to how the Secretary will process incomplete or inaccurate applications. The Department believes this will add clarity to the regulations as suggested by IRRC. With regard to IRRC's concern about duplicity, the Department believes that § 138i.7 of the proposed regulations (§ 138i.6 of the final-form regulations) is not duplicative. Section 138i.7 of the proposed regulations, dealt with the processing of a grant application and are intended to notify the applicant of who will review the grant applications, the time period of the review and the process for incomplete or inaccurate applications. Section 138i.8 of the proposed regulations (§ 138i.7 of the final-form regulations) related to review of applications deals with applicant eligibility standards and with the factors to be considered by the Secretary when

reviewing and ranking a Program grant application. Finally, § 138i.10 of the proposed regulations (§ 138i.8 of the final-form regulations) relating to notice of disposition of a grant application, is intended to inform the applicant of how and in what time period the applicant will be notified of approval or denial of the grant application. It should be noted that § 138i.10 of the proposed regulations has been moved so that it now follows the sections relating to processing and review of applications. Therefore, the regulations gain a logical flow by notifying the applicant of: (1) how applications will be processed; (2) how an application will be reviewed and ranked; and (3) how and when an applicant will be notified.

*Comment:* IRRC commented concerning subsection (b) (regarding the Advisory Board function) of § 138i.7. of the proposed regulations. IRRC interpreted the language of the subsection to mean that the Advisory Board would have an active role in reviewing each individual grant application. Under that interpretation and the fact the Department plans to review and approve grant applications within 30 days, IRRC was concerned that it would not be feasible to include the Advisory Board in the review of each application. IRRC suggested the Department clarify the language of this section or move this subsection to § 138i.4(b) of the proposed regulations.

*Response:* The Department did not intend the language of this subsection to include the Advisory Board in the review of each individual grant application. This interpretation of the language of this subsection is in direct conflict with the powers of the Advisory Board enumerated in section 3(g) of the act (3 P. S. § 1903(g)). The Department has changed the language of this section of the final-form regulations to remove all doubt as to the function of the Advisory Board. The revised language makes it clear that the Advisory Board does not and will not review individual grants. The Advisory Board will only carry out those functions set forth in the act, such as recommending overall farm safety and occupational health program priorities and recommending priorities for expenditure of funds for development and implementation of farm safety and occupational health programs. The Department does not agree with moving this language to the section related to limitations on grant funds. While the Advisory Board's recommendations on funding may affect the number of grants that can be given out under any of the various farm safety and occupational health programs and the overall factors considered when reviewing a grant application, the Advisory Boards' function does not directly affect or limit each individual grant application. Therefore, the Department has elected to keep this language in the section related to processing of applications.

*Comment:* IRRC commented with regard to § 138i.12 (relating to right of recovery) of the proposed regulations, that the term "used" in the phrase "... grant may be canceled by the Secretary upon a determination that the funds are not being or were not properly used" was not defined and it was unclear as to what the term meant.

*Response:* The Department added language to this section that narrows the scope of what the term "used" could mean. The language of this section now refers to violations of any provision of the act, the regulations or the grant agreement and implementation of the project set forth in the grant application.

*Comment:* IRRC commented that § 138i.1 entitled "Authority" was unnecessary and should be deleted.



*Response:* The Department agrees with this comment and has deleted § 138i.1 from the final-form regulations.

*Comment:* The Pennsylvania Emergency Health Services Council (PEHSC) commented with regard to the Department's interpretation of § 138i.4(e) of the proposed regulations. The PEHSC questioned whether the Department interpreted "... emergency medical care-related programs specifically designed for farm-related emergencies" as eligible for Program grants.

*Response:* Emergency medical care-related programs specifically designed for farm-related emergencies do qualify for tuition assistance. Program grants may be awarded to supplement tuition to the types of projects delineated in section 4(b) of the act. Section 4(b)(9) of the act specifically refers to training of emergency service providers in methods and procedures for responding to farm emergencies, including farm rescue and machinery extraction. In addition section 6(a) of the act, regarding tuition assistance states that tuition assistance may be provided to eligible applicants to "... attend farm safety and occupational health training and emergency response programs. Section 2 of the act (3 P. S. § 1902), regarding the definition of "emergency service provider" supports this interpretation.

#### *Fiscal Impact*

##### *Commonwealth*

The final-form regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth, including projected increases in program costs. The Department has an appropriation for use in developing the various Farm Safety and Occupational Health Grant Programs allowed under section 6 of the act. The Secretary, with the advice of the Advisory Board, will determine the amount of funds to allocate to each grant program promulgated under section 6 of the act.

##### *Political Subdivisions*

The final-form regulations will impose no direct costs and have no fiscal impact upon political subdivisions.

##### *Private Sector*

The final-form regulations will impose minimal costs on those organizations or individuals who are interested in applying for FSTAP grants. The costs that may be associated with the regulation would involve the time spent to obtain and fill out a grant application. Organizations and individuals receiving grants would benefit by receiving funds to cover tuition costs associated with attending some farm safety and occupational health programs. The private sector may also benefit through the realization of reduced health care and occupational costs resulting from increased attendance at the educational and preventative programs espoused by the act and these regulations.

##### *General Public*

The final-form regulations will impose no direct costs and have no fiscal impact upon the general public. The farm community and the general public should benefit through the reduction of health care and occupational costs which are likely to result from increased attendance at educational and preventative programs such as those espoused by the act and these regulations.

#### *Paperwork Requirements*

The final-form regulations will not result in an appreciable increase of paperwork. The Department will have

to develop a grant application form to administer the FSTAP. However, the administrative provisions of the FSTAP are very similar to the administrative provisions of Chapter 138g (relating to Farm Safety and Occupational Health Grant Program—statement of policy) (FSOH) and the Department has already developed a grant application form and grant agreement for use in administering the FSOH program and has administered that program, under a statement of policy, since 1996.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Farm Safety and Occupation Health Grant Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: John Tacosky (717) 772-5217.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 771 (February 12, 2000) to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on February 13, 2001. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 15, 2001, and approved the final-form regulations.

#### *Findings*

The Department finds that:

(1) Public notice of its intention to adopt the regulations encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and their attendant regulations in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 30 Pa.B. 771.

(4) The adoption of the regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

#### *Order*

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code, are amended by adding §§ 138i.1—138i.13 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and to the Office of

Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,  
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 1291 (March 3, 2001).)

**Fiscal Note:** Fiscal Note 2-123 remains valid for the final adoption of the subject regulations.

## Annex A

### TITLE 7. AGRICULTURE

#### PART V-C. FARMLAND AND FOREST LAND

#### CHAPTER 138i. FARM SAFETY AND OCCUPATIONAL HEALTH TUITION ASSISTANCE PROGRAM

Sec.	
138i.1.	Program objectives.
138i.2.	Definitions.
138i.3.	Limitation on grants.
138i.4.	General conditions.
138i.5.	Applications.
138i.6.	Processing of applications.
138i.7.	Review of applications.
138i.8.	Notice of disposition of application.
138i.9.	Conflict of interest.
138i.10.	Recordkeeping.
138i.11.	Grant cancellation.
138i.12.	Right of recovery.
138i.13.	Deficits.

#### § 138i.1. Program objectives.

(a) *Purpose.* The purpose of the Program is to provide tuition assistance to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production, to allow them to attend farm safety and occupational health projects and emergency response programs.

(b) *Competitive program.* The Program is competitive. Grant applications and related documents will be collected by the Department and reviewed by the Secretary. Grants will be awarded annually.

(c) *Funds available basis.* Grants will not be awarded unless funds are available.

#### § 138i.2. Definitions.

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

*Act*—The Farm Safety and Occupational Health Act (3 P. S. §§ 1901—1915).

*Advisory Board*—The Farm Safety and Occupational Health Advisory Board.

*Agricultural Production*—The production for commercial purposes of crops, livestock and livestock products. The term includes the processing or retail marketing of these crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farmer.

*Department*—The Department of Agriculture of the Commonwealth.

*Designee*—A person chosen or appointed by the Secretary to carry out the Secretary's duties under this chapter.

*Farm*—Land in this Commonwealth which is being used for agricultural production, including all farm structures, buildings, facilities and farm family residences situated on the land.

*Farmer*—A person who is engaged in agricultural production for commercial purposes.

*Farm laborer*—An individual employed by a farmer in raising, cultivating, fertilizing, seeding, planting, pruning, harvesting, gathering, washing, sorting, weighing or handling, drying, packing, packaging, grading, storing or delivering to market in its unmanufactured state, an agricultural commodity as defined in 3 Pa.C.S. Chapter 45 (relating to agricultural commodities marketing) or a farm product as defined in 1 Pa.C.S. § 1991 (relating to definitions).

*Members of farm family*—Any son, daughter or spouse of a farmer or any lineal relation of the farmer who works on the farm or any collateral relation of the first degree (such as nieces, nephews or grandchildren) who works on the farm.

*Person*—An individual, partnership, corporation, association or other form of business enterprise.

*Program*—The Farm Safety and Occupational Health Tuition Assistance Program.

*Project*—A course, training, program, activity or event pertaining to farm safety and occupational health or emergency response programs.

*Rural emergency services providers*—An employee, agent member or officer of a paid or volunteer fire company, ambulance service or rescue squad located in or servicing a rural area of this Commonwealth which is regularly engaged in providing emergency medical care and transportation, fire protection services or rescue services.

*Secretary*—The Secretary of Agriculture of the Commonwealth or a designee.

*Volunteer ambulance services*—A nonprofit chartered corporation, association or organization located in this Commonwealth and which is regularly engaged in the services of providing emergency medical care and transportation of patients.

*Volunteer fire company*—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

*Volunteer rescue squad*—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides rescue services within this Commonwealth.

#### § 138i.3. Limitation on grants.

(a) *Tuition assistance.* The Program will award grants to provide tuition assistance to approved applicants under this chapter. The Program will provide grants of up to \$100 per calendar year to an approved applicant.

(b) *Grant awards.* An eligible applicant may apply for more than one Program grant per year. However, an eligible applicant may not be awarded more than \$100 in tuition assistance grants in any calendar year.

(c) *Recipient's use of Program grant funds.* A recipient of a Program grant may only use the funds to cover or supplement the cost of tuition for the specific project delineated in the recipient's grant application.

(d) *Substitution of person.* Once an applicant has been approved to receive tuition reimbursement for a specific project, no other person or project may be substituted. Any change in person or project shall require submission and review of a new application.

(e) *Eligible courses, programs, training, activities or events.* Program grants may be awarded to cover or supplement tuition for the types of projects delineated in section 4(b) of the act (3 P. S. § 1904(b)).

(f) *Additional limitations.*

(1) Program grant funds may only be used to provide tuition assistance for farm safety and occupational health projects or emergency response programs administered within the geographic boundaries of this Commonwealth.

(2) Program grant funds may not be used to cover the cost of travel, lodging or any other expenses incurred by the grant recipient other than the cost of tuition.

(3) Program grant funds may not be used for or applied to any training, programs, activities, certification or licensing requirement or events pertaining to the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60) or Chapters 128 and 128a (relating to pesticides; and chemsweep pesticide disposal program—statement of policy).

(4) Program grant funds shall be awarded to reimburse the tuition expenses of an approved applicant who submits the documentation required by this chapter.

#### § 138i.4. General conditions.

(a) *Grant agreement.* The approved, signed application for a Program grant shall constitute the grant agreement. The recipient of a Program grant shall sign the application which shall set forth the amount of the grant and other terms and conditions as the Department may reasonably require. Upon completion of all the terms of the agreement, a reimbursement check will be issued in the name of the recipient and mailed to the address indicated on the recipient's approved and signed application.

(b) *Default.* Any recipient of a Program grant who fails to abide by the terms of the grant agreement or the act or this chapter shall be in default. The Secretary may waive a default after consultation with the Advisory Board in the event of a physical disability suffered by the recipient or as a result of other extenuating circumstances.

(c) *Verification.* To receive a Program reimbursement payment, a recipient shall, within 2 weeks of the completion of the specific project delineated in the recipient's grant application, submit to the Department a final report which includes a written receipt evidencing the cost of tuition and records or any other pertinent documentation evidencing the grant recipient's attendance and the program agenda. In addition, the final report shall include a narrative report of at least one page but not more than two pages, describing the effectiveness of the project and the experience gained and personal knowledge acquired.

(d) *Failure to verify.* If a fully completed final report containing the required receipts, records and documentation is not submitted within the 2-week period, the Program grant recipient shall be deemed to have defaulted. The Secretary may direct that no Program grant

funds be paid to the defaulting recipient. The Secretary will notify the grant recipient in writing of a default due to the grant recipient's failure to supply a completed final report. The recipient will have 10 days, from the receipt of the written notice to remedy the default. The Secretary may extend the verification deadline if the Secretary determines the grant recipient has made a reasonable effort to verify, but the verification was incomplete, or for extenuating circumstances.

#### § 138i.5. Applications.

(a) *Application required.* An interested rural emergency service provider, farmer, member of a farm family, farm laborer or anyone else involved in agricultural production within this Commonwealth, may submit a grant application to the Department.

(b) *Grant application requirements.* An application for a program grant will not be considered by the Secretary unless the following items are attached:

(1) A detailed description of the farm safety project to be attended by the applicant, including documentation delineating the focus of the project.

(2) A reasonable and accurate statement of the estimated or actual cost of tuition.

(3) Information regarding the skills, knowledge or experience to be gained from the project.

(4) Documentation regarding the name and location of the person administering the project.

(c) *Obtaining an application and assistance.* An application for a grant under this chapter shall be made on a form prepared by the Department. For applications and for assistance, contact the Farm Safety and Occupational Health Grant Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

(d) *Additional information.* The Secretary may require an applicant to submit additional documentation as may be necessary to complete, verify or clarify the application.

(e) *Application deadline.* Applications for grants under this chapter shall be received by the Department 30 days prior to the date of the project the applicant wishes to attend. The Secretary may approve an application submitted after this deadline if it is determined there is adequate time for a thorough review of the application and to issue written approval to the applicant.

#### § 138i.6. Processing of applications.

(a) *Approval or denial.* The Secretary will approve, approve with special conditions or reject grant applications and issue grants in accordance with the general considerations and criteria of the act and this chapter. The Secretary may exercise his judgment in approving grant applications and in determining the distribution of grants so that the widest possible audience becomes acquainted with farm safety and occupational health practices and techniques espoused by the act and this chapter. The Secretary may impose restrictions or special conditions upon the issuance of a grant.

(b) *Processing.* An application for a program grant shall be processed in the following manner:

(1) *Completeness and accuracy.* Upon receipt of an application for a program grant and the required supporting documentation, the Secretary will review this information for completeness and accuracy.

(2) *Complete and accurate applications.* Applications containing all the required information and supporting documentation will be reviewed in accordance with the

criteria in the act and this chapter and accepted, accepted with special conditions or rejected. Grant applicants will be notified in writing as set forth in § 138i.8(a) (relating to notice of disposition of application).

(3) *Incomplete or inaccurate applications.* If the Secretary determines an application is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request shall be in writing as set forth in § 138i.8(b) and will be sent to the address listed on the grant application. The processing of the application will cease until the applicant supplies the requested data. The Secretary will terminate the processing of an incomplete application when the additional data requested is not supplied within 10 days of the request for the data.

(c) *Advisory Board.* The Advisory Board, as required under section 3(g)(2) and 4(c) of the act (3 P. S. §§ 1903(g)(2) and 1904(c)), shall recommend overall program priorities for each grant program to the Secretary. Additionally, the Advisory Board, as required by section 3(g)(3) of the act (3 P. S. § 1903(g)(3)), shall recommend the amount of funds to be allocated to each grant program. The Advisory Board has no authority to and will not review individual grant applications and will have no input into individual grant awards.

**§ 138i.7. Review of applications.**

(a) *Evaluation.* The Secretary will evaluate an application based on the applicant eligibility and grant application requirements, as well as the factors in the act and this chapter.

(b) *Applicant eligibility.* To be eligible for a Program grant, the applicant shall be a rural emergency service provider, farmer, member of a farm family or farm laborer or be otherwise involved in agricultural production. An emergency service provider shall submit an application for each individual member for which it wishes to receive a Program grant. Each member for which it receives a Program grant shall comply with the criteria established by the act and this chapter, including the verification criteria.

(c) *Grant application completeness.* An application for a Program grant will not be considered by the Secretary unless it contains the required information and items as set forth in § 138i.5(b) (relating to applications).

(d) *Factors.* Factors to be considered by the Secretary in selecting grant recipients include the following:

- (1) The relevance of the project to farm safety or rural health issues.
- (2) The innovativeness of the project.
- (3) The effect the project will have on hazard elimination.
- (4) The scope of the project and how it relates to program components delineated in section 4(b) of the act (3 P. S. § 1904(b)).
- (5) The number and type of people or groups who will be affected by the project as described in the application.
- (6) The impact upon and the value and benefits to the agricultural community of the project described in the application.
- (7) The continual and progressive nature of the project and the benefits and knowledge gained therefrom.
- (8) The value to those who work directly with farm accident victims.

(9) Whether the applicant has been the recipient of a Program grant within the same year.

(10) The availability of funding to the applicant from a source other than the Program.

(11) The priorities as the Secretary, in consultation with the Advisory Board, set in accordance with section 4(c) of the act.

**§ 138i.8. Notice of disposition of application.**

(a) *Applications deemed complete.* The Secretary will notify grant applicants within 30 days of receipt of their completed grant application of a decision to approve, approve with special conditions or reject the grant application. This notice will be sent by regular mail to the address indicated by the applicant on the grant application.

(b) *Applications deemed incomplete.* Within 30 days of receipt of a grant application, the Secretary will notify the applicant of a decision to reject the grant application or notify the applicant of a deficiency in the grant application and request additional data. If additional data is requested, notification shall be in writing and detail the additional data needed. The Secretary will follow the action prescribed in § 138i.6(b)(3) (relating to processing of applications).

**§ 138i.9. Conflict of interest.**

A member of the Advisory Board may apply for a grant if all decisions regarding the grant application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

**§ 138i.10. Recordkeeping.**

A Program grant recipient shall maintain all receipts, supporting documents, final reports and other documents pertaining to the project and the Program grant. These records shall be retained for 1 year beginning at the conclusion of the project. The records shall be made available to the Department upon request.

**§ 138i.11. Grant cancellation.**

A Program grant may be canceled by the Secretary upon a determination that the grant recipient has violated any provision of the act, this chapter or the grant agreement, the grant funds or any portion thereof were not used to implement the project set forth in the grantee's approved grant application, or upon failure of the recipient to satisfy the verification requirements of this chapter. Upon cancellation the Secretary may seek recovery of the grant funds or any portion thereof as delineated in § 138i.12 (relating to right of recovery).

**§ 138i.12. Right of recovery.**

The Department has the right to make a claim for and receive from the grant recipient grant funds not expended in accordance with the act, the grant agreement or this chapter and may demand the return of the grant funds or any portion thereof.

**§ 138i.13. Deficits.**

The Department's financial obligation is limited to the amount of the grant.

[Pa.B. Doc. No. 01-545. Filed for public inspection March 30, 2001, 9:00 a.m.]

# Title 25—ENVIRONMENTAL PROTECTION

## ENVIRONMENTAL QUALITY BOARD

### [25 PA. CODE CH. 78]

#### Oil and Gas Wells

The Environmental Quality Board (Board) by this order amends Chapter 78 (relating to oil and gas wells). Amendments are needed to reflect the statutory amendment of act of May 15, 1998 (P. L. 358, No. 57) (Act 57), which eliminated the bonding requirement for oil and gas wells drilled prior to April 18, 1985. These amendments also clarify several sections, including brine spill reporting, notification requirements, permit requirements, disposal options and requirements for drilling through a gas storage reservoir.

This order was adopted by the Board at its meeting of January 16, 2001.

#### A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### B. Contact Persons

For further information, contact James Erb, Director of the Bureau of Oil and Gas Management, P. O. Box 8765, Rachel Carson State Office Building, Harrisburg, PA 17105-8765, (717) 772-2199, or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

#### C. Statutory Authority

The final rulemaking is adopted under the authority of sections 601—604 of the Oil and Gas Act (act) (58 P. S. §§ 601.601—601.604), which directs the Board to adopt regulations to implement the provisions of the act; section 5(b)(1) of The Clean Streams Law (CSL) (35 P. S. § 691.5(b)(1)), which grants the Department the power and duty to formulate, adopt, promulgate and repeal rules and regulations necessary to implement the provisions of the CSL; section 304 of the CSL (35 P. S. § 691.304), which grants the Department the power to adopt, prescribe and enforce rules and regulations as may be necessary for the protection of the purity of the waters of this Commonwealth, or parts thereof, and to purify those now polluted, and to assure the proper and practical operation and maintenance of treatment works approved by the Department; section 402(a) of the CSL (35 P. S. § 691.402(a)), which grants the Department the authority to require by rules and regulations that activities be conducted under a permit or other conditions established by the Department whenever the Department finds that the activity creates a danger of pollution of the waters of this Commonwealth, or that regulation is necessary to avoid pollution; section 105(a) of the Solid Waste Management Act (SWMA) (35 P. S. § 6018.105(a)), which grants the Board the power and duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA; and sections 1901-A, 1917-A, 1920-A, 30 and 31 of The Administrative Code of 1929 (71 P. S. §§ 510-1, 510-17, 510-20, 510-103 and 510-104).

#### D. Background of the Amendments

The final-form rulemaking is required to update the current regulations to reflect the legislated changes in Act 57, regarding bonding for wells drilled prior to April 18, 1985. It incorporates recommendations received during the Oil and Gas Customer Needs Project regarding standardizing the use of pits, clarifying terms, organization of the sections of the regulations, and the placement of design criteria in the regulations. It also includes an additional recommendation regarding notification requirements for de minimis brine spill reporting. The Oil and Gas Technical Advisory Board suggested additional precautions regarding notification requirements to coal owners and gas storage operators as well as advance notice of procedures when drilling is proposed in relation to gas storage operations.

#### E. Summary of the Amendments and Changes to the Proposed Rulemaking

This section describes the substantive changes in the proposed rulemaking and those made at final-form rulemaking based on public comment.

##### Section 78.1. Definitions.

The amendments add a definition for "reportable release of brine." This change provides clarification as to the quantity of spilled brine that must be reported. This definition is added in conjunction with § 78.66 (relating to reporting releases).

##### Section 78.17. Permit renewal.

The amendments add affected coal owners and gas storage operators to the persons who shall be notified when an operator requests a permit renewal. This change provides consistency with other sections of the regulations that allow coal owners and gas storage operators the opportunity for notification and objection of well permits. The final version was changed to clarify that notice shall be given to gas storage operators where the permit renewal is for a proposed well location without an underground gas storage reservoir or the reservoir protective area.

##### Section 78.53. Erosion and sediment control.

The amendment references the best management practices for oil and gas well operators as part of the technical guidance found in the *Oil and Gas Operators Manual*. The title of the section is changed for consistency. The final version requires well operators to design and implement best management practices.

##### Section 78.56. Pits and tanks for temporary containment.

The amendment changes subsection (a) to recognize additional operations that may result in the discharge of pollutional substances, and includes additional pollutional substances that must be contained. This section eliminates the permitting requirement for recompletion, servicing, and plugging pits, which are temporary in nature.

The amendment changes subsection (a)(4) to include drill cuttings from below the casing seat as a substance that must be considered when an operator is installing, constructing or maintaining the temporary pit.

The amendment adds subsection (a)(4)(v) to clarify the maintenance requirement for pit liners.

Subsection (d) is amended to include pits used during servicing and plugging. At final rulemaking, the word "restored" was replaced with "removed or filled."

*Section 78.59. Pits used during servicing and plugging.*

The amendment deletes this section because the changes to § 78.56 (relating to pits and tanks for temporary containment) regulate the same pits.

*Section 78.60. Discharge requirements.*

The amendment changes subsection (b)(5) to clarify that discharge of tophole water may include accumulated precipitation, and that tophole water is more appropriately characterized as the discharge.

*Section 78.61. Disposal of drill cuttings.*

The amendment changes subsections (a)—(c) to add a leading description to each subsection.

The amendment adds subsection (b)(8) and amends subsection (a) to clarify that free liquid fraction must be disposed of in accordance with the proper discharge requirements. Subsection (b)(8) is added for consistency with subsection (a).

*Sections 78.62 and 78.63. Disposal of residual waste—pits; and disposal of residual waste—land application.*

The amendments change §§ 78.62(a)(3) and 78.63(a)(3) to reflect the legislative changes that Act 57 created. Act 57 eliminated the bonding requirement for onsite disposal of residual wastes at oil and gas wells drilled prior to April 18, 1985. Clarifying language was added to these sections at final rulemaking to specify that the requirements apply to wells drilled on or after April 18, 1985.

*Section 78.66. Reporting releases.*

The amendment adds this section to clarify when a brine spill must be reported to the Department. This section also details the notification requirements for such a brine release. The title has been changed in the final version, and minor word changes were made in subsections (a) and (c).

*Section 78.75. Alternative methods.*

The amendment changes subsections (c) and (d) to clarify who is to be notified when an alternate method of casing, plugging or equipping a well is proposed by the well operator. The amendment includes all potentially impacted parties, such as coal owners and gas storage operators. This amendment includes these owners and operators as individuals who may evaluate the impact the alternate method may have on their interests.

*Section 78.76. Drilling within a gas storage reservoir area.*

The amendment changes subsection (a) to clarify that when a well operator proposes to drill within a gas storage area or reservoir protective area, the Department and the gas storage operator are to receive copies of the drilling proposal to allow them the opportunity to evaluate the impact on gas storage operations. Subsection (b) clarifies that the storage operator may object to the drilling, casing, and cementing plan or location of the proposed well. Subsection (c) is deleted here and moved to new § 78.87(a)(4) (relating to cementing procedures).

*Section 78.78. Pillar permit applications.*

The amendment adds subsection (a) to recognize the Department's use of the most current coal pillar study when considering a coal pillar permit application. The most recent coal pillar study was developed in 1957 and is still valid. Several other states also use this study in determining pillar adequacy.

The amendment adds subsection (b) to allow coal mine operators the opportunity to propose alternative adequate

methods for developing a coal pillar. The final version references the applicable study in subsection (a).

*Sections 78.81 and 78.87. General provisions, and gas storage reservoir protective casing; and cementing procedures.*

The amendments relocate and modify § 78.81(d) as new § 78.87 to improve clarity of the regulation.

Specific changes from § 78.81 to § 78.87 are:

1) Section 78.87(a)(1) requires well operators to use drilling procedures capable of controlling anticipated gas flows and pressures when drilling from the surface to 200 feet above a gas storage reservoir or gas storage horizon. Deleted § 78.81 required these procedures "at all times."

2) Language deleted in § 78.81(d)(2) that provided for mutual agreement between well operators and gas storage operators concerning well casing has not been included in § 78.87. This language has been modified and is included in § 78.76 (relating to drilling within a gas storage reservoir area).

The final version clarifies that the protective area is the gas storage protective area.

*Sections 78.91—78.93. General provisions; wells in coal areas—surface or coal protective casing is cemented; and wells in coal areas—surface or coal protective casing anchored with a packer or cement.*

The amendments delete the word "expanding" from these three sections. The word "expanding" was used as an adjective to describe "cement." Cement expands upon curing; therefore, the use of the adjective is not necessary.

*Section 78.302. Requirement to file a bond.*

The amendment revises this section to reflect the legislative change of Act 57, which eliminated the bonding requirement for oil and gas wells drilled prior to April 18, 1985.

*Section 78.303. Form, terms and conditions of the bond.*

The amendment deletes subsections (a)(3) and (e)(3) to reflect the legislative changes of Act 57.

*Section 78.309. Phased deposit of collateral.*

The amendment revises subsection (a)(1) to reflect the legislative changes of Act 57. The amendment states that an operator who has a phased deposit of collateral bond in effect as of the date of Act 57 (November 26, 1997) may maintain that bond. Due to the elimination of the bonding requirement for oil and gas wells drilled prior to April 18, 1985, operators can no longer qualify for a new phased deposit of collateral bond.

The amendment changes subsection (a)(1) to provide that all of the operator's wells are included in the number of wells considered for the purpose of calculating an operator's annual deposit amount. This amendment reflects the legislative changes of Act 57.

The amendment deletes subsection (b)(1)(ii) because it only applied to pre-act wells. This amendment reflects the legislative changes of Act 57.

*Section 78.310. Replacement of existing bond.*

The amendment changes this section to delete the fee-in-lieu of bond option because new fee-in-lieu of bonding is not allowed. This amendment reflects the legislative changes of Act 57.

*Section 78.901. Definitions*

The amendment deletes this section because the only definition listed is for the Natural Gas Policy Act, a Federal program no longer delegated to the Department.

### *Section 78.903. Frequency of inspections.*

The amendments delete paragraph (17) in accordance with the Department's operation under the act, and not the Federal Natural Gas Policy Act. The Federal program was discontinued.

### *F. Summary of Comments and Responses on the Proposed Rulemaking*

The Board approved the proposed rulemaking on April 18, 2000, and it was published at 30 Pa.B. 3065 (June 17, 2000), with provision for a 30-day public comment period that closed on July 17, 2000. Comments were received from a total of five commentators and the Independent Regulatory Review Commission (IRRC).

The majority of comments suggested clarifying language, which was incorporated in the final-form regulations. Several commentators had opposing views regarding the anticipated drilling date and drilling plan notification requirements for drilling through gas storage reservoirs. Comments suggesting that gas storage operators be given the authority to reject a well operator's drilling plan were not included in the final-form rulemaking. This ability to effectively veto the Department's permitting authority goes beyond the statutory provisions of the act. Comments suggesting that well operators be excluded from providing notice to gas storage operators were also not included in the final-form rulemaking. Providing notice of the anticipated drilling date and the drilling plan is important because pressure in a storage reservoir fluctuates from low pressures in the summer to high pressures in fall and winter. Thus, the date drilling is to occur impacts how an operator must plan. The changes to § 78.76 ensure that the storage reservoir is protected by allowing a storage operator to confirm that the well operator's drilling plan adequately provides for the anticipated storage reservoir pressures.

### *G. Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

#### *Benefits*

These amendments are needed to reduce unnecessary permitting and reporting requirements, standardize the use of pits, clarify terms, organize the sections of the regulation, and provide information as to where to find design criteria. The amendments include notification requirements for de minimis brine spill reporting. The Oil and Gas Technical Advisory Board suggested additional precautions regarding notification requirements to coal owners and gas storage operators as well as advance notice of procedures when drilling is proposed in relation to gas storage operations. The amendments also reflect the legislative changes of Act 57. The oil and gas industry and the Department should realize savings in the form of reduced time and costs due to decreased permitting and reporting requirements and improved regulation clarity. The provision regarding elimination of the permit requirement for temporary pits will affect operators with active drilling or plugging programs. The renewal notification requirements will benefit coal owners and gas storage operators. The spill reporting provision will benefit about 2,000 operators with active wells as well as reduce the Department's staff time to address reported de minimis spills.

#### *Compliance Costs*

Operators proposing to drill a well in a gas storage area will have to provide the storage well operator the details of how the operator intends to construct the well. There

will be fewer than 20 occurrences each year. This particular amendment will impose minimal additional compliance costs on the Department and the regulated community; however, these costs are likely to be offset by the overall savings of time and costs that are described in the Benefits section of this Preamble.

### *Compliance Assistance Plan*

The technical guidance for the coal pillar permit criteria is made available on the Department website. The best management practices for erosion and sedimentation control is made available in the *Oil and Gas Operators Manual*. Both of these documents are available from the contact persons listed in Section B of this Preamble.

### *Paperwork Requirements*

These amendments will reduce certain paperwork required for brine spill reporting and eliminate permits for certain pits.

### *H. Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 31, 2000, the Department submitted a copy of the notice of proposed rulemaking at 30 Pa.B. 3065, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered all comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)) these final-form regulations were deemed approved by the House and Senate Committees on February 26, 2001. IRRC met on March 8, 2001, and approved the amendments in accordance with section 5.1(e) of the Regulatory Review Act.

### *J. Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 30 Pa.B. 3065.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

### *K. Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 78, are amended by amending §§ 78.1, 78.60, 78.75, 78.76, 78.81, 78.91—78.93, 78.302, 78.303, 78.310 and 78.903 and deleting §§ 78.59 and 78.901 to read as

set forth at 30 Pa.B. 3065; and by amending §§ 78.17, 78.53, 78.56, 78.61—78.63 and 78.309 and adding §§ 78.66, 78.78 and 78.87 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order, 30 Pa.B. 3065 and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order, 30 Pa.B. 3065 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 30 Pa.B. 3065 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,  
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

**Fiscal Note:** Fiscal Note 7-353 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION

#### PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

##### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE I. LAND RESOURCES

#### CHAPTER 78. OIL AND GAS WELLS

##### Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

##### PERMITS AND TRANSFERS

#### § 78.17. Permit renewal.

An operator may request a 1-year renewal of a well permit. The request shall be accompanied by a permit fee, the surcharge required in section 601 of the act (58 P. S. § 601.601), and an affidavit affirming that the information on the original application is still accurate and complete, that the well location restrictions are still met and that the surface owners, coal owners and operators, gas storage operators, where the permit renewal is for a proposed well location within an underground gas storage reservoir or the reservoir protective area, and water supply owners within 1,000 feet have been notified of this request for renewal. The request shall be received by the Department at least 15 calendar days prior to the expiration of the original permit.

##### Subchapter C. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

#### § 78.53. Erosion and sediment control.

During and after earthmoving or soil disturbing activities, including the activities related to siting, drilling, completing, producing, servicing and plugging the well, constructing, utilizing and restoring the access road and restoring the site, the operator shall design, implement and maintain best management practices in accordance with Chapter 102 (relating to erosion and sediment control) and an erosion and sediment control plan pre-

pared under that chapter. Best management practices for oil and gas well operations are listed in the *Oil And Gas Operators Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001 (April 1997), as amended and updated.

#### § 78.56. Pits and tanks for temporary containment.

(a) Except as provided in §§ 78.60(b) and 78.61(b) (relating to discharge requirements; and disposal of drill cuttings), the operator shall contain pollutional substances and wastes from the drilling, altering, completing, recompleting, servicing and plugging the well, including brines, drill cuttings, drilling muds, oils, stimulation fluids, well treatment and servicing fluids, plugging and drilling fluids other than gases in a pit, tank or series of pits and tanks. The operator shall install or construct and maintain the pit, tank or series of pits and tanks in accordance with the following requirements:

(1) The pit, tank or series of pits and tanks shall be constructed and maintained with sufficient capacity to contain all pollutional substances and wastes which are used or produced during drilling, altering, completing and plugging the well.

(2) A pit shall be designed, constructed and maintained so that at least 2 feet of freeboard remain at all times. If open tanks are used, the tanks shall be maintained so that at least 2 feet of freeboard remain at all times unless the tank is provided with an overflow system to a standby tank or pit with sufficient volume to contain all excess fluid or waste. If an open standby tank is used, it shall be maintained with 2 feet of freeboard. If this subsection is violated, the operator immediately shall take the necessary measures to ensure the structural stability of the pit or tank, prevent spills and restore the 2 feet of freeboard.

(3) Pits and tanks shall be designed, constructed and maintained to be structurally sound and reasonably protected from unauthorized acts of third parties.

(4) A pit or tank that contains drill cuttings from below the casing seat, pollutional substances, wastes or fluids other than top-hole water, fresh water and uncontaminated drill cuttings shall be impermeable and comply with the following:

(i) The pits shall be constructed with a synthetic flexible liner with a coefficient of permeability of no greater than  $1 \times 10^{-7}$  cm/sec and with sufficient strength and thickness to maintain the integrity of the liner. The liner shall be designed, constructed and maintained so that the physical and chemical characteristics of the liner are not adversely affected by the waste and the liner is resistant to physical, chemical and other failure during transportation, handling, installation and use. Adjoining sections of liners shall be sealed together to prevent leakage in accordance with the manufacturer's directions. If the operator seeks to use a liner material other than a synthetic flexible liner, the operator shall submit a plan identifying the type and thickness of the material and the installation procedures to be used, and shall obtain approval of the plan by the Department before proceeding.

(ii) The pit shall be constructed so that the liner subbase is smooth, uniform and free from debris, rock and other material that may puncture, tear, cut or otherwise cause the liner to fail. The liner subbase and subgrade shall be capable of bearing the weight of the material above the liner without settling that may affect the integrity of the liner. If the pit bottom or sides consist of rock, shale or other materials that may cause the liner to fail, a subbase of at least 6 inches of soil, sand or



smooth gravel, or sufficient amount of an equivalent material, shall be installed over the area as the subbase for the liner.

(iii) The bottom of the pit shall be at least 20 inches above the seasonal high groundwater table, unless the operator obtains approval under subsection (b) for a pit that exists only during dry times of the year and is located above groundwater.

(iv) If a liner becomes torn or otherwise loses its integrity, the pit shall be managed to prevent the pit contents from leaking from the pit. If repair of the liner or construction of another temporary pit is not practical or possible, the pit contents shall be removed and disposed at an approved waste disposal facility or disposed on the well site in accordance with § 78.61, § 78.62 or § 78.63 (relating to disposal of residual waste—pits; and disposal of residual waste—land application).

(v) If the liner drops below the 2 feet of freeboard, the pit shall be managed to prevent the pit contents from leaking from the pit and the 2 feet of lined freeboard shall be restored.

(b) The operator may request to use practices other than those specified in subsection (a) which provide equivalent or superior protection by submitting a request to the Department for approval. The request shall be made on forms provided by the Department.

(c) Disposal of uncontaminated drill cuttings in a pit or by land application shall comply with § 78.61. A pit used for the disposal of residual waste, including contaminated drill cuttings, shall comply with § 78.62. Disposal of residual waste, including contaminated drill cuttings, by land application shall comply with § 78.63.

(d) Unless a permit under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or approval under § 78.57 or § 78.58 (relating to control, storage and disposal of production fluids; and existing pits used for the control, storage and disposal of production fluids) has been obtained for the pit, the owner or operator shall remove or fill the pit within 9 months after completion of drilling, or in accordance with the extension granted by the Department under section 206(g) of the act (58 P. S. § 601.206(g)). Pits used during servicing, plugging and recompleting the well shall be removed or filled within 90 days of construction.

#### **§ 78.61. Disposal of drill cuttings.**

(a) *Drill cuttings from above the casing seat—pits.* The owner or operator may dispose of drill cuttings from above the casing seat determined in accordance with § 78.83(b) (relating to surface and coal protective casing and cementing procedures) in a pit at the well site if the owner or operator satisfies the following requirements:

(1) The drill cuttings are generated from the well at the well site.

(2) The drill cuttings are not contaminated with pollutional material, including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases.

(3) The disposal area is not within 100 feet of a stream, body of water or wetland unless approved as part of a waiver granted by the Department under section 205(b) of the act (58 P. S. § 601.205(b)).

(4) The disposal area is not within 200 feet of a water supply.

(5) The pit is designed, constructed and maintained to be structurally sound.

(6) The free liquid fraction of the waste shall be removed and disposed under § 78.60 (relating to discharge requirements).

(7) The pit shall be backfilled to the ground surface and graded to promote runoff with no depression that would accumulate or pond water on the surface. The stability of the backfilled pit shall be compatible with the adjacent land.

(8) The surface of the backfilled pit area shall be revegetated to stabilize the soil surface and comply with § 78.53 (relating to erosion and sedimentation control). The revegetation shall establish a diverse, effective, permanent, vegetative cover which is capable of self-regeneration and plant succession. Where vegetation would interfere with the intended use of the surface of the landowner, the surface shall be stabilized against erosion.

(b) *Drill cuttings from above the casing seat—land application.* The owner or operator may dispose of drill cuttings from above the casing seat determined in accordance with § 78.83(b) by land application at the well site if the owner or operator satisfies the following requirements:

(1) The drill cuttings are generated from the well at the well site.

(2) The drill cuttings are not contaminated with pollutional material, including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases.

(3) The disposal area is not within 100 feet of a stream, body of water or wetland unless approved as part of a waiver granted by the Department under section 205(b) of the act (58 P. S. § 601.205(b)).

(4) The disposal area is not within 200 feet of a water supply.

(5) The soils have a minimum depth from surface to bedrock of 20 inches.

(6) The drill cuttings are not spread when saturated, snow covered or frozen ground interferes with incorporation of the drill cuttings into the soil.

(7) The drill cuttings are not applied in quantities which will result in runoff or in surface water or groundwater pollution.

(8) The free liquid fraction is disposed in accordance with § 78.60.

(9) The drill cuttings are spread and incorporated into the soil.

(10) The land application area shall be revegetated to stabilize the soil surface and comply with § 78.53. The revegetation shall establish a diverse, effective permanent vegetative cover which is capable of self-regeneration and plant succession. Where vegetation would interfere with the intended use of the surface by the landowner, the surface shall be stabilized against erosion.

(c) *Drill cuttings from below the casing seat.* After removal of the free liquid fraction and disposal in accordance with § 78.60, drill cuttings from below the casing seat determined in accordance with § 78.83(b) may be disposed of as follows:

(1) In a pit that meets the requirements of § 78.62(a)(5)—(18) and (b) (relating to disposal of residual waste—pits).

(2) By land application in accordance with § 78.63(a)(5)—(20) and (b) (relating to disposal of residual waste—land application).

(d) The owner or operator may request to use solidifiers, dusting, unlined pits, attenuation or other alternative practices for the disposal of uncontaminated drill cuttings by submitting a request to the Department for approval. The request shall be made on forms provided by the Department and shall demonstrate that the practice provides equivalent or superior protection to the requirements of this section.

(e) A pit used for the disposal of residual waste, including contaminated drill cuttings, shall comply with § 78.62. Land application of residual waste, including contaminated drill cuttings, shall comply with § 78.63.

**§ 78.62. Disposal of residual waste—pits.**

(a) After the removal and disposal of the free liquid fraction of the waste under § 78.60(a) (relating to discharge requirements), the owner or operator may dispose of residual waste, including contaminated drill cuttings, in a pit at the well site if the owner or operator satisfies the following requirements:

(1) The waste is generated by the drilling or production of an oil or gas well that is located on the well site where the waste is disposed.

(2) The well is permitted under section 201 of the act (58 P. S. § 601.201) or registered under section 203 of the act (58 P. S. § 601.203).

(3) The requirements of section 215 of the act (58 P. S. § 601.215) are satisfied by filing a surety or collateral bond for wells drilled on or after April 18, 1985.

\* \* \* \* \*

**§ 78.63. Disposal of residual waste—land application.**

(a) The owner or operator may dispose of residual waste, including contaminated drill cuttings, at the well site by land application of the waste if the owner or operator satisfies the following requirements:

(1) The waste is generated by the drilling or production of an oil or gas well that is located on the well side.

(2) The well is permitted under section 201 of the act (58 P. S. § 601.201) or registered under section 203 of the act (58 P. S. § 601.215).

(3) The requirements of section 215 of the act (58 P. S. § 601.215) are satisfied by filing a surety or collateral bond for wells drilled on or after April 18, 1985.

\* \* \* \* \*

**§ 78.66. Reporting releases.**

(a) A release of a substance causing or threatening pollution of the waters of this Commonwealth, shall comply with the reporting and corrective action requirements of § 91.33 (relating to incidents causing or threatening pollution).

(b) If a reportable release of brine on or into the ground occurs at the well site, the owner or operator shall notify the appropriate regional office of the Department as soon as practicable, but no later than 2 hours after detecting or discovering the release.

(c) The notice required by subsection (b) shall be by telephone and describe:

(1) The name, address and telephone number of the company and person reporting the incident.

(2) The date and time of the incident or when it was detected.

(3) The location and cause of the incident.

(4) The quantity of the brine released.

(5) Available information concerning the contamination of surface water, groundwater or soil.

(6) Remedial actions planned, initiated or completed.

(d) If, because of an accident, an amount of brine less than the reportable amount as described in § 78.1 (relating to definitions), spills, leaks or escapes, that incident does not have to be reported.

(e) Upon the occurrence of any release, the owner or operator shall take necessary corrective actions to:

(1) Prevent the substance from reaching the waters of this Commonwealth.

(2) Recover or remove the substance which was released.

(3) Dispose of the substance in accordance with this subchapter or as approved by the Department.

**Subsection D. WELL DRILLING,  
OPERATION AND PLUGGING**

**GENERAL**

**§ 78.78. Pillar permit applications.**

(a) The Department will use recommendations for coal pillar size and configuration set forth in the coal pillar study, listed in the Department's *Coal Pillar Technical Guidance* Number 550-2100-006 (October 31, 1998) and any updates or revisions, as a basis for approval or disapproval of coal pillar permit applications submitted by underground coal mine operators.

(b) Where proposed coal pillar size and configuration does not conform to the recommendations of the coal pillar study referenced in subsection (a), the underground coal mine operator may request Department approval for an alternate coal pillar size and configuration.

**CASING AND CEMENTING**

**§ 78.87. Gas storage reservoir protective casing and cementing procedures.**

(a) In addition to the other provisions in this subchapter, a well drilled through a gas storage reservoir or a gas storage reservoir protective area shall be drilled, cased and cemented as follows:

(1) An operator shall use drilling procedures capable of controlling anticipated gas flows and pressures when drilling from the surface to 200 feet above a gas storage reservoir or gas storage horizon.

(2) An operator shall use drilling procedures capable of controlling anticipated gas storage reservoir pressures and flows at all times when drilling from 200 feet above a gas storage reservoir horizon to the depth at which the gas storage protective casing will be installed. Operators shall use blow-out prevention equipment with a pressure rating in excess of the allowable maximum storage pressure for the gas storage reservoir.

(3) To protect the gas storage reservoir, an operator shall run intermediate or production casing from a point located at least 100 feet below the gas storage horizon to

the surface. The operator shall cement this casing by circulating cement to a point at least 200 feet above the gas storage reservoir or gas storage horizon.

(4) When cementing casing in a well drilled through a gas storage reservoir, the operator shall insure that no gas is present in the drilling fluids in an amount that could interfere with the integrity of the cement.

(b) A request by an operator for approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well drilled through a gas storage reservoir under section 211 of the act (58 P. S. § 601.211) shall be made in accordance with § 78.75 (relating to alternative methods).

### Subchapter G. BONDING REQUIREMENTS

#### § 78.309. Phased deposit of collateral.

##### (a) Operators.

(1) *Eligibility.* An operator who had a phased deposit of collateral in effect as of November 26, 1997, may maintain that bond for wells requiring bonding, for new well permits and for wells acquired by transfer.

(i) An operator may not have more than 200 wells.

(ii) Under the following schedule, an operator shall make a deposit with the Department of approved collateral prior to the issuance of a permit for a well or the transfer of a permit for a well, and shall make subsequent annual deposits and additional well payments. For the purpose of calculating the required deposit, all of the operator's wells are included in the number of wells.

<i>Number of Wells</i>	<i>Annual Deposit</i>	<i>Per Additional Well</i>
1-10 with no intention to operate more than 10	\$50/well	N.A.
11-25 or 1-10 and applies for additional well permits	\$1,150	\$ 150
26-50	\$1,300	\$ 400
51-100	\$1,500	\$ 400
101-200	\$1,600	\$1,000

(iii) An operator shall make the phased deposits of collateral as required by the bond.

(2) *Termination of eligibility.* An operator is no longer eligible to make phased deposits of collateral when one or more of the following occur:

(i) The operator shall fully bond the wells immediately, if an operator has more than 200 wells.

(ii) If the operator misses a phased deposit of collateral payment, the operator shall do one of the following:

(A) Immediately submit the appropriate bond amount in full.

(B) Cease all operations and plug the wells covered by the bond in accordance with the plugging requirements of section 210 of the act (58 P. S. § 601.210).

##### (b) Individuals.

##### (1) Eligibility.

(i) An individual who seeks to satisfy the collateral bond requirements of the act by submitting phased deposit of collateral under section 215(d.1) of the act (58 P. S. § 601.215(d.1)), may not drill more than ten new wells per calendar year. A well in which the individual has a financial interest is to be considered one of the wells permitted under this section. A partnership, associa-

tion or corporation is not eligible for phased deposit of collateral under this subsection.

(ii) The individual shall deposit with the Department \$500 per well in approved collateral prior to issuance of a new permit.

(iii) The individual shall deposit 10% of the remaining amount of bond in approved collateral in each of the next 10 years. Annual payments shall become due on the anniversary date of the issuance of the permit, unless otherwise established by the Department. Payments shall be accompanied by appropriate bond documents required by the Department.

(iv) The individual shall make the phased collateral payments as required by the bond.

(2) *Termination of eligibility.* If the individual misses a phased deposit of collateral payment, the individual will no longer be eligible to make phased deposits of collateral and shall do one of the following:

(i) Immediately submit the appropriate bond amount in full.

(ii) Cease operations and plug the wells covered by the bond in accordance with the plugging requirements of section 210 of the act.

(c) *Interest earned.* Interest earned by collateral on deposit by operators and individuals under this section shall be accumulated and become part of the bond amount until the operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest earned by the collateral shall be returned to the operator or the individual upon release of the bond. Interest may not be paid for postforfeiture interest accruing during appeals and after resolution of the appeals, when the forfeiture is adjudicated, decided or settled in favor of the Commonwealth.

[Pa.B. Doc. No. 01-546. Filed for public inspection March 30, 2001, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

### [25 PA. CODE CH. 240]

#### Radon Certification; Continuing Education

The Environmental Quality Board (Board) by this order amends Chapter 240 (relating to radon certification). The amendment is being adopted to modify the requirements for a continuing education program by certified persons performing radon-related work in this Commonwealth outlined in § 240.306 (relating to continuing education program) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of January 16, 2001.

##### A. Effective Date

This amendment will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

##### B. Contact Person

For further information contact Michael A. Pyles, Chief, Division of Radon, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-3594; or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA, 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800)

654-5988 (voice users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

#### C. Statutory Authority

The final rulemaking is being made under the authority of section 13 of the Pennsylvania Radon Certification Act (63 P. S. § 2013); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510.20).

#### D. Background of the Amendment

The Department is responsible for maintaining a certification program for persons conducting radon-related work in this Commonwealth, and a component of that certification program is a continuing education program. Currently the regulation requires that a certified person conducting radon-related activities in this Commonwealth will participate in a continuing education program consisting of a minimum of 16 hours of Department-approved courses or seminars on radon testing or mitigation each year. This amendment will reduce this minimum continuing education requirement to 8 hours each year.

The purpose of this reduction in the required number of continuing education hours is to conform the Commonwealth's regulations with the recommendations of National bodies which set standards in this area, as well as with the requirements for continuing education in neighboring states with active radon certification programs, and provide relief to the radon regulated community in this Commonwealth from a regulation that is unnecessarily burdensome.

The National Environmental Health Association (NEHA), and the National Radon Safety Board (NRSB), both of which have standards for continuing education by persons conducting radon-related activities, recommend a minimum of 8 hours of continuing education each year. Likewise, the neighboring states of New Jersey and Ohio have active radon certification programs, and require a minimum of 8 hours of continuing education each year.

The radon regulated community in this Commonwealth participated in a series of eight radon regulatory workshops in 1996. At that time, the regulated community and members of organizations involved with the radon issue represented at these workshops recommended that the minimum continuing education requirement for certified persons performing radon-related work in this Commonwealth be reduced from 16 hours each year to 8 hours each year. The participants believed that the 16-hour minimum requirement was unnecessarily burdensome. In February 2000, staff from the Department's Radon Division surveyed the workshop participants to confirm their views on this amendment. The results of this survey indicated that participants continued to support this reduction of hours.

No comments or questions were received from the public, the Independent Regulatory Review Commission (IRRC) or the House and Senate Standing Committees on the proposed rulemaking. As a result, the text of the final-form rulemaking submission is identical to the text of the proposed rulemaking. The radon regulatory workshop participants were notified in September 2000 that no comments or questions had been submitted on the proposed rulemaking and they continue to support the rulemaking.

#### E. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulation.

#### Benefits

This final-form rulemaking would benefit about 200 certified radon laboratory, testing and mitigation persons who take continuing education courses to fulfill the requirements in § 240.306. By reducing the minimum number of required continuing education hours from 16 hours each year to 8 hours each year, the estimated savings per certified person per year is expected to be \$150. Thus, the total savings to the community of certified radon laboratory, testing and mitigation persons is estimated to be about \$30,000 per year.

#### Costs

There are no additional costs to the Commonwealth, its citizens or regulated community associated with this regulation.

#### Compliance Costs

The final-form regulation is not expected to impose any additional compliance costs on the regulated community.

#### F. Sunset Review

This final-form regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

#### G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 11, 2000, the Department submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 3661 (July 22, 2000), to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment. There were no comments received from IRRC, the Committees or the public.

Under section 5.1(g) of the Regulatory Review Act (71 P. S. § 745.5a(g)), on February 26, 2001, these final-form regulation was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulation.

#### H. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and the comments were considered.

(3) The regulation do not enlarge the purpose of the proposal published at 30 Pa.B. 3661 (July 22, 2000).

(4) The regulation is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

#### I. Order

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 240, are amended by amending § 240.306 to read as set forth at 30 Pa.B. 3661.

(b) The Chairperson of the Board shall submit this order and 30 Pa.B. 3661 to the Office of General Counsel and the Office of Attorney General for review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and 30 Pa.B. 3661 to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and 30 Pa.B. 3661 and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,  
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

**Fiscal Note:** Fiscal Note 7-351 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 01-547. Filed for public inspection March 30, 2001, 9:00 a.m.]

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE ARCHITECTS LICENSURE BOARD

#### [49 PA. CODE CH. 9]

#### Biennial Renewal Fees

The State Architects Licensure Board (Board) adopts an amendment to § 9.3 (relating to fees) by raising the biennial renewal fee for architects.

Notice of proposed rulemaking was published at 30 Pa.B. 2481 (May 20, 2000). Publication was followed by a 30-day public comment period during which the Board received no comments from the general public. Neither the House Professional Licensure Committee, nor the Senate Consumer Protection and Professional Licensure Committee made comments on the proposed amendment. The Independent Regulatory Review Commission (IRRC) sent a letter to the Board, stating it had no objections, comments or suggestions to offer on the proposed amendment.

#### A. Effective Date

The amendment will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

The amendment is authorized under section 11 of the Architects Licensure Law (act) (63 P. S. § 34.11).

#### C. Background and Purpose

Section 11(b) of the act requires the Board to fix the fees required for renewal of licenses by regulation. In addition, section 11(a) of the act requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

The Board last increased its biennial renewal fees on February 2, 1987. At the close of the 1997–1999 biennial period, the Board experienced a deficit of approximately \$51,445.79. The Board estimates that it must generate revenues of about \$725,100 to meet its anticipated expen-

ditures for the July 1, 1999, through June 30, 2001, biennial period. In addition, since the Board incurred a biennial reconciliation deficit, the Board anticipates recovering that deficit during the July 1, 1999, through June 30, 2001, biennial period. The Board anticipates that the new fees plus the increased user fees which are being separately promulgated, will enable it to recapture the current deficit, meet its estimated expenditures for the 1999–2001 biennial cycle, and generate a surplus of approximately \$264,637.08 of its biennial expenses at the end of the 1999–2001 biennial period.

#### D. Description of Amendment

The following table outlines the affected fee and change:

Application	Current Fee	New Fee
Biennial renewal fee	\$50	\$100

#### E. Compliance with Executive Order 1996-1

Copies were provided to those interested parties who requested an opportunity to provide input.

#### F. Fiscal Impact and Paperwork Requirements

The amendment increases the biennial renewal fee for architects in this Commonwealth; otherwise, it should have no fiscal impact on the private sector, the general public or political subdivisions.

The amendment requires the Board to alter some of its forms to reflect the new biennial renewal fees; however, the amendment should create no additional paperwork for the private sector.

#### G. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 5, 2000, the Board submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 2481, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received no written comments from the public. Subsequent to the close of the public comment period, the Board received no comments from the Committees. The Board received no comments from IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745a(d)), on February 22, 2001, this final-form regulation was deemed approved by the House and Senate Committees, and approved by the Professional Licensure Committee on February 27, 2001. The amendment was deemed approved under 5.1(g) of the Regulatory Review Act effective February 28, 2001.

#### I. Further Information

Individuals who need information about the regulation may contact Roberta Silver, Counsel, State Architects Licensure Board, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200.

#### J. Findings

The Board finds that:

(1) Public notice of intention to adopt a final-form regulation in 49 Pa. Code Chapter 9, was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769,

No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law.

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 30 Pa.B. 2481.

(4) The amendment of the Board is necessary and appropriate for the administration of the act.

K. *Order*

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 9, are amended by amending § 9.3 to read as set forth at 30 Pa.B. 2481.

(b) The Board shall submit a copy of this order and 30 Pa.B. 2481 to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and 30 Pa.B. 2481 shall deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

FRANK M. ADAMS,  
*Chairperson*

**Fiscal Note:** Fiscal Note 16A-415 remains valid for the final adoption of the subject regulation.

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa. B. 1647 (March 24, 2001).)

[Pa.B. Doc. No. 01-548. Filed for public inspection March 30, 2001, 9:00 a.m.]

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# PROPOSED RULEMAKING

## GAME COMMISSION

[58 PA. CODE CHS. 131, 137 AND 139]

**Crossbows; Replacement Costs; and Elk**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 23, 2001, meeting, proposed the following amendments:

Amend § 131.2 (relating to definitions) by defining a crossbow, § 131.4 (relating to civil liability for wildlife killed) by making an editorial change to correct the reference to 34 Pa.C.S. § 2307(e) (relating to unlawful taking or possession of game or wildlife), and adding § 131.8 (relating to replacement costs for wildlife killed) to establish replacement costs as provided in 34 Pa.C.S. § 925(i) (relating to jurisdiction and penalties).

Add § 137.33 (relating to protection of elk) to protect animals which cannot be killed until every reasonable effort is made to live trap and transfer the animals.

Amend § 139.2 (relating to definitions) to facilitate the harvest of additional antlerless deer.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for these proposals is 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

These proposals were made public at the January 23, 2001, meeting of the Commission. Comments on these proposals can be sent to the Executive Director, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 6, 2001.

*Proposed Amendment to § 131.2.*

### 1. Introduction

The act of December 20, 2000 (P. L. 452, No. 111) (Act 111) removed the crossbow from the list of unlawful hunting devices contained in section 2308 of the code (relating to unlawful devices and methods). To adopt regulations relating to the use of crossbows to hunt, it is first necessary to define "crossbow." The Commission at its meeting held on January 23, 2001, therefore, proposed adding a definition of "crossbow" to § 131.2. This proposal is being made under the authority contained in the code.

### 2. Purpose and Authority

Act 111 gives the Commission the authority to allow the use of crossbows to hunt in this Commonwealth. To regulate their use however, what constitutes a crossbow must be established. The proposed addition will accomplish that purpose.

Section 2102(a) of the code (relating to regulations) directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning ... the ways, manner, methods and means of hunting or furtaking ..." Section 2102(d) of the code also directs the Commission to promulgate regulations stipulating "... the type of firearms and ammunition and other devices which may be used ..." The amendment will be adopted under this authority.

### 3. Regulatory Requirements

The amendment merely defines the term "crossbow."

### 4. Persons Affected

Individuals wishing to hunt using a crossbow will be affected by the proposal.

*Proposed Amendment to § 131.4*

#### 1. Introduction

When section 2307 of the code was changed by the act of December 21, 1998 (P. L. 1274, No. 166), the penalty section was changed from subsection (d) to subsection (e). Section 131.4(a) was never changed to reflect this amendment. At its meeting held on January 23, 2001, the Commission proposed amending § 131.4(a) to refer to section 2307(e) of the code, rather than section 2307(d) of the code. The change is being proposed under section 2102 of the code.

#### 2. Purpose and Authority

The proposed change is essentially an editorial change resulting from the addition of a subsection to section 2307 of the code. Changing the subsection will have the regulation correctly refer to the penalty provisions of that section. This proposal is being made under section 2102 of the code which provides that: "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife ..."

#### 3. Regulatory Requirements

The amendment is an editorial change.

#### 4. Persons Affected

Since the proposed change is editorial, it will not affect anyone not affected by the original regulation.

*Proposed Addition of § 131.8*

#### 1. Introduction

To more effectively manage the game and wildlife of this Commonwealth, the Commission at its January 23, 2001, meeting proposed adding § 131.8. Section 925(i) of code provides for the payment of replacement costs in addition to fines and costs "... as is fixed by regulation of the commission." This section provides the authority for the proposed addition.

#### 2. Purpose and Authority

The Commission has expended and continues to expend a great deal of money and resources in encouraging the increase of endangered and threatened and other critical species. The unlawful possessing, killing and taking of these species tends to frustrate the purpose of these expenditures. The proposed addition will discourage unlawful possession and killing and compensate the Commission for its investment in these species.

As was pointed out in the Introduction, section 925(i) of the code specifically authorizes the Commission to fix by regulation replacement costs for unlawfully killed species. In addition, section 2102 of the code directs the Commission to promulgate "... such regulations as it deems necessary and appropriate concerning game or wildlife ..." Both of these sections provide the authority for the proposed addition.

#### 3. Regulatory Requirements

The proposed addition will specify replacement costs to be assessed on conviction for unlawfully possessing or killing specified species.

#### 4. *Persons Affected*

Individuals unlawfully possessing or killing certain game and wildlife species will be affected by the proposed addition.

##### *Proposed Addition of § 137.33*

##### 1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission, at its January 23, 2001, meeting proposed adding § 137.33. The Commission has expended a great deal of resources in encouraging the growth of the elk herd in this Commonwealth. Section 2121(b) of the code (relating to killing game or wildlife to protect property) authorizes the Commission to designate by regulation, game or wildlife for which every reasonable effort must be expended to live trap and transfer prior to killing. The proposed addition would designate elk as being such a species and provide procedures to be followed in dealing with nuisance elk.

##### 2. *Purpose and Authority*

The elk herd in this Commonwealth is growing. With that growth comes conflicts, particularly with those engaged in growing crops that elk like to eat. The Commission has taken steps to create and preserve elk habitat and to trap and transfer elk. Unfortunately, conflicts still occur with those lawfully authorized by section 2121 of the code to kill game or wildlife to protect property.

A partial solution to this problem may lie in section 2121(b) of the code, which protects endangered and threatened species and authorizes the Commission to protect other species. This subsection requires that every reasonable effort be made to live trap and transfer the wildlife before lethal steps are taken. The proposed addition will provide that protection to elk.

In addition to section 2121(b) of the code, section 2102 of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning game or wildlife ...". These provisions provide the authority for the proposed addition.

##### 3. *Regulatory Requirements*

The proposed addition will require the exhaustion of all reasonable efforts, including considering the possibility of erection of elk deterrent fencing and the live trap and transfer of elk.

#### 4. *Persons Affected*

Individuals living in the elk range who are qualified to kill wildlife to protect property will be affected by the proposed addition.

##### *Proposed Amendment of § 139.2*

##### 1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its January 23, 2001, proposed amending § 139.2 to add definitions of "antlered elk" and "antlerless elk," and to revise the definition of "field possession limit—deer" to eliminate the requirement that a harvested deer be transported and secured prior to harvesting additional deer. These changes were proposed under the authority contained in section 322(c)(1) of the code (relating to powers and duties of the commission) and section 2102(b)(1) of the code.

##### 2. *Purpose and Authority*

Act 111 authorized the Commission to issue elk hunting licenses. The Commission has proposed that there be a 6 day elk hunting season in 2001. To carefully control the

harvest of elk, antlered and antlerless elk must be distinguished. The proposed amendment of § 139.2 would accomplish this purpose.

In addition, last year the Commission had established by definition of "field possession limit—deer," a field possession limit of one deer at a time. Where multiple harvests of deer are authorized, however, the Commission wants to encourage a high harvest of deer. To do this, the Commission has proposed changing the definition contained in § 139.2 to require only the lawful tagging of a harvested deer prior to harvesting another deer.

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section 322(c) of the code specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits. These sections provide the authority for the proposed amendment.

##### 3. *Regulatory Requirements*

The addition of definitions of "antlered" and "antlerless" elk will facilitate requiring elk hunters to distinguish between the two. The change in the definition of "field possession limit—deer" will relax requirements but still require the lawful tagging of harvested deer.

#### 4. *Persons Affected*

Individuals wishing to hunt deer and elk will be affected by the proposals.

##### 5. *Cost and Paperwork Requirements*

The proposed amendment should not result in any additional cost or paperwork.

##### *Effective Date*

The proposed changes will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

##### *Contact Person*

For further information on the change contact David E. Overcash, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-128. No fiscal impact; (8) recommends adoption.

#### **Annex A**

#### **TITLE 58. RECREATION**

#### **PART III. GAME COMMISSION**

#### **CHAPTER 131. PRELIMINARY PROVISIONS**

#### **§ 131.2. Definitions.**

In addition to the definitions contained in section 102 of the act (relating to definitions), the following words and terms, when used in this part, or in the act have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Crossbow**—A device consisting of a bow fixed transversely on a stock, the string of which is released by a trigger mechanism, has a mechanical safety and propels an arrow.



\* \* \* \* \*

#### § 131.4. Civil liability for wildlife killed.

(a) If a voluntary settlement cannot be reached, the Director or an officer designated by the Director may bring a civil action in the name of the Commission against a person killing or unlawfully in possession of wildlife, or part thereof, and may seek to recover an amount not less than the penalties prescribed in section 2307 [ (d) ] (e) of the act (relating to unlawful taking or possession of game or wildlife).

\* \* \* \* \*

#### § 131.8. Replacement costs for wildlife killed.

In addition to the penalties provided for the violation of any of the provisions of the act or this title, every person who unlawfully kills or possesses wildlife shall be assessed the following replacement costs:

(1) Each elk, bear or threatened or endangered bird or mammal not less than \$800 nor more than \$5,000.

(2) Each elk with at least six points on one antler, not less than \$5,000 nor more than \$10,000.

### CHAPTER 137. WILDLIFE

#### § 137.33. Protection of elk.

(a) Elk are hereby designated as protected under section 2121(b) of the act (relating to killing game or wildlife to protect property). Elk may not be killed under section 2121(a) of the act without first expending every effort to live trap and transfer the animal in cooperation with a representative of the Commission.

(b) The following procedures shall be followed before an elk can be lawfully killed under the provisions of section 2121(a) of the act.

(1) The person who qualifies to kill for crop damage shall give telephone or facsimile notice of damage by elk to the applicable regional office of the Commission.

(2) The local representative of the Commission will contact the complainant within 24 hours of receipt of notice at the regional office. During this period, the qualified person may take any reasonable measures short of killing the elk such as creating obstacles or harassment to avoid or minimize damage.

(3) The local representative of the Commission will make every reasonable effort to trap and transfer the elk involved and otherwise assist the qualified person in eliminating elk damage. This will also include consideration of the erection of a deterrent fence under Chapter 5, Subchapter C of the act (relating to erection of deterrent fences).

(4) If all efforts do not eliminate elk damage, the local representative of the Commission will either kill the elk or authorize the qualified person to kill the elk in compliance with Chapter 21, Subchapter B of the act (relating to destruction for agricultural protection).

(c) A person violating this subchapter will be subject to the penalties provided in section 2126 of the act (relating to unlawful activities).

### CHAPTER 139. SEASONS AND BAG LIMITS

#### § 139.2. Definitions.

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

\* \* \* \* \*

**Antlered elk**—An elk having at least one spike visible above the hairline.

\* \* \* \* \*

**Antlerless elk**—An elk without antlers, or an elk without at least one spike visible above the hairline.

\* \* \* \* \*

**Field possession limit—deer**—When multiple harvests of deer per day are authorized, only one deer at a time may be harvested [and possessed in the field or forest]. Before harvesting additional deer, the deer previously harvested shall be [transported and secured at the hunter's motor vehicle, permanent or temporary camp, residence, deer processing facility or pick-up point] lawfully tagged.

\* \* \* \* \*

[Pa.B. Doc. No. 01-549. Filed for public inspection March 30, 2001, 9:00 a.m.]

## INSURANCE DEPARTMENT

[31 PA. CODE CH. 146a]

### Privacy of Consumer Financial Information

The Insurance Department (Department) proposes to adopt Chapter 146a (relating to privacy of consumer financial information) to read as set forth in Annex A. The proposal is made under the general rulemaking authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), and under the guidance of section 648 of The Insurance Department Act of 1921 (40 P. S. § 288), as amended by the act of June 25, 1997 (P. L. 349, No. 40) (Act 40). Likewise, this proposal is made under the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.14) (as this authority is further explained in *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner of the Commonwealth has determined that the improper disclosure or marketing, or both, of nonpublic personal financial information by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.

#### Purpose

The purpose of this proposed rulemaking is to adopt Chapter 146a in order to implement the privacy requirements for nonpublic financial information set forth in Title V of the act of November 12, 1999 (Pub. L. No. 106-102, 113 Stat. 1338) known as the Gramm-Leach-Bliley Act (GLBA) (15 U.S.C.A. §§ 6801—6827). Title V of the GLBA requires various state and Federal regulators of the financial services industries to promulgate regulations for their respective regulated communities. For example, the Federal banking regulators (the Office of the

Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS) and the Board of Governors of the Federal Reserve System (BGFRS)) have already promulgated final-form regulations pertaining to the privacy of nonpublic personal financial information when that information is collected by the various Federal banking entities within their regulatory jurisdiction. See, for example, 12 CFR 40.1 et seq. (OCC regulations) and 12 CFR 216.1 et seq. (BGFRS regulations).

As with the Federal banking regulators, state insurance authorities are required by Title V of the GLBA to establish appropriate consumer privacy standards for various entities in the insurance industry. The failure of a state to adopt privacy regulations will result in the state's inability to override the Federal insurance consumer protection regulations that were issued by the Federal banking agencies in final form on December 4, 2000, under section 305 of the GLBA. See 65 Fed. Reg. 233, 75821 (to be codified at 12 CFR Parts 14, 208, 343 and 536). These regulations were initially scheduled to become effective on April 1, 2001, but the compliance date of these regulations has now been delayed until October 1, 2001. These regulations pertain generally to the sale of insurance by financial institutions and specifically to matters such as referral fees, separation of banking and insurance sales areas and disclosures regarding the nature of insurance products that are sold by banks.

#### *Background*

These proposed regulations are modeled from the Privacy of Consumer Financial and Health Information Regulation that was adopted by the National Association of Insurance Commissioners (NAIC) on September 26, 2000. For purposes of this rulemaking, the Department will make available a copy of the NAIC model to the Standing Committees of the Senate and the House, and to the Independent Regulatory Review Commission (IRRC). Otherwise, this material is copyrighted and is available from the NAIC upon request. For further information, see the NAIC website at <http://www.naic.org>. In general, the NAIC model resembles the Federal banking privacy regulations by utilizing a notice and opt out structure for the protection of customer financial information from disclosure. The NAIC model, however, does vary from the Federal banking privacy regulations. Because of the nature of insurance products and their inherent differences from banking products and services, the NAIC model extends its privacy protections to persons who do not have a direct relationship with a regulated entity, namely insurance policy beneficiaries and claimants. Otherwise, the NAIC model and the Federal privacy regulations generally share a common ideological framework for the protection of financial information privacy.

In addition to achieving a level of parity with the Federal regulations in order to place the insurance industry on an equal footing in the financial services industry with other banking and securities counterparts, another primary goal of the NAIC model is achieving a level of uniformity among the states. Because each state is responsible for the promulgation of its own privacy regulation for the implementation of Title V of the GLBA, uniformity among these regulations is of central importance. The insurance industry generally views uniformity of the states' privacy regulations as crucial because activities in the insurance marketplace essentially transcend state boundaries and compliance with privacy regulations with dramatically differing approaches and schemes could result in significant administrative burden and impede the transaction of the business of insurance.

For these reasons and in the interest of uniformity, the Department has attempted to implement the NAIC model as closely as possible. However, because of the statutory framework established by Act 40, the Department was required to make certain substantive variations of that model regulation for this proposed rulemaking. For example, these proposed regulations require an opt out for the sharing of information between both affiliates and nonaffiliates, while the NAIC model allows the sharing of information among affiliates without providing consumers with an opportunity to opt out of such sharing. Also, because of the standing requirements in Act 40, this rulemaking requires a financial institution to send a second opt out notice to any consumer or customer who does not respond to the first notice. There is no such requirement in the NAIC model. These and other substantive differences between the NAIC Model and the proposed rulemaking are explained in greater detail below.

#### *Preproposal Comments*

The Department, on November 8, 2000, held an outreach meeting with various members of this Commonwealth's insurance industry that could be affected by this rulemaking. The purpose of the meeting was to discuss the NAIC model and the Department's intent to base its privacy rulemaking on such model, as well as to solicit comments from these groups. Written comments were submitted by the following entities and, where applicable, were considered during the design of this proposed rulemaking: the National Association of Independent Insurers (NAII), American Family Life Assurance Company of Columbus (AFLAC), Pennsylvania Association of Health Underwriters (PAHU), Independent Insurance Agents of Pennsylvania/Pennsylvania Association of Insurance and Financial Advisors (IIAP/PAIFA), Managed Care Association of Pennsylvania (MCAP), Capital Blue Cross (CBC), Pennsylvania Bankers Association (PBA), Blue Cross of Northeastern Pennsylvania (BCNP), Alliance of American Insurers (AAI), Pennsylvania Association of Mutual Insurers (PAMIC), Independence Blue Cross (IBC) and the Insurance Federation of Pennsylvania, Inc. (IFP).

Copies of the written comments submitted by these groups in the preproposal period are available upon request. The following is a synopsis of the most important comments raised by the industry, and the Department's reaction thereto:

#### *Health Information Privacy*

The NAIC model tracks very closely the privacy regulations of the Federal banking agencies in most aspects, with some obvious modifications to tailor the regulation for application to the insurance industry. However, one point of departure between the NAIC model and the Federal banking regulations is their differing approaches for the treatment of health information privacy. On one hand, the Federal banking regulations treat health information in the same manner as financial information by requiring that an institution refrain from disclosing consumer health information to nonaffiliated third parties only when the consumer opts out of the disclosure. On the other hand, the NAIC model takes a different approach by requiring an affirmative opt in of the consumer before health information may be disclosed by an insurance entity. Thus, the NAIC model establishes an entirely different scheme of regulation for health information.

Also, it is important to note that Federal regulations pertaining to health information privacy under the Health Insurance Portability and Accountability Act of

1996 (HIPAA) (Pub. Law No. 104-191) (August 21, 1996) were issued in final form by the United States Department of Health and Human Services (HHS) on December 28, 2000. See 65 Fed. Reg. 250, 82461-82510 (to be codified at 45 CFR Parts 160 and 164). Generally, the HHS regulations require a "covered entity" to obtain an individual authorization prior to disclosing covered health information.

- Concerns regarding the inclusion of an opt in health requirement relating to health information privacy in the NAIC model were raised by NAI, AFLAC, PAHU, IIAP/PAIFA, MCAP, CBC, PBA, BCNP, AAI, PAMIC and IBC.

- These groups oppose the inclusion of an opt in requirement for health information privacy because it allegedly exceeds the scope of the GLBA, and they assert that there is no requirement in the GLBA for states to implement such rules.

- At the time of the preproposal comment period, some commentators also noted that the HHS will soon be issuing health information privacy regulations in final form and the groups assert that the provisions in the NAIC model will be duplicative and confusing for entities that have to comply with both rules (that is, health insurers), and any less protective state laws will be preempted by the HHS rules.

- The commentators also assert that the opt in requirement for health information in the NAIC model applies to the sharing of health information with both nonaffiliated third parties and affiliated third parties for marketing purposes, so treatment of health information is inconsistent with the other Federal privacy regulations for banks and securities, potentially causing an unfair disadvantage for insurance entities in the financial services industry.

The Department has reviewed these comments, the NAIC model, the GLBA and the Department's statutory authority for the promulgation of this rulemaking. While the Department believes that it has statutory authority to include an opt in requirement for health information and that section 507 of the GLBA clearly preserves the ability of states to enact more rigorous consent requirements for health information, it has decided to remove the opt in requirement for health information for the purpose of this proposed rulemaking. Rather, the Department will defer the implementation of health privacy regulations until a later date. It is the intent of the Department to develop health privacy regulations that will supplement rather than duplicate the HHS health information privacy regulations that were issued in final form on December 28, 2000.

#### *Workers' Compensation Insurance Coverage Inclusion in NAIC Model*

The NAIC model includes workers' compensation insurance coverage within the scheme for regulating privacy of consumer information.

- Concerns regarding the inclusion of workers' compensation insurance coverage in the proposed rulemaking were raised by NAI, IIAP/PAIFA, PAMIC and AAI.

- These groups oppose the inclusion of workers' compensation insurance coverage in the privacy regulation because the GLBA was intended to cover only products for personal, family or household use.

The Department considered these comments while developing the proposed rulemaking. Although workers' compensation insurance is not necessarily purchased for household purposes, carriers of this product collect and maintain nonpublic personal financial information per-

taining to individuals, and the protection of this information is consistent with the purposes of this proposed regulation. Also, to the extent possible, the Department is committed to uniformity, so it will retain this provision of the NAIC model. Therefore, because nonpublic personal financial information is obtained as a regular part of the underwriting process in issuing workers' compensation policies and because of the interest in uniformity, the provisions pertaining to the inclusion of workers' compensation insurance remain in this proposal as § 146a.2 (definition of "consumer," subsection (v)).

In addition, because worker's compensation insurance issues generally fall within the dual jurisdiction of both the Department and the Department of Labor and Industry (DLI), the Department has met and consulted with the DLI Bureau of Workers' Compensation in order to discuss the applicability and effect of this proposed regulation to workers' compensation insurance. As a result of these meetings, the DLI Bureau of Workers' Compensation has commented that it is supportive of the Department's privacy regulation.

#### *Producer Issues*

The NAIC model states that insurance producers are generally subject to this proposed rulemaking as licensees of the Department. However, an exception in the NAIC model states that insurance producers acting as an agent from another licensee covered by the regulation will not be subject to the notice and opt out requirements of the regulation, if the principal licensee otherwise complies with the NAIC model. Also, the NAIC model contains numerous exceptions to the notice and opt out requirements that are generally intended to preserve the ability of an insurance entity to engage in the daily operations of its business with minimal interference.

- Concerns regarding certain insurance producer issues were raised by NAI and AFLAC.

- These groups believe that producers will be subject to liability because they will be unable to determine if the insurers for which they act as agents will be in compliance.

- Also, these commentators are concerned that the NAIC model does not allow independent producers to perform certain functions on behalf of an insurer (such as, communications to resolve claims that require the disclosure of personally identifiable information) unless they individually comply with the opt out and notice requirements.

The Department has retained the exception to the opt out and notice requirements for insurance producers acting as agents for another licensee covered by the regulation when the principal licensee otherwise complies with the requirements of this proposed regulation at proposed § 146a.2 (definition of "licensee," subparagraph (iii)). Without this exception, consumers would receive notices and opt out forms from both insurers and producers, and these multiple notices might be confusing to consumers, especially when they relate to the same information from the same insurance transactions. Imposing a requirement on insurance producers who are acting on behalf of an entity that is required to comply with this rulemaking is duplicative and serves no purpose toward the ultimate goal of consumer protection.

The Department further believes that the concern that independent producers acting as agents on behalf of another licensee will be unable to perform certain functions on behalf of their principals is unfounded. Subchapter D (relating to exceptions to limits on disclo-

tures of financial information) contains numerous business exceptions to general opt out and notice requirements set forth in the proposed rulemaking. Since it is not the intent of the Department or this proposed rulemaking to hinder the transaction of the business of insurance, these exceptions were carefully crafted in the NAIC model to allow insurance producers and insurers to conduct their daily business with minimal interference, while maintaining the necessary protection for the privacy of consumer information.

#### *Definition of "Consumer"*

The NAIC Model includes within the definition of consumer, and therefore extends privacy protections to, persons who do not necessarily have a direct or contractual relationship with an insurer, producer or other licensee covered by the regulation. These individuals include claimants and beneficiaries under insurance policies or workers' compensation benefits.

- Concerns regarding the definition of consumer in the NAIC model were raised by NAI, AFLAC, MCAP, AAI, PAMIC and IBC.

- The definition of "consumer" in the NAIC model includes beneficiaries and third party claimants to an insurance policy, participants and beneficiaries of an employee benefit plan, individuals covered under a group or blanket insurance plan and beneficiaries of workers' compensation plans. The NAI, AFLAC, MCAP, AAI, PAMIC and IBC have asserted that they believe it is inappropriate to extend the protections of the privacy regulation to persons, thereby requiring that an entity satisfy the notice and opt out requirements of the privacy regulation before information about persons may be disclosed. These commentators base their comments on the fact that the protections of the privacy regulation will then be extended beyond persons who have a direct contractual relationship with a licensee.

The Department has carefully considered these comments, but believes that beneficiaries and third party claimants to an insurance policy, participants and beneficiaries of an employee benefit plan, individuals covered under a group or blanket insurance plan, and beneficiaries of workers' compensation plans are properly included in the definition of consumer. Licensees regularly collect and maintain nonpublic personal financial information pertaining to such individuals, so these beneficiaries, claimants, plan and group policy participants, and beneficiaries of workers' compensation plans should be afforded protection of their privacy in that information, despite the fact that they do not have a direct contractual relationship with the licensee. Consequently, these persons have been retained in the definition of consumer in this proposed rulemaking as § 146a.2 (definition of consumer, subparagraphs (iv) and (v)), and the protections set forth therein will extend to them. Also, in the interest of uniformity, the Department wants to remain as consistent as possible with the NAIC model, especially with regard to its fundamental principles and definitions.

#### *"Unclear" Unfair Discrimination Provisions*

The NAIC model contains an "unfair discrimination" provision that prohibits insurance entities from discriminating against consumers on the basis of a consumer's exercising his opt out rights or otherwise directing an institution from disclosing his nonpublic personal information.

- Concerns regarding an alleged lack of clarity in the "unclear" unfair discrimination provisions of the NAIC model were raised by NAI and AAI.

- These groups believe that the unfair discrimination provision of the NAIC model is unclear and does not provide sufficient information as to what activities fall within this term.

Contrary to these comments, the Department believes that the unfair discrimination provisions of the NAIC model are adequately clear and has retained them in this proposed regulation at § 146a.42 (relating to nondiscrimination). As with any regulation, the Department is unable to provide an exhaustive list of activities that might constitute unfair discrimination against persons who chose to exercise their opt out rights. Rather, in the interest of consumer protection, the Department believes that it should not limit its enforcement authority on this issue in the proposal. Rather, potential violations will be considered on a case-by-case basis.

#### **NCOIL Model**

Besides the NAIC, the National Conference of Insurance Legislators (NCOIL) has also developed a model for the protection of nonpublic personal information that is applicable to insurance entities. The NCOIL model is available from the NCOIL website at <http://www.ncoil.org/>.

- AFLAC has raised a concern that it prefers the NCOIL privacy model over the NAIC model, especially with respect to the treatment of health information, insurance producers and the electronic delivery of notices.

The Department has reviewed the NCOIL model and because the Department has decided not to require an opt in for health information, the concern raised by AFLAC in that regard has been eliminated. However, with regard to the treatment of independent producers and electronic delivery of notices, the NAIC model and the NCOIL model are very similar. Both models provide that independent producers need not provide an opportunity to opt out or notices when their principals otherwise comply with the regulation, and the independent producers do not otherwise disclose information beyond the exceptions identified in the regulation. Also, both models allow for the electronic delivery of notices when a consumer consents to such delivery. Therefore, in the interest of uniformity and because there is little substantive difference in the models, the Department has based this proposed rulemaking on the NAIC model. Finally, numerous other states have expressed a commitment to implementing the NAIC model, and some states have already introduced the NAIC model through legislation or regulation. Thus, the Department is committed to implementing the NAIC model over the NCOIL model.

#### *Electronic Notices*

The NAIC model generally allows insurance entities to provide consumers with notices through electronic means, provided that the consumer has consented to receiving notices through this means. The NAIC model also contains several examples of situations where a consumer may be deemed to have consented to receiving notices through electronic means.

- AFLAC has raised a concern that the NAIC model does not appear to be consistent in its treatment of the ability of a licensee to deliver electronic notices because the proposed rulemaking in § 146a.16(b)(1)(iii) and (2)(ii) (relating to delivery) seems to suggest that a consumer must conduct electronic transactions or purchase insurance electronically in order to be eligible for receipt of electronic notices. AFLAC believes that this is contrary to the general rule that consumers may receive notices electronically if they chose.

The Department believes that there is no inconsistency in the proposed rulemaking with regard to electronic notices. Rather, § 146a.16(b)(1)(iii) and (2)(ii) are only included as examples of compliant and noncompliant activities with regard to electronic notices, and do not otherwise limit the general rule set forth in the proposed rulemaking in § 146a.16(a) which allows consumers to consent to the electronic delivery of notices, regardless of the means through which the consumer obtained the insurance product. Finally, the Commonwealth has adopted the Electronic Transactions Act (73 P. S. §§ 2260.101—2260.903) (ETA), and these proposed regulations are consistent with the ETA in that consumers are not required to conduct transactions electronically, but are free to consent to the transaction of business through electronic means.

#### *Delivery of Notices Through Policyholder*

The NAIC model includes a provision that allows for the satisfaction of the notice requirements when notices are delivered to a main policyholder, as opposed to providing notices to each individual that obtains a certificate of coverage under a group policy.

- AFLAC has also commented that it would like a new subsection added to the proposed rulemaking that clarifies that a licensee may satisfy the delivery requirements to insurance beneficiaries, account insureds or claimants by delivering the notice to the policyholder.

The Department believes that the delivery requirements for insurance beneficiaries, account insureds or claimants are abundantly clear in the proposed rulemaking in § 146a.2 (definition of "licensee", subparagraph (v)) and has not made any changes to the NAIC model in that regard.

#### *Compliance Date*

Both the NAIC model and § 146a.44 (relating to effective date) provide that the effective date of the regulations will be July 1, 2001, especially since the date is of central importance in avoiding the loss of the Commonwealth's ability to override the Federal insurance consumer protection regulations that were issued in final form on December 4, 2000. See 65 Fed. Reg. 233, 75821 (to be codified at 12 CFR Parts 14, 208, 343 and 536).

- Concerns relating to the compliance date for the proposed rulemaking were raised by AFLAC, IIAP/PAIFA, MCAP, PBA and BCNP.

- These groups assert that there is insufficient time to comply with the privacy regulations by July 1, 2001, especially if the regulations are not promulgated in final form until after that date.

The Department previously issued Insurance Department Notice 2000-08 to provide guidance to insurers authorized to do business in this Commonwealth in regard to the compliance date for the privacy provisions of the GLBA.

Under the Insurance Department Act of 1921 (40 P. S. §§ 1—321), and the Insurance Company Law of 1921 (40 P. S. §§ 341—991), the Insurance Commissioner and the Department are charged with the regulation and oversight of insurers and insurance producers within this Commonwealth. See 40 P. S. §§ 1, 341; 71 P. S. § 66, 186, 411, 412. The GLBA recognizes the Department's jurisdiction by reaffirming the McCarran-Ferguson Act (15 U.S.C.A. §§ 1011 et seq.), which provides for the functional regulation of insurance by the states. See section 301 GLBA.

The GLBA recognizes that states are the functional regulators of the insurance industry and directs state insurance regulators to promulgate privacy regulations for its regulated community. In addition, state insurance regulators are also charged with the duty of enforcing the customer privacy requirements contained in the Federal statute. Although there is no requirement that state insurance regulators promulgate their regulations prior to a specific date, the GLBA's general statutory privacy requirements would have become effective on November 12, 2000, and all relevant insurance entities would have been required to comply with these statutory provisions by that time. However, because enforcement of the GLBA's statutory privacy provisions is within the jurisdiction of state insurance regulators, it was clear that the Department was authorized to extend the date on which all relevant insurance entities must comply with the GLBA's statutory privacy requirements.

While enforcement of the GLBA's statutory privacy requirements for insurers and insurance producers is within the jurisdiction of the state insurance regulators, enforcement for banking entities is within the jurisdiction of the Federal banking agencies. Like the state insurance regulators, the Federal banking agencies are authorized to extend the compliance date for enforcement of the GLBA's statutory privacy requirements. However, unlike the state insurance regulators, the Federal banking agencies were required to develop their "appropriate standards" in the form of final regulations by May 12, 2000. In these regulations, the Federal banking agencies determined that the compliance date should be extended to July 1, 2001.

To achieve a sense of parity between insurance entities and other members of the financial services industry, the Department joined other members of the NAIC in a June 11, 2000, resolution which details that it was the intent of state insurance regulators to extend the GLBA privacy requirements compliance date to July 1, 2001, for entities within their respective jurisdictions.

Therefore, under its regulatory authority under the Insurance Department Act and the Insurance Company Law, as recognized by the section 505 of GLBA, the Department issued Insurance Department Bulletin No. 2000-08, which stated that the compliance date for the GLBA's statutory privacy requirements as they apply to insurers and insurance producers shall be extended until July 1, 2001. The bulletin also informed this Commonwealth's insurance industry that prior to this date, no action to enforce the GLBA's statutory privacy requirements would be taken against an insurer or insurance producer subject to the Department's jurisdiction. For these reasons, the Department intends to have this proposed rulemaking become effective on July 1, 2001, to avoid the potential loss of its authority to override the Federal insurance consumer protection regulations as previously discussed.

Although the Department intends to make this proposed rulemaking effective on July 1, 2001, it intends to remain flexible with regard to its initial enforcement of the regulations and the privacy provisions of the GLBA. For approximately 6 months after the promulgation of the privacy regulations, the Department intends to utilize its Market Surveillance Unit to monitor the insurance industry's implementation of the privacy regulation and provide assistance to the industry. The Department believes that this enforcement approach will best serve both the insurance industry and this Commonwealth's insurance consumers, especially since implementation of the privacy

regulation may prove to be a time consuming and complex undertaking for some insurance entities.

#### *Uniformity*

As previously explained, because each state is responsible under the GLBA to enact privacy regulations for its regulated community, uniformity of the regulations is of central importance to the insurance industry.

- Concerns regarding uniformity of insurance privacy regulations implemented under the GLBA among all 50 states were raised by PAHU, IIAP/PAIFA and PBA.
- These groups assert that there is a need for uniformity among the states with regard to the privacy regulations, which they must implement under the GLBA.

The Department agrees that uniformity is of central importance in the promulgation of privacy regulations by the various states. Each state must enact either legislation or regulation to be in compliance with GLBA or it could lose its regulatory authority over certain consumer protection issues addressed in the Federal regulations on this subject. However, as do other states, this Commonwealth has an existing statutory framework for privacy of insurance information in section 648 of the Insurance Department Act (40 P. S. § 288). Therefore, the Department has adhered to the NAIC model to every extent possible, but certain changes were required to ensure compliance with section 648.

#### *Explanation of Regulatory Changes*

##### *Subchapter A. General provisions*

Section 146a.1 (relating to purpose) contains the purpose, scope and compliance requirements needed to govern the treatment of nonpublic personal information about individuals in this Commonwealth by licensees of the Department.

Section 146a.2 (relating to definitions) contains the definitions as they are used in this chapter and gives examples that, to the extent applicable, constitute compliance and noncompliance with this proposed rulemaking.

##### *Subchapter B. Privacy And Opt Out Notices For Financial Information*

Section 146a.11 (relating to initial privacy notice to consumers required) contains the requirements for the provision of an initial privacy notice to consumers and customers by a licensee. It also contains the exceptions, under which subsequent notice is permissible.

Section 146a.12 (relating to annual privacy notice to customers requires) contains the general rule and provides examples for the provision of annual privacy notice to customers.

Section 146a.13 (relating to information to be included in privacy notices) describes the information that shall be included in initial, annual and revised privacy notices. It also contains the exceptions to the inclusion of the required information. The situations when the use of simplified and short-form initial notice is permissible is set forth.

Section 146a.14 (relating to form of opt out notice to consumers and opt out methods) describes the form of the opt out notice and specifies the information that shall be contained in the notice. It also specifies reasonable opt out means and gives examples of what would be unreasonable. It also contains the means for treating joint consumers of an insurance product or service.

Section 146a.15 (relating to revised privacy notices) contains the requirements imposed on licensees for providing revised privacy notices.

Section 146a.16 (relating to delivery) describes how notices shall be delivered and provides examples of when a licensee may reasonably expect that a consumer has received actual notice. It also describes when a licensee may reasonably expect that a customer will receive actual notice of a licensee's annual privacy notice.

##### *Subchapter C. Limits On Disclosures Of Financial Information*

§ 146a.21 (relating to limits on disclosure of nonpublic personal financial information to nonaffiliated third parties) contains the limits on disclosure of nonpublic personal financial information to nonaffiliated third parties. It lists the conditions for disclosure and describes the opt out direction. It includes examples of when a licensee shall provide a consumer with a reasonable opportunity to opt out.

Section 146a.22 (relating to limits on redisclosure and reuse of nonpublic personal financial information) contains the limits on redisclosure and reuse of nonpublic personal financial information in situations when the licensee receives the information under one of the exceptions contained in this proposed rulemaking, as well as when the licensee receives the information outside of an exception.

Section 146a.23 (relating to limits on sharing account number information for marketing purposes) contains a prohibition of sharing certain account number information and the exceptions to this prohibition.

##### *Subchapter D. Exceptions To Limits On Disclosures Of Financial Information*

Section 146a.31 (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing) describes when the opt out requirements contained in §§ 146a.13 and 146a.20 do not apply for service providers and joint marketing.

Section 146a.32 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions) contains the exceptions to the notice and opt out requirements for disclosure of nonpublic personal financial information for certain processing and servicing transactions.

Section 146a.33 (relating to other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information) contains certain other exceptions to the notice and opt out requirements contained in §§ 146a.10, 146a.13, 146a.20 and 146a.30.

##### *Subchapter E. Additional Provisions*

Section 146a.41 (relating to Protection of Fair Credit Reporting Act) provides that nothing in this proposed rulemaking should be construed to modify, limit or supersede the Federal Fair Credit Reporting Act (15 U.S.C.A. §§ 1681—681u).

Section 146a.42 (relating to nondiscrimination) prohibits a licensee from discriminating against a consumer or customer because the consumer or customer has opted out from the disclosure of his nonpublic personal financial information.

Section 146a.43 (relating to violation) provides that a contravention of this proposed rulemaking shall be deemed to be an unfair or deceptive act and practice in

the conduct of the business of insurance and shall be deemed to be a determined violation, as defined in section 2 of the Unfair Insurance Practices Act (40 P.S. § 1171.2).

Section 146a.44 (relating to effective date) provides that this proposed rulemaking is effective on July 1, 2001.

To provide guidance to licensees that are covered by the regulation, Appendix A of this proposed rulemaking provides numerous examples of sample clauses that may be used in Appendix A for the privacy notices that are required by the regulation.

#### *Fiscal Impact*

There will be a fiscal impact as a result of the proposed rulemaking. However, Federal statute requires that this provision be mandated, therefore, the adoption of these regulations should not have a significant cost impact over what is currently being required.

#### *Paperwork*

Unless specifically executed under § 146a.2 definition of "licensee" of the proposed rulemaking, the rulemaking will affect all licensees doing the business of insurance in this Commonwealth by imposing additional paperwork requirements pertaining to the delivery and treating of opt out notices.

#### *Effectiveness/Sunset Date*

The proposed rulemaking will become effective July 1, 2001, as previously provided in Insurance Department Notice 2000-08.

#### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 21, 2001, the Department submitted a copy of this proposed rulemaking to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days after the close of the Committees' review. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN,  
*Insurance Commissioner*

**Fiscal Note:** 11-206. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 31. INSURANCE

#### PART VIII. MISCELLANEOUS PROVISIONS

#### CHAPTER 146a. PRIVACY OF CONSUMER FINANCIAL INFORMATION

##### Subch.

- A. GENERAL PROVISIONS
- B. PRIVACY AND OPT OUT NOTICE FOR FINANCIAL INFORMATION
- C. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION
- D. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION
- E. ADDITIONAL PROVISIONS

##### Subchapter A. GENERAL PROVISIONS

##### Sec.

- 146a.1. Purpose.
- 146a.2. Definitions.

##### § 146a.1. Purpose.

(a) *Purpose.* This chapter governs the treatment of nonpublic personal financial information about individuals by various licensees of the Department. This chapter:

- (1) Requires a licensee to provide notice to individuals about its privacy policies and practices.
- (2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to third parties.

(3) Provides methods for individuals to prevent a licensee from disclosing that information.

(b) *Scope.* This chapter applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. Unless otherwise specified, this chapter generally does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

(c) *Compliance.* A licensee domiciled in this Commonwealth that is in compliance with this chapter in a state that has not enacted laws or regulations that meet the requirements of Title V of the act of November 12, 1999 (Pub. L. No. 106-102, 113 Stat. 1338) known as the Gramm-Leach-Bliley Act (Financial Services Modernization Act of 1999) (15 U.S.C.A. §§ 6801-6827) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in the other state.

(d) *Examples.* The examples provided in this chapter are for illustrative purposes only and do not otherwise limit or restrict the scope of this chapter.

##### § 146a.2. Definitions.

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

*Act*—The Insurance Department Act of 1921 (40 P.S. §§ 1-321)

*Affiliate*—A company that controls, is controlled by or is under common control with another company.

*Clear and conspicuous*—That a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. Examples include:

(i) *Reasonably understandable.* A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs and sections.

(B) Uses short explanatory sentences or bullet lists whenever possible.

(C) Uses definite, concrete, everyday words and active voice whenever possible.

(D) Avoids multiple negatives.

(E) Avoids legal and highly technical business terminology whenever possible.

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice.

(B) Uses a typeface and type size that are easy to read.

(C) Provides wide margins and ample line spacing.

(D) Uses boldface or italics for key words.

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style and graphic devices, such as shading or sidebars.

(iii) *Notices on websites.* If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted.

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

*Collect*—To obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Company*—A corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

*Consumer*—An individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(i) *Examples of consumers.*

(A) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(B) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(C) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(D) An individual is a licensee's consumer if the licensee discloses nonpublic personal financial information about the individual to a third party other than as permitted under Subchapter D (relating to exceptions to limits on disclosures of financial information), and the individual is:

(I) A beneficiary of a life insurance policy underwritten by the licensee.

(II) A claimant under an insurance policy issued by the licensee.

(III) An insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee.

(IV) A mortgagor of a mortgage covered under a mortgage insurance policy.

(ii) *Examples of nonconsumers.*

(A) Provided that the licensee provides the initial, annual and revised notices under §§ 146a.11, 146a.12 and 146a.15 (relating to initial privacy notice to consumers required; annual privacy notice to customers required; and revised privacy notices) to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan participant, and further provided that the licensee does not disclose to a third-party nonpublic personal financial information about an individual other than as permitted under Subchapter D, an individual is not the consumer of the licensee solely because the individual is:

(I) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary.

(II) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(III) A beneficiary in a workers' compensation plan.

(B) The individuals described in subparagraph (v) are consumers of a licensee if the licensee does not meet all the conditions of subparagraph (v).

(C) Individuals, solely by virtue of the status described in subparagraph (v), may not be deemed to be customers for purposes of this chapter.

(D) An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee.

(E) An individual is not a licensee's consumer solely because the individual has designated the licensee as trustee for a trust.

*Consumer reporting agency*—Has the same meaning as in section 603(f) of the Federal Fair Credit Reporting Act (15 U.S.C.A. § 1681a(f)).

*Control*—As defined in section 1401 of The Insurance Company Law (40 P. S. § 991.1401).

*Customer*—A consumer who has a customer relationship with a licensee.

*Customer relationship*—A continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or



services to the consumer that are to be used primarily for personal, family or household purposes. Examples include:

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee.

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance.

(B) The licensee sells the consumer airline travel insurance in an isolated transaction.

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(D) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee.

(E) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option.

(F) The customer's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12-consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or Federal authority, or promotional materials.

(G) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity.

(H) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

*Department*—The Insurance Department of the Commonwealth.

*Financial institution*—An institution the business of which is engaging in activities that are financial in nature or incidental to the financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C.A. § 1843(k)). The term does not include the following:

(i) A person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C.A. §§ 1–25).

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C.A. §§ 2001–2279cc).

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions

related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a third party.

*Financial product or service*—A product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to the financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C.A. § 1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

*Insurance product or service*—A product or service that is offered by a licensee under the insurance laws of the Commonwealth. Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

*Licensee*—

(i) A licensed insurer, as defined in section 201-A of the act (40 P. S. § 65.1-A), a producer and other persons or entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under the act, including health maintenance organizations holding a certificate of authority under section 201 of the Health Care Facilities Act (35 P. S. § 448.201).

(ii) The term does not include:

(A) Bail bondsmen as defined in 42 Pa.C.S.A. § 5741 (relating to definitions).

(B) Motor vehicle physical damage appraisers as defined in section 2 of the Motor Vehicle Physical Damage Appraiser Act (63 P. S. § 852) and § 62.1 (relating to definitions).

(C) Public adjusters as defined in section 1 of the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. § 1601) and § 115.1 (relating to definitions).

(D) An entity providing continuing care as defined in section 3 and licensed under section 4 of the Continuing-Care Provider Registration and Disclosure Act (40 P. S. §§ 3203 and 3204).

(iii) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information in Subchapters A–D if the licensee is an employee, agent or other representative of another licensee (“the principal”) and:

(A) The principal otherwise complies with, and provides the notices required by, this chapter.

(B) The licensee does not disclose nonpublic personal information to any person other than the principal in a manner permitted by this chapter.

(C) Subject to subparagraph (ii), the term “licensee” shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this Commonwealth, but only in regard to the surplus lines placements placed under section 1601 of The Insurance Company Law (40 P. S. § 991.1601).

(D) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information in Subchapters A–D provided:

(I) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to third

parties for any purpose, including joint servicing or marketing under § 146a.31 (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing), except as permitted by § 146a.32 or § 146a.33 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions; and other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information).

(II) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

*PRIVACY NOTICE*

"NEITHER THE U.S. BROKERS THAT HAVE HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO THIRD PARTIES EXCEPT AS PERMITTED BY LAW."

*Nonaffiliated third party*—Any person except:

- (i) A licensee's affiliate.
- (ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).
- (iii) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Federal Bank Holding Company Act (12 U.S.C.A. §§ 1843(k)(4)(H) and (I)).

*Nonpublic personal information*—

- (i) The term includes the following:
  - (A) Personally identifiable financial information.
  - (B) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.
- (ii) The term does not include:
  - (A) Publicly available information, except as included on a list described in clause (B).
  - (B) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.
- (iii) Examples of lists are as follows:
  - (A) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.
  - (B) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

*Personally identifiable financial information*—

(i) Customer information, as defined in section 601 of The Insurance Department Act (40 P.S. § 231) and includes the following:

(A) Information that a consumer provides to a licensee to obtain an insurance product or service from the licensee.

(B) Information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer.

(C) Information that the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(ii) Examples are as follows:

(A) *Information included.* Personally identifiable financial information includes:

(I) Information a consumer provides to a licensee on an application to obtain an insurance product or service.

(II) Account balance information and payment history.

(III) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee.

(IV) Information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer.

(V) Information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(VI) Information the licensee collects through an Internet cookie (an information-collecting device from a web server).

(VII) Information from a consumer report.

(B) *Information not included.* Personally identifiable financial information does not include:

(I) A list of names and addresses of customers of an entity that is not a financial institution.

(II) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

*Publicly available information*—Information that a licensee has a reasonable basis to believe is lawfully made available to the public from:

(i) Federal, State or local government records.

(ii) Widely distributed media.

(iii) Disclosures to the public that are required to be made by Federal, State or local law.

*Reasonable basis*—

(i) A licensee has a reasonable basis to believe that information is lawfully made available to the public if the licensee has taken steps to determine:

(A) That the information is of the type that is available to the public.

(B) Whether an individual can direct that the information not be made available to the public and, if so, that the licensee's consumer has not done so.

(ii) The term includes the following conditions:

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the

public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the public if the licensee has located the telephone number in the telephone book or the consumer has informed the licensee that the telephone number is not unlisted.

(iii) Examples are as follows:

(A) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(B) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the public.

#### **Subchapter B. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION**

*Sec.*

- 146a.11. Initial privacy notice to consumers required.
- 146a.12. Annual privacy notice to customers required.
- 146a.13. Information to be included in privacy notices.
- 146a.14. Form of opt out notice to consumers and opt out methods.
- 146a.15. Revised privacy notices.
- 146a.16. Delivery.

#### **§ 146a.11. Initial privacy notice to consumers required.**

(a) *Initial notice requirement.* A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) *Customer.* An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (e).

(2) *Consumer.* A consumer, before the licensee discloses nonpublic personal financial information about the consumer to any third party, if the licensee makes a disclosure other than as authorized by §§ 146a.32 and 146a.33 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions; and other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information).

(b) *When initial notice to a consumer is not required.* A licensee is not required to provide an initial notice to a consumer under subsection (a)(2) if:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any third party, other than as authorized by §§ 146a.32 and 146a.33, and the licensee does not have a customer relationship with the consumer.

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(c) *When the licensee establishes a customer relationship.*

(1) *General rule.* A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(2) *Examples of establishing customer relationship.* A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee.

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(d) *Existing customers.* When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (a) as follows:

(1) The licensee may provide a revised policy notice, under § 146a.15 (relating to revised privacy notices), that covers the customer's new insurance product or service.

(2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subsection (a).

(e) *Exceptions to allow subsequent delivery of notice.*

(1) A licensee may provide the initial notice required by subsection (a)(1) within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election.

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) Examples of exceptions are as follows:

(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to § 146a.16 (relating to delivery). If the licensee uses a short-form initial notice for noncustomers according to § 146a.13(d), the licensee may deliver its privacy notice according to § 146a.13(d)(3).

#### **§ 146a.12. Annual privacy notice to customers required.**

(a) *Notice.*

(1) *General rule.* A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

(2) *Example.* A licensee provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

(b) *Termination.*

(1) *Termination of customer relationship.* A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(2) *Examples.*

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(iii) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(c) *Delivery.* When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to § 146a.16 (relating to delivery).

**§ 146a.13. Information to be included in privacy notices.**

(a) *General rule.* The initial, annual and revised privacy notices that a licensee provides under §§ 146a.11, 146a.12 and 146a.15 (relating to initial privacy notice to consumers required; annual privacy notice to consumers required; and revised privacy notices) shall include each of the following items of information, in addition to other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects.

(2) The categories of nonpublic personal financial information that the licensee discloses.

(3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under §§ 146a.32 and 146a.33 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions; and other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information).

(4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under §§ 146a.32 and 146a.33.

(5) If a licensee discloses nonpublic personal financial information to a third party under § 146a.31 (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing) (and no other exception in §§ 146a.32 and 146a.33 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted.

(6) An explanation of the consumer's right under § 146a.21(a) (relating to limitation on disclosure of nonpublic personal financial information to third parties) to opt out of the disclosure of nonpublic personal financial information to any third parties, including the methods by which the consumer may exercise that right at that time.

(7) Any disclosures that the licensee makes under section 603(d)(2)(A)(iii) of the Federal Fair Credit Reporting Act (15 U.S.C.A. § 1681a(d)(2)(A)(iii)).

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

(9) Any disclosure that the licensee makes under subsection (b).

(b) *Description of parties subject to exceptions.* If a licensee discloses nonpublic personal financial information as authorized under §§ 146a.32 and 146a.33, the licensee is not required to list those exceptions in the initial or annual privacy notices required by §§ 146a.11 and 146a.12. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) *Examples.*

(1) *Categories of nonpublic personal financial information that the licensee collects.* A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer.

(ii) Information about the consumer's transactions with the licensee or its affiliates.

(iii) Information about the consumer's transactions with nonaffiliated third parties.

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal financial information a licensee discloses.*

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subsection (c)(1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number.

(B) Transaction information, such as information about balances, payment history and parties to the transaction.

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(3) *Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.*

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(4) *Disclosures under exception for service providers and joint marketers.* If a licensee discloses nonpublic personal financial information under the exception in § 146a.31 to a third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subsection (a)(5) if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (a)(2), as applicable.

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution.

(B) A financial institution with whom the licensee has a joint marketing agreement.

(5) *Simplified notices.* If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 146a.32 and 146a.33, the licensee may simply state that fact, in addition to the information it shall provide under subsection (a)(1), (8) and (9), and subsection (b).

(6) *Confidentiality and security.* A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information.

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(d) *Short-form initial notice with opt out notice for noncustomers.*

(1) A licensee may satisfy the initial notice requirements in § 146a.11(a)(2) and § 146a.14(c) (relating to form of opt out notice to consumers and opt out methods) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in § 146a.14.

(2) A short-form initial notice shall:

(i) Be clear and conspicuous.

(ii) State that the licensee's privacy notice is available upon request.

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) The licensee shall deliver its short-form initial notice according to § 146a.16 (relating to delivery). The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to § 146a.16.

(4) Examples of obtaining privacy notice are included in this paragraph. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice.

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(e) *Future disclosures.* The licensee's notice may include categories of:

(1) Nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose.

(2) Affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix A (relating to sample clauses).

**§ 146a.14. Form of opt out notice to consumers and opt out methods.**

(a) *Opt out notice.*

(1) *Form of opt out notice.* If a licensee is required to provide an opt out notice under § 146a.21(a) (relating to limitation on disclosure of nonpublic personal financial information to third parties), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a third party.

(ii) That the consumer has the right to opt out of that disclosure.

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.*

(i) *Adequate opt out notice.* A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of third parties to which the licensee discloses the information, as described in §§ 146a.13(a)(2) and (3) (relating to information to be included in privacy notices), and states that the consumer can opt out of the disclosure of that information.

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice.

(B) Includes a reply form together with the opt out notice.

(C) Provides an electronic means to opt out, such as a form that can be sent by means of electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information.

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his own letter to exercise that opt out right.

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the

licensee provides in accordance with § 146a.11 (relating to initial privacy notice to consumers required).

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If a licensee provides the opt out notice later than required for the initial notice in accordance with § 146a.11, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships.*

(1) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in paragraph (5)).

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers.

(ii) Permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) An example is as follows: If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other.

(B) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call).

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.*

(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee

collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to § 146a.16 (relating to delivery).

(i) *Written consent alternative.* Nothing in this section otherwise prohibits a licensee from directly obtaining written consent for the use of nonpublic personal information from a consumer or customer under section 648(e) of the act (40 P. S. § 288(e)), if applicable to the licensee, provided that an adequate initial or annual, or both, notice has been provided to the consumer or customer. A consumer or customer's refusal to provide written consent shall be dispositive until the consumer or customer affirmatively permits the use of the information.

#### § 146a.15. Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this chapter, a licensee may not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a third party other than as described in the initial notice that the licensee provided to that consumer under § 146a.11 (relating to initial privacy notice to consumers required), unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices.

(2) The licensee has provided to the consumer a new opt out notice.

(3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the third party, to opt out of the disclosure.

(4) The consumer does not opt out.

(b) *Examples.*

(1) Except as otherwise permitted by Subchapter D (relating to exceptions to limits on disclosure of financial information), a licensee shall provide a revised notice before it discloses:

(i) A new category of nonpublic personal financial information to any third party.

(ii) Nonpublic personal financial information to a new category of third party.

(iii) Nonpublic personal financial information about a former customer to a third party, if that former customer has not had the opportunity to exercise an opt outright regarding that disclosure.

(2) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new third party that the licensee adequately described in its prior notice.

(c) *Delivery.* When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to § 146a.16 (relating to delivery).

#### § 146a.16. Delivery.

(a) *How to provide notices.* A licensee shall provide any notices that this chapter requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) *Actual notice.*

(1) *Examples of reasonable expectation of actual notice.* A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer.

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication.

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(2) *Examples of unreasonable expectation of actual notice.* A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices.

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(c) *Annual notices only.* A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(1) The customer uses the licensee's website to access insurance products and services electronically and agrees to receive notices at the website and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the website.

(2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.*

(1) *Notices for customers.* For customers only, a licensee shall provide the initial notice required by § 146a.11(a)(1) (relating to initial privacy notice to consumers required), the annual notice required by § 146a.12(a) (relating to annual privacy notice to consumers required), and the revised notice required by § 146a.15 (relating to revised privacy notices) so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer.

(ii) Mails a printed copy of the notice to the last known address of the customer.

(iii) Makes its current privacy notice available on a website (or a link to another website) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(g) *Joint relationships.* If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of §§ 146a.11(a), 146a.12(a) and 146a.15(a), respectively, by providing one notice to those consumers jointly.

### **Subchapter C. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION**

Sec.

- 146a.21. Limitation on disclosure of nonpublic personal financial information to third parties.
- 146a.22. Limits on redisclosure and reuse of nonpublic personal financial information.
- 146a.23. Limits on sharing account number information for marketing purposes.

#### **§ 146a.21. Limits on disclosure of nonpublic personal financial information to third parties.**

(a) *Conditions for disclosure.* Except as otherwise authorized in this chapter, a licensee may not, directly or through an affiliate, disclose nonpublic personal financial information about a consumer to a third party unless:

(1) The licensee has provided to the consumer an initial notice as required under § 146a.11 (relating to initial privacy notice to consumers required).

(2) The licensee has provided to the consumer an opt out notice as required in § 146a.14 (relating to form of opt out notice to consumers and opt out methods).

(3) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the third party, to opt out of the disclosure.

(4) The consumer does not opt out.

(b) *Opt out definition.* Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a third party, other than as permitted by Subchapter D (relating to exceptions to limits on disclosure of financial information).

(c) *Examples of reasonable opportunity to opt out.* A licensee provides a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* The licensee mails the notices required in subsection (a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(2) *By electronic means.* A customer opens an online account with a licensee and agrees to receive the notices required in subsection (a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(3) *Second opt out notice required.* If required by section 648 of the act (40 P. S. § 288), after 30 days from the date of delivering, electronically or otherwise, a first opt out notice, a consumer or customer has not responded to the notice, a licensee must deliver to the consumer or customer a second opt out notice satisfying the same requirement and criteria as the first opt out notice. When a second notice is required, the licensee shall deliver it according to § 146a.16 (relating to delivery). Thereafter, the licensee may disclose nonpublic personal information as permitted by this chapter and section 648 of the act, if applicable.

(4) *Isolated transaction with consumer.* For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subsection (a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(d) *Application of opt out to all consumers and all nonpublic personal financial information.*

(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(2) Unless a licensee complies with this section, the licensee may not, directly or through an affiliate, disclose nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(e) *Partial opt out.* A licensee may allow a consumer to select certain nonpublic personal financial information or certain third parties with respect to which the consumer wishes to opt out.

#### **§ 146a.22. Limits on redisclosure and reuse of nonpublic personal financial information.**

(a) *Information the licensee receives under an exception.* If a licensee receives nonpublic personal financial information from a financial institution under an exception in § 146a.32 or § 146a.33 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions; and other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information), the licensee's disclosure and use of that information is limited to the disclosure and use of the information under an exception in § 146a.32 or § 146a.33, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) *Example.* If a licensee receives information from a financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(c) *Information a licensee receives outside of an exception.* If a licensee receives nonpublic personal financial information from a financial institution other than under an exception in § 146a.32 or § 146a.33, the licensee may disclose the information only if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.



(d) *Example.* If a licensee obtains a customer list from a financial institution outside of the exceptions in § 146a.32 or § 146a.33:

(1) The licensee may use that list for its own purposes.

(2) The licensee may disclose that list to another third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in § 146a.32 or § 146a.33, such as to the licensee's attorneys or accountants.

(e) *Information a licensee discloses under an exception.* If a licensee discloses nonpublic personal financial information to a third party under an exception in § 146a.32 or § 146a.33, the third party may disclose and use that information only under an exception in § 146a.32 or § 146a.33 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(f) *Information a licensee discloses outside of an exception.* If a licensee discloses nonpublic personal financial information to a third party other than under an exception in § 146a.32 or § 146a.33, the third party may disclose the information only if the disclosure would be lawful if the licensee made it directly to that person.

**§ 146a.23. Limits on sharing account number information for marketing purposes.**

(a) *General prohibition on disclosure of account numbers.* A licensee may not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Subsection (a) does not apply if a licensee discloses a policy number or similar form of access number or access code to:

(1) The licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account.

(2) A licensee who is a producer solely in order to perform marketing for the licensee's own products or services.

(3) A participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples.*

(1) *Policy number.* A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(2) *Policy or transaction account.* For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

**Subchapter D. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION**

*Sec.*

146a.31. Exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing.

146a.32. Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions.

146a.33. Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information.

**§ 146a.31. Exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing.**

(a) *General rule.*

(1) *Opt out requirements.* The opt out requirements in §§ 146a.14 and 146a.21 (relating to form of opt out notice to consumers and opt out methods; and limitation on disclosure of nonpublic personal financial information to third parties) do not apply when a licensee provides nonpublic personal financial information to a third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with § 146a.11 (relating to initial privacy notice to consumers required).

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in § 146a.32 or § 146a.33 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions; and other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information) in the ordinary course of business to carry out those purposes.

(2) *Example.* If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of paragraph (1)(i) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in § 146a.32 or § 146a.33 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a third party performs for a licensee under subsection (a) may include marketing of the licensee's own products or services or marketing of financial products or services offered under joint agreements between the licensee and one or more financial institutions.

(c) *Definition of "joint agreement."* For purposes of this section, "joint agreement" means a written contract under which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

**§ 146a.32. Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions.**

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 146a.11(a)(2) (relating to initial privacy notice to consumers required), the opt out in §§ 146a.14 and 146a.21

(relating to form of opt out notice to consumers and opt out methods; and limitation on disclosure of nonpublic personal financial information to third parties), and service providers and joint marketing in § 146a.31 (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing) do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes.

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of that entity.

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(4) Reinsurance or stop loss or excess loss insurance.

(b) *Necessary to effect, administer or enforce a transaction.* When used in this section, this means that the disclosure is required or is:

(1) One of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service.

(2) A usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service.

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part.

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker.

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party.

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by Federal or State law.

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means.

(B) The transfer of receivables, accounts or interests therein.

(C) The audit of debit, credit or other payment information.

### **§ 146a.33. Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information.**

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 146a.11(a)(2) (relating to initial privacy notice to consumers required) the opt out in §§ 146a.14 and 146a.21 (relating to form of opt out notice to consumers and opt out methods; and limitation on disclosure of nonpublic personal financial information to third parties), and service providers and joint marketing in § 146a.31 (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing) do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction.

(2) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction.

(3) To protect against or prevent actual or potential fraud or unauthorized transactions.

(4) For required institutional risk control or for resolving consumer disputes or inquiries.

(5) To persons holding a legal or beneficial interest relating to the consumer.

(6) To persons acting in a fiduciary or representative capacity on behalf of the consumer.

(7) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors.

(8) To the extent specifically permitted or required under other provisions of law and in accordance with the Federal Right to Financial Privacy Act of 1978 (12 U.S.C.A. §§ 3401—3422), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C.A. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C.A. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety.

(9) To a consumer reporting agency in accordance with the Federal Fair Credit Reporting Act (15 U.S.C.A. §§ 1681—1681u). From a consumer report reported by a consumer reporting agency.

(10) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit.

(11) To comply with Federal, state or local laws, rules and other applicable legal requirements.

(12) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by Federal, state or local authorities.

(13) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law.

(14) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(b) *Example of revocation of consent.* A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 146a.14(f) (relating to form of opt out notice to consumers and opt out methods).

### Subchapter E. ADDITIONAL PROVISIONS

Sec.

146a.41. Protection of Fair Credit Reporting Act.

146a.42. Nondiscrimination.

146a.43. Violation.

146a.44. Effective date.

#### § 146a.41. Protection of Fair Credit Reporting Act.

This chapter will not be construed to modify, limit or supersede the operation of the Federal Fair Credit Reporting Act (15 U.S.C.A. §§ 1681—1681u), and no inference may be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of that act (15 U.S.C.A. § 1681a).

#### § 146a.42. Nondiscrimination.

A licensee may not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his nonpublic personal financial information under this chapter.

#### § 146a.43. Violation.

Violations of this chapter are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to all penalties contained in sections 9—11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9—1171.11).

#### § 146a.44. Effective date.

(a) *Effective date.* This chapter is effective July 1, 2001.

(b) *Notice requirements.*

(1) *Consumers who are the licensee's customers on the effective date.* By July 1, 2001, a licensee shall provide an initial notice, as required by § 146a.11 (relating to initial privacy notice to consumers required), to consumers who are the licensee's customers on July 1, 2001.

(2) *Example.* A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that a licensee has entered into with a third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of § 146a.31(a)(1)(ii) (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing), even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

### APPENDIX A—SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the Federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

#### A-1—Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(1) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms.
- Information about your transactions with us, our affiliates or others.
- Information we receive from a consumer reporting agency.

#### A-2—Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of § 146a.13(a)(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in §§ 146a.31, 146a.32 and 146a.33.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"].
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premiums, and payment history"].
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as "above" or "below"].

#### A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of §§ 146a.13(a)(2), (3) and (4) to describe the categories of nonpublic personal information

about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 146a.32 and 146a.33.

**Sample Clause A-3:**

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

**A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)**

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§ 146a.31, 146a.32 and 146a.33, as well as when permitted by the exceptions in §§ 146a.32 and 146a.33.

**Sample Clause A-4:**

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”].
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”].
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

**A-5—Service provider/joint marketing exception**

A licensee may use one of these clauses, as applicable, to meet the requirements of § 146a.13(a)(5) related to the exception for service providers and joint marketers in § 146a.31. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

**Sample Clause A-5, Alternative 1:**

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”].

- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”].

- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

**Sample Clause A-5, Alternative 2:**

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

**A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)**

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§ 146a.31, 146a.32 and 146a.33.

**Sample Clause A-6:**

If you prefer that we not disclose nonpublic personal information about you to third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)"].

**A-7—Confidentiality and security (all institutions)**

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

**Sample Clause A-7:**

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with Federal regulations to guard your nonpublic personal information.

[Pa.B. Doc. No. 01-550. Filed for public inspection March 30, 2001, 9:00 a.m.]

# NOTICES

## 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 March 20, 2001.

### BANKING INSTITUTIONS

#### Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-19-01	American Interim Bank Allentown Lehigh County	Allentown	Filed

#### Conversions

<i>Date</i>	<i>Name of Institution</i>	<i>Location</i>	<i>Action</i>
3-2-01	First Financial Savings Association Downingtown Chester County	Downingtown	Filed (Revised)

*To:*

First Financial Bank  
Downingtown  
Chester County

Application represents conversion from a State-chartered stock savings association to a State-chartered bank and trust company.

#### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-16-01	Sun Bank Selinsgrove Snyder County  Purchase of assets/assumption of liabilities of two branch offices of Mellon Bank, N.A., Pittsburgh, located at: Bellefonte Avenue and East Church Street Lock Haven Clinton County	Selinsgrove      349 Main Street Mill Hall Clinton County	Approved
3-16-01	Mercer County State Bank Sandy Lake Mercer County  Purchase of assets/assumption of liabilities of one branch office of Mellon Bank, N.A., Pittsburgh, located at: 144 Venango Avenue Cambridge Springs Mercer County	Sandy Lake	Approved
3-20-01	Three Rivers Bank and Trust Company, Jefferson Borough, and the Pennsylvania Capital Bank, Pittsburgh Surviving Institution— Three Rivers Bank and Trust Company, Monroeville	Jefferson Borough	Filed

**Branch Applications**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-20-01	Northwest Savings Bank Warren Warren County	319 W. Central Ave. Titusville Warren County (Drive-Up Facility)	Approved

**SAVINGS INSTITUTION****Branch Applications**

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
3-16-01	First Financial Savings Association Downingtown Chester County	830 East Baltimore Pike Kennett Square Chester County	Approved

**CREDIT UNIONS**

No activity.

JAMES B. KAUFFMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 01-551. Filed for public inspection March 30, 2001, 9:00 a.m.]

**DEPARTMENT OF ENVIRONMENTAL PROTECTION****Applications, Actions and Special Notices****APPLICATIONS****NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)  
PERMITS****NPDES APPLICATIONS****PART I PERMITS**

Under the Federal Clean Water Act and the Pennsylvania Clean Streams Law, the following parties have applied for an NPDES permit or to renew their current permit to discharge controlled wastewaters into the waters of this Commonwealth or to conduct other activities required by the NPDES permit. For renewal applications listed in Section I below, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements. For all new permit applications, renewal application with major changes or applications for permits not waived by EPA, the Department, based upon preliminary reviews, also made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications listed in Section II. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise below, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6(d).

Persons wishing to comment on the proposed permit are invited to submit a statement, to the office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. The comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant. Following the comment period, the Department's Water Management Program Manager will make a final determination regarding these applications. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The renewal application, including proposed effluent limitations and special conditions, is available on file. For new permit applications, information submitted with the applications is available on file. The information may be inspected and arrangements made for copying at the office indicated above the application.

Persons with a disability, who require an auxiliary aid service, including TDD users or other accommodations to seek additional information, should contact the Department through the Pennsylvania AT&T Relay service at (800) 654-5984.

**I. NPDES Renewal Applications**

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA-0061816	Nemanie Village, Inc. P. O. Box 77 Hawley, PA 18428	Pike County Palmyra Township	Unnamed Tributary to Lake Wallenpaupack— 1C.	Yes
PA-0063444	Butler Township Municipal Authority P. O. Box 382 Ashland, PA 17921	Butler Township Schuylkill County	Mahanoy Creek— 06B	Yes
PA-0034428	Caesars Cove Haven Resort P. O. Box 400 Scotrun, PA 18355	Wayne County Paupack Township	Unnamed Tributary to Lake Wallenpaupack— 01C	Yes

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4700.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream (Watershed)</i>	<i>EPA Waived (New/Renewal)</i>
PA0084417	The Village Square Robert L. Brunner P. O. Box 310 Shermansdale, PA 17090	Perry County Carroll Township	UNT to Shermans Creek (7-A Shermans Creek)	Renewal
PA0087165	Bleyer Industries, Inc. 260 W. Sunrise Highway P. O. Box 9019 Valley Stream, PA 11582-9019	Huntingdon County Mt. Union Borough	Juniata River (12-C Aughwick Creek)	Renewal
PA0044059	PA Fish & Boat Commission Benner Spring Fish Research Station 1225 Shiloh Road State College, PA 16801	Bedford County E. St. Clair Township	Dunnings Creek (11-C Dunning Creek)	Renewal
PA0081272	Galaxy Tire & Wheel Inc. P. O. Box 110 Red Lion, PA 17356-0110	York County Red Lion Borough	Drainage Swale to Fishing Creek (7-I Kreutz/ Muddy Creek)	Renewal

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0113093	Christ Wesleyan Church R. R. #4 Box 2000 Milton, PA 17847	Northumberland County Turbot Township	10D	Y
PA0114766	South Williamsport Area School District (Nisbet Elementary School) 515 West Central Avenue South Williamsport, PA 17702	Lycoming County Susquehanna Township	10A	Yes
PA0043583	Hartley Township Municipal Authority P. O. Box 175 Laurelton, PA 17835-0175	Union County Hartley Township	6A	Renewal
PA0101290	Sandy Township P. O. Box 267 Dubois, PA 15801	Clearfield County Sandy Township	17C	Renewal
PA0113051	City of Dubois 16 West Scribner Avenue Dubois, PA 15801	Clearfield County Sandy Township	17C	Renewal

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0114821	Gregg Township Municipal Authority P. O. Box 192 Allenwood, PA 17810-0192	Union County Gregg Township	10C	Renewal
PA0228338	Union Chapman Regional Authority R. R. #1 Box 568 Port Trevorton, PA 17864	Snyder County Union Township	6C	Renewal

## II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Applications

*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**No. PA0031887**, Sewage, **Greenhill Mobile Home Park**, Route 29, R. D. 2, Green Lane, PA 18054.

This application is for renewal of an NPDES permit to discharge treated sewage from Greenhill Mobile Home Park in Marlborough Township, **Montgomery County**. This is an existing discharge to Green Lane Reservoir.

The receiving stream is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 30,000 gpd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mb/l)</i>
CBOD <sub>5</sub>	25	50
Suspended Solids	30	60
Ammonia (as N)	20	40
Phosphorus (as P)	0.5	1.0
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 5.0 mg/l at all times	
pH	within limits of 6.0—9.0 standard units at all times	

Other Conditions:

The EPA waiver is in effect.

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**PA0012203**, Industrial Waste, **Allen Organ Company**, 150 Locust Street, Macungie, PA 18062.

This proposed facility is located in Macungie Borough, **Lehigh County**.

Description of Proposed Activity: Renewal of a NPDES Permit.

The receiving stream, Swabia Creek, is in watershed 2C-Lehigh River and classified for: HQ-CWF.

The receiving stream, Swabia Creek, is in the State Water Plan watershed #2C-Lehigh River and is classified for: High Quality Cold Water Fishery. The nearest downstream public water supply intake for City of Allentown located on Little Lehigh Creek, 8 miles below the point of discharge.

The proposed effluent limits for Outfalls 001, 002 and 003 are based on a combined design flow of 0.398 MGD.

### Outfall 001

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Temperature			110°F
Oil and Grease	15.0		30.0
pH	6—9 Std. Units		

### Outfall 002

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Temperature			110°F
Oil and Grease	15.0		30.0
pH	6—9 Std. Units		



## Outfall 003

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Temperature			110°F
Oil and Grease	15.0		30.0
pH	6—9 Std. Units		

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Application No. PA 0026263**, SIC Code 4952, Sewage, **York City Sewer Authority**, c/o Blakey, Yost, Bupp & Schaumann, 17 East Market Street, York, PA 17401.

This application is for renewal of an NPDES permit for an existing discharge of treated sewage to Codorus Creek in Watershed 7-H, in Manchester Township, **York County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Wrightsville Water Supply Co. located in York County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 16 MGD (at peak hour plant flow) are:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
pH		from 6.0 to 9.0 inclusive minimum of 5.0 at all times		
Dissolved Oxygen				
Total Residual Chlorine	0.5	XXX	XXX	1.6
Total Suspended Solids	30	45	XXX	60
CBOD <sub>5</sub>				
(5-1 to 10-31)	15	22	XXX	30
(11-1 to 4-30)	20	30	XXX	40
NH <sub>3</sub> -N				
(5-1 to 10-31)	1.7	XXX	XXX	3.4
(11-1 to 4-30)	2.1	XXX	XXX	4.2
Total Phosphorus	2.0	XXX	XXX	4.0
Fecal Coliform				
(5-1 to 9-30)		200/100 ml as a geometric average		
(10-1 to 4-30)		2,000/100 ml as a geometric average		

The proposed effluent limits for Outfall 002 for a design flow of 26 MGD are:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
pH		from 6.0 to 9.0 inclusive minimum of 5.0 at all times		
Dissolved Oxygen				
Total Suspended Solids	30	45	XXX	60
CBOD <sub>5</sub>				
(5-1 to 10-31)	15	22	XXX	30
(11-1 to 4-30)	20	30	XXX	40
NH <sub>3</sub> N				
(5-1 to 10-31)	1.7	XXX	XXX	3.4
(11-1 to 4-30)	2.1	XXX	XXX	4.2
Total Phosphorus	2.0	XXX	XXX	4.0
Fecal Coliform				
(5-1 to 9-30)		200/100 ml as a geometric average		
(10-1 to 4-30)		2,000/100 ml as a geometric average		
Oil and Grease	XXX	XXX	Monitor & Report	XXX
Total Nitrogen	XXX	XXX	Monitor & Report	XXX

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is not in effect.

**Application No. PA 0080624**, SIC Code 0161, Industrial Waste, **B & W Quality Growers, Inc.** (Carlisle Facility), 17825 79th Street, Fellsmere, FL 32948.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to Letort

Spring Run in Watershed 7-B, in South Middleton Township, **Cumberland County**.

The receiving stream is classified for exceptional value, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>,

fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Pennsylvania American Water Company located in Silver Spring Township, Cumberland County. The discharge is not expected to impact any potable water supply.

The proposed conditions apply to the facility:

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. Maintain straw bales or silt fence at cress bed outlets during planting or harvesting to minimize sediment discharges.
3. Limit pesticide use to Dipel, Malathion, Induce, Safer Insecticidal Soap, Neemix, Kocide 101, and Roundup without prior Department approval.
4. Cease discharging from cress beds if there is a potential for a pollution incident.
5. Submit monthly reports indicating pesticides used, application rates, and acres treated.
6. Operate a trout maintenance facility at Bonny Brook Bed No. 3.

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0080641**, SIC Code 0161, Industrial Waste, **B & W Quality Growers, Inc.** (Newville Facility), 17825 79th Street, Fellsmere, FL 32948.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to Green Spring Creek in Watershed 7-B, in North Newton Township, **Cumberland County**.

The receiving stream is classified for cold water fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS,  $\text{NO}_2\text{-NO}_3$ , fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Carlisle Borough located in North Middleton Township, Cumberland County. The discharge is not expected to impact any potable water supply.

The proposed conditions apply to the facility:

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. Maintain straw bales or silt fence at cress bed outlets during planting or harvesting to minimize sediment discharges.
3. Limit pesticide use to Dipel, Malathion, Induce, Safer Insecticidal Soap, Neemix, Kocide 101, and Roundup without prior Department approval.
4. Cease discharging from cress beds if there is a potential for a pollution incident.
5. Submit monthly reports indicating pesticides used, application rates, and acres treated.

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0080675**, SIC Code 0161, Industrial Waste, **B & W Quality Growers, Inc.** (Midvale Facility), 17825 79th Street, Fellsmere, FL 32948.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to Red Run in Watershed 13-C, in Washington Township, **Franklin County**.

The receiving stream is classified for cold water fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS,  $\text{NO}_2\text{-NO}_3$ , fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Brunswick Mayor and Council located in Brunswick, MD. The discharge is not expected to impact any potable water supply.

The proposed conditions apply to the facility:

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. Maintain straw bales or silt fence at cress bed outlets during planting or harvesting to minimize sediment discharges.
3. Limit pesticide use to Dipel, Malathion, Induce, Safer Insecticidal Soap, Neemix, Kocide 101, and Roundup without prior Department approval.
4. Cease discharging from cress beds if there is a potential for a pollution incident.
5. Submit monthly reports indicating pesticides used, application rates, and acres treated.

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0083275**, SIC Code 0161, Industrial Waste, **B & W Quality Growers, Inc.** (Newville II Facility), 17825 79th Street, Fellsmere, FL 32948.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to Green Spring Creek in Watershed 7-B, in North Newton Township, **Cumberland County**.

The receiving stream is classified for cold water fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS,  $\text{NO}_2\text{-NO}_3$ , fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Carlisle Borough located in North Middleton Township, Cumberland County. The discharge is not expected to impact any potable water supply.

The proposed conditions apply to the facility:

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. Maintain straw bales or silt fence at cress bed outlets during planting or harvesting to minimize sediment discharges.
3. Limit pesticide use to Dipel, Malathion, Induce, Safer Insecticidal Soap, Neemix, Kocide 101, and Roundup without prior Department approval.
4. Cease discharging from cress beds if there is a potential for a pollution incident.
5. Submit monthly reports indicating pesticides used, application rates, and acres treated.

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0084841**, SIC Code 4922, Industrial Waste, **Texas Eastern Transmission Corporation**, 5400 Westheimer Court, Houston, TX 77056-5310.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to an unnamed tributary to Susquehanna River, in East Donegal Township, **Lancaster County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the

purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was an unnamed tributary to the Susquehanna River located in East Donegal Township, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.0576 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Benzene	XXX	0.005	XXX
Toluene	XXX	0.005	XXX
Ethylbenzene	XXX	0.005	XXX
Xylene	XXX	0.005	XXX
Naphthalene	XXX	00.1	XXX
2-Methylnaphthalene	XXX	Monitor & Report	XXX

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0088676**, SIC Code 4952, Sewage, **Creek View Mobile Home Community Sewage Association, Inc.**, 595 Greason Road, Carlisle, PA 17013.

This application is for issuance of an NPDES permit for a new discharge of treated sewage to Conodoguinet Creek, in Watershed 7-B, **Cumberland County**.

The receiving stream is classified for warm water fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Carlisle Borough located in North Middleton Township, Cumberland County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.060 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
Total Phosphorus	1.0	2.0
Total Residual Chlorine	Nondetect	
Dissolved Oxygen	Minimum of 5.0 at all times	
pH	From 6.0 to 9.0 inclusive	
Fecal Coliform	200/100 ml as a geometric average	
(5-1 to 9-30)	100,000/100 ml as a geometric average	
(10-1 to 4-30)		

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0088722**, SIC Code 2011, Industrial Waste, **John F. Martin & Sons, Inc.**, 55 Lower Hillside Road, Stevens, PA 17578.

This application is for issuance of an NPDES permit for a new discharge of treated industrial waste to Indian Run in Watershed 7-J, in West Cocalico Township, **Lancaster County**.

The receiving stream is classified for trout stocking fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was the Lancaster Municipal Water Authority located in Lancaster City, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.09 MGD are:

<i>Parameter</i>	<i>Average Monthly (lbs/day)</i>	<i>(mg/l)</i>	<i>Maximum Daily (lbs/day)</i>	<i>(mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	6.8	25	13.6	30	62.5
Oil and Grease	2.4	Monitor	4.8	Monitor	30
Total Suspended Solids	8.6	30	17.1	45	75

	Average Monthly		Maximum Daily		Instantaneous Maximum
NH <sub>3</sub> -N					
(5-1 to 10-31)	3.8	3.0	7.5	6.0	7.5
(11-1 to 4-30)	3.8	9.0	7.5	18.0	22.5
Parameter	Average Monthly (mg/l)		Maximum Daily (mg/l)		Instantaneous Maximum (mg/l)
Total Phosphorus	2		4		5
Total Residual Chlorine	0.46		—		1.5
Dissolved Oxygen	Minimum of 5.0 at all times From 6.0 to 9.0 inclusive				
pH					
Fecal Coliform					
(5-1 to 9-30)	200/100 ml as a geometric average				
(10-1 to 4-30)	200/100 ml as a geometric average				

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0088749**, SIC Code 4952, **Adams County Board of Commissioners (Hunterstown WWTP)**, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, PA. 17325.

This application is for issuance of an NPDES permit for a new discharge of treated sewage to Beaverdam Creek in Watershed 7-F, in Straban Township, **Adams County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was the Wrightsville Water Supply Co. located in York County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.225 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>				
(5-1 to 10-31)	15	22	XXX	30
(11-1 to 4-30)	25	40	XXX	50
Total Suspended Solids	30	45	XXX	60
NH <sub>3</sub> N				
(5-1 to 10-31)	2.0	XXX	XXX	4.0
(11-1 to 4-30)	6.0	XXX	XXX	12
Total Phosphorus	2.0	XXX	XXX	4.0
Osmotic Pressure	XXX	XXX	Monitor & Report	XXX
Total Copper	XXX	XXX	Monitor & Report	XXX
Total Lead	XXX	XXX	Monitor & Report	XXX
Total Zinc	XXX	XXX	Monitor & Report	XXX
Dissolved Oxygen	Minimum of 5.0 at all times From 6.0 to 9.0 inclusive			
pH				
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric average			
(10-1 to 4-30)	2,200/100 ml as a geometric average			

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

#### **WATER QUALITY MANAGEMENT PERMITS CONTROLLED INDUSTRIAL WASTE AND SEWAGE WASTEWATER APPLICATIONS UNDER THE PENNSYLVANIA CLEAN STREAMS LAW**

##### **PART II PERMITS**

The following permit applications or requests for plan approval have been received by the Department of Environmental Protection (Department).

Persons wishing to comment on any of the applications are invited to submit a statement to the office noted

above the application within 15 days from the date of this public notice. Comments received within this 15-day comment period will be considered in making the final decision regarding the application. The comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department reserves the right to hold a public hearing if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation of the area. If no hearing is held, the Department's Water Management Program Manager will make a final determination regarding the applications after a complete review. Notice of

this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

A copy of the permit application or proposed plan is on file in the office indicated and is open to public inspection. Appointments to review the application may be made by contacting Records Management at the indicated telephone number.

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**Industrial waste and sewerage applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)**

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*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Application Number 6701402.** Sewage, submitted by **Lynwood Corporation**, 236 Ebb Point Lane, Annapolis, MD 21401 in Codorus Township, **York County** to construct and operate a wastewater treatment plant to serve Graystone was received in the Southcentral Region on March 8, 2001.

**Application Number 0101402.** Sewage, submitted by **Insite Development, LLC**, 4216 Little Run Road, Harrisburg, PA 17110-3105 in Berwick Township, **Adams County** to construct a wastewater treatment plant to serve Eagle View Mobile Home Park was received in the Southcentral Region on March 9, 2001.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**WQM Permit No. 1901401,** Sewerage New, **Locust Township Municipal Authority**, 1223A Numidia Drive, Catawissa, PA 17820.

This proposed facility is located in Locust Township, **Columbia County**.

Description of Proposed Action/Activity: Locust Township Municipal Authority submitted an application package for the Village of Numidia, for a treatment plant and collection system to serve the village of Numidia. Application was received on March 2, 2001 at the Northcentral Regional office of DEP in Williamsport.

**WQM Permit No. 5501401,** Sewerage Rerate, **Kreamer Municipal Authority**, P. O. Box 220, Kreamer PA 17833.

This proposed facility is located in Middlecreek Township, **Snyder County**.

Description of Proposed Action/Activity: Kreamer Municipal Authority, submitted an application package for rerate of the wastewater treatment facility. The rerate application is to establish the maximum month hydraulic capacity and maximum month organic loading of the treatment plant. The application was received on March 5, 2001 at the Northcentral Regional Office of DEP in Williamsport.

**WQM Permit No. 4901402,** Sewerage, **West Chillisquaque Township Municipal Authority**, P. O. Box 168, Montandon, PA 17850.

This proposed facility is located in West Chillisquaque Township, **Northumberland County**.

Description of Proposed Action/Activity: This project involves the construction of a sewer to serve Astro Village Mobile Home Park and Clymer Mobile Home Park plus Countryside Manor. All flow collected from these areas will then connect into a currently unused interceptor which will convey the flow to the Industrial Park pump station and into the Borough of Milton Wastewater

Treatment Plant. The application was received January 23, 2001 at the Northcentral Regional Office.

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*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 2501405,** Sewerage, **Interstate Antique Mall**, 6205 West Lake Road, Erie, PA 16428.

This proposed facility is located in North East Township, **Erie County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a small flow treatment facility.

**WQM Permit No. 2501406,** Sewerage, **Jeanette Paris**, 2101 Dorn Road, Waterford, PA 16441.

This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: This project is for the construction of a Single Residence Sewage Treatment Plant.

**WQM Permit No. 1001404,** Sewerage, **P. Joseph and Lynne Barth**, 138 Bradman Estates, Slippery Rock, PA 16057.

This proposed facility is located in Slippery Rock Township, **Butler County**.

Description of Proposed Action/Activity: This project is for the construction of a Single Residence Sewage Treatment Plant.

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**NPDES Stormwater Individual Permit**

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The following parties have applied for an NPDES permit to discharge stormwater associated with a construction activity into 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 limitations set forth in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices (BMPs) which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the appropriate Department Regional Office noted above the application within 30 days from the date of this public notice. Comments reviewed 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 Department of the exact basis of a comment and relevant facts upon which it is based. A public hearing may be held after consideration of comments received by the appropriate DEP Regional Office during the 30-day public comment period.

Following the 30-day comment period, the appropriate Regional Office Water Management Program Manager 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, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the office identified in this notice.

Persons with a disability that require an auxiliary aid, service or other accommodation to participate during the 30-day public comment period should contact the specified Regional Office. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

*Southeast Region: Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**NPDES Permit PAS10 G460**, Stormwater. **PA Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106-7676, has applied to discharge stormwater associated with a construction activity located in Charlestown Township, **Chester County** to UNT to Valley Creek (CWF-MF/EV).

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*Northeast Region: Water Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.*

*Lackawanna County Conservation District: 1300 Old Plank Rd., Mayfield, PA 18433, (570) 281-9495.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS10N027	Theodore Fischer DEP/BAMR 2 Public Square Wilkes-Barre, PA 18711-0790	Lackawanna County Archbald Borough	Unnamed Tributary To Lackawanna River HQ-CWF

*Lehigh County Conservation District: Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Rd., Allentown, PA 18104, (610) 391-9583.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS10Q200-1	The Davis-Mushko Partnership 544 Jubilee St. Emmaus, PA 18049	Lehigh County Upper Milford Township	Little Lehigh Creek HQ-CWF

*Luzerne County Conservation District: R485 Smith Pond Rd., Lehman, PA 18627-0250, (570) 674-7991.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS10R039	Dorothy Lutinski R. R. 1, Box 93 Harveys Lake, PA 18618	Luzerne County Harveys Lake Borough	Beaver Run HQ-CWF

*Monroe County Conservation District: 8050 Running Valley Rd., Stroudsburg, PA 18360, (570) 629-3060.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS10S033-R	Pinecrest Lake PRD Spectrum/Pinecrest L.L.C. P. O. Box 760 Pocono Pines, PA 18350	Monroe County Tobyhanna Township	Tobyhanna Creek HQ-CWF

*Northampton County Conservation District: Greystone Bldg., Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS10U148	Stephen Selvaggio 623 Selvaggio Dr. Suite 200 Nazareth, PA	Northampton County Lower Nazareth Township	Monocacy Creek HQ-CWF
PAS10U149	Michael Goffrodo P. O. Box 247 Wind Gap, PA 18091	Northampton County Forks Township	Bushkill Creek HQ-CWF

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*Southcentral Region: Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110.*

**NPDES Permit PAS10 H092**, Stormwater. **Ty-Ara, Inc.**, 204 Campground Road Carlisle, PA 17013 has applied to discharge stormwater associated with a construction activity located in South Middleton Township, Cumberland County to Letort Spring Run (HQ-CWF).

*Cumberland County Conservation District: 43 Brookwood Avenue, Suite 4, Carlisle, PA 17013 (717) 240-7812.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS10H092	Ty-Ara Inc. 204 Campground Road Carlisle, PA 17013	South Middleton Township Cumberland County	Letort Spring Run (HQ-CWF)

**NPDES Permit PAS10 H093**, Stormwater. **Prologis Development Services, Inc.** One Capital Drive, Suite 103 Cranbury, NJ 08512 has applied to discharge stormwater associated with a construction activity located in South Middleton Township, **Cumberland County** to Letort Spring Run (HQ-CWF) and Conodoguinet Creek (WWF).

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS10H093	Prologis Dev Services Inc. One Capital Drive Suite 103 Cranbury, NJ 08512	South Middleton Township Cumberland County	Letort Spring Run (HQ-CWF) Conodoguinet Creek (WWF)

## WATER ALLOCATIONS

**Applications received under the Act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of the Commonwealth.**

*Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WA 16-1001**, Water Allocations. **PA American Water Company—Clarion**, 1909 Oakland Avenue, Indiana, PA 15701, Clarion Township, **Clarion County**. Permit application submitted for the increase of withdrawal of water from the Clarion River from 2 MGD to 4 MGD. Increase is necessary for the anticipated growth of the service area for the next 25 years.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION 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—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 the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as 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 or suspected 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, or who receives approval of a special industrial area remediation 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. Furthermore, the person 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 standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified below, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, 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 the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection 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 (800) 654-5984.

The Department of Environmental Protection has received the following Notices of Intent to Remediate:

*Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**Kardon Park Community Center**, East Caln Township, **Chester County**. Laura L. Peck, Law Offices of Janet S. Kole, P.C., 900 Haddon Ave., Suite 412, Collingswood, NJ 08108, on behalf of Borough of Downingtown, Municipal Government Center, 4-10 W. Lancaster Ave., Downingtown, PA 19335-2800, has submitted a Notice of Intent to Remediate site soil contaminated with lead. The applicant proposes to remediate the site to meet Statewide Health and Site-specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Daily Local News* on March 5, 2001.

**Hale Products**, Conshohocken Borough and Whitmarsh Township, **Montgomery County**. Frank Keirse, Hale Products, Inc., 700 Spring Mill Ave., Conshohocken, PA 19428, on behalf of Washington St. Associates III, LP, 700 S. Henderson Rd., Suite 2, King of Prussia, PA 19406, has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with lead and heavy metals. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Norristown Times Herald* on February 21, 2001.

*Northeast Region: Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Lott Residence/Ace Robbins, Inc.**, Meshoppen Borough, **Wyoming County**. Thomas Jimmie, Jr., Vice President, Datom Products, Inc., 452 East Drinker Street, Dunmore, PA 18512 has submitted an NIR (on behalf of Ace Robbins, Inc., P. O. Box 477, Trucksville, PA 18957) concerning the remediation of site soils and groundwater found or suspected to have been contaminated with no. 2 fuel oil petroleum constituents. The applicant proposes to remediate the site to meet the Statewide health standard. A Summary of the Notice of Intent to Remediate was published in *The Tunkhannock New-Age* on January 10, 2001.

**Former Krueger Greenhouse and Flower Shop Property**, Upper Saucon Township, **Lehigh County**. William J. Ponticello, Vice-President, Penn Environmental & Remediation, 2755 Bergey Road, Hatfield, PA 19440 has submitted a Notice of Intent to Remediate (on behalf of his client, Southern Lehigh School District, 40 South 5th Street, Allentown, PA 18101) concerning the remediation of site soils found to have been contaminated with metals. The applicant proposes to remediate the site to meet the Statewide health standard. A Summary of the Notice of Intent to Remediate was published in Allentown's *The Morning Call* on September 14, 2000. A Final Report was simultaneously submitted.

*Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Charus L. Goss Estate**, Wysox Township, **Bradford County**. Chambers Environmental Group, Inc., on behalf of Charus L. Goss Estate, Route 6 and Sullivan Street, Towanda, PA 18848, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with lead, BTEX and PHCs. The applicant proposes to remediate site soils to meet the Site-specific Standard and site groundwater to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Daily Review* on January 4, 2001.

## RESIDUAL WASTE GENERAL PERMITS

**Applications received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Application No. WMGR073. Blue Mountain Processors, Inc.**, 34 Blue Mountain Lane, Elliptsburg, PA 17024. General Permit application numbered WMGR073 for the processing and beneficial use of asphalt shingles as aggregate for road and driveway construction. Central Office received the application on February 9, 2001 and determined administratively completeness on March 15, 2001.

Comments concerning the application should be directed to Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472. Persons interested in obtaining more information about the general permit application may contact the Division at (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Applications submitted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and Regulations to Operate or Close Solid Waste Processing or Disposal Area or Site.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Application No. 100281. Republic Services of Pennsylvania, LLC**, Box 717 East Huntingdon Landfill Road, Scottdale, PA 15683. Greenridge Reclamation, R. D. No. 1, Box 717, East Huntingdon Landfill Road, Scottdale, PA 15683. An application for a major permit modification to increase the permit boundaries of a municipal waste landfill in East Huntingdon Township, **Westmoreland County**. Received in the Regional Office on March 14, 2001.

## AIR QUALITY

### Notice of Plan Approval and Operating Permit Applications

#### New Sources and Modifications

The Department of Environmental Protection (DEP) has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for DEP, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The DEP has received applications for plan approvals and/or operating permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Office identified in this notice. Persons interested in reviewing the application files should contact the appropriate Regional Office to schedule an appointment.

Persons wishing to receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the DEP Regional Office within 30 days of the date of this notice, and must file protests or comments on a Proposed Plan Approval or Operating Permit within 30



days of the DEP providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with DEP Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts, which serve as the basis for the objections. If DEP schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office identified below. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121 through 143, the Federal Clean Air Act and regulations adopted under the Act.

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**Applications Received and Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F (relating to operating permit requirements).**

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*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**06-05077: Can Corp. of America** (P. O. Box 170, Blandon, PA 19510) for a 3-piece metal can manufacturing facility controlled by four oxidizers and a fabric collector in Maiden Creek Township, **Berks County**.

**28-05013: UNOVA Industrial Automation Systems, Inc.** (20 East Sixth Street, Waynesboro, PA 17268) for a Synthetic Minor Operating Permit for its Landis Gardner Division in Waynesboro Borough, **Franklin County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**10-285B: Waste Management Disposal Services of PA** (1436 West Sunbury Road, West Sunbury, PA 16061) for operation of a flare system in Clay Township, **Butler County**.

**25-558A: Products Finishing Inc.** (2001 Greengarden Road, Erie, PA 16509) for operation of chrome plating tanks in Erie, **Erie County**.

**37-00012: Dunbar Asphalt Production Co.** (Route 224, Hillsville, PA 16161) for operation of the facility's air contamination sources consisting of a 325-tph-asphalt batch plant in Mahoning Township, **Lawrence County**.

**25-00984: Harrison Machine Co.** (3118 Station Road, Erie, PA 16510) for operation of a surface coating operation in Wesleyville Borough, **Erie County**.

**PLAN APPROVALS**

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**Applications Received for Plan Approvals Under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).**

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*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**35-310-038: Keystone Quarry Incorporated** (P. O. Box 249, Dunmore, PA 18512) for relocation and modification of the existing stone crushing plant and associated air cleaning device on Dunham Drive in Dunmore and Throop Boroughs, **Lackawanna County**.

**39-303-005A: Eastern Industries, Inc.** (4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034) for modification of the McCarter batch asphalt plant to utilize recycled oil as a fuel in Lower Macungie Township, **Lehigh County**.

**39-303-008A: Eastern Industries, Inc.** (4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034) for modification of the Midwest batch asphalt plant to utilize recycled oil as a fuel in Lower Macungie Township, **Lehigh County**.

**48-306-008C: Northampton Generating Co.** (1 Horwith Drive, Northampton, PA 1806) for modification of the fuels to utilize petroleum coke in Northampton Borough, **Northampton County**.

**35-318-084: Chamberlain Manufacturing Corp.** (156 Cedar Avenue, Scranton, PA 18505) for construction of a paint spray booth and associated air cleaning device in Scranton, **Lackawanna County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**01-05031A: Metropolitan Edison Co. d/b/a GPU Energy—Germantown Substation** (PO Box 16001, Reading, PA 19640-0001) for construction of 11 diesel-fired electrical generating units Mt. Joy Township, **Adams County**.

**06-03029A: Yuasa Battery, Inc.** (2901 Montrose Avenue, Reading, PA 19605) for construction of a lead/acid battery assembly line controlled by a fabric collector in Laureldale Borough, **Berks County**. The source is subject to 40 CFR Part 60, Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants.

**06-03088: Metropolitan Edison Co. dba GPU Energy—Muhlenberg Substation** (2800 Pottsville Pike, Reading, PA 19640-0001) for the construction of six emergency power generators controlled by Tier 1 combustion controls in Muhlenberg Township, **Berks County**.

**22-03020B: Hempt Bros., Inc.** (205 Creek Road, Camp Hill, PA 17011) for construction of a primary jaw crusher controlled by a wet suppression system and three conveyor belts at its Steelton Quarry in Steelton Borough, **Dauphin County**. These sources are subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

**22-05023A: Mobil Oil Corp.** (600 Billingsport Road, Paulsboro, NJ 08066) for installation of a Vapor Combustion Unit at Harrisburg Terminal in Swatara Township, **Dauphin County**.

**36-05093A: Martin Limestone, Inc.** (PO Box 550, Blue Ball, PA 17506) for adding No. 4 and No. 5 fuel oils to the approved fuels for the existing asphalt plant in East Cocalico Township, **Lancaster County**. The asphalt plant is subject to 40 CFR Part 60, Subpart I—Standards of Performance for Hot Mix Asphalt Facilities. Existing fuel oil and asphalt cement tanks are subject to 40 CFR Part 60, Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels.

**67-310-004I: Southdown, Inc.** (PO Box 220, Thomasville, PA 17364) for installation of three 100-ton storage silos and loadout tanks with respective controls at their Thomasville Facility in Jackson Township, **York**

**County.** The sources are subject to 40 CFR 60, Subpart 000—Standards of Performance for Nonmetallic Mineral Processing Plants.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

**18-00005A: Dominion Transmission Corp.—Finnefrock Compressor Station** (CNG Tower, 625 Liberty Avenue, Pittsburgh, PA 15222-3199) for installation of a replacement air cleaning device (an electronic fuel gas injection system) on an 1100 horsepower natural gas-fired reciprocating internal combustion compressor engine (Engine #3) in Leidy Township, **Clinton County.**

**59-00005C: Dominion Transmission Corp.—Sabinsville Compressor Station** (CNG Tower, 625 Liberty Avenue, Pittsburgh, PA 15222-3199) for installation of replacement air cleaning devices (screw-in prechambers) on five 1300 horsepower natural gas-fired reciprocating internal combustion compressor engines (Engines 1, 2, 3, 4 and 5) in Clymer Township, **Tioga County.**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222.*

**11-00052A: Pennsylvania Department of Labor—Hiram Andrews Center** (727 Goucher Street, Johnstown, PA 15905) for installation of two generators in Upper Yoder Township, **Cambria County.**

**26-00045A: Coolspring Mining, Inc.** (PO Box 1328, Uniontown, PA 15401) for operation of sandstone processing at Coolspring Stone Supply, Inc.—Coolspring Quarry #1 in North Union Township, **Fayette County.**

**65-00659B: Commercial Stone Co., Inc.** (PO Box 187, Berkeley Springs, WV 25411) for construction of an asphalt plant in North Huntingdon, **Westmoreland County.**

**26-00535A: Duke Energy North America—Fayette Energy Facility** (5400 Westheimer Court, Houston, TX 77056) for construction of an electrical generation facility in German Township, **Fayette County.**

**26-00534A: Fayette Thermal, LLC—East Millsboro Steam Plant** (755 Opossum Lake Road, Carlisle, PA 17013) for installation of boilers in Luzerne Township, **Fayette County.**

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**10-285B: Waste Management Disposal Services of PA** (1436 West Sunbury Road, West Sunbury, PA 16061) for operation of a flare system in Clay Township, **Butler County.**

**25-558A: Products Finishing Inc.** (2001 Greengarden Road, Erie, PA 16509) for operation of chrome plating tanks in Erie, **Erie County.**

**37-00012: Dunbar Asphalt Production Co.** (Route 224, Hillsville, PA 16161) for operation of the facility's air contamination sources consisting of a 325-tph-asphalt batch plant in Mahoning Township, **Lawrence County.**

**25-00984: Harrison Machine Co.** (3118 Station Road, Erie, PA 16510) for operation of a surface coating operation in Wesleyville Borough, **Erie County.**

**Intent to Issue Plan Approvals Under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).**

*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

### **Notice of Intent to Issue a Plan Approval and Amend a Title V Operating Permit**

**46-0003A: Stroehmann Bakeries, L.C.** (1810 East Ridge Pike, Norristown, PA 19404) for replacement of a catalytic oxidizer that controls emissions from various production lines in Norristown, **Montgomery County.** This catalytic oxidizer will reduce volatile organic compound emissions to 19 tons per year. Emissions of nitrogen oxides and carbon monoxide will be less than 6 tons per year each. The facility shall be required to operate the catalytic oxidizer at all times when the various production lines are in operation. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

**19-322-002: White Pines Landfill** (515 State Route 442, Millville, PA 17846) for construction of a municipal waste landfill at the present location of the company's existing residual waste landfill in Pine Township, **Columbia County.** The information provided by the applicant and the Air Quality Program's own analysis indicates that this entire operation may potentially result in the emission of 236.88 tons per 12 consecutive month period of particulate matter, 69.56 tons of which may also be particulate matter less than 10 microns (PM<sub>10</sub>), 15.71 tons per 12 consecutive month period of nitrogen oxides, 37.87 tons per 12 consecutive month period of carbon monoxide, 9.82 tons per 12 consecutive month period of sulfur oxides, 7.21 tons per 12 consecutive month period of non-methane organic compounds and 3.52 tons per 12 consecutive month period of hazardous air pollutants. A preliminary review of the information submitted by White Pines Landfill indicates that the proposed construction will meet all applicable air quality requirements. Based on this finding, the Air Quality Program intends to approve the application and issue a plan approval to construct the proposed municipal waste landfill provided that all other affected Programs within the Department of Environmental Protection are also prepared to issue the various other Department permits and approvals required for the respective project.

Issuance of this plan approval will make the White Pines Landfill a Title V facility and thus, subject the facility to the Title V rules and regulations.

In order to ensure compliance with all applicable air quality standards, the Air Quality Program proposes to place the following conditions in the respective plan approval:

1. The municipal solid waste landfill is to be constructed in accordance with the plans submitted with the application (as approved herein).

2. This plan approval is issued for the construction of a municipal solid waste landfill consisting of a disposal area and a network of access and haul roads. The disposal area shall consist of six cells and have a total waste disposal capacity of approximately 3,000,000 tons (2,750,000 megagrams).

3. This plan approval is also issued for the installation of a landfill gas extraction and collection system associated with the disposal area identified in condition 2 herein.

4. Under Section 60.752(b)(2)(iii) of Part 60 of the Federal Standards of Performance for New Stationary Sources and the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, the landfill gas collected with the landfill gas extraction and collection system identified in condition 3 herein shall be controlled by an enclosed ground-type flare.

5. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, the flare identified in condition 4 herein shall meet the following design/operational criteria:

a. The flare shall be equipped with the necessary equipment to allow auxiliary fuel to be bled into the landfill gas to enhance its heat content.

b. The flare shall be equipped with a continuous pilot ignition source using an auxiliary fuel.

c. There shall be sufficient flow of auxiliary fuel during system startup or restart such that a flame is supported and unburned gases are not emitted to the atmosphere.

d. The flare shall have no visible flames or emissions except for periods not to exceed a total of 5 minutes in any two consecutive hours and the emissions during these periods shall not exceed 10% opacity.

e. The flare shall achieve and maintain a non-methane organic compound destruction/removal efficiency of at least 98% by weight at all times landfill gas is vented to it. This minimum destruction efficiency requirement is also required by Section 60.752(b)(2)(ii)(B) of Part 60 of the Federal Standards of Performance for New Stationary Sources.

f. The flare gas temperature shall at all times be maintained at a minimum of 1500°F and the landfill gas being flared shall be held at this temperature for a period of at least 0.3 second.

g. The flare shall be equipped with a continuous temperature monitoring and recording system which will log the temperature of the flue gas exiting the flare at all times. The temperature sensor associated with this system shall be positioned so that it will indicate the temperature of the gases after they have been in the flare for at least 0.3 second. The records shall be kept on file for the life of the flare and shall be made available to the Department upon request. The use of the temperature monitor and recorder is also required by Section 60.756(b)(1) of Part 60 of the Federal Standards of Performance for New Stationary Sources.

h. The flare shall be equipped with a flame scanner.

i. In the event the flame scanner does not detect the flame or the flare is not operating between 1500°F and a preset maximum temperature, an automatic shutoff device shall immediately stop the flow of landfill gas to the flare and the flare shall be automatically shut down while alerting plant personnel via an autodialer system.

j. The flare shall at any given point in time be capable of accommodating the maximum landfill gas collection rate which will exist at that point in time while maintaining compliance with the limitations and requirements specified in, or established under, all applicable rules and regulations contained in Article III of the Rules and Regulation of the Department of Environmental Protection as well as in compliance with all conditions contained herein.

k. The flare shall be equipped with a device that will accurately measure and record the flow of landfill gas to the flare. The use of the flow monitor and recorder is also required by Section 60.756(b)(2) of Part 60 of the Federal Standards of Performance for New Stationary Sources. The records shall be kept on file for at least 5 years and shall be made available to the Department upon request.

6. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, a capping system shall be placed over the disposal area cells identified in condition 2 herein in a manner that will minimize gas leakage to the ambient air. Additionally, the capping system shall be installed in accordance with the requirements specified in Article VIII (Municipal Waste) of the Rules and Regulations of the Department of Environmental Protection.

7. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, asbestos-containing waste shall not be deposited within 35 feet of any gas collection well associated with the disposal area identified in condition 2 herein.

8. Within 60 days of selection of a flare vendor White Pines Landfill shall submit to the Air Quality Program final vendor specifications. The installation of the flare shall not commence until White Pines Landfill has received written approval from the Air Quality Program to do so. A copy of the final vendor specifications shall be maintained on the landfill site for the life of the flare.

9. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, the gas collection wells identified in condition 3 herein shall be located no more than 200 feet apart. The Department reserves the right to require the installation of additional wells in the event that well spacing does not bring the system into full compliance with the limitations and requirements specified in, or established under, any applicable rule or regulation contained in Article III of the Rules and Regulations of the Department of Environmental Protection or with those specified in any condition contained herein.

10. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, all piping incorporated in the landfill gas collection system identified in condition 3 herein as well as any blower used to convey the collected gas shall be sized to accommodate the maximum gas generation rate throughout the gas-generating life of the disposal area identified in condition 2 herein. This sizing requirement is also required by Section 60.759(c) of Part 60 of the Federal Standards of Performance for New Stationary Sources.

11. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, there shall never be any passive venting of landfill gas to atmosphere from any landfill gas collection well associated with the disposal area identified in condition 2 herein.

12. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, the landfill gas collection system iden-

tified in condition 3 herein shall be equipped with devices capable of minimizing moisture in the collected landfill gases.

13. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, should the landfill gas flow rate from the disposal area identified in condition 2 herein ever require the continuous, simultaneous use of both blowers, White Pines Landfill shall install additional blowers such that a blower can be left in reserve at all times.

14. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, within 90 days of the date of initial waste deposition within the disposal area identified in condition 2 herein, White Pines Landfill shall install the four perimeter landfill gas check wells as described in Sheets 52 and 53 of the application and supplemental materials submitted for plan approval.

15. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, White Pines Landfill shall begin the active collection of landfill gas from a cell within 60 days of final closure of the cell or within 2 years of the date of initial waste deposition within the respective cell, whichever event occurs first, unless White Pines Landfill can prove to the Department's satisfaction that the active collection of landfill gas from the respective cell is not yet warranted.

16. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, should the landfill gas flow rate from the disposal area identified in condition 2 herein ever exceed the maximum design capacity of the flare identified in condition 4 herein, White Pines Landfill shall submit a plan approval application for the installation of an additional flare or other control device deemed acceptable by the Department.

17. Within 180 days from the date the first set of landfill gas collection wells described in condition 3 herein are vented to the flare identified in condition 4 herein, White Pines Landfill shall conduct testing on the flare for non-methane organic compound destruction efficiency and the emission of nitrogen oxides.

18. Under Section 60.753(d) of Part 60 of the Federal Standards of Performance for New Stationary Sources and the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, the maximum concentration of total ambient organic compounds measured as methane at any point on the surface of any cell, or portion of any cell, that is a part of the disposal area identified in condition 2 herein where gas extraction and collection is taking place shall not exceed 500 ppm at any time.

19. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, a measurable vacuum shall be maintained within the gas collection system identified in condition 3 herein at all times.

20. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environ-

mental Protection, the landfill gas collection system identified in condition 3 herein shall be routinely inspected to ensure there are no leaks or other problems occurring within the system. Any leaks or problems shall be immediately repaired.

21. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, White Pines Landfill shall minimize the emission of fugitive particulate matter by implementing the following:

a. maintain a paved road from the entrance to the facility to the scalehouse

b. maintain gravel roads from the scalehouse to the working face

c. all paved roads shall be swept with a vacuum-type sweeper employing dust filtration or wetted and all graveled roads shall be wetted as much as practicable

d. employ the use of a truck tire wash station

e. tarp all open-top waste haul vehicles.

22. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, the landfill operator shall not deposit or dispose of any wastes at this site which have the potential to generate fugitive particulate matter unless the wastes have first been rendered essentially dust-free at the site of waste generation by treatment with water or other dust suppressants. Under no circumstances shall the landfill operator deposit or dispose of any flyash or like materials at this site which have not been adequately treated with water, etc. at the point of origin.

23. Under the best available technology provisions of Sections 127.1 and 127.12 of Chapter 127 of Article III of the Rules and Regulations of the Department of Environmental Protection, the total combined air contaminant emissions from the entire site shall never exceed the following emission limitations:

<i>Contaminant</i>	<i>Emission Limitation (tons per 12 consecutive month period)</i>
particulate matter	236.88
particulate matter less than 10 micrograms	69.56
non-methane organic compounds	7.21
nitrogen oxides (expressed as NO <sub>2</sub> )	15.71
carbon monoxide	37.87
sulfur oxides (expressed as SO <sub>2</sub> )	9.82
hazardous air pollutants	3.52

24. White Pines Landfill shall comply with the following monitoring requirements:

a. On a monthly basis, each landfill gas collection wellhead identified in condition 3 herein shall be monitored for temperature, percent oxygen and pressure. Should a temperature in excess of 131°F (55°C), an

oxygen content greater than or equal to 5%, or a lack of vacuum be detected during the monitoring of these wellheads, the White Pines Landfill shall take the necessary steps to bring the affected wellheads into compliance. The monitoring procedures shall comply with the provisions of Section 60.753(c) of Part 60 of the Federal Standards of Performance for New Stationary Sources.

b. From the date the perimeter landfill gas check wells described in condition 14 herein have been installed, and on a quarterly basis thereafter, White Pines Landfill shall monitor the wells for the presence of landfill gas. Should the readings indicate the off-site migration of landfill gas, White Pines Landfill shall take the necessary steps to ensure the off-site migration of landfill gas is eliminated. Records shall be maintained on the readings taken during the monitoring, the dates that it is determined the off-site migration of landfill gas is taking place as well as the corrective action taken.

c. Once the gas collection system is tied into the gas collection wells associated with a cell, or any portion of a cell, White Pines Landfill shall on a quarterly basis perform surface monitoring of the respective cell or respective portion of that cell for the presence of fugitive landfill gas. The procedures to be used shall comply with the provisions of Section 60.755(c) of Part 60 of the Federal Standards of Performance for New Stationary Sources. Records of the dates and results of the monitoring (including the dates, locations and magnitude of all excess landfill gas emission readings) and the corrective actions taken shall be recorded and retained on site for at least 5 years.

25. In addition to any records required by any other condition contained herein, White Pines Landfill shall maintain records of the following:

a. The dates and location of all asbestos-containing waste deposited in the disposal area identified in condition 2 herein.

b. The dates of initial waste deposition within cells 1, 2, 3, 4, 5 and 6.

c. The dates each landfill gas collection well identified in condition 3 herein is tied into the landfill gas collection and flaring system.

d. on a daily basis, the total amount of wastes in place.

e. on an annual basis, an estimate of the previous year's waste acceptance rate.

These records are to be maintained onsite for at least 5 years and shall be made available to the Department upon request.

White Pines Landfill shall additionally maintain the following documents on the landfill site for the life of the gas collection system identified in condition 3 herein:

f. the landfill design capacity estimation

g. a site plan with the location of all existing and proposed gas collection wells

26. The landfill is subject to Subpart WWW of the Federal Standards of Performance for New Stationary Sources, 40 CFR 60.750 through 60.759.

27. The landfill is subject to Subpart M of the National Emission Standards for Hazardous Air Pollutants, 40 CFR 61.150-61.157.

28. Issuance of an operating permit for the aforementioned disposal area is contingent upon the respective disposal area being constructed, the landfill gas extraction and collection system being installed, and the dis-

posal area and associated landfill gas extraction, collection and flaring system being maintained and operated, as described in the application and supplemental materials submitted for plan approval, as well as in accordance with all conditions contained herein, and upon satisfactory demonstration that any air contaminants emitted from the source(s) are in compliance with the requirements specified in Sections 123.1, 123.13, 123.31 and 123.41 of Chapter 123 of Article III of the Rules and Regulations of the Department of Environmental Protection as well as in compliance with the requirements specified in any condition contained herein as well as in compliance with requirements specified in, or established under, any other applicable rule or regulation contained in Article III, as well as in compliance with the requirements specified in Subpart WWW of the Federal Standards of Performance for New Stationary Sources, 40 CFR 60.750 through 60.759, as well as in compliance with the requirements specified in Subpart M of the National Emission Standards for Hazardous Air Pollutants, 40 CFR 61.150—61.157.

31. By no later than 120 days after the date that municipal waste is first deposited in the disposal area identified in condition 2 herein White Pines Corporation shall submit a complete Title V operating permit application to the Department.

The incorporation of the above-referenced conditions into the plan approval is intended to do one or more of the following:

1. identify the source and location
2. establish allowable source operating requirements
3. establish appropriate monitoring, recordkeeping, testing and reporting requirements
4. help ensure proper operation and adequate maintenance of the air contamination sources.

**49-301-015A: Wildwood Cemetery Co.** (1151 Cemetery Street, Williamsport, PA 17701) for construction of a crematory incinerator at Pomfret Manor Cemetery at 900 Packer Street in the City of Sunbury, **Northumberland County**.

The proposed crematory incinerator will incorporate a secondary combustion chamber equipped with a natural gas-fired burner for the control of air contaminants and will be used only for the cremation or incineration of human remains and associated containers used for holding the remains. The resultant air contaminant emissions will be minimal, well below one pound per hour for particulate matter, nitrogen oxides, carbon monoxides, sulfur oxides and volatile organic compounds.

The Department of Environmental Protection has determined that the proposed crematory incinerator will comply with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12. The Department of Environmental Protection consequently intends to issue plan approval for the construction of the respective crematory incinerator.

The Department intends to place conditions in the plan approval to be issued pertaining to the operation and monitoring of the incinerator. These are intended to assure proper operation of the incinerator as well as compliance with all applicable air quality regulatory requirements. The following is a summary of these conditions:

1. Under the best available technology provisions of 25 Pa. Code §§ 127.1 and 127.12, only human remains and associated containers for holding the remains shall be incinerated in the incinerator.

2. Under the best available technology provisions of 25 Pa. Code §§ 127.1 and 127.12, the particulate matter emissions from the incinerator shall not exceed .08 grains per dry standard cubic foot corrected to 7% oxygen and the visible air contaminant emissions shall not equal or exceed 10% opacity for a period or periods aggregating more than 3 minutes in any 1 hour or equal or exceed 30% opacity at any time.

3. Under the best available technology provisions of 25 Pa. Code §§ 127.1 and 127.12, upon any occasion of incinerator use, a secondary combustion chamber temperature of at least 1800°F shall be achieved prior to the commencement of cremation and shall thereafter be maintained throughout the remainder of the cremation cycle.

4. Under the best available technology provisions of 25 Pa. Code §§ 127.1 and 127.12, the incinerator shall be equipped with instrumentation to continuously monitor and record the secondary chamber combustion chamber temperature. All records generated by this instrumentation shall be retained for at least 5 years.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222.*

**65-788L: Sony Electronics, Inc.—Pittsburgh Mfg. Center** (1001 Technology Drive, Mount Pleasant, PA 15666) for an increase in permitted emission limits from the Aperture Grille Line 1 in East Huntingdon Township, **Westmoreland County** as described in its application received on November 31, 2000.

In order for DEP to assure compliance with all applicable standards, DEP proposes to place the following conditions on the Plan Approval:

*Special Conditions for Plan Approval PA-65-788L*

3. This Plan Approval is for an increase in permitted emission limits from the Aperture Grille Line-1 located at the Sony Technology Center—Pittsburgh, in East Huntingdon Township, Westmoreland County.

4. Emissions of VOC from the Aperture Grille Line 1 shall be limited to 13,560 pounds per year.

5. Emissions of Acrylic Acid from the Aperture Grille Line 1 shall be limited to 2,860 pounds per year.

6. Emissions of VOC from the entire facility shall be limited to 49.0 tons per year.

7. Sony shall keep records to demonstrate compliance with the emission limits established in this approval. These records shall be kept on site for a period of 2 years and be made available to the Department upon request.

8. This Plan Approval authorizes temporary operation of the source covered by this Plan Approval provided the following conditions are met.

a) The Department must receive written notice from the Owner/Operator of the completion of construction and the operator's intent to commence operation at least 5 working days prior to the completion of construction. The notice should state when construction will be completed and when operator expects to commence operation.

b) Operation is authorized only to facilitate the start-up and shake-down of sources and air cleaning devices, to permit operations pending the issuance of an

Operating Permit or to permit the evaluation of the source for compliance with all applicable regulations and requirements.

c) This condition authorizes temporary operation of the source for a period of 180 days from the date of commencement of operation, provided the Department receives notice from the Owner/Operator pursuant to subpart (a), above.

d) The Owner/Operator may request an extension if compliance with all applicable regulations and Plan Approval requirements has not been established. The extension request shall be submitted in writing at least 15 days prior to the end of this period of temporary operation and shall provide a description of the compliance status of the source, a detailed schedule for establishing compliance, and the reasons compliance has not been established.

e) The notice submitted by the Owner/Operator pursuant to subpart (a), above, prior to the expiration of this Plan Approval, shall modify the plan approval expiration date. The new plan approval expiration date shall be 180 days from the date of the written notice.

**63-550B: USA South Hills Landfill, Inc.** (3100 Hill Road, Library, PA 15129) for construction of a new enclosed flare in South Park Township, **Allegheny County** and Union Township, **Washington County**.

The proposed flare is subject to the applicable requirements of 25 Pa. Code Chapter 127 (related to construction, modification, reactivation and operation of sources and control devices) and 40 CFR 60, Subparts Cc and WWW—Standards of Performance for Municipal Waste Landfills. The Department believes that the facility will meet these requirements by complying with the following Plan Approval conditions:

1. The facility is to be constructed in accordance with the plans submitted with the application (as approved herein).

2. Upon completion of the construction of the facility, an operating permit must be obtained. Notify the Department when the installation is completed so that the facility can be inspected for issuance of an operating permit.

3. This Plan Approval authorizes the installation of a new enclosed flare at USA South Hills Landfill located in South Park Township, Allegheny County and Union Township, Washington County. (25 Pa. Code § 127.12b)

4. Enclosed flare is a John Zink Co., LLC Model ZTOF Enclosed Flare System, rated at 2,500 CFM. Flare shall be equipped with the following as described in application: programmable logic controller, flame scanner, high and low temperature sensor and shutdown switches, automatic shutdown valve, inlet flame arrestor, temperature monitoring and recording equipment, automatic phone dialer, and landfill gas flow meter. (25 Pa. Code § 127.12b).

5. Emissions from the enclosed flare are established as follows: (25 Pa. Code § 127.12b)

<i>Pollutant</i>	<i>Pounds per Hour</i>	<i>Tons per Year</i>
CO	13.6	59.8
NO <sub>x</sub>	4.0	17.9
NMOC	0.16	0.72

6. Operation

a. The enclosed flare shall achieve a 98% Non-Methane Organic Compound (NMOC) destruction efficiency for landfill gas. (40 CFR 60.752(b)(2)(iii)(B))

b. The enclosed flare shall be operated with no visible flame. (25 Pa. Code § 127.12b)

c. The enclosed flare shall be operated with no visible emissions except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. (40 CFR 60.18)

d. The enclosed flare shall be operated at a minimum operating temperature of 1500°F or the operating temperature at which the required 98% NMOC destruction efficiency was demonstrated through performance testing. Operating temperature shall be continuously monitored and recorded. The gas residence time above 1500°F shall be at least 0.3 second. (25 Pa. Code § 127.12b)

e. The enclosed flare shall be equipped and operated with an intermittent pilot ignition source using propane as an auxiliary fuel. (25 Pa. Code § 127.12b)

f. The enclosed flare shall be operated with a flame present at all times. The enclosed flare shall be equipped and operated with an automatic shutoff mechanism designed to immediately stop the flow of gases when a flame out occurs. During restart or startup, there shall be sufficient flow of auxiliary fuel to the burner such that unburned landfill gases are not emitted to the atmosphere. (25 Pa. Code § 127.12b)

g. The enclosed flare and gas extraction system shall be equipped with a backup power source such as a diesel generator such that power shall not be interrupted in the event of a power outage. (25 Pa. Code § 127.12b)

h. Owner/operator shall maintain and operate the emergency telephone notification system at all times. Notification system shall call up to four plant personnel telephone numbers so that someone may be notified that the enclosed flare has shut down. (25 Pa. Code § 127.12b)

#### 7. Initial Performance Testing

a. Owner/operator shall conduct stack testing to demonstrate compliance with the emission limitations above and the 98% NMOC Destruction efficiency requirement. (40 CFR 60.8)

b. The inlet NMOC mass flow rate in the fuel feed to the flare and the outlet NMOC, CO and NO<sub>x</sub> mass flow rates in the flare exhaust shall be tested. (25 Pa. Code § 127.12b)

c. Testing shall be conducted in accordance with 40 CFR 60.754 and the Department's source testing procedures described in the latest Source Testing Manual referenced in 25 Pa. Code § 139.4(5).

d. Within 90 days of issuance of this Plan Approval, owner/operator shall submit to the Department two copies of the protocol to be followed for the stack test. Drawings with dimensions indicating the location of sampling ports and other data to ensure the collection of representative samples shall be included in the protocol. (25 Pa. Code § 127.12b)

e. Testing shall take place within 60 days of Departmental approval of the stack test protocol. Testing shall not take place until the Department has approved the stack test protocol. (25 Pa. Code § 127.12b)

f. At least 15 days prior to the test, the Regional Air Quality Manager shall be informed of the date and time of the test. (25 Pa. Code § 127.12b)

g. The stack test shall be performed while the flare is operating at its maximum rated capacity, using the maximum available amount of landfill gas. (25 Pa. Code § 127.12b)

h. All available operating parameters, including but not limited to landfill gas flow rate and flare temperature shall be recorded during the duration of the stack tests. (25 Pa. Code § 127.12b)

i. Within 60 days after the stack test, two copies of the complete test report, including all recorded operating parameters, shall be submitted to the Regional Air Quality Manager for approval. (25 Pa. Code § 127.12b)

j. Stack testing may be required to be repeated if flow rate to the enclosed flare ever exceeds the rate at which the unit was previously stack tested. (25 Pa. Code § 127.12b)

#### 8. Monitoring

a. The owner/operator shall comply with the applicable monitoring requirements of 40 CFR 60.756(b)(1).

b. The enclosed flare shall at all times be equipped with devices for measuring the presence of a flame and/or the operating temperature of the flare.

c. All monitoring and measuring devices shall be calibrated, maintained and operated according to the manufacturer's specifications.

#### 9. Recordkeeping

a. The owner/operator shall comply with the applicable recordkeeping requirements specified in 40 CFR 60.758(b)(2).

b. Owner/operator shall keep records of all visible emission readings, heat content determinations, flowrates or bypass flowrates, flare flame or temperature monitoring, outages, surface monitoring data, well pressures, temperatures and nitrogen or oxygen concentrations, and any other parameters that are available to indicate that the collection and control system is operating properly.

c. The owner or operator shall keep records of any exceedances of the collection or control systems as defined in 40 CFR 60, Subparts WWW.

d. Records required herein shall be kept for a minimum period of 5 years and shall be made available to the Department upon request. Offsite records may be maintained by the owner/operator if they are retrievable within 4 hours. (25 Pa. Code § 127.12b)

#### 10. Reporting

a. This facility is subject to the applicable requirements of 40 CFR 60, Subparts Cc and WWW. Per 40 CFR 60.4, all requests, reports, applications, submittals and other communications, including the notification requirements of 40 CFR 60.7 and the annual reporting requirements of 40 CFR 60.757(f)(1) through (f)(6) shall be submitted to both EPA and the PADEP at the following addresses:

Regional Air Quality Manager  
PA Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

Director  
Air, Toxics and Radiation Division  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

11. Unless specifically amended herein, all conditions contained in previously issued Plan Approvals and Operating Permits shall remain in effect. (25 Pa. Code § 127.12b)

12. Per 25 Pa. Code § 127.13, if the construction authorized in this Plan Approval is not commenced within 18

months of issuance of this Plan Approval, or if there is more than an 18-month lapse in construction, a new Plan Approval application shall be submitted.

13. In accordance with 25 Pa. Code § 127.12b(d), this Plan Approval authorizes temporary operation of the source and/or the pollution control device covered by this Plan Approval provided that the following conditions are met:

a. The Department must receive written notice from the owner/operator of when the owner/operator expects to commence operation of the source and/or pollution control device.

b. Operation is authorized only to facilitate the startup and shakedown of source and/or air cleaning device, to permit operations pending the issuance of an Operating Permit or to permit the evaluation of the source for compliance with all applicable regulations and requirements.

c. This condition authorizes temporary operation of the source and/or pollution control device for a period of 180 days from the date of startup, provided the Department receives notice from owner/operator under Subpart a. above.

d. Owner/operator may request an extension if compliance with all applicable regulations and Plan Approval requirements has not been established. The extension request shall be submitted in writing at least 15 days prior to the end of this period of temporary operation and shall provide a description of the compliance status of the source and/or pollution control device, a detailed schedule for establishing compliance, and the reasons compliance has not been established.

e. The notice submitted by owner/operator under Subpart a. above, prior to the expiration of this Plan Approval, shall revise the Plan Approval expiration date. The revised Plan Approval expiration date shall be 180 days from the date of startup.

### 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 such 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 below 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 on 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.

### COAL APPLICATIONS RECEIVED

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**545851601R3. Superior Preparation Co., Inc.**, (RR 1 Box 114, Hegins, PA 17938), renewal of an existing anthracite preparation plant operation in Hegins & Hubley Townships, **Schuylkill County** affecting 19.0 acres, receiving stream—none. Application received March 14, 2001.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209.*

**17823101, Waroquier Coal Company** (P. O. Box 128, Clearfield, PA 16830), transfer of an existing bituminous surface mine permit from Hepburnia Coal Company. The permit is located in Union Township, **Clearfield County** and affects 128 acres. Receiving stream—unnamed streams to Anderson Creek; unnamed streams to Laborde Branch; Anderson Creek. Application received March 12, 2001.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931.*

**56960107. Permit Transfer from Godin Brothers, Inc. to PBS Coals, Inc.** (P. O. Box 260, Friedens, PA 15541), to continue operation of a bituminous surface and auger mine in Jenner Township, **Somerset County**, affecting 129.9 acres, receiving stream unnamed tributaries to/and Quemahoning Creek. Application received March 9, 2001.



**11900105.** Permit Revision, **Cooney Brothers Coal Company** (P. O. Box 246, Cresson, PA 16630), for a post-mining land use change from forestland to wildlife habitat on lands of Leonard Kalinoski and Cooney Brothers Coal in Portage Township, **Cambria County**, affecting 45.0 acres, receiving stream an unnamed tributary to Beaverdam Run. Application received March 7, 2001.

*Noncoal Applications Received*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**28810302. M. Joseph and Marlene F. Reese** (1322 South Road, Shippensburg, PA 17257), Stage I & II bond release of a small quarry operation in Lurgan Township, **Franklin County** affecting 1.3 acres for \$1,300 on property owned by M. Joseph & Marlene F. Reese. Application received March 13, 2001.

**06010301. Berks Products Corporation** (726 Spring Street, P. O. Box 421, Reading, PA 19603), commencement, operation and restoration of a quarry operation in Maxatawny Township, **Berks County** affecting 38.3 acres, receiving stream—mine pool to Schuylkill River. Application received March 12, 2001.

**35910301C. West Mt. Sand, Stone & Aggregates, Ltd.** (819 Newton Road, Scranton, PA 18504), renewal of NPDES Permit PA0595209 in Newton and Ransom Townships, **Lackawanna County**, receiving stream - Keyser Creek. Application received March 13, 2001.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931.*

**05960301, New Enterprise Stone & Lime Company, Inc.** (P. O. Box 77, Church Street, New Enterprise, PA 16664), renewal of NPDES Permit No. PA0213373 in Snake Spring Valley Township, **Bedford County**, receiving stream Raystown Branch, Juniata River. NPDES Renewal application received March 8, 2001.

**05910301, New Enterprise Stone & Lime Company, Inc.** (P. O. Box 77, Church Street, New Enterprise, PA 16664), renewal of NPDES Permit No. PA0599085 in Napier and West St. Clair Townships, **Bedford County**, receiving stream unnamed tributaries to Dunning Creek; and to Dunning Creek. NPDES Renewal application received March 8, 2001.

**FEDERAL WATER POLLUTION CONTROL ACT,  
SECTION 401**

The following permit applications and requests for Environmental Assessment approval and requests for Water Quality Certification have been received by the Department of Environmental Protection. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341(a)), requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA 33 U.S.C.A. §§ 1311—1313, 1316 and 1317 as well as relevant State requirements. Initial requests for 401 Water Quality Certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under Section 401 or to the issuance of a Dam Permit or Water Obstruction and Encroachment Permit, or the approval of an Environmental Assessment must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed, and a concise statement of

comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between the hours of 8 a.m. and 4 p.m. on each working day at the office noted 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 proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**Applications Received 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 (33 U.S.C.A. § 1341(a)).**

**WATER OBSTRUCTIONS AND ENCROACHMENTS**

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**E58-240. Acred Lake Improvement Association, c/o Attorney William Higgs, 334 South Franklin St., Wilkes-Barre, PA 18702 in Lenox Township, Susquehanna County, ACOE Baltimore District.**

To dredge within the reservoir of Acre Pond (also known as Acre Lake), increasing the maximum water depth from approximately 10 feet to 30 feet. The reservoir has an area of approximately 48 acres. Approximately 340,000 cubic yards of material will be removed, utilizing a floating clam shell hydraulic bucket. The floating conveyor system will be used to transport material across the reservoir to several shore based off loading points. The material to be removed consists primarily of peat humus. The project includes the installation of approximately eight fish habitat structures and three aeration diffusers throughout the lake. The project is located along the southside of S.R. 0106, immediately south of the Lenox Township/Hartford Township boundary, Lenoxville, PA, Quadrangle N: 18.0 inches; W: 10.6. Inches.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**E36-703. Lester Guyton, Dogwood Valley Residential Development, 20 Red Oak Drive, Lititz, PA 17543, ACOE Baltimore District, in Warwick Township, Lancaster County.**

To construct and maintain a concrete bridge having a single span of 16 feet with an underclearance of 4 feet across an unnamed tributary to Lititz Run (WWF) and to fill in 0.26 acre of wetlands in order to construct Dogwood Valley Road located in Dogwood Valley Residential Development - Phase III (Lititz, PA Quadrangle N:2.3 inches; W:3.6 inches). The applicant is required to provide a minimum of 0.26 acre of replacement wetland.

**E50-201. Wheatfield Township, RD 2 or 248-B, Duncannon, PA 17020, ACOE Baltimore District, in Wheatfield Township, Perry County.**

To remove an existing culvert and to construct and maintain a pre-cast concrete box culvert having a clear span of 14.33 feet, an underclearance of 4.75 feet and a length of 34.0 feet in Dark Run (CWF) located on T-345 about 200 feet west of its intersection with T-452 (Duncannon, PA Quadrangle N: 2.0 inches; W: 15.0 inches).

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E41-477. Cogan House Township**, 4609 Rt. 184 Hwy., Trout Run. Hoagland Road Improvements, in Cogan House Township, **Lycoming County**, ACOE Baltimore District (White Pine, PA Quadrangle N: 2 inches; W: 3.75 inches).

To install ten 15-inch diameter cross culvert pipes that will discharge into Hoagland Run. This permit also authorizes headwalls and riprap channel protection at the outlet of the culverts. The beginning location is 2 miles southeast on Hoagland Run Road from the intersection with Buckhorn Road (T-790) and Green Goose Road in Steuben. The ending location is 5 miles southeast on Hoagland Run Road at the Anthony/Cogan House Township Line. This project is associated with numerous improvements to Hoagland Run Road. This project proposes to effect 5 miles of roadway, which will minimize the amount of sedimentation to Hoagland Run, which is, designated a High Quality Cold Water Fishery. This project does not propose to impact any wetlands.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-447-A1. Township of McCandless**, 9955 Grubbs Road, Wexford, PA 15090. McCandless Township, **Allegheny County**, ACOE Pittsburgh District.

To amend permit E02-447 which authorized the construction and maintenance of stream enclosures consisting of an 84 inch diameter and 60 inch diameter A.C.C.M. pipes, including railroad tie cribbing walls and a rock energy dissipater in a tributary to Pine Creek (TSF) beginning at a point approximately 100 feet upstream from the Hampton Township line. This amend will authorize the construction and maintenance of 54 feet of 84 inch diameter C.M.P. culvert replacing the rail road tie cribbing walls, thereby enclosing a gap originally left between the existing 84 inch culverts. This amendment will also authorize the operation and maintenance of 102 feet of 84 inch diameter C.M.P. culvert that was constructed beyond the original permit limits. The new total length of the 84 inch diameter culvert will be approximately 578 feet long, and the 60 inch diameter culvert length shall remain at approximately 217 feet long (Glenshaw, PA Quadrangle N: 14.9 inches; W: 16.2 inches).

**E03-396. Roaring Run Watershed Association**, P. O. Box 333, Apollo, PA 15613. Kiskiminetas Township, **Armstrong County**, ACOE Pittsburgh District.

To construct and maintain approximately 425 LF stabilization of the right bank of the Kiskiminetas River located at the Trux Abandoned Mine site located near Brownstown (Vandergrift, PA Quadrangle N: 8.45 inches; W: 4.18 inches).

**E63-506. Washington County**, 100 West Beau Street, Washington, PA 15301. West Pike Run Township, **Washington County**, ACOE Pittsburgh District.

To remove the existing bridge (County Bridge 18, Walker Bridge) and to construct and maintain a new bridge having a span of 60.54 feet with a minimum

underclearance of 5.20 feet across Pike run for the purpose of improving highway safety. The project is located on T-395 (Woods Run), approximately 54 feet south from the intersection of S.R. 2063 and T-395 (Woods Run) (California, PA Quadrangle N: 9.9 inches; W: 12.0 inches).

**E30-199. Greene County Commissioners**, 93 East High Street, Waynesburg, PA 15370. Franklin Township, **Greene County**, ACOE Pittsburgh District.

To remove and replace the existing superstructure of Greene County Bridge No. 30 across Smith Creek (WWF) located on T-511 (Hill Road) at a point at its intersection with S.R. 218 (Waynesburg, PA Quadrangle N: 0.13 inch; W: 10.0 inches).

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6945.*

**E10-329, Jack J. and Denise B. Rice**, 536 Osceola Street, Pittsburgh, PA 15224. Rice Property Bridge Crossing, in Lancaster, **Butler County**, ACOE Pittsburgh District (Evans City, PA Quadrangle N: 14.0 inches; W: 14.0 inches).

To construct and maintain a concrete and steel bridge 53.5 feet long, 10.0 feet wide, and 7.0 feet clear across Yellow Creek (WWF) to provide private vehicular access to an existing cabin along Yellow Creek Road.

**E16-117, Farmington Township**, P. O. Box 148, Leeper, PA 16233-0148. T-612 Salsgiver Drive Across Little Coon Run, in Farmington Township, **Clarion County**, ACOE Pittsburgh District (Tylersburg, PA Quadrangle N: 5.3 inches; W: 9.05 inches).

To remove the existing bridge and to install and maintain a 103-inch-wide by 71-inch-high corrugated metal pipe arch culvert in Little Coon Run on T-612 (Salsgiver Drive) approximately 0.4 mile north of T-607 (Mealy Drive).

**E25-620, Borough of Edinboro**, 124 Meadville Street, Edinboro, PA 16412-2502. Edinboro Lake Municipal Docks, in Borough of Edinboro, **Erie County**, ACOE Pittsburgh District (Edinboro North, PA Quadrangle N: 1.5 inches; W: 2.2 inches).

To operate and maintain various boat docks in Edinboro Lake including seasonal installation and removal of 31 pile supported and floating docks, maintenance of three existing solid fill concrete docks and periodic maintenance dredging of six areas extending approximately 15 feet from the edge of water at normal pool and along a total length of approximately 1,750 feet of the western shoreline.

**E33-202, Borough of Sykesville**, 21 East Main Street, Sykesville, PA 15865. Stump Creek Sewer Line Crossing, in Borough of Sykesville, **Mercer County**, ACOE Pittsburgh District (Dubois, PA Quadrangle N: 8.8 inches; W: 9.5 inches).

To remove the existing PVC pipe and concrete encasement and to cross Stump Creek at Station Street Bridge and 395 feet downstream of the Park Street Bridge with a ductile iron pipe placed on an encased reinforced concrete slab associated with the Sykesville Borough Wastewater Collection System and Treatment Facility Construction Project.

**E42-276, Daniel E. Goldsmith**, RR #1, Box 283, Coontown Road, Kane, PA 16735. Bridge over Hubert

Run, in Wetmore Township, **McKean County**, ACOE Pittsburgh District (Kane, PA Quadrangle N: 11.5 inches; W: 8.8 inches).

To construct and maintain an 83-inch by 53-inch oval corrugated metal pipe (CMP) culvert along/in Hubert Run as part of a private property access project located on the east side of Route 321 North approximately 2 miles past Kane Borough.

**E61-239, PA Department of Transportation**, District 1-0, 255 Elm Street, Oil City, PA. S.R. 0062, Segment 0600, Offset 1408 Across Slate Run, in Cranberry Township, **Venango County**, ACOE Pittsburgh District (Oil City, PA Quadrangle N: 8.1 inches; W: 2.8 inches).

To install 1-foot-thick concrete paving 0.5 foot below the existing stream bed and maintain the reinforced concrete arch having a clear span of 8 feet and an underclearance of 6.33 feet across Slate Run on S.R. 0062, Segment 0600, Offset 1408 approximately 2.1 miles north of S.R. 157.

**E61-240, PA Department of Transportation**, District 1-0, 255 Elm Street, Oil City, PA 16323. S.R. 1009, Section SPA, Segment 0050, Offset 0380 Across Benninghof Run, in Cherrytree Township, **Venango County**, ACOE Pittsburgh District (Titusville South, PA Quadrangle N: 9.0 inches; W: 7.8 inches).

To place concrete streambed paving and maintain the concrete slab bridge having a clear span of 10 feet and an underclearance of 3.4 feet across Benninghof Run on S.R. 1009, Section SPA, Segment 0050, Offset 0380 approximately 1.1 miles east of S.R. 8.

**E61-241, PA Department of Transportation**, District 1-0, 255 Elm Street, Oil City, PA 16323. S.R. 1009, Section SPA, Segment 0050, Offset 0471 Across Tributary to Benninghof Run, in Cherrytree Township, **Venango County**, ACOE Pittsburgh District (Titusville South, PA Quadrangle N: 9.0 inches; W: 7.8 inches).

To place concrete paving approximately 6 inches below the streambed and maintain the concrete slab bridge having a clear span of 7 feet and an underclearance of 4.6 feet across a tributary to Benninghof Run on S.R. 1009, Section SPA, Segment 0050, Offset 0471 approximately 1.1 miles east of S.R. 8.

#### ENVIRONMENTAL ASSESSMENTS

*Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.*

**EA67-013CO. Daniel T. Guthrie**, 6224 Hauser School Road, York, PA 17406. Hellam Township, **York County**, ACOE Baltimore District.

Project proposes to construct a nonjurisdictional dam across a tributary to Kreutz Creek (WWF) impacting approximately 350 linear feet of stream channel for aesthetics and recreation. The proposed dam will be located approximately 900 feet south of the intersection of L.R. 66018 and T-776 (Columbia West, PA Quadrangle, N: 5.50", W: 9.55").

**EA34-001CO. CRL Holdings, L.P.**, c/o Apple Hill Business Advisors, Inc., 33 North Second Street, Harrisburg, PA 17101. Walker Township, **Juniata County**, ACOE Baltimore District.

Project proposes to construct a nonjurisdictional dam in the watershed of a tributary to Cedar Spring Run (TSF) directly and indirectly impacting approximately 0.63 acre of wetlands (PEM) for a Supplemental Environmental Project, which includes donating approximately 14 acres of mixed upland/wetland habitat to the Central Pennsylv-

ania Conservancy. The project will result in a net gain of 1.39 acres of wetlands. The proposed non-jurisdictional dam will be located adjacent to the Port Royal Propane Terminal at the intersection of State Route 75 and T-451 (Mexico, PA Quadrangle, N: 9.9, W: 15.9").

#### ACTIONS

#### FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

#### NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PROGRAM (NPDES)

#### INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval.

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 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 of 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.

#### I. Municipal and Industrial Permit Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**WQM Permit No. 1500433.** Sewage. **Kennett Township**, P. O. Box H, Kennett Square, PA 19348. Applicant is granted approval for the construction and operation of a new pump station, associated gravity collection pipe and force main to serve the proposed Victoria Gardens, located in Kennett Township, **Chester County**.

**WQM Permit No. 4600431.** Sewerage. **James J. Gorman** 1426 rose Glen Road, Gladwyne, PA 19035. Applicant is granted approval for the construction of a single residence sewage treatment plant located in Lower Merion Township, **Montgomery County**.

**WQM Permit No. 4600432.** Sewage. **Berks-Montgomery Municipal Authority**, P. O. Box, 136 Municipal Drive, Gilbertsville, PA 19525. Applicant is granted approval to rerate the Swamp Creek Sewage treatment plant for a maximum flow of 2.1 mgd located in Douglass Township, **Montgomery County**.

**WQM Permit No. 2301401.** Sewage. **Concord Township Sewer Authority**, 664 Concord Road, Glen Mills, PA 19342. Applicant is granted approval for the construction and operation of a pump station and forcemain to serve the proposed Windmill Creek II subdivision located in Concord Township, **Delaware County**.

**WQM Permit No. 0900420.** Sewage. **Warren Manger**, 130 Beaumont Drive, Newton, PA 18940. Applicant is granted approval for the construction and operation of sewage treatment plant serving a residential dwelling located in Upper Makefield Township, **Bucks County**.

**WQM Permit No. 1597404 Amendment No. 1.** Sewage. **East Marlborough Township**, 721 Unionville Road, Kennett Square, PA 19348. Applicant is granted approval to amend its existing permit to serve the Baltimore Pike wastewater treatment plant located in East Marlborough Township, **Chester County**.

**NPDES Permit No. PA0056014 Amendment No. 1.** Industrial Waste. **AMETEK U.S. Gauge Division, plant 2**, 900 Clymer Avenue, Sellersville, PA 18960. Is authorized to discharge from a facility located in Sellersville Borough, **Bucks County** into East Branch of Perkiomen Creek.

**NPDES Permit No. PA0031771. Amendment No. 2.** Sewage. **Westtown Township**, 1081 Wilmington Pike, West Chester, PA 19382. Is authorized to discharge from a facility located at Westtown-Chester Creek STP to revise effluent limit for Total Residual Chlorine (TRC) located in Westtown Township, **Chester County** into East Branch of Chester Creek.

**NPDES Permit No. PA0053970.** Sewage. **Dawn Holding, L.P.** 215 West Church Street, King of Prussia, PA 19406. Is authorized to discharge from a facility located at Martin's Mobile Home Village located in West Nottingham Township, **Chester County**, to an unnamed tributary to Northeast Creek.

**NPDES Permit No. PA0012891.** Industrial Waste. **TTT Realty, Inc.**, 600 East Center Street, PO Box 606, Shenandoah, PA 17976-0606. Is authorized to discharge from a facility located in Upper Hanover Township, **Montgomery County**, into Perkiomen Creek-Perkiomen Watershed.

**NPDES Permit No. PA0058131.** Sewage. **North 100 Partners L.P.**, 75 East Uwchlan Avenue, Exton, Pa 19341. Is authorized to discharge from a facility located in East Nantmeal Township, **Chester County** into Beaver Run.

**NPDES Permit No. PA0058122.** Sewage. **Lucy Green and Mark Sfirri**, 1669 Pineville Road, New Hope, PA 18938. Is authorized to discharge from their residence located in Buckingham Township, **Bucks County**, into Pidcock Creek.

**NPDES Permit No. PA0012572 Amendment No. 1.** Industrial Waste. **Jefferson Smurfit Corporation (U.S.)**, 5000 Flat Rock Road, Philadelphia, PA 19127. Is authorized to discharge from a facility located in The City of Philadelphia, **Philadelphia County** to include coverage of their eight storm water only outfalls into receiving waters named Schuylkill River and Schuylkill Canal

**NPDES Permit No. PA0052779.** Sewage. **Al Wulf**, 206 River Road, Gladwyne, PA 19035. Is authorized to discharge from a facility located in Lower Merion Township, **Montgomery County** into the Schuylkill River.

**NPDES Permit No. PA0013081.** Industrial Waste. **Kimberly-Clark Corporation**, Front and Avenue of the

States, Chester, PA 19103. Is authorized to discharge from a facility located in the City of Chester, **Delaware County** into Delaware River Estuary Zone 4 and Chester Creek

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**NPDES Permit No. PA-0026107,** Sewage, **Wyoming Valley Sanitary Authority**, 1000 Wilkes-Barre Street, Wilkes-Barre, PA 18702.

This proposed facility is located in Hanover Township, **Luzerne County**.

Description of Proposed Action/Activity: to discharge from a facility located in to N. Branch Susquehanna River.

**NPDES Permit No. PA-0053911,** Sewage, **East Bangor Municipal Authority**, P.O. Box 539, East Bangor, PA 18013.

This proposed facility is located in Washington Township, **Northampton County**.

Description of Proposed Action/Activity: to discharge from a facility located in to Brushy Meadow Creek.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**NPDES Permit No. PA0010375.** Industrial Waste. **Lehigh Portland Cement Company**, 200 Hokes Mill road, York, PA 17404-5540 is authorized to discharge from a facility located in West Manchester Township, **York County** to the receiving waters named an UNT of Codorus Creek in Watershed 7-H (Codorus Creek).

**WQM Permit No. 0701402.** Sewage. **Logan Township**, 800 39<sup>th</sup> Street, Altoona, PA 16602-1799. This permit approves the construction/operation of sewers and appurtenances for the Blair County Convention Center Fairway Development Interceptor in Logan Township, **Blair County**.

**WQM Permit No. 0701401.** Sewage. **Allegheny Township Water & Sewer Authority**, 3131 Old Sixth Avenue Road North, Duncansville, PA 16635. This permit approves the construction/operation of sewers and appurtenances for the Blair County Convention Center Fairway Development Interceptor in Logan Township, **Blair County**.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**NPDES Permit No. PA0033928,** Sewerage Renewal. **Town & Country Estates Mobile Home Park**, c/o Thomas Calkins, RD 3, Troy, PA 16947.

This proposed facility is located in Troy Township, **Bradford County**.

Description of Proposed Action/Activity: Renewal of an existing permit to discharge from facility to unnamed tributary of West Branch Sugar Creek.

**NPDES Permit No PA0209228.** Sewerage Renewal. **Lycoming County Water & Sewer**, 216 Old Cement Road, Montoursville, PA 17754.

This proposed facility is located in Fairfield Township, **Lycoming County**

Description of Proposed Action/Activity: Renewal of an existing permit to discharge from facility to receiving waters of the West Branch Susquehanna River

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 4301405**, Sewerage, **Matthew E. Gentile**, 39 Baker Road, Greenville, PA 16125.

This proposed facility is located in Otter Creek Township, **Mercer County**.

Description of Proposed Action/Activity: This project is for the construction of a Single Residence Sewage Treatment Plant.

**WQM Permit No. 3701403**, Sewerage, **Sonia B. Hasson**, 4014 Ellwood Road, New Castle, PA 16101.

This proposed facility is located in Slippery Rock Township, **Lawrence County**.

Description of Proposed Action/Activity: This project is for the construction of a Single Residence Sewage Treatment Plant.

**WQM Permit No. 2501404**, Sewerage, **Elmer W. and Bridget E. Knobloch**, 10657 Route 19, Waterford, PA 16441.

This proposed facility is located in Waterford Township, **Erie County**.

Description of Proposed Action/Activity: This project is for the construction of a Single Residence Sewage Treatment Plant.

## NPDES STORMWATER INDIVIDUAL PERMITS

### (PAS)

The following NPDES Individual Permits for Discharges of Stormwater Associated with 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, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483, by any aggrieved person under 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). 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 Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10-G370	East Vincent Development Corp 900 West Bridge Street Spring City, PA 19475	Chester	East Vincent Township	Schuylkill River and Stony Run (HQ)

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

<i>NPDES Permit</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10A079-1	Manor Development Group 109 Gateway Avenue Wexford, PA 15090	Allegheny County Pine Township	Pine Creek/TSF North Fork Pine Creek/TSF
PAS10W082	Estes Express Lines P. O. Box 25612 Richmond, VA 23260-5612	Washington County North Strabane Township	Little Chartiers Creek/ HQ-WWF

## APPROVALS TO USE NPDES AND/OR OTHER GENERAL PERMITS

The following parties have submitted: (1) Notices of Intent (NOIs) for Coverage Under (1) General NPDES Permit(s) to Discharge Wastewater into the Waters of the 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; (3) General NPDES Permit Authorizing the Discharge of Stormwater Associated with Construction Activities to Waters of the Commonwealth; (4) Notification for First Use Application of Sewage Sludge.

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 permit. The Department of Environmental Protection approves the following coverage under the specific General Permit.

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

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 Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
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 (CSO)
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 Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)

*General Permit Type—PAG-2*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Concord Township Delaware County	PAR10-J206	Concord Township P. O. Box 171 Concordville, PA 19331	UNT West Branch Chester Creek (TSF)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131
Eddystone, Ridley, Tinicum Townships, Delaware County	PAR10-J207	Philadelphia Suburban Water Co 762 West Lancaster Avenue Bryn Mawr, PA 19010	Darby Creek (TSF) Crum Creek (WWF)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131
Skippack Township Montgomery County	PAR10-T643	Gambone Brothers Dev. Co. P. O. Box 287 Fairview Village, PA 19409	UNT of Perkiomen Creek (WF, M)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131
Upper Dublin Township Montgomery County	PAR10-T676	Manufactures Golf County Club P. O. Box 790 Ft. Washington, PA 19034	Sandy Run Creek (TSF)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131
Franconia Township Montgomery County	PAR10-T689	R & G Properties 220 Farm Lane Doylestown, PA 18901	UNT Skippack Creek (TSF)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131
Towamencin Township Montgomery County	PAR10-T693	WB Homes, Inc. 538 East Main Street Lansdale, PA 19446	UNT Skippack Creek (TSF)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131
Upper Merion Township Montgomery County	PAR10-T697	O'Neill Properties 700 South Henderson Road King of Prussia, PA 19406	Trout Creek (WWF)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Whitpain Township Montgomery County	PAR10-T702	Whitpain Township 960 Wentz Road Blue Bell, PA 19422	Stoney Creek (TSF)	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA (610) 832-6131
Lehigh County Upper Saucon Township	PAR10Q151	Vanquard Lehigh Limited Partnership Edwin Glasgow 413 Johnson St. Jenkintown, PA 19046	Saucon Creek CWF	Lehigh County Conservation District (610) 391-9583
Lehigh County Lower Milford Township	PAR10Q156	PA DOT Dist. 5-0 Steve Caruano 1713 Lehigh St. Allentown, PA 18103	Saucon Creek CWF	Lehigh County Conservation District (610) 391-9583
Northampton County Williams Township	PAR10U149	Gregory Chrin 635 Industrial Dr. Easton, PA 18042	Lehigh River WWF	Northampton County Conservation District (610) 7460-1971
Maxatawny Township Berks County	PAR 10C356	A & P Haldeman Assoc. P. O. Box 303 531 E. Main Street Kutztown, PA 19530	Sacony Creek	Berks County Conservation District P. O. Box 520 1238 County Welfare Road Leesport, PA 19533 (610) 372-4657
Derry Township Dauphin County	PAR10I258	Derry Township School Dist. P. O. Box 898 Hershey, PA 17033	UNT Spring Creek (East)	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Conewago Township Adams County	PAR100087	BJLM Enterprises 982 Bollinger Road Littlestown, PA 17340	South Branch of Conewago Creek (WWF)	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Herrick, Oswell, Pike, Stevens, Tuscarora, Warren, Wyalusing Townships	PAR100823	Stagecoach Lateral Pipeline Tennessee Gas Pipeline Co. 1001 Louisiana St. Houston, TX 77002	Wyalusing Creek WWF Cold Creek WWF Johnson Creek WWF Pendleton Creek CWF Wappasening Creek CWF Prince Hollow Run CWF Babcock Run CWF Hunts Creek C	Bradford County Conservation District Stoll Natural Resources Center R. R. 5, Box 5030C Towanda, PA 18848 (570) 265-7435

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Brady Township Lycoming County	PAR103943	Lycoming County RMS Recycling Facility P. O. Box 187 Montgomery, PA 17752	Unt. Black Run CWF	Lycoming County Conservation District 542 County Farm Rd. Suite 202 Montoursville, PA 17754 (570) 433-3003
Brady Township Lycoming County	PAR103943	Lycoming County RMS Southside Stockpile P. O. Box 187 Montgomery, PA 17752	Unt. Black Run CWF	Lycoming County Conservation District 542 County Farm Rd. Suite 202 Montoursville, PA 17754 (570) 433-3003

*Southwest Region: Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Allegheny County Robinson Township	PAR10A415-1	John E. Howard 116 Shingle Hollow Rd. Harmony, PA 16037	Campbell's Run/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Jefferson Hills Borough	PAR10A454	RHF Holdings, Inc. 429 Fourth Avenue Pittsburgh, PA 15219	Peters Creek/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Carnegie Borough Rosslyn Farms Borough Robinson Township	PAR10A472	Spiros G. Raftis 700 North Bell Avenue Carnegie, PA 15106	Campbell's Run/WWF Chartiers Creek/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Ohio Township	PAR10A476	MT Nebo Road Office LP 650 Washington Road Pittsburgh, PA 15228	Bear Run/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Town of McCandless	PAR10A477	Town of McCandless 9600 Perry Highway Pittsburgh, PA 15237	Lowries Run/TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Elizabeth Township	PAR10A480	Gary Wargo 2144 Constitution Avenue Boston, PA 15135	Monongahela River/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Plum Borough	PAR10A481	Plum Borough School District 200 School Road Pittsburgh, PA 15239	Plum Creek/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Bethel Park Municipality	PAR10A482	Wadwell Group 122 Cedar Lane McMurray, PA 15317	Lick Run/TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County North Versailles Township	PAR10A483	National Land Development Corp. P. O. Box 545 Monroeville, PA 15146	Brush Creek/TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Mt. Lebanon	PAR10A484	Temple Emmanuel 1250 Bower Hill Road Pittsburgh, PA 15243 B'nai B'rith 1640 Rhode Island Ave., NW Washington, DC 20036	Scrubgrass Run/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County West View Borough	PAR10A485	North Hills School District 135 Sixth Avenue Pittsburgh, PA 15229	Girty's Run/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Robinson Township	PAR10A486	Mosites 600 High Tower Company 4831 Campbells Run Road Pittsburgh, PA 15205	Montour Run/WWF	Allegheny County Conservation District (412) 241-7645



<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Allegheny County Ohio Township	PAR10A487	Nebo Group LP 241 Emmett Road Wexford, PA 15090	Bear Run/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Plum Borough	PAR10A489	Pugliano Realty 2808 Broadway Boulevard Monroeville, PA 15146	Plum Creek/WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Kennedy Township	PAR10A494	Sto-Rox School District 17 May Avenue McKees Rocks, PA 15136	Ohio River/WWF	Allegheny County Conservation District (412) 241-7645
Armstrong County South Bend	PAR10B033	Dominion Armstrong Energy, LLC 5000 Dominion Blvd. Glem Allen, VA 23060	UNT to Goblers Run/ WWF	Armstrong County Conservation District (724) 548-3425
Beaver County Center Township	PAR10249R-1	Raymond Hall 137 Hall Road Aliquippa, PA 15001	UNT to Poorhouse Run/WWF	Beaver County Conservation District (724) 774-7090
Beaver County Economy Borough New Sewickley Township	PAR100274-1	Economy Borough Municipal Authority 2860 Conway Wallrose Road Baden, PA 15005	Big Sewickley Creek/ TSF	Beaver County Conservation District (724) 774-7090
Beaver County Beaver Falls City	PAR100279	Big Beaver Falls Area School District 820 16th Street Beaver Falls, PA 15010	Walnut Bottom Run/ WWF	Beaver County Conservation District (724) 774-7090
Beaver County Economy Borough	PAR100280	Ambridge Area School District 740 Park Road Ambridge, PA 15003	Tevebau Run/WWF	Beaver County Conservation District (724) 774-7090
Beaver County Big Beaver Borough	PAR100281	Joseph Tomon 123 Fifth Street Ellwood City, PA 16117	UNT to Clarks Run/WWF	Beaver County Conservation District (724) 774-7090
Cambria County Richland Township	PAR101064	Wilmore Coal Company 509 15th Street Windber, PA 15963	Solomon Run/WWF Falls Run/WWF	Cambria County Conservation District (814) 472-2120
Cambria County White Township	PAR101068	Glendale School District 1466 Beaver Valley Road Flinton, PA 16640	Dutch Run/CWF Beaverdam Run/CWF	Cambria County Conservation District (814) 472-2120
Cambria County Vintondale Borough Blacklick Township Jackson Township Indiana County Buffington Township	PAR101069	Blacklick Valley Municipal Authority P. O. Box 272 Twin Rocks, PA 15960	Blacklick Creek and Tributaries/CWF	Cambria County Conservation District (814) 472-2120
Cambria County White Township	PAR101070	DEP/BAMR Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119	UNT to Beaverdam Run/CWF	Cambria County Conservation District (814) 472-2120
Fayette County	PAR10L067	Bullskin Township/ Connellsville Township Joint Sewer 178 Shenandoah Road Connellsville, PA 15425	White Creek/WWF Irish Run/WWF Mounts Creek/WWF	Fayette County Conservation District (724) 438-4497
Indiana County Burrell Township	PAR103154	12th Congressional Equipment Center 600 Indiana Avenue Blairsville, PA 15717	UNT to Conemaugh River/CWF	Indiana County Conservation District (724) 463-8547
Indiana County Cherryhill Township	PAR103156	Blacklick Creek Watershed Association 52 Oakland Avenue Homer City, PA 15748	Two Lick Reservoir/ CWF	Indiana County Conservation District (724) 463-8547

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Indiana County East Mahoning Township Pine Township East Wheatfield Township	PAR103157	Indiana County Municipal Services 827 Watter Street Indiana, PA 15701	Pine Run/CWF Mardis Run/CWF	Indiana County Conservation District (724) 463-8547
Washington County South Strabane Township	PAR10W157	Maronda Homes, Inc. 11 Timberglen Drive Imperial, PA 15126	Chartiers Creek/WWF	Washington County Conservation District (724) 228-6774
Washington County Peters Township	PAR10W173	Marcus L. Ruscitto 555 Sugar Camp Road Venetia, PA 15367	UNT to Brush Run/ WWF	Washington County Conservation District (724) 228-6774
Washington County Peters Township	PAR10W174	Evergreen Village Company 1168 Washington Pike Bridgeville, PA 15017	Little Chartiers Creek/ WWF	Washington County Conservation District (724) 228-6774
Washington County Smith Township	PAR10W175	PADEP Bureau of Abandoned Mine Reclamation 286 Industrial Park Road Ebensburg, PA 15931	Burgetts Fork of Raccoon Creek/WWF	Washington County Conservation District (724) 228-6774
Washington County North Strabane Township	PAR10W176	Meadows Brook Heights Joint Venture 3901 Washington Road McMurray, PA 15317	Chartiers Creek/WWF	Washington County Conservation District (724) 228-6774
Washington County Peters Township	PAR10W178	BAR Development 772 Pond Valley Drive Pittsburgh, PA 15239	Peters Creek/TSF	Washington County Conservation District (724) 228-6774
Summit Township Erie County	PAR10K177	Maleno Developers, Inc. 2236 West 38th Street Erie, PA 16506	Walnut Creek (CWF:MF) Mill Creek (WWF: MF)	Erie Conservation District 12723 Route 19 P. O. Box 801 Waterford, PA 16441 (814) 796-6760 Ext. 5

*General Permit Tupe—PAG-3*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Upper Providence Township Montgomery County	PAR140013	Jefferson Smurfit Corporation U.S. 1035 Longford Road Phoenixville, PA 19460	Schuylkill Canal to Schuylkill River—Manatawny Watershed	Southeast Regional Office Lee Park, Suite 6010 555 North Lane Conshohocken, PA 19428-2233
West Goshen Township Chester County	PAR800065	United Parcel Services, Inc.— West Chester Facility 1200 Ward Avenue West Chester, PA 19380	UNT to East Branch Chester Creek	Southeast Regional Office Lee Park, Suite 6010 555 North Lane Conshohocken, PA 19428-2233
Douglass Township Montgomery County	PAR210002	Berks Products Corporation P. O. Box 421 Reading, PA 19525	Swamp Creek and Perkiomen Creek Watershed	Southeast Regional Office Lee Park, Suite 6010 555 North Lane Conshohocken, PA 19428-2233

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Lycoming County Fairfield Township	PAR804862	Federal Express World Headquarters Environmental Management Department Building B, Second Floor 3620 Hacks Cross Road Memphis, TN 38125-7113	Bennetts Run and West Branch of the Susquehanna River	Northcentral Regional Office DEP 208 West Third Street Suite 101 Williamsport PA 17701 (570) 327-3666
Butler Township Butler County	PAR238324	Napco, Inc. 150 Bonnie Drive Bonnie Brook Industrial Park Butler, PA 16002	Bonnie Brook Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG-4</i>				
<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Otter Creek Township Mercer County	PAG048717	Matthew E. Gentile 39 Baker Road Greenville, PA 16125	Tributary of Little Shenango River	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Slippery Rock Township Lawrence County	PAG048718	Sonia B. Hasson 4014 Ellwood Road New Castle, PA 16101	Tributary Duck Run	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Waterford Township Erie County	PAG048712	Elmer W. and Bridget E. Knobloch 10657 Route 19 Waterford, PA 16441	Unnamed Tributary to LeBoeuf Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG-8</i>				
<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Manor Township Lancaster County	PAG083556	Lancaster Area Sewer Auth 130 Centerville Road Lancaster, PA 17603	N/A	DEP SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Greenfield Township Blair County	PAG083559	Greenfield Township MA P. O. Box 372 Claysburg, PA 16625	N/A	DEP SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Newport Borough Perry County	PAG083558	Newport Borough MA 231 Market Street Newport, PA 17074	N/A	DEP SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Bethel Township Lebanon County	PAG083557	Fredericksburg Water & Sewer Auth. 2529 Route 22 P. O. Box 161 Fredericksburg, PA 17026	N/A	DEP SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

## SAFE DRINKING WATER

### Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

*Southeast Region: Water Supply Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**Operations Permit** issued to: **PA-American Water Company**, Norristown Borough, **Montgomery County** on March 13, 2001.

**Operations Permit** issued to: **Echo Valley Mobile Home Park**, East Nottingham Township, **Chester County** on March 13, 2001.

**Permit No. 0901502**, Minor Amendment. Public Water Supply.

Applicant	<b>Dublin Borough Authority</b> 119 Maple Avenue Dublin, PA 18917
Borough	Dublin
County	<b>Chester</b>
Type of Facility	Public Water Supply System
Consulting Engineer	Cowan Associates, Inc. 120 Penn-Am Drive Quakertown, PA 18951
Permit to Construct Issued	March 13, 2001

**Permit No. 0901501**, Minor Amendment. Public Water Supply.

Applicant	<b>Sellersville Borough Municipal Authority</b> 140 East Church Street Sellersville, PA 18960
Borough	Sellersville
County	<b>Bucks</b>
Type of Facility	Public Water Supply System
Consulting Engineer	Cowan Associates, Inc. 120 Penn-Am Drive Quakertown, PA 18951
Permit to Construct Issued	March 16, 2001

**Permit No. 0901503**, Public Water Supply.

Applicant	<b>Central Bucks School District</b> 320 West Swamp Road Doylestown, PA 18901
Township	Plumstead
County	<b>Bucks</b>
Type of Facility	Public Water Supply System

Consulting Engineer	Boucher and James, Inc. P. O. Box 904 Doylestown, PA 18901
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Permit to Construct Issued March 15, 2001

*Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Permit No. 5600504**, Public Water Supply.

Applicant	<b>Indian Lake Borough</b> 1301 Causeway Drive Central City, PA 15926
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[Borough or Township]	Indian Lake Borough
County	<b>Somerset</b>
Type of Facility	Well 99-1, sequestering and disinfection, expansion of storage tank, pump house
Consulting Engineer	Killam Associates 651 South Center Avenue Somerset, PA 15501

Permit to Construct Issued February 28, 2001

**Permit No. 6501501**, Public Water Supply.

Applicant	<b>Municipal Authority of Westmoreland County</b> Lincoln Highway West Greensburg, PA 15650
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[Borough or Township]	Bell Township
County	<b>Westmoreland</b>
Type of Facility	Pleasant View Drive Pump Station
Consulting Engineer	KLH Engineers
Permit to Construct Issued	March 9, 2001

### SEWAGE FACILITIES ACT PLAN APPROVAL

### Plan approvals granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Jim Thorpe Borough	101 East Tenth Street Jim Thorpe, PA 18229	Carbon

Plan Description: The approved plan provides for an expansion of the sewer service area to Hacklebernie (including Jim Thorpe Campground), Pleasant Hill, Germantown and the Mauch Chunk Lake study areas.

The collected sewage will be treated at the Borough's existing treatment plant. The review has also not identified any significant environmental impacts resulting from this proposal. The Department approved the Plan on March 14, 2001. Any required WQM Permits must be obtained in the name of the municipality or authority as appropriate.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Guilford Township	115 Spring Valley Rd. Chambersburg, PA 17201	Franklin County

Plan Description: The approved plan provides for the construction of a small flow treatment facility to serve a single family residence. The project is located at the intersection of Swope Road (T-444) and Swope Road (T-459) in Guilford Township. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal.

## LAND RECYCLING AND ENVIRONMENTAL REMEDICATION UNDER ACT 2, 1995

### PREAMBLE 2

**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 (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site where 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 non-residential exposure factors, a description of the remediation performed, and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected.

For further information concerning the final report, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection 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 reports:

*Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**Hale Products**, Conshohocken Borough and White-marsh Township, **Montgomery County**. Frank Keirse, Hale Products, Inc., 700 Spring Mill Ave., Conshohocken, PA 19428, on behalf of Washington St., Associates III, LP, 700 S. Henderson Rd., Suite 2, King of Prussia, PA 19406, has submitted a Final Report concerning remediation of

site soil and groundwater contaminated with lead and heavy metals. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Balabanovic Residence**, Norristown Borough, **Montgomery County**. Joshua Trewitz, Marshall Miller & Assoc., 3913 Hartsdale Drive, Suite 1306, Camp Hill, PA, 17011, on behalf of Mike Balabanovic, 919 Swede St., Norristown, PA 19401, has submitted a Final Report concerning remediation of site soil contaminated with BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Richmond Waterfront Industrial Park LLC**, City of Philadelphia, **Philadelphia County**. A.L. Holmstrom, Rohm & Haas Co., Box 584, Bristol, PA 19107, has submitted a Final Report concerning remediation of site soil, groundwater, surface water and sediment contaminated with PCBs, lead, heavy metals, pesticides, dioxin, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Branch Road Farm Property**, East Rockhill Township, **Bucks County**. Walter H. Hungarter, III, RT Environmental Services, Inc., 215 W. Church Rd., King of Prussia, PA 19406, on behalf of Heritage Building Group, 3326 Old York Rd., Furlong, PA 18925, has submitted a Final Report concerning remediation of site soil contaminated with heavy metals and pesticides. The report is intended to document remediation of the site to meet the Statewide Health Standard.

*Northeast Region: Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Former Krueger Greenhouse and Flower Shop Property**, Upper Saucon Township, **Lehigh County**. William J. Ponticello, Vice-President, Penn Environmental & Remediation, 2755 Bergey Road, Hatfield, PA 19440 has submitted a Final Report (on behalf of his client, Southern Lehigh School District, 40 South 5th Street, Allentown, PA 18101) concerning the remediation of site soils found to have been contaminated with metals. The report was submitted to document remediation of the site to meet the Statewide health standard. A Notice of Intent to Remediate was simultaneously submitted.

**PPL Distribution Pole #49192N29167**, City of Hazleton, **Luzerne County**. PPL Electric Utilities Corporation, Environmental Management Division, 2 North Ninth Street, Allentown, PA, 18101-1179 has submitted a Final Report concerning the remediation of site soils found or suspected to have been contaminated with polychlorinated biphenyls (PCBs). The report was submitted to document remediation of the site to meet the Statewide health standard.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Distribution Pole 24811S33777**, City of Harrisburg, **Dauphin County**. PPL Generation LLC, Two North Ninth Street, Allentown, PA 18101 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to the Statewide health standard.

**Former General Cigar Facility**, City of Lancaster, **Lancaster County**. Fuss & O'Neill Inc., 146 Hartford Road, Manchester, CT 06040-5921, on behalf of Brown &

Williamson Tobacco, 209 Pitney Road, Lancaster, PA, and General Cigar Holding, Inc., 35 Griffin Road South, Bloomfield, CT 06002-1398, has submitted a Final Report concerning remediation of site soils and groundwater contaminated with BTEX. The report is intended to document remediation of the site to the Statewide health standard.

*Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Jarrell & Rea Property**, 2nd Ward, City of Pittsburgh, **Allegheny County**. David R. Perry, American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668-1848 (on behalf of Walnut Capital Partners, 5541 Walnut Street, Suite 200, Pittsburgh, PA 15232) has submitted a Final Report concerning remediation of site soil and groundwater contaminated with lead, BTEX and PHCs. The report is intended to document remediation of the site to meet the Site Specific Standard.

**New Bethlehem Operating Center**, South Bethlehem Borough, **Armstrong County**. Robert W. King, 98 Vanadium Road, Bridgeville, PA 15017 (on behalf of Donald and Judy Guntrum, 401 Broad Street, New Bethlehem, PA 16242, and Columbia Gas Transmission, P. O. Box 1273, Charleston, WV 25304) has submitted a Final Report concerning remediation of site soil and groundwater contaminated with PCBs, lead, heavy metals, BTEX, PHCs, PAHs, and solvents. The report is intended to document remediation of the site to meet the Background Standard.

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Bradford Refinery—Crude Tank Farm**, 77 North Kendall Avenue, Bradford, PA 16701, County of McKean, City of Bradford, and Aaron D Svitana, Enviro-Sciences Inc., 2944 Hunter Mill Road, Suite 104, Oakton, VA 22124 on behalf of Bradford Refinery has submitted a Remedial Investigation and Risk Assessment Report concerning remediation of soil, groundwater, surface water and sediment contaminated with lead, heavy metals, solvents, BTEX, PHCs and PAHs. The report is intended to document remediation of the site to meet the Background, Statewide Health and Site Specific Standards.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION UNDER ACT 2, 1995

### PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8, Administration of the Land Recycling and Environmental Remediation Standards Act (Act) requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Land Recycling and Environmental Remediation Standards Act. Plans and reports required by provisions of the Act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from

the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or non-residential 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. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection Regional Office under which the notice of the plan or 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 reports:

*Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**Willis Residence**, Lower Makefield Township, **Bucks County**. Peter Kuyk, Environmental Compliance & Control, Inc., 400 Morris Ave., Denville, NJ 07834, on behalf of Mr. & Mrs. John Willis, 3860 James Way, Boca Raton, FL 33434, has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with BTEX and petroleum hydrocarbons. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on March 9, 2001.

**Riverfront North Site—Property B**, Bristol Borough, **Bucks County**. Michael A. Christie, P.G., Penn Environmental & Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440, on behalf of the Redevelopment Authority of Bucks County, 1 N. Wilson Ave., Bristol, PA 19007, has submitted a Cleanup Plan concerning the remediation of site soil contaminated with lead, heavy metals, BTEX, petroleum hydrocarbons, polycyclic aromatic hydrocarbons and solvents. The Cleanup Plan was approved by the Department on March 13, 2001.

**Former Murray Lincoln—Mercury Property**, East Pikeland Township, **Chester County**. John F. Van Wagenen, Center Point Tank Services, Inc., 536 E. Benjamin Franklin Highway, Douglassville, PA 19518, on behalf of Valley Land Holdings, P. O. Box 187, Catasauqua, PA 18032, has submitted a Final Report concerning remediation of site groundwater contaminated with BTEX. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on March 7, 2001.

**Pappa Property**, Darby Township, **Delaware County**. Martin Liebhardt, Mulry & Cresswell Environmental, Inc., 1691 Horseshoe Pike, Suite 1, Glenmoore, PA, 19343, on behalf of Mr. & Mrs. Pappa, 302 Eggleston

Terrace, Sharon Hill, PA has submitted a Final Report concerning remediation of site soil contaminated with BTEX and petroleum hydrocarbons. The Final Report was submitted within 90 days of the release. The report did not demonstrate attainment of the Statewide Health Standard and was disapproved by the Department on March 12, 2001.

*Northeast Region: Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**PPL—Distribution Pole #55929N46880 (N. Sekol Road),** City of Scranton, **Lackawanna County.** PPL Generation, LLC, Environmental Management Division, 2 North Ninth Street, Allentown, PA, 18101 submitted a Final Report concerning the remediation of site soils found or suspected to have been contaminated with PCBs (polychlorinated biphenyls). The final report demonstrated attainment of the Statewide health standard, and was approved on March 8, 2001.

**Phoebe Floral,** Whitehall Township, **Lehigh County.** Samuel S. Harrison, Hydrogeologist, Harrison Hydrosciences, 435 Main Street, P. O. Box 908, Saegertown, PA 16433 submitted a Final Report (on behalf of his client, Phoebe Floral, Inc., 2102 Hamilton Street, Allentown, PA 18104) concerning the remediation of site soils and groundwater found or suspected to have been contaminated with no. 2 heating oil constituents. The final report documented attainment of the Statewide health standard and was approved on March 15, 2001.

*Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Goldschmidt Industrial Chemical Corporation,** Borough of McDonald, **Washington County.** Scott Rasmussen, Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 (on behalf of Goldschmidt Industrial Chemical Corp., 941 Robinson Highway, McDonald, PA 15057) has submitted a Final Report concerning the remediation of site soil contaminated with zinc. The Final report demonstrated attainment of the Site-Specific Standard and was approved by the Department on January 31, 2001.

**Westinghouse Facility Lots 1A, 1B, 1C and 3 (former),** Borough of Trafford, **Allegheny and Westmoreland Counties.** Chad C. Coy, Cummings/Riter Consultants, Inc., 339 Haymaker Road, Parkway Building, Suite 201, Monroeville, PA 15146 (on behalf of Leo Brausch, Viacom, Inc., 11 Stanwix Street, Pittsburgh, PA 15222) has submitted a Remedial Investigation Report concerning the remediation of site soil and groundwater contaminated with PCBs, lead, heavy metals, pesticides, solvents, BTEX, PAHs and other. The report was approved by the Department on March 13, 2001.

**Industrial Center of McKeesport,** City of McKeesport, **Allegheny County.** Mark Urbassik One Library Place, Suite 207, Duquesne, PA 15110 (on behalf of RIDC of Southwestern Pennsylvania Growth Fund, Suite 500, 425 Sixth Avenue, Pittsburgh, PA 15219) has submitted a Remedial Investigation Report, Risk Assessment and Cleanup Plan concerning the remediation of site soil and groundwater contaminated with PCBs, lead, heavy metals, BTEX and PAHs. The reports were approved by the Department on February 6, 2001.

#### HAZARDOUS WASTE TRANSPORTER LICENSE

**Hazardous Waste Transporter License issued, renewed or amended under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

#### Hazardous Waste Transporter License Renewed

**Franklin Environmental Services, Inc.,** P. O. Box 617, 185 Industrial Road, Wrentham, MA 02093-0617. License No. **PA-AH 0224.** Effective March 6, 2001.

**Keystone Environmental Services, Inc.,** P. O. Box 127, 1100 South Pottsville Pike, Shoemakersville, PA 19555. License No. **PA-AH 0236.** Effective March 7, 2001.

#### Hazardous Waste Transporter License voluntarily terminated or expired under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

#### Hazardous Waste Transporter License Voluntarily Terminated

**Hafer Environmental Services, Inc.,** P. O. Box 4418, Reading, PA 19606. License No. **PA-AH 0360.** Effective March 5, 2001.

**Fox Environmental Management, LLC,** 8537 So. Tryon Street, Charlotte, NC 28273. License No. **PA-AH 0669.** Effective March 7, 2001.

### SOLID AND HAZARDOUS WASTE

#### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Actions on permits under the Solid Waste Management Act (35 P. S. §§ 6026.101—6026.908), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

*Southeast Region: Regional Solid Waste Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**Permit No. 400429. Holy Redeemer Hospital and Medical Center,** 1648 Huntingdon Pike, Meadowbrook, PA 19046, Abington Township, **Montgomery County.** Permit revoked on February 6, 2001.

**Permit No. 301303. Wyeth-Ayerst Pharmaceuticals,** P. O. Box 861, Paoli, PA 19301, East Whiteland Township, **Chester County.** Permit revoked on January 23, 2001.

*Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.*

**Permit No. 101568. University Area Joint Authority,** 1576 Spring Valley Road, State College, PA 16801-8499 for Spring Creek Composting Facility located in College and Benner Townships, **Centre County.** Permit issued on March 20, 2001.

### AIR QUALITY

**Operating Permit Administrative Amendments Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450 (relating to administrative operating permit amendments).**

*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**15-0039: Highway Materials, Inc.** (850 Quarry Road, Downingtown, PA 19335) on March 5, 2001, for Synthetic Minor Facility in East Caln Township, **Chester County**.

**46-0024: McNeil Consumer Healthcare** (7050 Camp Hill Road, Fort Washington, PA 19428) on March 16, 2001, for Facility VOCs/NOx RACT in Whitmarsh Township, **Montgomery County**.

**46-0001: Moyer Packing Co.** (741 Souderton Road, Souderton, PA 18964) on March 16, 2001, for Facility NOx/VOCs RACT in Franconia Township, **Montgomery County**.

**46-0035: SmithKline Beecham Pharmaceuticals** (709 Swedeland Road, King of Prussia, PA 19406) on March 16, 2001, for a boiler in Upper Merion Township, **Montgomery County**.

**23-0015: Wyeth Laboratories, Inc.** (145 King of Prussia Road, Radnor, PA 19087) on March 16, 2001, for Facility VOCs/NOx RACT in Radnor Township, **Delaware County**.

**46-317-005E: Moyer Packing Co.** (741 Souder Road, Souderton, PA 18964) on March 16, 2001, for various rendering equipment and scrubbers in Franconia Township, **Montgomery County**.

**15-00037: Oberthur Card Systems, Inc.** (523 James Hance Court, Exton, PA 19341) issued a Title V Operating Permit on March 12, 2001, in West Whiteland Township, **Chester County**. Previously De La Rue Card systems, Inc., has been revised as a result of an appeal. Conditions for the monitoring and recordkeeping requirements for the Svecia screen press, adhesive screen press, screen washing system and three Heidelberg presses were clarified. Lithographic Press #4, which was in a previously issued federally enforceable permit, was added to the revised Title V permit.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**07-05034: Hollidaysburg Veterans Home** (P. O. Box 319, Hollidaysburg, PA 16648) on March 6, 2001, for a Synthetic Minor Operating Permit in Allegheny Township, **Blair County**.

**28-05019: Valley Quarries, Inc.** (169 Quarry Road, Chambersburg, PA 17201) on March 19, 2001, for a Synthetic Minor Operating Permit for the Chambersburg Blacktop Plant in Guilford Township, **Franklin County**.

**38-05009: Lebanon Methane Recovery, Inc.** (920 Rosstown Road, Lewisberry, PA 17339) on March 15, 2001, for a Synthetic Minor Operating Permit in North Lebanon Township, **Lebanon County**.

#### **Nitrogen Oxides (NOx) Allowance Allocations Program**

##### **Revisions to State Only Operating Permit to include Conditions relating to NOx Allowance Requirements in 25 Pa. Code §§ 145.1—145.100**

The Department of Environmental Protection (Department) has revised the following Operating Permit to incorporate the provisions of 25 Pa. Code §§ 145.1—145.90. These regulations establish a NOx Budget and a NOx Budget Trading Program for NOx budget units for the purpose of achieving the health-based ozone ambient air quality standard. The Department has establishing a NOx Allowance Allocation for each NOx budget unit listed in the permit under the provisions of 25 Pa. Code § 145.42.

Any person 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, 400 Market Street, 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 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.

Copies of these permits and other relevant information are available for review at the address given below:

*Bureau of Air Quality, Division of Permits, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325.*

**0025: Shenango Iron & Coke Works** (200 Neville Road, Pittsburgh, PA 15225-1690) located in Neville Township, **Allegheny County**.

#### **Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).**

*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**09-0131: Pyramid Graphics, Inc.** (1021 Washington Avenue, Croydon, PA 19021) on March 14, 2001, for operation of a Heatset Web Offset Printing Line in Bristol Township, **Bucks County**.

**46-0072: Willow Grove Air Reserve Station** (2164 McGuire Street, Willow Grove, PA 19090) on March 14, 2001, for operation of a spray paint booth in Horsham Township, **Montgomery County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**40-313-044: Bemis Co., Inc.** (20 Jaycee Drive, West Hazleton, PA 18201) on March 16, 2001, for construction of an ink blending and dispensing system in West Hazleton Borough, **Luzerne County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**21-03051: Valley Quarries, Inc.** (P. O. Box J, Chambersburg, PA 17201) on March 14, 2001, for installation of two stone crushers and conveyors at the Mount Cydonia Plant III in Southampton Township, **Cumberland County**. This source is subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

**21-05021B: Arnold Fuel Oil, Inc.—Mechanicsburg North Terminal** (P. O. Box 2621, Harrisburg, PA 17105) on March 14, 2001, for construction of two gasoline storage tanks in Silver Spring Township, **Cumberland County**. This source is subject to 40 CFR Part 60, Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels.



**36-03099: Southdown, Inc.** (47 McIlvaine Road, Paradise, PA 17562) on March 14, 2001, for modification of a truck bulk loadout operation at the Paradise Plant in Paradise Township, **Lancaster County**.

**38-03003B: Bayer Corp.** (400 West Stoeve Avenue, Myerstown, PA 17067-1418) on March 14, 2001, for installation of tablet manufacturing equipment in Myerstown Borough, **Lebanon County**.

**67-03041: County Line Quarry, Inc.** (P. O. Box 99, Wrightsville, PA 17368) on March 14, 2001, for construction of a crusher and screening plant controlled by wet suppression at the Wrightsville location in Hellam Township, **York County**. This source is subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**26-402A: CBF Landfill Management—J and J Landfill** (P. O. Box 266, McClellandtown, PA 15458) on February 15, 2001, for operation of leachate evaporation system and enclosed ground flair in German Township, **Fayette County**.

**65-788L: Sony Electronics, Inc.—Pittsburgh Mfg. Center** (1001 Technology Drive, Mount Pleasant, PA 15666) on March 13, 2001, for operation of Aperture Grille (AGL-1) in Mount Pleasant Township, **Westmoreland County**.

**32-321A: Pitt Mining Co.** (R. D. 3, Box 95-B, Shelocta, PA 15774) on March 12, 2001 for operation of biosolids processing in Young Township, **Indiana County**.

**63-066A: Wheeling Pittsburgh Steel Corp.—Allenport Plant** (1 Wheeling Pittsburgh Steel Drive, Allenport, PA 15412) on March 14, 2001, for operation of a pickle line replacement scrubber in Allenport Borough, **Washington County**.

**03-168A: Rosebud Mining Co.—Rosebud #3 Mine** (R. D. 9, Box 379A, Kittanning, PA 16201) on February 27, 2001, for operation of a diesel generator in Perry Township, **Armstrong County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**20-040C: Advanced Cast Products, Inc.** (18700 Mill Street, Meadville, PA 16335) on March 7, 2001, for installation of a nine channel induction holding furnace in Vernon Township, **Crawford County**.

**20-040D: Advanced Cast Products, Inc.** (18700 Mill Street, Meadville, PA 16335) on March 7, 2001, for relocation of eight grinding stations in Vernon Township, **Crawford County**.

**24-120A: Dominion Transmission Corp.—Ardell Station** (State Route 2004, St. Marys, PA 15857) on March 8, 2001, for modification of a natural gas fired turbine in Benezette Township, **Elk County**.

**10-284A: Seneca Landfill, Inc.** (Hartman Road, Evans City, PA 16033) on March 9, 2001, for operation of a portable rock crushing plant in Jackson Township, **Butler County**.

**Plan Approvals Extensions Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.13 (relating to extensions).**

*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**46-313-146: Penn Color, Inc.** (2755 Bergey Road, Hatfield, PA 19440) on March 14, 2001, for operation of a Base Pigment Dispersion Facility in Hatfield Township, **Montgomery County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**01-05017A: Quebecor World, Fairfield Inc.** (100 North Miller Street, Fairfield, PA 17320) on January 1, 2001, to authorize temporary operation of two 2-unit double web offset lithographic printing presses with four heatset dryers, covered under this Plan Approval until April 30, 2001, in Fairfield Borough, **Adams County**.

**06-05004B: Baldwin Hardware Corp.** (P. O. Box 15048, Reading, PA 19612-5048) on March 13, 2001, to authorize temporary operation of four cell batch vapor degreasers, covered under this Plan Approval until July 11, 2001, in Reading City, **Berks County**. This source is subject to 40 CFR Part 63, Subpart T—National Emission Standards for Halogenated Solvent Cleaning.

**67-02004: P. H. Glatfelter Co.** (228 South Main Street, Spring Grove, PA 17362) on March 16, 2001, to authorize temporary operation of three power boilers controlled by an electrostatic precipitator, a lime calciner controlled by a venturi scrubber and a softwood fiber line and causticizing area, covered under this Plan Approval until July 16, 2001, in Spring Grove Borough, **York County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

**41-318-045: High Steel Structures, Inc.** (P. O. Box 10008, Lancaster, PA 17605-0008) on March 3, 2001, to extend the authorization to operate a structural steel fabrication and surface coating operation on a temporary basis until July 6, 2001, in the City of Williamsport, **Lycoming County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**26-177A: Golden Eagle Construction/Asphalt Division** (P. O. Box 945, Uniontown, PA 15401) on March 12, 2001, for operation of a Hot-mix Asphalt Plant at Coolspring Asphalt Plant in North Union Township, **Fayette County**.

**03-206B: Rosebud Mining Co.—Tracy Lynne Mine** (RD 9, Box 379-A, Kittanning, PA 16201) on February 6, 2001, for coal handling operations in Kiskiminetas Township, **Armstrong County**.

**04-306A: BASF Corp.** (370 Frankfort Road, Monaca, PA 15061) on March 14, 2001 for operation of latex products manufacturing at Monaca Site in Potter Township, **Beaver County**.

**04-702A: United States Gypsum Co.—Aliquippa Plant** (1 Woodlawn Road, Aliquippa, PA 15001) on March 14, 2001, for operation of wallboard manufacturing in Aliquippa, **Beaver County**.

**63-901A: Allegheny Millwork—Cecil Township Plant** (104 Commerce Blvd., P. O. Box 493, Lawrence, PA 15055) on March 13, 2001, for operation of spray booths in Cecil Township, **Washington County**.

**63-307-027: American Iron Oxide Production Co.—Allenport Plant** (Foster Plaza #7, 661 Andersen Drive, Pittsburgh, PA 15220) on March 14, 2001, for operation of an iron oxide production in Allenport Borough, **Washington County**.

**Plan Approval Minor Modification Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**26-177A: Golden Eagle Construction Co.** (P. O. Box 945, Uniontown, PA 15401) for their hot-mix asphalt plant in North Union Township, **Fayette County**. Golden Eagle has requested that the Department modify the Plan Approval to include a Recycled Asphalt Pavement (RAP) processing system. This action includes the addition of the equipment associated with the RAP processing system and applicable requirements into the Plan Approval.

**03-206B: Rosebud Mining Co.—Tracy Lynn Mine** (RD 9, Box 379-A, Kittanning, PA 16201) in Kiskiminetas Township, **Armstrong County**. Rosebud Mining requests that the Department modify Plan Approval PA-03-206B. This action removes the requirement for an enclosure on the coal screen in exchange for an approved equivalent control.

**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

**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 such applications will also address the application 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).**

*Coal Permits Issued*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54683043R3. Jeddo-Highland Coal Company**, (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), renewal of an existing anthracite surface mine operation in Mahanoy Township, **Schuylkill County** affecting 1328.0 acres, receiving stream—none. Renewal issued March 16, 2001.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209.*

**17000904, R. B. Contracting** (R. R. 1, Box 13, Curwensville, PA 16833), commencement, operation and restoration of an Incidental Coal Extraction permit in Decatur Township, **Clearfield County** affecting 6.5 acres. Receiving stream—unnamed tributaries to Little Clearfield Creek. Application received September 28, 2000. Permit issued March 6, 2001.

**17850109, Al Hamilton Contracting Company** (R. D. 1, Box 87, Woodland, PA 16881), renewal of an existing bituminous surface mine permit in Decatur Township, **Clearfield County** affecting 52 acres. Receiv-

ing stream—unnamed tributaries of Morgan Run to Morgan Run to Clearfield Creek. Application received January 16, 2001. Permit issued March 8, 2001.

**17850143, Sky Haven Coal, Inc.** (R. D. 1, Box 180, Penfield, PA 15849), renewal of an existing bituminous surface mine permit in Lawrence Township, **Clearfield County** affecting 150.7 acres. Receiving stream—Wolf Run and West Branch Susquehanna River; Wolf Run to West Branch Susquehanna River. Application received December 21, 2000. Permit issued March 8, 2001.

**17950117, E. M. Brown, Inc.** (P. O. Box 767, Clearfield, PA 16830), renewal of an existing bituminous surface mine permit in Gulich Township, **Clearfield County** affecting 56.3 acres. Receiving stream—unnamed tributary to Little Muddy Run and unnamed tributary to Moshannon Creek to Moshannon Creek to the West Branch of the Susquehanna River. Application received December 21, 2000. Permit issued March 8, 2001.

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982.*

**03000103. Rosebud Mining Company** (R. D. 9, Box 379A, Kittanning, PA 16201). Revision permit issued for pit variance to commencement, operation and reclamation of a bituminous surface mine located in Plumcreek Township, **Armstrong County** affecting 65.9 acres. Receiving streams: unnamed tributaries to Plumcreek and Cessna Run. Revision application received: February 26, 2001. Permit issued: March 13, 2001.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931.*

**56000105, Hoffman Mining, Inc.** (P. O. Box 130, 118 Runway Road, Friedens, PA 15541), commencement, operation and restoration of a bituminous surface-auger mine in Shade Township, **Somerset County**, affecting 76.6 acres, receiving stream unnamed tributaries to Dark Shade Creek and Dark Shade Creek. Application received August 9, 2000. Permit issued March 8, 2001.

**32990103, T.L.H. Coal Company** (R. D. #1, Box 170, Rochester Mills, PA 15771), commencement, operation and restoration of a bituminous surface mine in Grant Township, **Indiana County**, affecting 25.5 acres, receiving stream unnamed tributaries to East Run and East Run. Application received February 22, 1999. Permit issued March 8, 2001.

**11000102, M. B. Energy, Inc.** (175 McKnight Road, Blairsville, PA 15717), commencement, operation and restoration of a bituminous surface-auger mine in Susquehanna and Barr Townships, **Cambria County**, affecting 450.0 acres, receiving stream unnamed tributaries to Moss Creek; Moss Creek; unnamed tributaries to West Branch Susquehanna River; West Branch Susquehanna River. Application received August 7, 2000. Permit issued March 12, 2001.

**56960102, Permit Renewal for reclamation only, Hoffman Mining, Inc.** (P. O. Box 130, 118 Runway Road, Friedens, PA 15541), for continued restoration of a bituminous surface and auger mine in Paint Township, **Somerset County**, affecting 196.0 acres, receiving stream Weaver Run to Paint Creek. Application received March 1, 2001. Issued March 16, 2001.

**56830114, Permit Renewal for reclamation only, Hilltop Mining, Inc.** (126 Bronco Drive, Berlin, PA 15530), for continued restoration of a bituminous surface mine in Summit Township, **Somerset County**, affecting 106.92 acres, receiving stream unnamed tributary to Bigby

Creek, Bigby Creek, and unnamed tributary to Casselman River. Application received March 2, 2001. Issued March 16, 2001.

**56960104.** Permit Renewal for reclamation only, **Shade Mining Company** (118 Runway Road, P. O. Box 130, Friedens, PA 15541), for continued restoration of a bituminous surface mine in Shade Township, **Somerset County**, affecting 34.4 acres, receiving stream unnamed tributaries to Oven Run. Application received March 1, 2001. Issued March 16, 2001.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669.*

**24960101. Energy Resources, Inc.** (P. O. Box 259, Brockway, PA 15824) Renewal of an existing bituminous strip & auger operation in Horton Township, **Elk County** affecting 235.0 acres. Receiving streams: Four unnamed tributaries to Mead Run and Mead Run. Application received: December 14, 2000. Permit Issued: March 9, 2001.

**33960108. MSM Coal Company, Inc.** (P. O. Box 243, DuBois, PA 15801) Renewal of an existing bituminous strip operation in Ringgold Township, **Jefferson County** affecting 54.1 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributaries to Painter Run. Application received: January 11, 2001. Permit Issued: March 9, 2001.

**24900104. Energy Resources, Inc.** (P. O. Box 259, Brockway, PA 15824) Renewal of an existing bituminous strip & coal ash placement operation in Horton Township, **Elk County** affecting 431.0 acres. This renewal is issued for reclamation only. Receiving streams: West Branch Walburn Run, Walburn Run and Vineyard Run. Application received: December 14, 2000. Permit Issued: March 9, 2001.

#### *Noncoal Permits Issued*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**64010801. Paul R. Gustin,** (Box 105, Preston Park, PA 18455), commencement, operation and restoration of a small bluestone quarry operation in Preston Township, **Wayne County**, affecting 2.0 acres (0.809 ha.), receiving stream—Equinunk Creek. Permit issued March 12, 2001.

**40000301. Hanson Aggregates, Inc.,** (P. O. Box 231, Easton, PA 18044), commencement, operation and restoration of a quarry operation in Dennison Township, **Luzerne County** affecting 54.1 acres, receiving stream—none. Permit issued March 16, 2001.

**8274SM5A1C5. D. M. Stoltzfus & Son, Inc.,** (P. O. Box 84, Talmage, PA 17580), correction to an existing quarry for an incidental boundary correction and a stream variance in Fulton Township, **Lancaster County** affecting 321.82 acres, receiving stream—Octoraro Creek. Correction issued March 16, 2001.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931.*

**31950301, Glass Bagging Enterprises, Inc.** (P. O. Box 120, Duncansville, PA 16635), renewal of NPDES Permit No. PA0213268 in Hopewell Township, **Huntingdon County**, receiving stream unnamed tributaries to Shy Beaver Creek, NPDES Renewal application received January 16, 2001. Permit issued March 16, 2001.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669.*

**16940308. County Environmental Services, Inc.** (P. O. Box 237, Leeper, PA 16233) Renewal of NPDES No. PA0226939 in Farmington Township, **Clarion County**. Receiving streams: Unnamed tributary to Little Coon Run, unnamed tributary to Licking Creek, Unnamed tributary to Toby Creek. Application received: November 3, 2000. NPDES Renewal Issued: March 9, 2001.

#### **ABANDONED MINE RECLAMATION**

Bond Forfeiture	
Contract Awarded	<b>BF 207-101.1</b>
Location	Bradford Township, <b>Clearfield County</b>
Description	Abandoned Mine Land Reclamation
Contractor	Transcontinental Construction, Sandy Ridge, PA
Amount	\$806,467.50
Date of Award	March 20, 2001 Contact: Mary Jane Olsen (717) 783-4800

#### **FEDERAL WATER POLLUTION CONTROL ACT SECTION 401**

The Department of Environmental Protection 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 (FWPCA) (33 U.S.C.A. § 1341(a)).

Except as otherwise noted, the Department of Environmental Protection certifies that the construction and operation herein described will comply with the applicable provisions of Sections 301—303, 306 and 307 of the FWPCA 33 U.S.C.A. §§ 1311—1313, 1316 and 1317, and that the construction will not violate applicable Federal and State Water Quality Standards.

Any person aggrieved by this action may appeal, pursuant to 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 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 of 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.

**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), Section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law (35 §§ 691.1 — 691.702) 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: Water Obstruction and Encroachment Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description).

*Permits Issued and Actions on 401 Certifications:*

## WATER OBSTRUCTIONS AND ENCROACHMENTS

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**EA54-007NE. Department of Environmental Protection,** Bureau of Abandoned Mine Reclamation, 2 Public Square—5th Floor, Wilkes-Barre, PA 18711-0790, Baltimore District U.S. Army Corps of Engineers.

Backfill a 0.34 acre water-filled strip pit in conjunction with Abandoned Mine Reclamation Project OSM 54(3024) 101.1, Tremont North, Tremont, PA Quadrangle N: 2.5 inches, W: 2.0 inches in Frailey and Tremont Townships, **Schuylkill County**.

**EA54-008NE. Department of Environmental Protection,** Bureau of Abandoned Mine Reclamation 2 Public Square—5th Floor, Wilkes-Barre, PA 18711-0790, Baltimore District U.S. Army Corps of Engineers.

To backfill a 0.46 acre water-filled strip pit in conjunction with Abandoned Mine Reclamation Project OSM 54(3649) 101.1, Newtown South 2, Minersville, PA Quadrangle N: 0.5 inch, W: 16.5 inches in Reilly and Tremont Townships, **Schuylkill County**.

**E13-120. Stoney Ridge Development Corporation,** P. O. Box D, Bowmanstown, PA 18030. East Penn Township, **Carbon County**, ACOE Philadelphia District.

To regrade an area within the floodway of Lizard Creek in order to provide approximately 2.5 acres of additional storage area for a pre-cast concrete products manufacturer. The project is located at the J & R Slaw, Inc. Pre-Cast Concrete Manufacturing Plant, on the south side of Lizard Creek approximately 1,500 feet upstream of its confluence with the Lehigh River, Lehigh, PA Quadrangle N: 7.9 inches; W: 6.0 inches.

**E35-321. Scranton Craftsmen, Inc.,** 930 Dunmore Street, Throop, PA 18512. Throop Borough, **Lackawanna County**, Army Corps of Engineers Baltimore District.

To place fill in multiple wetland areas totaling 0.97 acre, to facilitate the development of a residential and commercial subdivision known as School Side Estates. The permittee is required to provide 0.97 acre of replacement wetlands. The project is located on the northwestern side of Underwood Road, approximately 1.0 mile northeast of S.R. 2008, Olyphant, PA Quadrangle N: 14.4 inches; W: 14.25 inches).

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**E28-280. Guilford Township,** 115 Spring Valley Road, Chambersburg, PA 17201, ACOE Baltimore District, in Guilford Township, **Franklin County**.

To construct and maintain a steel bridge with concrete abutments and placed fill for the pedestrian access ramps to the structure having a 40-foot clear span and a 7.7-foot underclearance across an unnamed tributary to Conococheague Creek (locally known as English Valley Run (WWF)). Grading and filling for two baseball fields to be located on the north side of SR 30 and two elevated walkways constructed within the Lincoln arch-culvert, a pavilion, vehicle parking lot and a 10-foot wide macadam walking path will all be constructed and located within the 100-year flood plain. The proposed Norlo Community Park will be located between Main Street (SR 1008) and

Lincoln Terrace (T-508) (Scotland, PA Quadrangle N: 7.0 inches; W: 10.6 inches).

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E19-206. Pennsylvania Department of Transportation,** Engineering District 3-0, 715 Jordan Avenue, Montoursville, PA 17754. SR 4003, Section 004 Bridge, in Hemlock Township, **Columbia County**, ACOE Baltimore District (Bloomsburg, PA Quadrangle, N: 0.91 inch; W: 16.05 inches).

To remove an existing structure and to construct and maintain a single span reinforced concrete spread box beam bridge with a normal span of 17-meters (55 feet 9 inches), an average underclearance of 2.45-meters (8 feet) and the same 70-degree skew as the old bridge across Hemlock Creek located 1 kilometer (0.62 miles) north on SR 4003 from SR 4005 in Hemlock Township, Columbia County.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1318. D & D Land Development, L.P.,** 11279 Perry Highway, Suite 509, Wexford, PA 15090. Franklin Park Borough, **Allegheny County**, ACOE Pittsburgh District.

To impact approximately 0.08 acre of wetlands (PEM/PSS) adjacent to an unnamed tributary to Fish Run (CWF) for the purpose of constructing the LaPlace Point Garden Apartments located on the east side of T.R. 856 (Nicholson Road), approximately 1,800 feet north from the intersection of T.R. 856 (Nicholson Road) and Rochester Road. Permittee has met wetland replacement obligation by contributing to the Wetland Replacement Fund (Emsworth, PA Quadrangle N: 16.9 inches; W: 13.7 inches).

**E02-1324. J. West Corporation,** 222 Oxford Boulevard, Allison Park, PA 15101. O'Hara Township and Blawnox Borough, **Allegheny County**, ACOE Pittsburgh District.

To place and maintain fill on the right bank of the Allegheny River (WWF), to place and maintain fill in approximately 0.22 acre of wetlands on the right bank of said stream and to construct and maintain two outfall structures on the right bank of said stream for the purpose of constructing the Cove at St. Charles residential development located just south from the intersection of Boyd Avenue and River Road. The applicant has met the wetland replacement requirement by contributing to the Pennsylvania Wetland Replacement Fund (Braddock, PA Quadrangle N: 21.8 inches; W: 14.4 inches).

**E32-420-A1. Reliant Energy Mid-Atlantic Power Holdings, LLC,** 1001 Broad Street, P.O. Box 1050, Johnstown, PA 15907. East Wheatfield Township, **Indiana County**, ACOE Pittsburgh District.

To amend Permit No. E32-420 to include the remediation and maintenance of existing abandoned coal refuse piles, the placement and maintenance of fill in 0.3 acre of wetlands and the relocation and maintenance of a coal pile and a coal conveyor system along approximately 3,300 feet of the Conemaugh River (WWF). The project is located off of Power Plant Road, approximately 2 miles from its intersection with Route 711 (New Florence, PA Quadrangle N: 5.4 inches; W: 4.5 inches).

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**E25-627, North East Township**, 10300 West Main Road, Box 249, North East, PA 16428. South Washington Street Bridge Across Sixteenmile Creek, in North East Township, **Erie County**, ACOE Pittsburgh District (North East, PA Quadrangle N: 14.2 inches; W: 10.6 inches).

To remove the existing bridge and to construct and maintain a prestressed concrete adjacent box beam bridge having a clear, normal span of 43.5 feet and an average underclearance of 14 feet across Sixteen Mile Creek on South Washington Street (T-738) approximately 0.1 mile north of East Law Road.

**E62-373, Pine Grove Township**, P. O. Box 125, Russell, PA 16345. Main Street Across Johnny Run, in Pine Grove Township, **Warren County**, ACOE Pittsburgh District (Russell, PA-NY Quadrangle N: 12.4 inches; W: 1.35 inches).

To remove the existing bridge and to install and maintain a 35.5-foot long pre-cast concrete box culvert having a 24-foot-wide by 7-foot-high waterway opening in Johnny Run on Main Street approximately 0.25 mile north of Liberty Street in the Village of Russell.

#### ENVIRONMENTAL ASSESSMENTS

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E03-003SW. U.S. Army Corp of Engineers**, William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222-4186. Ford City Borough, **Armstrong County**, ACOE Pittsburgh District.

To place and maintain stone protection, along approximately 900 feet of the Allegheny River, in order to repair and stabilize a previously rehabilitated streambank, which is collapsing and eroding. The project will include some regarding of the streambank, and placing a portion of the old cut stone wall on the riverbed to create fish spawning habitat. The project is located along 1st Avenue (Water Street) near its intersection with 7th Street (Kittanning, PA Quadrangle N: 3.19 inches; W: 5.37 inches).

#### DAM SAFETY

**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 requests for certification under Section 401 of the Federal Water Pollution Control Act. (33 U.S.C.A. § 1341(a)).**

*Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.*

**D12-013CO. Dam. Emporium Water Company**, R.R. 4 Box 488, Emporium, PA 15834. To breach and remove the Picric Dam across Driftwood Branch Sinnemahoning Creek (TSF) for the purpose of restoring the stream to a free flowing condition. The dam is located approximately 3500 feet northwest of the intersection of State Route 120 and State Route 46 (Rich Valley, PA Quadrangle N: 3.25 inches; W: 0.80 inches). Shippen Township, **Cameron County**.

[Pa.B. Doc. No. 01-552. Filed for public inspection March 30, 2001, 9:00 a.m.]

#### Availability of Technical Guidance

Technical guidance documents are on DEP's world wide website ([www.dep.state.pa.us](http://www.dep.state.pa.us)) at the public participation center. The "March 2001 Inventory" heading is the governor's list of nonregulatory guidance documents. 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 continue to revise its nonregulatory documents, as necessary, throughout 2001.

#### Ordering Paper Copies of DEP Technical Guidance

DEP encourages the use of the Internet to view guidance documents. When this option is not available, 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. Please check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### Changes to Technical Guidance Documents

Following 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 Joe Sieber at (717) 783-8727.

#### Draft Technical Guidance

DEP ID: 012-5500-001 Title: 2002 Environmental Education Grants Program Manual and Forms Description: This guidance document is a guide for eligible organizations who are interested in applying for the Department's Environmental Education Grants Program. It provides information on eligibility and details on how to apply, and the operational procedures to follow upon receiving a grant award. Comment Period Ends: April 30, 2001 Anticipated Effective Date: July 1, 2001 Contact: Helen Olena at (717) 772-1828.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 01-553. Filed for public inspection March 30, 2001, 9:00 a.m.]

#### Proposed Revision to the State Implementation Plan for Ozone for the Pittsburgh-Beaver Valley Ozone Nonattainment Area

#### Proposed Maintenance Plan

#### Public Hearing

Ground-level ozone concentrations above the Federal health-based standard are a serious human health threat and can also cause damage to crops, forests and wildlife. The Pittsburgh-Beaver Valley ozone nonattainment area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland counties) has not experienced a violation of the 1-hour ozone standard for the past 3 years (1998-2000). Therefore, the Department of Environmental Protection (DEP) plans to submit a request to redesignate this area to "attainment." DEP is seeking public comment

on this request and on a state implementation plan (SIP) revision setting forth a maintenance plan for the next 10 years. The maintenance plan, once found adequate by the Federal Environmental Protection Agency, will establish new motor vehicle emission budgets for purposes of transportation conformity.

This proposal is available on the DEP website at <http://www.dep.state.pa.us> (choose Information by Subject/Air Quality/State Implementation Plans), or through the contact person listed below.

The Department will hold a public hearing to receive comments on the SIP revision on Tuesday May 1, 2001, at 1 p.m. at the offices of the DEP Southwest Regional Office, Waterfront Room A, 500 Building, 500 Waterfront Drive, Pittsburgh, PA 15222-4745. The Department's Southwest Regional Office is located at Washington's Landing beneath the 31st Bridge along Pa. Route 28.

Persons wishing to present testimony at the hearing should contact Connie Cross, (717) 787-9495 (P. O. Box 8468, Harrisburg, PA 17105) to reserve a time. If a time is not reserved, individuals will be able to testify as time allows. Witnesses should keep testimony to 10 minutes and should provide two written copies at the hearing. 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 Wick Havens at the telephone above. TDD users may contact the AT&T Relay Service at (800) 654-5984 to discuss how the Department can best accommodate their needs.

Written comments should be sent to Wick Havens, Chief Division of Air Resource Management, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468 no later than noon on May 2, 2001.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 01-554. Filed for public inspection March 30, 2001, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Correction to Application for Exception of HealthSouth Rehab Mechanicsburg

This notice is to publish a correction to the notice that was published on March 17, 2001, for HealthSouth Rehab Mechanicsburg. This incorrect notice indicated that this facility was requesting an exception to 28 Pa. Code § 153.1 (relating to minimum standards). The correct request was a request for an exception to 28 Pa. Code § 107.62 (relating to oral orders).

The request is on file with the Department. Persons may receive a copy of a request for an exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, telephone: (717) 783-8980, fax: (717) 772-2163, e-mail Address: DDITLOW@STATE.PA.US.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed above.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with disability who wish to obtain a copy of the request or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact, Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6154 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 01-555. Filed for public inspection March 30, 2001, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Notice of Intent to Amend the Medicaid State Plan for Payments to Federally Qualified Health Centers and Rural Health Clinics

The Department of Public Welfare (Department) is announcing its intent to amend the Medicaid State Plan for payments to Federally qualified health centers (FQHCs) and rural health clinics (RHCs).

The Department intends to change the Medicaid State Plan to reflect the Department's implementation of section 702 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000. We also intend to clarify the treatment of case management fees.

Section 702 of BIPA repeals the reasonable cost-based reimbursement requirements for FQHC/RHC services, and institutes a new prospective payment system (PPS) to pay for FQHC/RHC services effective January 1, 2001. In accordance with BIPA requirements, for the period January 1, 2001, through September 30, 2001, the Department will pay FQHCs/RHCs 100 % of the average of their audited reasonable costs of providing Medicaid-covered services during Fiscal Years (FY) 1999-2000, adjusted to account for any increase or decrease in the scope of services furnished by the FQHCs/RHCs during FY 2001. The payment amount will be calculated on a per visit basis. Beginning in FY 2002, and for each FY thereafter, each FQHC/RHC is entitled to a payment amount, on a per visit basis, equal to that of the previous FY, adjusted by the percentage increase in the Medicare Economic Index (MEI) for primary care services for that FY and adjusted to account for any increase or decrease in the scope of services furnished by the FQHCs/RHCs during that FY.

For FQHCs/RHCs that are newly qualified as an FQHC or RHC after FY 2000, the Department will pay for the initial year, on a per visit basis, 100 % of the reasonable costs related to the provision of Medicaid covered services of other centers/clinics located in the same or adjacent areas with a similar caseload. In the absence of such other centers/clinics, cost reporting methods will be used to establish the initial rate.

For the next FY, the Department will pay, on a per visit basis, the amount paid for the initial year, adjusted to reflect the actual audited reasonable costs of the FQHC/RHC, increased by the percentage increase in the MEI applicable to primary care services for the current FY and adjusted to account for any increase or decrease in the scope of services furnished by the FQHC/RHC during that

FY. For subsequent FYs, payment shall be set by using the MEI method used for other centers/clinics.

The Department will pay FQHCs and RHCs directly, on a quarterly basis, an amount which represents the difference, if any, between the amounts paid by managed care organizations (MCOs) to FQHCs and RHCs for services provided to MCO enrolled Medical Assistance recipients and the payment to which the FQHC/RHC would be entitled for these services under the PPS payment method. The Department will use the FQHC's and RHC's audited cost reports to reconcile the amount of these supplemental payments, and for FQHCs only, to reconcile the amount paid for dental services.

The Department will pay case management fees during the first year of an FQHC's or RHC's participation in a primary care case management (PCCM) system. Thereafter, the Department will use the FQHC's/RHC's audited cost report to adjust the payment, on a per visit basis, to take into account the FQHC's/RHC's costs for participation in the PCCM system. Any PCCM fees paid after the initial year will offset the FQHC's/RHC's overall costs.

#### *Fiscal Impact*

There is no fiscal impact anticipated to result from the implementation of the new PPS system.

#### *Contact Person*

A copy of this notice is available for review at local County Assistance Offices. Interested persons are invited to submit written comments to the notice within 30 days of this publication. These comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, Attention: Suzanne Love, Room 515 Health and Welfare Building, Harrisburg, PA 17105-2675.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). Persons who require an alternate format should contact Thomas Vracarich at (717) 783-2209.

FEATHER O. HOUSTOUN,  
*Secretary*

[Pa.B. Doc. No. 01-556. Filed for public inspection March 30, 2001, 9:00 a.m.]

### **Office of Medical Assistance Programs; Addition of Periodontal Services**

By this notice, the Department of Public Welfare announces that it is adding selected periodontal services to its list of covered dental services, effective March 1, 2001, as follows:

<i>Procedure Code</i>	<i>Description</i>	<i>MA Fee</i>
D4210	Gingivectomy or gingivoplasty—per quadrant	\$125.00
D4341	Periodontal scaling and root planing—per quadrant	75.00
D4355	Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis	60.00
D4910	Periodontal maintenance procedures (following active treatment)	44.00

Section 443.6(b)(7) of the Public Welfare Code (62 P. S. § 443.6(b)(7)) authorizes the Department of Public Welfare to add items and services to its list of services

requiring prior authorization by publication of notice in the *Pennsylvania Bulletin*. All periodontal services, except Procedure Code D4355, will require prior authorization. Procedure Code D4355 will require post-operative review.

The proposed adoption of these services and the requirement of prior authorization was presented to the Medical Assistance Advisory Committee (MAAC) at its January 25, 2001 meeting. The Department received no written comments from the MAAC regarding the proposed addition of periodontal services and the requirement of prior authorization.

#### *Fiscal Impact*

The fiscal note was prepared under provision of Section 612 of The Administrative Code of 1929 (71 P. S. § 232).

#### *Contact Person*

A copy of this Notice is available for review at local County Assistance Offices. Interested persons are invited to submit written comments to this Notice. These comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17120. Any comments received will be considered for subsequent Fee Schedule updates.

Persons with a disability may use the AT&T Relay service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users). Persons who require another alternative should contact Thomas Vracarich in the Office of Legal Counsel at (717) 783-2209.

FEATHER O. HOUSTOUN,  
*Secretary*

#### **Fiscal Note: 14-NOT-273. (1) General Fund.**

	<i>MA-Outpatient</i>	<i>MA-Capitation</i>
(2) Implementing Year 2000-01 is	\$112,000	\$691,000
(3) 1st Succeeding Year 2001-02 is	\$1,142,000	\$2,242,000
2nd Succeeding Year 2002-03 is	\$822,000	\$2,465,000
3rd Succeeding Year 2003-04 is	\$822,000	\$2,465,000
4th Succeeding Year 2004-05 is	\$822,000	\$2,465,000
5th Succeeding Year 2005-06 is	\$822,000	\$2,465,000

	<i>MA-Outpatient</i>	<i>MA-Capitation</i>
(4) 1999-00 Program-\$622,669,000	\$1,384,763,000	
1998-99 Program-\$695,935,000	\$1,026,075,000	
1997-98 Program-\$662,740,000	\$959,286,000	
(7) Medical Assistance-Outpatient and Medical Assistance-Capitation; (8) recommends adoption. Funds are included in the budget for these changes.		

[Pa.B. Doc. No. 01-557. Filed for public inspection March 30, 2001, 9:00 a.m.]

### **Payments to Nursing Facilities April 1, 2001 Proposed Rates**

The purpose of this notice is to announce the proposed changes in payment rates based on case-mix index (CMI) adjustments only, for nursing facilities beginning April 1,



2001, and to identify the methodology and justification for these proposed rates. Under 42 U.S.C.A. § 1902(a)(13)(A), as amended by section 4711 of the Balanced Budget Act of 1997, (Pub.L. No. 105-33), a state must use a public process when it proposes to make changes in payment rates or payment methodologies for nursing facility services under its approved Title XIX State Plan. The Department of Public Welfare (Department) is not proposing to amend its State Plan or to change its regulations, 55 Pa. Code Chapter 1187, relating to the rate-setting methodology used to set nursing facility payment rates. Rather, the Department is proposing to make changes in its nursing facility payment rates based on CMI adjustments as required by the rate-setting methodology contained in its approved State Plan and regulations.

#### *Rates*

The proposed April 1, 2001, rates are available through the Bulletin Board System (BBS) at (800) 833-5091, at the local County Assistance Offices throughout this Commonwealth, on the Office of Medical Assistance Programs' website at [www.dpw.state.pa.us/omap](http://www.dpw.state.pa.us/omap), or by contacting Tom Jayson in the Policy Section of the Bureau of Long Term Care Programs at (717) 772-2525.

#### *Methodology*

The methodology that the Department used to set the proposed rates based on CMI adjustments is contained in 55 Pa. Code Chapter 1187, Subchapter G (relating to rate setting) and the Commonwealth's approved Title XIX State Plan.

#### *Justification*

The justification for the proposed rates is that they were set under the rate-setting methodology required by the Commonwealth's approved State Plan and the current regulations.

The estimated increase in annual aggregate expenditures for Medical Assistance nursing facility services for FY 2000-2001 is \$263,046 million (\$121,870 million in State funds).

Interested persons are invited to submit written comments only concerning case-mix index adjustments to the proposed rates to the Department within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments should be addressed to: Department of Public Welfare, Attention: Suzanne Love, P. O. Box 2675, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Services by calling (800) 654-5984 (TDD Users) or (800) 654-5988 (Voice Users). Persons who require another alternative should contact Thomas Vracarich in the Office of Legal Counsel at (717) 783-2209.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-NOT-274. (1) General Fund; (2) Implementing Year 2000-01 is \$122,000; (3) 1st Succeeding Year 2001-02 is \$133,000; 2nd Succeeding Year 2002-03 is \$133,000; 3rd Succeeding Year 2003-04 is \$133,000; 4th Succeeding Year 2004-05 is \$133,000; 5th Succeeding Year 2005-06 is \$133,000; (4) 1999-00 Program—\$693,625,000; 1998-99 Program—\$721,631,000; 1997-98 Program—\$617,252,000; Medical Assistance-Long Term Care; (8) recommends adoption. Funds are included in the budget for these changes.

[Pa.B. Doc. No. 01-558. Filed for public inspection March 30, 2001, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Finding

#### Lebanon County

Pursuant to the provisions of 71 P. S. Section 2002(b), the Secretary of Transportation makes the following written finding:

The Federal Highway Administration and the Department of Transportation plan to replace the existing bridge over Norfolk Southern Right-of-Way on Center Street in Cleona Borough, Lebanon County.

The subject project will use approximately 0.28 hectares (0.7 acres) from the National Register Eligible Kreider Farm and will use approximately 0.045 hectares (0.11 acres) from the National Register Eligible Lebanon Valley Railroad.

The environmental, economic, social and other effects of the proposed project as enumerated in Section 2002 of the Administrative Code have been considered. It has been concluded that there is no feasible and prudent alternative to the project as designed and all reasonable steps have been taken to minimize such effects.

No adverse environmental effect is likely to result from this bridge replacement project.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 01-559. Filed for public inspection March 30, 2001, 9:00 a.m.]

## ENVIRONMENTAL HEARING BOARD

### Municipal Authority of Union Township v. DEP; EHB Doc. No. 2001-043-L

Municipal Authority of Union Township has appealed the issuance by the Department of Environmental Protection of an NPDES permit to same for a facility in Union Township, Mifflin County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form, contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.62. Copies of the Board's rules of practice and procedure are available upon request from the Board.

GEORGE J. MILLER,  
*Chairperson*

[Pa.B. Doc. No. 01-560. Filed for public inspection March 30, 2001, 9:00 a.m.]



# FISH AND BOAT COMMISSION

## Changes to the List of Class A Wild Trout Waters 2001

Notice is hereby given that the Fish and Boat Commission (Commission) is considering changes to its list of Class A Wild Trout Streams. Under 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource and to conserve that resource and the angling it provides. Class A wild trout populations represent the best of this Commonwealth's naturally reproducing trout fisheries. The Commission manages these stream sections solely for the perpetuation of the wild trout fishery with no stocking.

Criteria developed for Class A Wild Trout fisheries are species specific. Wild Trout Abundance Class Criteria include provisions for:

### (i) Wild Brook Trout Fisheries

(A) Total brook trout biomass of at least 30 kg/ha (26.7 lbs/acre).

(B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Brook trout biomass must comprise at least 75% of the total trout biomass.

### (ii) Wild Brown Trout Fisheries

(A) Total brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Brown trout biomass must comprise at least 75% of the total trout biomass.

### (iii) Mixed Wild Brook and Brown Trout Fisheries

(A) Combined brook and brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(D) Brook trout biomass must comprise less than 75% of the total trout biomass.

(E) Brown trout biomass must comprise less than 75% of the total trout biomass.

### (iv) Wild Rainbow Trout Fisheries

Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 2.0 kg/ha (1.78 lbs/acre).

In order for a water to be removed from the Class A Wild Trout Streams designation, total trout biomass must be documented below the set criteria for two consecutive stream examinations.

The Commission intends to consider changes to its list of Class A Wild Trout Streams at its meeting on May 6—7, 2001. Persons with comments, objections or suggestions concerning the changes are invited to submit comments in writing to Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at [ra-pfbcregs@state.pa.us](mailto:ra-pfbcregs@state.pa.us). A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

### Additions

The Commission will consider adding the following waters to the current list of Class A Wild Trout Waters:

County	Stream	Limits	Length
Berks	UNT Tulpehocken Creek	From SR3002 Bridge in Womelsdorf downstream to mouth	0.8 mile
Carbon	Hawk Run	From headwaters downstream to dam upstream of SR0534 Bridge	1.4 miles
Carbon	Hawk Run	From dam upstream of SR0534 Bridge downstream to mouth	0.5 mile
Centre	Laurel Run	From headwaters downstream to inflow of FOP dam approximately 300 meters downstream SR3032	2.9 miles
Centre	Wallace Run	From 1.4 miles upstream of the mouth downstream to mouth	1.4 miles
Clinton	Benjamin Run	From headwaters downstream to mouth	4.8 miles

<i>County</i>	<i>Stream</i>	<i>Limits</i>	<i>Length</i>
Clinton	Rockey Run	From headwaters down-stream to mouth	2.7 miles
Cumberland	Toms Run	From headwaters down-stream to mouth	5.4 miles
Lehigh	Saucon Creek	From headwaters down-stream to 0.92 km down-stream of T-410 bridge	2.8 miles
Lehigh	UNT Saucon Creek	From headwaters down-stream to mouth	1.2 miles
Luzerne	Conety Run	From headwaters down-stream to mouth	2.7 miles
Luzerne	Creasy Creek	From headwaters down-stream to mouth	4.6 miles
Luzerne	Long Headwaters	From headwaters down-stream to mouth	2.2 miles
Luzerne	Long Run	From headwaters down-stream to mouth	2.8 miles
Luzerne	Nescopeck Creek, Little	From first unnamed tributary downstream of Tunnel downstream to mouth	3.5 miles
Luzerne	Oley Creek	From headwaters down-stream to I-80 at mile marker 265	2.3 miles
Luzerne	UNT (04) Nescopeck Creek	From headwaters down-stream to mouth	1.1 miles
Luzerne	UNT (05) Nescopeck Creek	From headwaters down-stream to mouth	1.1 miles
Luzerne	UNT (07) Nescopeck Creek	From headwaters down-stream to mouth	2.2 miles
Luzerne	UNT (11) Nescopeck Creek	From headwaters down-stream to mouth	1.2 miles
Luzerne	UNT (12) Nescopeck Creek	From headwaters down-stream to mouth	1.0 mile
Luzerne	UNT (15) to UNT (18) Nescopeck Creek	From headwaters down-stream to mouth	1.9 miles
Luzerne	UNT (17) to UNT (18) Nescopeck Creek	From headwaters down-stream to mouth	3.0 miles
Luzerne	UNT (19) Nescopeck Creek	From headwaters down-stream to mouth	2.9 miles
Lycoming	Grays Run	State Forest boundary (Grays Run Club) down-stream to T-842	2.2 miles
Lycoming	Truman Run	From headwaters down-stream to mouth	2.2 miles
Lycoming/Sullivan	Pleasant Stream	From headwaters down-stream to confluence with North Pleasant Stream	3.1 miles
McKean	Parker Run	From headwaters down-stream to mouth	6.8 miles
Perry	Kansas Valley Run	From headwaters down-stream to mouth	2.5 miles
Pike	Mill Brook, Kellam Creek	From pond at source down-stream to mouth	2.4 miles
Potter	Elk Lick Run	From headwaters down-stream to mouth	3.7 miles
Potter	Portage Creek, Little S Brook	From headwaters down-stream to mouth	2.9 miles

<i>County</i>	<i>Stream</i>	<i>Limits</i>	<i>Length</i>
Potter	Yochum Run	From headwaters downstream to mouth	5.3 miles
Susquehanna	Gaylord Creek	From headwaters downstream to upper crossing on Bradford/Susquehanna County line	4.2 miles
Susquehanna	Little Creek	From headwaters downstream to mouth	3.1 miles
Susquehanna	Lyons Brook	From headwaters downstream to mouth	2.1 miles
Susquehanna	Rock Creek	From headwaters downstream to mouth	2.7 miles
Susquehanna	Tinker Creek	From headwaters downstream to mouth	3.2 miles
Susquehanna	Tunkhannock Creek, East Branch	From headwaters downstream to SR2027 upstream of confluence with Little Creek	4.2 miles
Susquehanna	UNT Tunkhannock Creek	From headwaters downstream to mouth	1.3 miles
Tioga	Buck Run	From headwaters downstream to mouth	2.4 miles
Tioga	Dixie Run	From headwaters downstream to mouth	3.7 miles
Tioga	Rathbone Creek	From headwaters downstream to mouth	2.9 miles
Tioga	South Creek	From headwaters downstream to mouth	1.4 miles
Union	Rapid Run	From Buffalo Path downstream to T383	4.5 miles

*Removals*

The Commission will consider removing the following waters from the current list of Class A Wild Trout Waters:

<i>County</i>	<i>Stream</i>	<i>Limits</i>	<i>Length</i>
Blair	Tipton Run	From headwaters downstream to upper limit of Slackwater at Tipton Reservoir	2.5 miles

PETER A. COLANGELO,  
*Executive Director*

[Pa.B. Doc. No. 01-561. Filed for public inspection March 30, 2001, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulation on the date indicated. To obtain the date and time of the meeting at which the Commission will consider this regulation, contact the Commission at (717) 783-5417 or visit its website

at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). To obtain a copy of the regulation, contact the promulgating agency.

#### *Final-Form*

*Reg. No.* *Agency/Title*

10-155 Department of Health  
Public Swimming and Bathing  
Places

*Received*

03/15/01

JOHN R. MCGINLEY, JR.,  
*Chairperson*

[Pa.B. Doc. No. 01-562. Filed for public inspection March 30, 2001, 9:00 a.m.]

# INSURANCE DEPARTMENT

## Catastrophic Loss Benefits Continuation Fund

*Health South of Mechanicsburg, Inc., formerly Pennsylvania Health Corporation t/d/a Mechanicsburg Rehab System, and Blue Cross of Northeastern Pennsylvania; Doc. No. FC01-03-027*

On March 14, 2001, the Catastrophic Loss Benefits Continuation Fund (CAT Fund) through its attorney, filed a complaint in equity for interpleader. The defendants are Health South of Mechanicsburg, Inc., formerly Pennsylvania Health Corporation t/d/a Mechanicsburg Rehab System and Blue Cross of Northeastern Pennsylvania.

Under 75 Pa.C.S. §§ 1701—1799 (relating to financial responsibility) and 31 Pa. Code § 67.6 (relating to appeals), it is hereby ordered as follows:

The CAT Fund's request for the interpleader of defendants Health South of Mechanicsburg, Inc., formerly Pennsylvania Health Corporation, t/d/a Mechanicsburg Rehab System (MRS) and Blue Cross of Northeastern Pennsylvania (Blue Cross) is granted so that it can be determined which of the defendants is entitled to all or a portion of the remaining \$48,854.16 in the CAT Fund benefits payable on behalf of Bertha E. Cusatis. No answer to the attached complaint is required. However, on or before April 12, 2001, MRS and Blue Cross must each file with the Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Room 200, Harrisburg, PA 17102, a Statement of Claim for the \$48,854.16. The CAT Fund, until further order, shall retain \$48,854.16 in the Klett Rooney Lieber & Schorling interest bearing escrow account and must file with the Administrative Hearings Office on or before March 30, 2001, written confirmation of the deposit. Upon dispersal of funds in accordance with directives of the Insurance Commissioner, the CAT Fund will be discharged from liability with respect to the \$48,854.16 in benefits for Bertha E. Cusatis.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 01-563. Filed for public inspection March 30, 2001, 9:00 a.m.]

## Insurance Services Office, Inc.; Homeowners Loss Cost Level Revision

On March 12, 2001, the Insurance Department (Department) received from Insurance Services Office, Inc. a filing for a proposed loss cost level change for homeowners insurance.

The advisory organization requests an overall 0.1% decrease in loss cost effective September 1, 2001.

Unless formal administrative action is taken prior to May 11, 2001, the subject filing may be deemed approved by operation of law.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

All interested parties are invited to submit written comments, suggestions or objections to Xiaofeng Lu, Insurance Department, Bureau of Regulation of Rates and Policies, Room 1311, Strawberry Square, Harrisburg,

PA 17120, e-mail: xlu@state.pa.us, within 15 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 01-564. Filed for public inspection March 30, 2001, 9:00 a.m.]

## Penn Treaty Network America; Rate Filing

Penn Treaty Network America is requesting approval to increase its premium an aggregate 21.8% for the Comprehensive Long Term Care Policy Forms FPF2600, FPF2600, and the associated 5% compound inflation rider. The maximum increase is 60% which will affect some policy holders with issue ages under 60, while no increase is planned for policyholders with issue ages over 80. The average increase for plans with level benefits (that is, no inflation adjustments included) is 10.6% while plans with increasing benefits (that is, with inflation adjustments included) have an average increase of 33.7%. The average premium will increase from \$1,526 to \$1,858, and will affect 7,381 Commonwealth policyholders. The requested effective date of the change is April 1, 2001.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 01-565. Filed for public inspection March 30, 2001, 9:00 a.m.]

## Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) in connection with the termination of the insured's automobile policy. The hearing will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). These administrative hearings will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by the appellants to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held in the Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Room 200, Harrisburg, PA 17102.

Appeal of John S. and Meagan M. Boozer; file no. 01-181-00671; Geico Direct; doc. no. P01-03-022; April 17, 2001, at 1 p.m.

Appeal of Kenneth and Mary Ellen Horodenski; file no. 01-181-00702; Fireman's Insurance Company of Washington, DC; doc. no. P01-03-024; April 26, 2001, at 1 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, 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 may be 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,  
*Insurance Commissioner*

[Pa.B. Doc. No. 01-566. Filed for public inspection March 30, 2001, 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. This administrative hearing will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held in the Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Room 200, Harrisburg, PA 17102.

Appeal of Leonard Foremsky; file no. 01-181-00699; American Motorists Insurance Company; doc. no. P01-03-023; April 18, 2001, at 10 a.m.

Each party appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (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 may be 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,  
*Insurance Commissioner*

[Pa.B. Doc. No. 01-567. Filed for public inspection March 30, 2001, 9:00 a.m.]

## **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

### **Final Report of the Collaborative to Determine the Adequacy and Interpretation of Existing Accounting Procedures and Financial Reporting Regulations for All Telecommunications Carriers; Doc. No. M-00001374**

The Pennsylvania Public Utility Commission (Commission), at its September 12, 2000, public meeting established a collaborative to examine accounting methods and financial reporting requirements for all telecommunications carriers. On September 22, 2000, all telecommunications carriers received notice and were invited to participate in that collaborative. This letter serves as notice that the final report of the collaborative, dated March 15, 2001, has been submitted to the Commission. The recommendations contained in that report may impact the financial reporting obligations of incumbent and competitive local exchange and inter-exchange carriers operating in this Commonwealth. Interested parties may obtain a free copy of the report from the Commission's website <http://puc.paonline.com> or hard copies are available for a fee via written request to the Secretary of the Commission:

Pennsylvania Public Utility Commission  
James J. McNulty, Secretary  
P. O. Box 3265  
Harrisburg, PA 17105-3265

The contact for questions regarding this notice is either Carl Hisiro, Assistant Counsel, Law Bureau, (717) 783-2812 or Elizabeth A. Lion Januzzi, Assistant Counsel, Law Bureau (717) 772-0696.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-568. Filed for public inspection March 30, 2001, 9:00 a.m.]

### **Investigation into Relief Plans for the 215/267 and 610/484 NPAs; P-00961071F0002**

Public meeting held  
March 8, 2001

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

*By the Commission:*

In this order, the Commission revisits the issue of area code exhaust in the southeastern portion of this Commonwealth and the implementation of relief to address such exhaust. The Commission remains committed to ensuring that numbering resources are made available on an equitable, efficient and timely basis in this Commonwealth. Nevertheless, in view of the well-documented disruption to customers caused by changes in their area code, it is in the public interest to assure that new area codes are opened only when it is necessary, and only after the existing number resources in the existing area code are close to exhaustion. Therefore, by this decision, the Commission orders a deferral of the previously adopted implementation schedule for the new 445 and 835 Numbering Plan Areas (NPAs) in the southeastern portion of this Commonwealth.

#### *Background*

By Order entered May 21, 1998,<sup>1</sup> the Commission directed that the 215 and 610 NPAs, or area codes, in the southeastern portion of this Commonwealth receive individual overlay NPAs so as to address the prevailing NXX code shortage problem. The 215 NPA received the 267 overlay NPA and the 610 NPA received the 484 overlay NPA. At the time of that determination, the supply of NXX codes in the 215 and 610 area codes were totally exhausted.<sup>2</sup> Nonetheless, it was forecasted that the projected life for the 267 NPA overlay and the 484 NPA overlay would be 4.5 and 5.8 years, respectively.

In June 1999, the 267 and 484 NPAs were placed into service. Based upon the initial demand for NXX codes in the 267 and 484 NPAs when they were first activated, the North American Numbering Plan Administrator (NANPA)<sup>3</sup> recalculated the estimated lives for the NPAs. The NANPA estimated that the 267 and 484 NPAs would exhaust their respective supply of NXX codes, or telephone numbers, during the first quarter of 2003, and fourth quarter of 2001, respectively.

On October 4, 1999, in accordance with its directive to initiate NPA relief planning in areas in sufficient time (30 months) to prevent the exhaust of numbering resources, NANPA notified the Commission and the telecommunications industry that it was necessary to begin planning relief alternatives for both the 267 NPA and the 484 NPAs. Shortly thereafter, NANPA declared that the 484 NPA was in an "extraordinary jeopardy" situation because the demand for NXX codes within that NPA was substantially higher than originally projected.<sup>4</sup>

On December 2, 1999, NANPA convened a meeting with the telecommunications industry to discuss relief alternative so as to address the numbering exhaust in the 267 and 484 NPAs. The NANPA explained that since the time the NPAs had been placed in service (June 1999), 364 NXX codes had been assigned in the 267 NPA, and 506

NXX codes had been assigned in the 484 NPA.<sup>5</sup> During this meeting, the industry reached consensus to recommend to the Commission two separate all services distributed overlays as its preferred alternative for area code relief in both the 267 NPA and the 484 NPA. One overlay would cover the same geographic boundaries of the existing 215/267 NPAs and the other overlay would cover the same geographic boundaries of the existing 610/484 NPAs.

Shortly thereafter, NANPA, on behalf of the industry, conveyed the industry's relief recommendation to the Commission in a filing, which also informed the Commission that the industry would begin implementation of the two overlay NPAs on or about April 3, 2000.<sup>6</sup> Specifically, the 215/267 NPAs would receive the 445 NPA, and the 610/484 NPAs would receive the 835 NPA. On May 18, 2000, the Commonwealth telecommunications industry reached a consensus to adopt the following implementation schedule for the two separate overlays:

1. All network preparation for the implementation of the 445 and 835 NPAs will be completed by February 1, 2001, at 12:01a.m.
2. The earliest code activation date for NXX or central office codes assigned in the 445 and 835 NPAs is May 1, 2001.
3. The telecommunications industry will complete customer education programs for the new NPAs by May 1, 2001.
4. Any jeopardy rationing of NXX codes within either the 267 or 484 NPAs would end on February 1, 2001.
5. The NANPA will assign NXX codes from the new NPAs with an effective date on or after May 1, 2001, and will continue to honor code requests for NXXs in the existing NPAs as long as resources are available.

#### *Discussion*

When the supply of numbers available within an NPA, or area code, is estimated to exhaust, some form of area code relief must be implemented so that customers in that area can continue to obtain the services they desire from the carrier of their choice. Under section 251(e) of the Telecommunications Act of 1996 (47 U.S.C. § 251(e)), the Federal Communication Commission (FCC) delegated authority to state commissions to direct the form of area code relief in such situations.

The FCC has consistently stated that state commissions may not utilize number conservation measures in lieu of implementing timely area code relief.<sup>7</sup> Accordingly, the Commission permitted the industry consensus plan of implementing two all services overlays to alleviate the number exhaust in the 267 and 484 NPAs to go forward under the above-referenced schedule.

Nevertheless, FCC regulations at 47 CFR § 52.19(a) set forth that "state commissions may resolve matters involving the introduction of new area codes within their states, which includes establishing the necessary dates for the implementation of relief plans."

The FCC recently noted that state commissions are uniquely positioned "to ascertain and weigh the very local

<sup>1</sup>Petition of NPA Relief Coordinator Re: 215/610 Area Code Relief Plan, at Docket No. P-00961061 (Order entered May 21, 1998).

<sup>2</sup>There are approximately 792 NXX codes or telephone numbers in a NPA/area code.

<sup>3</sup>The NANPA is the entity that allocates numbering resources and monitors the viability of area codes to determine when all of the numbers available in the area code are nearing exhaust. The Industry Numbering Committee Guidelines provide that when an area code is nearing exhaust, the NANPA, in the appropriate circumstances, must act as the NPA Relief Planner and discuss relief alternatives so as to address the numbering exhaust. Additionally, as one of its duties as the NPA Relief Planner, the NANPA provides a projected life span for each relief alternative, which is based upon forecasted demand data from the industry. *NPA Code Relief Planning & Notification Guidelines*, INC97-0404-016, reissued Nov. 8, 1999.

<sup>4</sup>Under the *Central Office Code (NXX) Assignment Guidelines*, "a jeopardy condition exists when the forecasted and/or actual demand for NXX codes will exceed the known supply during the planning/implementation interval for relief." Central Office Code (NXX) Assignment Guidelines at § 9.3 (INC 95-0407-008, Jan. 8, 2001) ("CO Code Guidelines").

<sup>5</sup>See footnote 2.

<sup>6</sup>Although the Commission has the ultimate authority to approve or reject a relief plan, it chose not to open a docket on the industry's consensus recommendation.

<sup>7</sup>See *In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order and Order of Reconsideration, FCC 98-224, CC Docket No. 96-98, NSD File No. L-97-42 (rel. Sept. 28, 1998) (*Pennsylvania Numbering Order*).

and granular information inherent in area code relief decision making.”<sup>8</sup> Additionally, the FCC noted that the implementation of new area codes before they are necessary forces consumers to go through the expense, trouble and dislocation of changing telephone numbers or dialing patterns earlier or more often than necessary.<sup>9</sup> Therefore, while a state commission may not utilize numbering optimization measures in lieu of implementing timely area code relief, a state commission may minimize the consumer impact of traditional area code relief by not implementing new area codes sooner than necessary.

Based upon our current review of the number utilization data in this region and the amount of NXX codes available for assignment within the existing area codes, we believe that the current implementation schedule for the new overlay NPAs, 445 and 835, is inappropriate.

According to the utilization data from the Numbering Resource Utilization Forecast worksheet submitted to NANPA, the utilization rates<sup>10</sup> for NXX codes in the 267 and 484 NPAs is 5% and 3%, respectively. Additionally, according to information on NANPA’s website,<sup>11</sup> as of February 28, 2001, there were approximately 197 NXX codes available for assignment in the 267 NPA and 178 NXX codes available for assignment in the 484 NPA. The Commission notes that the demand for NXX codes in both these NPAs has substantially declined.<sup>12</sup> Although the forecasted future demand for available NXX codes within these NPAs is uncertain, we believe that the aforementioned numbers lend justification to our desire to modify the current implementation schedule for the new NPAs.

Furthermore, the Commission has begun to implement its reclamation authority and has already reclaimed some NXX codes within the 267 and 484 NPAs. The Commission believes that additional NXX codes from these NPAs will be subject to reclamation and, thus, will add to the number of NXX codes available for assignment.

The Commission remains committed to the competitive process in the telephone industry, and stands firmly resolved to ensure that all telecommunications carriers have adequate numbering resources so as to compete in the rapidly growing telecommunications marketplace in this Commonwealth. Therefore, the consensus relief plan of two all services overlays for the 267 and 484 NPAs remains in effect. Nevertheless, we feel that the utilization levels and the number of available NXX codes in the existing NPAs does not justify the activation of the new overlays on May 1, 2001. In particular, we believe that neither of the new overlay NPAs should be activated until 3 months to NXX code exhaust in the existing NPAs (267 and 484). In the meantime, NANPA will provide the Commission with monthly updates on the projected exhaust dates for each of the existing NPAs (267 or 484) so that the Commission can ensure that no telecommunications carriers will be without adequate numbering resources to meet customer demand.

### Conclusion

The policy of the Commission is to ensure that numbering resources are made available on an equitable, efficient

<sup>8</sup>In the Matter of Numbering Resource Optimization, Second Report and Order, CC Docket No. 99-200, FCC 00-429 (rel. December 29, 2000).

<sup>9</sup>*Id.*

<sup>10</sup>Utilization rate has been defined as the percentage of NXX codes assigned to end-users from the carriers total inventory of NXX codes within a NPA.

<sup>11</sup>[www.nanpa.com](http://www.nanpa.com)

<sup>12</sup>The average assignment rate for NXX codes in the 267 NPA from June 1999-December 1999 was 61 NXX codes per month as compared to the average of 18 NXX code assigned per month from Jan. 2000-December 2000. Additionally, the average of NXX codes assigned in the 484 NPA from June 1999-December 1999 was 84 codes per month as compared to the average of 9 codes per month from January 2000-December 2000. It should be noted that the 484 NPA was subjected to rationing of 10 NXX codes per month pursuant to industry consensus.

and timely basis in this Commonwealth while ensuring that the impact of proliferating new area codes on consumers is minimized to the extent possible. We believe that temporarily delaying the current implementation schedule will not compromise the ability of area code relief to be implemented in the 267 and 484 NPAs on a timely basis; *Therefore,*

### *It Is Ordered That:*

1. The previously adopted implementation schedule for the 445 and 835 overlay NPAs in the southeastern portion of this Commonwealth is modified.

2. NAPA provide this Commission with monthly updates on the projected exhaust dates for the 267 NPA and the 484 NPA, beginning when each NPA is within 10 months of exhaust. Time to exhaust in months shall be calculated and based on actual carrier demand for numbers. The monthly updates shall be addressed to Anthony Rametta, Bureau of Fixed Utility Services.

4. The Commission shall inform all jurisdictional telecommunications carriers when either the 267 NPA or 484 the NPA is 3 months to NXX code exhaust so that the Commission can ensure that all carriers, including non-paying carriers, will have nondiscriminatory access to numbers when needed to meet customer demand.

5. All jurisdictional telecommunications carriers are directed to continue and complete all network preparation to their systems that is necessary to implement the new NPAs if it was not completed by the February 1, 2001, date set forth in the original implementation schedule adopted by the industry.

6. All jurisdictional telecommunications carriers are directed to suspend all consumer education programs regarding the introduction of the new 445 and 835 NPAs. To the extent that a carrier has begun its consumer education program, we direct that carrier to mail out a bill insert informing its customers that the introduction of the new overlay NPAs has been postponed. Carriers will not commence their customer education program in either the 267 NPA or the 484 NPA until the Commission informs them that the existing area code will exhaust within 3 months.

7. A copy of this order shall be published in the *Pennsylvania Bulletin* and also posted on the Commission’s website at <http://puc.paonline.com/>.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-569. Filed for public inspection March 30, 2001, 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. 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 April 23, 2001, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protests 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-00117634. Janet Betar and John Betar, Husband and Wife** (P. O. Box 1052, Altoona, Blair County, PA 16603)—persons upon call or demand, in the city of Altoona, Blair County and within an airline distance of 8 statute miles of the limits thereof.

**A-00117635. James R. Star** (4131 Mulberry Avenue, Oakford, Bucks County, PA 19053)—persons in airport transfer service, from points in the township of Newtown, Bucks County, and within an airline distance of 14 statute miles of the limits thereof, to airports located within Pennsylvania.

**Applications of the following for amendment to the common carrier permit approving the operation of motor vehicles as common carriers for transportation of persons as described under each application.**

**A-00112577, Folder 2, Am-B. Airport Limousine Service, Inc., t/d/b/a Checker Cab** (36 South Sixth Street, Pittsburgh, Allegheny County, PA 15203), a corporation of the Commonwealth of Pennsylvania, inter alia—persons upon call or demand, in the borough of Coraopolis and the townships of Moon, Crescent, Robinson and Findley, Allegheny County: *So as to permit the transportation of persons upon call or demand, in the boroughs of White Oak, North Braddock, Turtle Creek, Forest Hills, Chalfant, Edgewood, Baldwin, Churchill, Brentwood, Pleasant Hills, Whitehall, Green Tree, Dormont and Monroeville, and the township of North Versailles, all in Allegheny County.* *Attorney:* Ray F. Middleman, 117 VIP Drive, Suite 310, Wexford, PA 15090.

JAMES J. MCNULTY,  
Secretary

[Pa.B. Doc. No. 01-570. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Telecommunications

**A-310870. United Telephone Company of Pennsylvania d/b/a Sprint and Metrocall, Inc.** Joint Petition of the United Telephone Company of Pennsylvania d/b/a Sprint and Metrocall, Inc. for approval of a master interconnection agreement under section 252(a)(1) and (e) of the Telecommunications Act of 1996.

The United Telephone Company of Pennsylvania d/b/a Sprint and Metrocall, Inc. filed on March 20, 2001, at the Pennsylvania Public Utility Commission, a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the United Telephone Company of Pennsylvania d/b/a Sprint and Metrocall, Inc. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
Secretary

[Pa.B. Doc. No. 01-571. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Telecommunications

**A-311080. Verizon Pennsylvania Inc. and Cricket Communications, Inc. d/b/a Cricket Wireless, Inc.** Joint Petition of Verizon Pennsylvania Inc. and Cricket Communications, Inc. d/b/a Cricket Wireless, Inc. for approval of adoption of an interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Cricket Communications, Inc. d/b/a Cricket Wireless, Inc. filed on March 19, 2001, at the Pennsylvania Public Utility Commission, a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Cricket Communications, Inc. d/b/a Cricket Wireless, Inc. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
Secretary

[Pa.B. Doc. No. 01-572. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Telecommunications

**A-310917F0002. Verizon Pennsylvania Inc. and Line Systems, Inc.** Joint Petition of Verizon Pennsylvania Inc. and Line Systems, Inc. for approval of adoption of an interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Line Systems, Inc. filed on March 19, 2001, at the Pennsylvania Public Utility Commission, a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Line Systems, Inc. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.



The contact person is Cheryl Walker Davis, Director,  
Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-573. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Telecommunications

**A-310791F0002. Verizon Pennsylvania Inc. and Unified Messaging Inc. d/b/a Single Source Inc.** Joint Petition of Verizon Pennsylvania Inc. and Unified Messaging Inc. d/b/a Single Source Inc. for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Unified Messaging Inc. d/b/a Single Source Inc. filed on March 19, 2001, at the Pennsylvania Public Utility Commission, a joint petition for approval of a resale agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Unified Messaging Inc. d/b/a Single Source Inc. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director,  
Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-574. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Water Service Without Hearing

**A-210095. Birdsboro Heights Water Company, Inc.** Application of Birdsboro Heights Water Company, Inc., for approval to offer, render, furnish or supply water service to the public in the Birdsboro Heights Residential Development in Union Township, Berks County.

Notice is hereby given that this application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before April 16, 2001, under 52 Pa. Code (relating to public utilities).

*Applicant:* Birdsboro Heights Water Company, Inc.

*Through:* Anthony E. Jeremias, Senior Project Engineer, Haines and Kibblehouse, Inc, P. O. Box 196, Skipack, PA 19474.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-575. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Water Service Without Hearing

**A-210078 F2000. Galen Hall Corporation.** Application of Galen Hall Corporation for approval of the abandonment of public water service and system to the public in a localized portion of South Heidelberg Township, Berks County.

Notice is hereby given that this application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before April 16, 2001, under 52 Pa. Code (relating to public utilities).

*Applicant:* Galen Hall Corporation

*Through and By Counsel:* Carl J. Engleman, Jr., Esquire, Bridgid M. Good, Esquire, Ryan, Russell, Ogden and Seltzer, LLP, 1100 Berkshir Boulevard, Suite 301, Reading, PA 19610-1221.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-576. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Water Service Without Hearing

**A-212285 F0086. Pennsylvania-American Water Company.** Application of Pennsylvania-American Water Company for approval of the right to offer, render, furnish or supply water service to the public in an additional portion of Upper Augusta Township, Northumberland County.

Notice is hereby given that this application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before April 16, 2001, under 52 Pa. Code (relating to public utilities).

*Applicant:* Pennsylvania-American Water Company

*Through and By Counsel:* Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-577. Filed for public inspection March 30, 2001, 9:00 a.m.]

## PHILADELPHIA REGIONAL PORT AUTHORITY

### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project 0116.P, Uniform Rental (which includes weekly cleaning and repairs), until 2 p.m. on Thursday, April 12, 2001. The bid documents can be obtained from the Director of Procurement, PRPA, 3460

N. Delaware Ave., 2nd Fl., Philadelphia, PA 19134, (215) 426-2600 and will be available April 3, 2001. PRPA is an equal opportunity employer. Contractor must comply with all applicable equal employment opportunity laws and regulations.

JAMES J. MCDERMOTT, Jr.,  
*Executive Director*

[Pa.B. Doc. No. 01-578. Filed for public inspection March 30, 2001, 9:00 a.m.]

### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #0031.1, Encapsulation of Interior, 2nd Floor, Pier 84 South, until 2 p.m. on Thursday, April 19, 2001. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Fl., Philadelphia, PA 19134, (215) 426-2600 and will be available April 5, 2001. The cost of the bid document is \$35 (includes 7% PA sales tax) which is nonrefundable. PRPA is an equal opportunity employer. Contractor must comply with all applicable equal employment opportunity laws and regulations.

Mandatory prebid job site meeting will be held Thursday, April 12, 2001, 10 a.m. at the job site, Columbus Blvd. & Porter St. Philadelphia, PA 19148 (entrance at the north or upriver gate).

JAMES T. MCDERMOTT,  
*Executive Director*

[Pa.B. Doc. No. 01-579. Filed for public inspection March 30, 2001, 9:00 a.m.]

## STATE EMPLOYEES' RETIREMENT BOARD

### Hearings Scheduled

Hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of Claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17101:

April 4, 2001	Anthony G. Kondracki (Purchase of Nonintervening Military Service Credit for service rendered as a Merchant Marine)	1 p.m.
April 11, 2001	Ronald C. Roland (Dec'd) (Contested Death Benefit)	1 p.m.
April 19, 2001	Margaret M. Harlan (Effective Date of Disability Re- tirement)	1 p.m.
April 25, 2001	Francis P. Eagen III (Pension Forfeiture due to Criminal Conviction)	1 p.m.
May 2, 2001	Harrisburg Area Comm. College (Offering SERS membership to its employees)	1 p.m.
May 2, 2001	Jacqueline A. Campbell (Dec'd) (Contested Death Benefit)	2 p.m.
May 16, 2001	David H. Larkins (Service Rendered as a Correc- tions Officer to be credited as Age 50 instead of Age 60)	1 p.m.

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 4 Pa. Code § 250.1 (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.

JOHN BROSIUS,  
*Secretary*

[Pa.B. Doc. No. 01-580. Filed for public inspection March 30, 2001, 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". The 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.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center

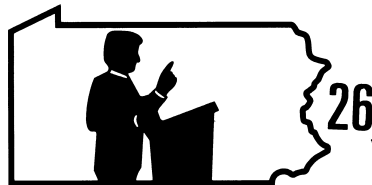
PA Department of Community and Economic Development

374 Forum Building

Harrisburg, PA 17120

800-280-3801 or (717) 783-5700

### Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services

Location: Harrisburg, Pa.

Duration: 12/1/93-12/30/93

Contact: Procurement Division  
787-0000

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

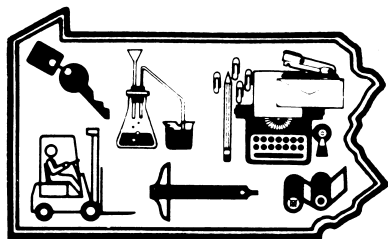
## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

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 HAHER,  
*State Treasurer*



### Commodities

**5850-01** Microcomputer, LAN Hardware & Peripherals. During each quarter of the current calendar year, new contractors may seek to be added to the list of qualified contractors for the Microcomputer & Local Area Network (LAN) Hardware & Peripherals, 5850-01. Also existing qualified contractors may seek to become qualified for additional categories of supplies or services. In order to be considered, contractors must submit a completed bid, 5850-01 to ensure receipt by the Commonwealth on or before 1:30 p.m. on the last Commonwealth business day of each quarter (the deadline). A "quarter" is defined as the three consecutive calendar months ending with the last business day of the months of March, June, September, and December of a calendar year. Those bids received before the deadline will be evaluated beginning the 1st business day of the month immediately following the deadline. The evaluation cycle will take an estimated 25 Commonwealth business days (subject to workload and holidays). Bids received after the deadline (but on or before the deadline for the next quarter) will be held and evaluated after the deadline for the next quarter. There will be no exceptions. To receive copy of bid package fax request to (717) 787-0725 or call our faxback system at (717) 705-6001.

**Department:** General Services  
**Location:** Harrisburg, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1510110** Stainless Steel Round Seats, 12" Diameter made of heavy duty metal 16 GA. Metal

**Department:** Corrections  
**Location:** Pittsburgh, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1337200** Motorcycles, 2001 Harley Davidson. Referenced Model: FLHTPI Electra Glide Police. No Substitute.

**Department:** State Police  
**Location:** Harrisburg, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**SRM198** Various electrical items, such as wire, transformers, etc. For copy of the bid package please fax request to (717) 861-2932.

**Department:** Military Affairs  
**Location:** State Reservation Maintenance, Ft. Indiantown Gap, Annville, PA 17003  
**Duration:** FY 00-01  
**Contact:** Brenda Lower, (717) 861-2118

**6350-03** Surveillance & Security Equipment & Supplies. During each quarter of the current calendar year, new contractors may seek to be added to the list of qualified contractors for the Surveillance & Security Equipment & Supplies, 6350-03. Also existing qualified contractors may seek to become qualified for additional categories of supplies or services. In order to be considered, contractors must submit a completed bid, 6350-03 to ensure receipt by the Commonwealth on or before 1:30 p.m. on the last Commonwealth business day of each quarter (the deadline). A "quarter" is defined as the three consecutive calendar months ending with the last business day of the months of March, June, September, and December of a calendar year. Those bids received before the deadline will be evaluated beginning the 1st business day of the month immediately following the deadline. The evaluation cycle will take an estimated 25 Commonwealth business days (subject to workload and holidays). Bids received after the deadline (but on or before the deadline for the next quarter) will be held and evaluated after the deadline for the next quarter. There will be no exceptions. To receive copy of bid package fax request to (717) 787-0725 or call our faxback system at (717) 705-6001.

**Department:** General Services  
**Location:** Harrisburg, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1454040** Furnish and Install Air Conditioner

**Department:** Agriculture  
**Location:** Harrisburg, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**6350-01** Security System Services. During each quarter of the current calendar year, new contractors may seek to be added to the list of qualified contractors for the Security System Services, 6350-01. Also existing qualified contractors may seek to become qualified for additional categories of supplies or services. In order to be considered, contractors must submit a completed bid, 6350-01 to ensure receipt by the Commonwealth on or before 1:30 p.m. on the last Commonwealth business day of each quarter (the deadline). A "quarter" is defined as the three consecutive calendar months ending with the last business day of the months of March, June, September, and December of a calendar year. Those bids received before the deadline will be evaluated beginning the 1st business day of the month immediately following the deadline. The evaluation cycle will take an estimated 25 Commonwealth business days (subject to workload and holidays). Bids received after the deadline (but on or before the deadline for the next quarter) will be held and evaluated after the deadline for the next quarter. There will be no exceptions. To receive copy of bid package fax request to (717) 787-0725 or call our faxback system at (717) 705-6001.

**Department:** General Services  
**Location:** Harrisburg, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1435380** Latest Model Articulated Wheel Loader with Four Wheel Drive.

**Department:** Conservation and Natural Resources  
**Location:** Millmont, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1514150** Furnish materials, tools and supervision to repair and make operational air-conditioning equipment.

**Department:** General Services  
**Location:** Philadelphia, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**7314520** Film, Shrink Wrap; Polyethylene, Single Wound, Color: Clear, Low slip, 3 Mil Thick.

**Department:** Liquor Control Board  
**Location:** Various, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**8505730** Precast Concrete Box Culvert.

**Department:** Transportation  
**Location:** SR 3014, Section 551, Oliver Township  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**5810-03** Microcomputer & Local Area Network (LAN) Software. During each quarter of the current calendar year, new contractors may seek to be added to the list of qualified contractors for the Microcomputer & Local Area Network (LAN) Software, 5810-03. Also existing qualified contractors may seek to become qualified for additional categories of supplies or services. In order to be considered, contractors must submit a completed bid, 5810-03 to ensure receipt by the Commonwealth on or before 1:30 p.m. on the last Commonwealth business day of each quarter (the deadline). A "quarter" is defined as the three consecutive calendar months ending with the last business day of the months of March, June, September, and December of a calendar year. Those bids received before the deadline will be evaluated beginning the 1st business day of the month immediately following the deadline. The evaluation cycle will take an estimated 25 Commonwealth business days (subject to workload and holidays). Bids received after the deadline (but on or before the deadline for the next quarter) will be held and evaluated after the deadline for the next quarter. There will be no exceptions. To receive copy of bid package fax request to (717) 787-0725 or call our faxback system at (717) 705-6001.

**Department:** General Services  
**Location:** Harrisburg, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1465380** Printing of Mini-Maps for Twenty-Seven State Parks.

**Department:** Conservation and Natural Resources  
**Location:** Various  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**3146417** PUG—Badlands Series B624 4x4 All Terrain Vehicle. Vehicle shall be installed with a gondola box, hydraulic lift, and Z3500 winch. Delivery to park to be included in price.

**Department:** Conservation and Natural Resources  
**Location:** Ricketts Glen State Park, 695 State Route 487, Benton, PA 17814  
**Contact:** Terence L. Daltroff, (570) 477-5675

**1129210** Air Conditioner, 60 Ton Roof Centrifugal with Chiller and Fan Cooling Unit.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, Torrance, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1495070** Compressed Printed Sponges.

**Department:** Health  
**Location:** Harrisburg, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

**1512200** Pistol, 45 Caliber, Glock Model 21. No Substitute.

**Department:** State Police  
**Location:** Hershey, PA  
**Duration:** FY 2000-01  
**Contact:** Vendor Services, (717) 787-2199

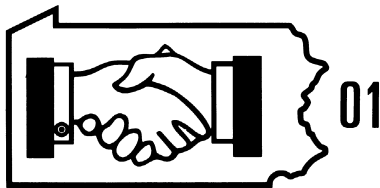
**GRA Sewing Machines** The State Correctional Institution at Graterford is looking to purchase approximately 15 sewing machines. Purchase will include approximately 8 Singer 691 Lockstitch machines; 1 Juki button machine; 2 Union special Serger machines; 4 Brother Lockstitch machines. To be delivered FOB to the Institution at Graterford, PA.

**Department:** Corrections  
**Location:** Correctional Industries, P. O. Box 246 (Off RT 29), Graterford, PA 19426  
**Duration:** Delivery to be June, 2001  
**Contact:** Gerald L. Arasin, Manager II, (610) 489-4151 Ext. 2310

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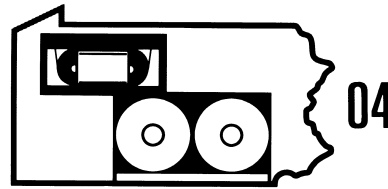
## SERVICES

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**Advertising**

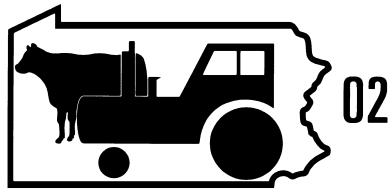
**ESU 405-01-Campaign** East Stroudsburg University is seeking a professional consultant to provide an internal assessment/feasibility study in preparation for a major gift/capital campaign. Fax your request for a bid package to (570) 422-3232, Attention Ann Zaffuto, RFP #ESU 405-01-Campaign. The RFP should be available in May 2001. All responsible bidders are invited to participate including MBE/WBE Firms.

**Department:** State System of Higher Education  
**Location:** East Stroudsburg University, 200 Prospect St., East Stroudsburg, PA 18301  
**Duration:** Six Months  
**Contact:** Ann Zaffuto, (570) 422-3595

**Audio/Video**

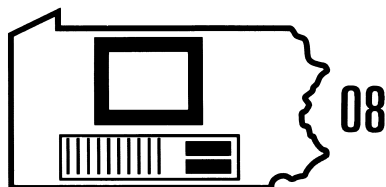
**RFI #0001-01** Request for Information—RFI#0001-01, East Stroudsburg University seeks information on which vendors can perform the following services and detailed information on how they will perform the services: ESU has a need to provide VOIP (voice over ip telephony) access for the campus community. The scope of work will provide alternate domestic and international dialing access interfaced to our existing Verizon Centrex DMS100 switch located in Stroudsburg, Pa. Access to said circuits will be via standard POTS (plain old telephone) touch tone, web based telephony PC with multimedia support and PC's with VOIP appliances. Call access will also be via calling card with local number dialing issued and managed by same VOIP vendor. International POPs (points of presence) need to be in South America, England, Ireland, Israel, India, Singapore, Europe and China as well as other overseas countries. Domestic long distance POPs need to cover all areas of the continental United States, Alaska, Hawaii, and Canada. This RFI will NOT result in an award but may be used to prepare a Request for Proposal at a later date. Send informational proposal to: Procurement & Contracting Office, East Stroudsburg University, 200 Prospect Street, East Stroudsburg, PA 18301, not later than April 5, 2001. MBE/WBE Firms Welcome.

**Department:** State System of Higher Education  
**Location:** East Stroudsburg University, East Stroudsburg, PA 18301  
**Contact:** Ann Zaffuto, (570) 422-3595

**Agricultural Services**

**SP4012130018** Contractor will provide all labor, equipment and packing materials (Red plastic bags, Plastic tape 2" wide, Labels and Boxes) required to remove from site and dispose of infectious waste. Special Note: The on-site incinerator is operational for one day per week. An increase in the number of days of operation of the incinerator would result in the estimated usage being decreased or eliminated.

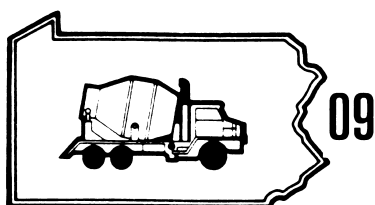
**Department:** Agriculture  
**Location:** Harrisburg  
**Duration:** 1 Year  
**Contact:** Lewis Newpher, (717) 787-8808



## Computer Related Services

**SP3500015380** Provide ViewNow Mainframe Upgrade (developed by Netmanager) from OnNet Host Suite Site License to include maintenance and support. For bid package, contact Sharon Peterson at (717) 787-2471 or shapeterso@state.pa.us.

**Department:** Environmental Protection  
**Location:** Harrisburg, PA  
**Duration:** Upgrade to be provided upon execution of contract. Maintenance and support to be provided for one year upon execution of contract.  
**Contact:** Sharon Peterson, (717) 787-2471



## Construction &amp; Construction Maintenance

**FDC-210-931.1** Sheet Piling and Sidewalk Rehabilitation at the Davis Hollow Marina, within Moraine State Park, Butler County. Work includes excavation, backfill (600 tons—2A and 2,000 tons of #57); 2,000 S.Y. of geotextiles, sheet pile bulkhead, 300 tons of bituminous paving, 200 L.F. of 12 inch and 15 inch pipe, seeding and mulching, 325 C.Y. of reinforced concrete, 1,325 L.F. of aluminum railing, fuel and service dock utilities. NOTE: Requests for Bid Documents will be taken ON or AFTER April 2, 2001.

**Department:** Conservation and Natural Resources  
**Location:** Worth and Brady Townships  
**Duration:** Complete all work by May 15, 2002  
**Contact:** Construction Management Section, (717) 787-5055

**C05:1-105.2** Bloody Run Pumping Station Improvements, Electrical, involves 1 each weatherproof generator enclosure, motor control center (MCC), emergency generator and automatic transfer switch, panel installation and wiring, upgrade existing service, conduit and wiring; and 3 each sluice gate controller retrofit. This project issues March 30, 2001; payment in the amount of \$15.00 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Everett, Bedford County  
**Duration:** 190 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817

**DGS 251-36** PROJECT TITLE: Construction of New Maintenance Building. BRIEF DESCRIPTION: Project consists of a new metal building to provide facilities for vehicle maintenance, offices and storage. Work includes General, HVAC, Plumbing and Electrical construction. ESTIMATED RANGE: \$1,000,000 to \$2,000,000. General, HVAC, Plumbing and Electrical Construction. PLANS DEPOSIT: \$160.00 per set payable to: Gwin, Dobson & Foreman, Inc. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. 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: Gwin, Dobson & Foreman, Inc., 3121 Fairway Drive, Suite B, Altoona, PA 16602, (814) 943-5214. Bid Date: WEDNESDAY, APRIL 18, 2001 AT 11 a.m.

**Department:** General Services  
**Location:** District 9-0 Headquarters, Hollidaysburg, Blair County, PA  
**Duration:** 270 CALENDAR DAYS FROM DATE OF INITIAL JOB CONFERENCE  
**Contact:** Contract & Bidding Unit, (717) 787-6556

**6797-12** PROJECT TITLE: Demolition of Existing Convention Center. BRIEF DESCRIPTION: The Sports & Exhibition Authority (Owner) will receive sealed bids for trade packages as identified below for additions and renovations to the David L. Lawrence Convention Center (Project). The Architect for the Project is Rafael Vinoly Architects, P.C. The Construction Manager is Turner Construction Company, P.J. Dick Inc. and ATS, Inc., a joint venture. APPROXIMATE VALUE: \$500,000 to \$1,500,000. Bid Packages can be examined, and Bids will be received by Owner at the field office of the Construction Manager located at 951 Penn Avenue, (basement level) Pittsburgh, PA 15222. Bid Date: WEDNESDAY, April, 11, 2001 at 2 p.m. Inquiries regarding the bidding should be made to the Construction Manager at its field office located at 951 Penn Avenue, Pittsburgh, PA 15222, Attn: Ralph Shipe, (412) 227-2010, FAX: (412) 227-2015. Bid Packages may be obtained through Accu-Copy (412) 281-0799. Determination of Responsibility. Bids will be awarded to bidders determined to be "responsible" by the Owner based upon criteria applicable to the particular Bid Package. Bidders must complete and submit a Determination of Responsibility (DOR) with the bid. MANDATORY PRE-BID MEETING. A mandatory pre-bid meeting will be held on Thursday, March 22, 2001, at 2 p.m. at the TPA Construction Office, 951 Penn Avenue (basement level), Pittsburgh, PA 15222.

**Department:** General Services  
**Location:** 951 Penn Avenue (basement level), Pittsburgh, PA 15222  
**Contact:** Ralph Shipe, (412) 227-2010

**C05:1-105.1** Bloody Run Pumping Station Improvements, Civil/Mechanical, involves approximately 18 c.y. concrete foundation slabs, 6 c.y. concrete baffle wall, 135 L.F. fencing and gates, 3 vertical propeller pumps, 1 submersible level transmitter, 1 secondary level sensing system, 1 propeller wall fan and 3 electric sluice gate actuators. This project issues March 30, 2001; payment in the amount of \$15.00 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Everett, Bedford County  
**Duration:** 190 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817

**FDC-422-970** Bituminous Paving and placing shoulder material along the bicycle trails at Nockamixon State Park in Bucks County. Work includes 145 tons ID-2 binder, 1,600 tons—ID-2 wearing, 540 tons of 2RC and 120 tons of 2A aggregate. NOTE: Requests for Bid Documents will be taken ON or AFTER April 2, 2001.

**Department:** Conservation and Natural Resources  
**Location:** Haycock Township  
**Duration:** 45 Days  
**Contact:** Construction Management Section, (717) 787-5055

**FDC-315-1443.1** Repairs to Dam at Whipple Dam State Park in Huntingdon County. Work includes excavating, backfilling and compaction; 500 S.F. clay liner; E & S measures; dewatering; landscaping; 65 L.F. of handrail; 500 S.F. masonry; and 16 C.Y. of Cast-In-Place concrete. NOTE: Requests for Bid Documents will be taken ON or AFTER April 2, 2001.

**Department:** Conservation and Natural Resources  
**Location:** Jackson Township  
**Duration:** 60 Days  
**Contact:** Construction Management Section, (717) 787-5055

**FDC-310-882.1** Renovations to Visitors Center at Pine Grove Furnace State Park in Cumberland County. Work includes selective demolition, concrete work, steel stairs, replacement roofing sheathing (100 S.F.), sheet metal roof and painting.

**Department:** Conservation and Natural Resources  
**Location:** Cook Township  
**Duration:** 120 Days  
**Contact:** Construction Management Section, (717) 787-5055

**FDC-300-878.1** Renovations to existing cottage at Shawnee State Park in Bedford County. Work includes demolition, earthwork, carpentry, exterior insulation and finish systems; asphalt shingles, flashing and trim, roof specialties, joint sealants, doors and windows, hardware, roof sheathing (1600 S.F.); painting and staining. NOTE: Requests for Bid Documents will be taken ON or AFTER April 4, 2001.

**Department:** Conservation and Natural Resources  
**Location:** Napier Township  
**Duration:** 120 Days  
**Contact:** Construction Management Section, (717) 787-5055

**DGS A 940-52** PROJECT TITLE: Forster Street Upgrades. BRIEF DESCRIPTION: Furnish and install new panel boards along with associated feeders. Overhaul an existing 165 ton chiller and install new chiller control panel. ESTIMATED RANGE: \$75,000 TO \$200,000. HVAC and Electrical Construction. PLANS DEPOSIT: \$25 per set payable to: Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. 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 a separate check for \$5 per set or provide your express mail account number to the office listed below. Mail requests to: Department of General Services, Room 107, Headquarters Building, 18th & Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid Date: WEDNESDAY, APRIL 18, 2001 AT 2 p.m.

**Department:** General Services  
**Location:** Forster Street Building, Harrisburg, Dauphin County, PA  
**Duration:** 90 CALENDAR DAYS FROM DATE OF INITIAL JOB CONFERENCE  
**Contact:** Contract & Bidding Unit, (717) 787-6556

**MU 2001-10-A** Mansfield University is accepting bids for renovation of main lobby, recreation and kitchen/snack bar areas of Laurel Manor Lobby. Including General, HVAC, Plumbing, and Electrical Construction. For bid packages call (570) 662-4148 or send \$30 non-refundable check to: Purchasing Department, Mansfield University, Brooks Maintenance Building, Mansfield, Pa. 16933. Bid opening May 3, 2001 at 2 p.m. Pre-bid conference has been scheduled for April 20, 2001 at 10 a.m. in Brooks Maintenance Building at Mansfield University. All responsible bidders are invited to participate including MBE/WBE firms.

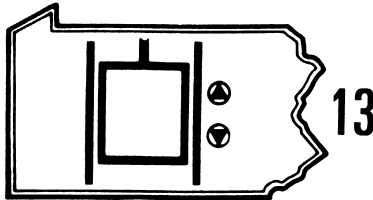
**Department:** State System of Higher Education  
**Location:** Mansfield University, Laurel Dormitory, Mansfield, PA 16933  
**Duration:** 135 Calendar days from Notice to Proceed  
**Contact:** Peg Chapel, Purchasing, (570) 662-4148

**SP4002130019** Construction of a roof/canopy over Dock 1 for the Pennsylvania Veterinary Laboratory.

**Department:** Agriculture  
**Location:** Harrisburg  
**Duration:** 3 Months  
**Contact:** Lewis Newpher, (717) 787-8808

**DGS A 972-14 REBID 2 PROJECT TITLE:** Roof & Gutter/Downspout Replacement—Various Buildings. **BRIEF DESCRIPTION:** Replace Roofing, flashing, gutters and downspouts on various buildings. **ESTIMATED RANGE:** \$100,000 to \$500,000. General Construction. **PLANS DEPOSIT:** \$25 per set payable to: COMMONWEALTH OF PA. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. 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 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 a separate check for \$5 per set or provide your express mail account number to the office listed below. Mail requests to: Department of General Services, Room 107 Headquarters Buildings, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid Date: WEDNESDAY, April 25, 2001 at 2 p.m. A Pre-Bid Conference has been scheduled for Wednesday, April 11, 2001 at 10 a.m. at Landis Valley Museum in the Administration Offices Conference Room in the County Store, Lancaster, PA. Contact: William Morrow, (717) 569-0401 EXT. 220. All Contractors who have secured Contract Documents are invited and urged to attend this Pre-Bid Conference. A Contractor's Qualification Form is included in the Bid Package and must be completed and submitted prior to award. The Contractor must demonstrate the qualifications and experience of key full-time personnel, gained within the last 10 years, involving, carpentry, roofing and painting.

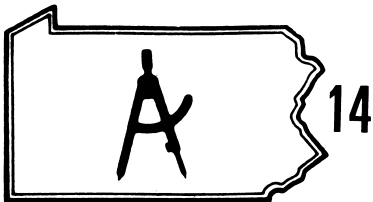
**Department:** General Services  
**Location:** Landis Valley Museum, Lancaster, Lancaster County, PA  
**Duration:** 150 CALENDARS DAYS FROM DATE OF INITIAL JOB CONFERENCE  
**Contact:** Contract and Bidding Unit, (717) 787-6556



### Elevator Maintenance

**060022** The Department of Transportation, Engineering District Six, is accepting bids for the monthly maintenance and service of three Otis Hydraulic Elevator Systems (two each passenger elevators and one freight elevator) in the five story office building located at 7000 Geerdes Blvd, King of Prussia, PA 19406. To obtain a bid package please fax name, address, fax and telephone number to our building maintenance supervisor at Fax No: (610) 205-6980. The anticipated release of the bid package is April 16, 2001. Bid opening will be approximately two weeks from this date.

**Department:** Transportation  
**Location:** Pennsylvania Department of Transportation, Engineering District 6-0, 7000 Geerdes Blvd., King of Prussia, PA 19406  
**Duration:** Two (2) years  
**Contact:** Mike Masterson, Building Maintenance Supervisor, (610) 205-6725



### Engineering Services

**SP3510016709** Provide professional consultant assistance on mine subsidence investigations on an as-needed basis. Evaluations shall be performed at sites that require a determination of mine subsidence damage to structures occurring anywhere over the underground bituminous coal fields of Pennsylvania. Consultant's office shall be located within a 40-mile radius of Pittsburgh, PA.

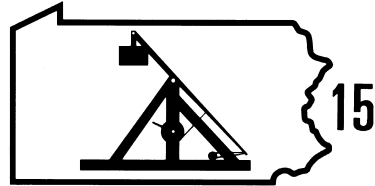
**Department:** Environmental Protection  
**Location:** Services required in various locations throughout Pennsylvania.  
**Duration:** 7/1/01 through 6/30/2002  
**Contact:** Sharon Peterson, (717) 787-2471

**PennDOT-ECMS** The Pennsylvania Department of Transportation has established a website advertising for the retention of engineering firms. You can view these business opportunities by going to the Department of Transportation's Engineering and Construction Management System at [www.dot2.state.pa.us](http://www.dot2.state.pa.us).

**Department:** Transportation  
**Location:** Various  
**Contact:** [www.dot2.state.pa.us](http://www.dot2.state.pa.us)

**SP3510016278** Perform tracer studies to assess chlorine contact times at approximately 200 small filtration plants. For bid package, contact Sharon Peterson at (717) 787-2471 or [shapeterso@state.pa.us](mailto:shapeterso@state.pa.us).

**Department:** Environmental Protection  
**Location:** Throughout the Commonwealth  
**Duration:** July 1, 2001 through June 30, 2002, with a renewal option to June 30, 2004.  
**Contact:** Sharon Peterson, (717) 787-2471



### Environmental Maintenance Service

**AMD 16(1176)101.1** Acid Mine Drainage Abatement, Allen Point, involves approximately 245,000 c.y. grading, 1,650 c.y. ditch excavation, 1,100 s.y. erosion matting, 1,400 s.y. rock lining with filter material, and 28,015 tons limestone screening. Funds are available for this project from the \$14.1 million Pennsylvania 2000 AML grant. This project issues March 30, 2001; payment in the amount of \$15.00 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Clarion Township, Clarion County  
**Duration:** 375 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817

**OSM 35(1760)101.1** Abandoned Mine Reclamation, Mayfield Southeast, involves approximately 349,220 c.y. grading, 2,915 c.y. drainage excavation, 3,605 s.y. lined drainage facilities and 34 acres seeding. Federal funds are available for this project from the \$27.5 million Pennsylvania 1999 AML grant. This project issues March 30, 2001; payment in the amount of \$10 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Mayfield, Archbald and Jermyrn Townships, Lackawanna County  
**Duration:** 290 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817

**OSM 26(2761)101.1** Abandoned Mine Reclamation, Tower Hill No. 2 South, involves demolition and disposal of abandoned structures and equipment, demolition and disposal of coke ovens, approximately 320 l.f. fence, 4 acres selective grading and 4.9 acres seeding. Federal funds are available for this project from the \$27.5 million Pennsylvania 1999 AML grant. This project issues March 30, 2001; payment in the amount of \$10 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Luzerne Township, Fayette County  
**Duration:** 100 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817

**OSM 04(6293)101.1** Abandoned Mine Reclamation, County School East, involves approximately 1,337,207 c.y. grading, seeding with grasses 79 acres and planting 6,480 trees. Federal funds are available for this project from the \$27.5 million Pennsylvania 1999 AML grant. This project issues March 30, 2001; payment in the amount of \$15.00 must be received before bid documents will be sent.

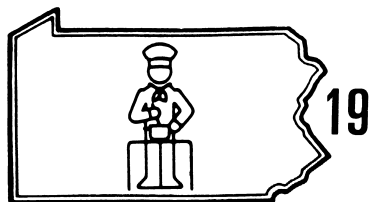
**Department:** Environmental Protection  
**Location:** Big Beaver Township, Beaver County  
**Duration:** 740 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817

**BOGM 01-05** Clean Out and Plug Five (5) Abandoned Gas Wells, Industrial Development Company, C. H. Snider, Mrs. Grace Frederick, Mr. Dennis Troutman and Mr. Roy Coleman properties, estimated to be between 2,383 and 3,420 feet each in depth; prepare and restore well sites; and mobilize and demobilize plugging equipment. This project issues March 30, 2001; payment in the amount of \$10 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Washington, Redbank, Gilpin and South Bend Townships, and Borough of Apollo, Armstrong County  
**Duration:** 70 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817

**BOGM 00-02R** Clean Out and Plug Twenty Six (26) Abandoned and Orphan Oil Wells, Game Commission property, estimated to be 850 each in depth; prepare and restore well sites; and mobilize and demobilize plugging equipment. This project issues March 30, 2001; payment in the amount of \$10 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** President Township, Venango County  
**Duration:** 130 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 787-7817



## Food

**PB-01-05** Frozen Waffles—80,000 servings; Cheese Pizza—60,000 servings; Tater Tots—45,000 lbs.; Frozen Vegetables: Broccoli, Cuts and Spears—30,000 lbs.; Brussel Sprouts 20,000 lbs.; Cauliflower—30,000 lbs.; Vegetable Blend, Italian—30,000 lbs. Quantities are estimated. To be bid out by the institution as needed.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002.  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890

**PB-01-09** Cabbage—80,000 lbs.; Carrots—60,000 lbs.; Celery—900 cs.; Cucumbers—22,000 lbs.; Lettuce, Salad Mix—52,000 lbs.; Onions—80,000 lbs.; Sweet Peppers—1,000 bushels; Tomatoes—1,500 cs.; Potatoes—325,000 lbs.; Apples—2,200 cs.; Bananas—40,000 lbs.; Grapefruit—1,000 cs.; Oranges—2,200 cs.; Baking Potatoes—48,000 lbs.; Mushrooms—5,000 lbs.; Cauliflower—5,000 lbs.; Broccoli—1,500 lbs.; Kale—1,440 lbs.; Watermelon—16,000 lbs.; Cantaloupes—4,400 ea.; and Fresh Corn—1,500 dz. Quantities are estimates. To be bid out by the institution as needed.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890

**PB-01-08** Chicken Leg Quarters—90,000 lbs.; Chicken Patties—20,000 lbs.; Unbreaded Chicken or Turkey Fillet—10,000 lbs.; Turkey Ham—10,000 lbs.; Turkey Polska Kielbasa—20,000 lbs.; Processed Turkey Breast—20,000 lbs.; Ground Turkey—25,000 lbs.; Turkey Thighs—25,000 lbs.; Fresh Turkey Breast—3,500 lbs.; Turkey Bologna—4,000 lbs.; Smoked Turkey—4,000 lbs.; Poultry Salami—2,000 lbs.; Pickle and Pimento Poultry Loaf—2,000 lbs. Quantities are estimates. To be bid out by the institution as needed.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890

**PB-01-07** Veal Patties—20,000 lbs.; Beef Rib-B-Q—20,000 lbs.; Beef Liver—10,000 lbs.; Beef Frankfurters—20,000 lbs.; Beef Sandwich Wafer Steaks—20,000 lbs.; Meatballs—15,000 lbs.; Salisbury Steaks—20,000 lbs.; Beef Polish Sausage—15,000 lbs.; Tavern Ham—5,000 lbs. Quantities are estimates. To be bid out by the Institution as needed.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002.  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890

**PB-01-06** Clams: Frozen, 3,500 lbs.; Crab Cakes: Maryland Style, frozen, 10,000 lbs. Quantities are estimates. To be bid out by the institution as needed.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002.  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890

**7009-0208** Beets, carrots, US #1. To be used for canning in Correctional Industries cannery.

**Department:** Corrections  
**Location:** Correctional Industries, SCI Rockview, Rt 26/Box 1200, Bellefonte, PA 16823  
**Duration:** 1 year  
**Contact:** MaryAnn Ulrich, (717) 731-7134

**PB-01** Equipment and supplies required for the dispensing of carbonated soft drink beverages in the Institution's Dietary Department.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2004.  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890

**PB-01-01** Bread: 23 oz. loaves, 28 servable slices. No pork or pork by-products. White Bread—150,000 loaves. Wheat Bread—20,000 loaves. Quantities are estimated. To be bid out by the institution as needed.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 2, 2001, through June 30, 2002.  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890 Ext. 142

**PB-01-04** Eggs: Shelled, Medium, Grade A, Class 1, 50,000 dozen; Eggs: Whole liquid, frozen 20,000 lbs. Quantities are estimates. To be bid out by the institution as needed.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002.  
**Contact:** Nancy L. Lasko, Purchasing Agent, (570) 644-7890

**LHF-1196** Contractor to supply white bread; rye bread; wheat bread; Italian bread; hamburger/frankfurter rolls; cloverleaf dinner rolls; hoagie/sub rolls; cake and yeast type doughnuts and fruit filled rolls as required by the food service department at SCI Laurel Highlands. Telephone orders will be called in by the Food Service Manager when items are required. Items are to be delivered the day after the telephone order is placed. Bid on file at Institution.

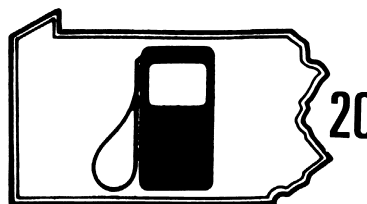
**Department:** Corrections  
**Location:** State Correctional Institution at Laurel Highlands, 5706 Glades Pike, P. O. Box 631, Somerset, PA 15501-0631  
**Duration:** 07/01/01 to 06/30/02  
**Contact:** Carole Kolesko PA II, (814) 445-6501 x: 347

**PB-01-02** Milk: 2% Butter Fat. Vitamin A & D Fortified, homogenized, half pint containers, 580,000 containers. Milk—Skim: Half pint containers, 20,000 containers. All milk to conform to Title 7, PA Code Chapter 50 of the Milk Sanitation and standards. Quantities are estimates. To be bid out by the institution.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890

**PB-01-03** Cheese: American-pre-sliced, 25,000 lbs.; Provolone—5,000 lbs.; Cottage Cheese-Low Fat (1%), small curds—2,000 lbs. Margarine: Solid—30,000 lbs.; Reddies—6,000 cs. Ice Cream: Neapolitan Slices, 85,000 servings. Sherbet: Assorted flavors, 4 oz. cups, 85,000 each. Quantities are estimates. To be bid out by the institution as needed. Yogurt: Low Fat, plain, non-sweetened, 5 lb. container. Must have temperature range of 35-40 degrees upon delivery. Shelf life of at least 21 days.

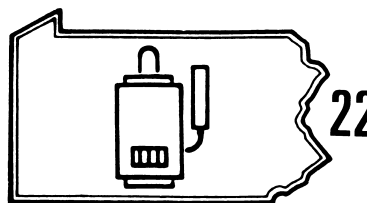
**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, PA 17866  
**Duration:** July 1, 2001, through June 30, 2002.  
**Contact:** Nancy A. Lasko, Purchasing Agent, (570) 644-7890 Est. 142



## Fuel Related Services

**ITQ #2001-08** The State System of Higher Education, Office of the Chancellor, is soliciting proposals from licensed natural gas suppliers to provide natural gas services to institutions and facilities of the State System of Higher Education. This ITQ will result in a multiple participation award contract. If interested please submit your proposal to provide these services as described in detail in ITQ #2001-08 located at [www.sshechan.edu/Procurement/bids.htm](http://www.sshechan.edu/Procurement/bids.htm) or contact Linda Venneri at (717) 720-4135 or [lvenneri@sshechan.edu](mailto:lvenneri@sshechan.edu).

**Department:** State System of Higher Education  
**Location:** Harrisburg, PA  
**Duration:** 5 Years  
**Contact:** Linda Venneri, (717) 720-4135



## HVAC Services

**1375017004** Provide emergency and routine repair work for electrical system. The contractor must respond to the call within 2 hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military Affairs  
**Location:** PAANG, 171st Refueling Wing, Pittsburgh International Airport, Coraopolis, PA 15108-4800  
**Duration:** 1 Oct 01—30 Sep 04  
**Contact:** Vicky Lengel, (717) 861-8579



**1375017003** Provide emergency and routine repair work for plumbing system. The contractor must respond to the call within 2 hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military Affairs  
**Location:** PAANG, 171st Refueling Wing, Pittsburgh International Airport, Coraopolis, PA 15108-4800  
**Duration:** 1 Oct 01—30 Sep 04  
**Contact:** Vicky Lengel, (717) 861-8579

**1375017002** Provide emergency and routine repair work for HVAC system. The contractor must respond to the call within 2 hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military Affairs  
**Location:** PAANG, 171st Refueling Wing, Pittsburgh International Airport, Coraopolis, PA 15108-4800  
**Duration:** 1 Oct 01—30 Sep 04  
**Contact:** Vicky Lengel, (717) 861-8579

**026-0007** Contractor to provide maintenance of oil fired heating system for the Pennsylvania Department of Transportation, 101 Locust Street, Coudersport, Pa. 16915. Please fax all bid requests to: (814) 274-9764 Attention: Janice Lutz.

**Department:** Transportation  
**Location:** 101 Locust Street, Coudersport, Pa 16915  
**Duration:** One year contract w/renewal options for 2 years.  
**Contact:** Janice Lutz, (814) 274-9181

**080S69** This contract is to provide HVAC repair services for the PennDOT District 8-0 Engineering Office located at 2140 Herr Street in Harrisburg. Bid packages must be requested via fax at (717) 787-6662. All requests must include the Contractor's (company) name, address, phone number, fax number (if available), and contact person.

**Department:** Transportation  
**Location:** PennDOT Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103  
**Duration:** One (1) year period with an option for four (4) such renewals.  
**Contact:** Tom Willier, (717) 787-4191

**1509-03842** Labor and parts to service and repair Thermo-King refrigeration units on C.I. Freight fleet reefer trailers.

**Department:** Corrections  
**Location:** SCI-Camp Hill Freight Terminal, Camp Hill, Pa.  
**Duration:** 3 years  
**Contact:** Russ Ilgenfritz, (717) 975-4988

**PGC-2697** Agency is seeking contractor to provide 2-year maintenance on approximately 78 McQuay water source heat pumps (approximately 14 years old) McQuay WODC panel, control and alarm panel; controls operating the primary/secondary circulating pumps, well pump, exhaust fans, two electric boilers, and fresh air supply fans. Also, provide 2-year maintenance as follows: Service calls, repair labor, travel expenses, all repair/replacement parts and material to service, maintain and provide regular preventive maintenance as required by the manufacturer of the Liebert computer room air conditioning equipment. (Approximately 14 years old). More information available in bid package by contacting agency.

**Department:** Game Commission  
**Location:** Pennsylvania Game Commission Automotive and Procurement Division, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797  
**Duration:** July 1, 2001 through June 30, 2003  
**Contact:** Diane Shultz or Linda Beaver, (717) 787-6594



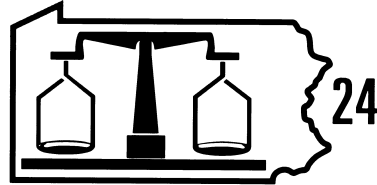
### Janitorial Services

**SP3864110001** The Nolde Forest Environmental Education Center, 2910 New Holland Road, Reading, PA 19607 is accepting bids for SERVICE PURCHASE CONTRACT NO. SP3864110001, JANITORIAL SERVICES, NOLDE FOREST ENVIRONMENTAL EDUCATION CENTER, BERKS COUNTY, PENNSYLVANIA. Bid documents containing pertinent information can be obtained from the office of the Center Manager, (610) 796-3699. Cleaning services are requested for 30 room mansion/office, education building and three comfort stations. Bids will be accepted for 14 days after publication of this notice.

**Department:** Conservation and Natural Resources  
**Location:** Nolde Forest Environmental Education Center, 2910 New Holland Road, Reading, PA 19607  
**Duration:** July 1, 2001 to June 30, 2002 with option to renew  
**Contact:** Daniel Hewko, (610) 796-3699

**SP3101500** The PA Emergency Management Agency is soliciting bids to provide custodial services on a weekly basis to PEMA's Eastern Regional Office, Hamburg Center, Hamburg, PA 19526. To request a bid package contact Fiscal Management at (717) 651-2189 or send an email to aschaeffer@state.pa.us, referencing SP3101500.

**Department:** PA Emergency Management Agency  
**Location:** PA Emergency Management Agency, Eastern Regional Office, Hamburg Center, Hamburg, PA 19526  
**Duration:** July 1, 2001 through June 30, 2003  
**Contact:** Amy Schaeffer, (717) 651-2189



### Laboratory Services

**031A20** The contract consists of collecting samples and performing water quality analyses for wastewater discharges at I-80 Roadside Rest Areas in Columbia and Montour Counties. Request for bid packages may be directed to S.A. Hunsinger at Fax (570) 387-4254

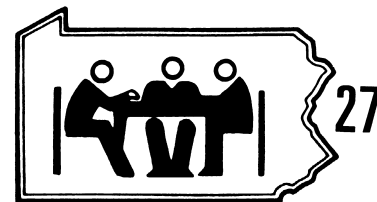
**Department:** Transportation  
**Location:** I-80 Roadside Rest Area, Columbia and Montour Counties, PA  
**Duration:** One year contract with possibility of four one year renewals  
**Contact:** Susan A. Hunsinger, (570) 387-4250 x230



### Laundry/Dry Cleaning & Linen/Uniform Rental

**1250** CONTRACTOR SHALL SUPPLY 20 VARIOUS SIZES OF COVERALLS ONCE A WEEK, PICK-UP AND CLEANING 11 PER PERSON (5 CHANGES) LIGHTWEIGHT LONG SLEEVE 65/35 COVERALLS NON-INSULATED IN LIGHT BLUE (SUMMARY: UP TO 25 EMPLOYEES @ 11 COVERALLS PER PERSON PER WEEK) CONTRACT SHALL BE FOR ONE (1) YEAR WITH THREE (3) RENEWALS. SIGNIFICANT COST SAVINGS DEPT DOES NOT HAVE MEANS TO DO THIS.

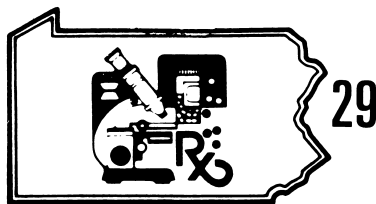
**Department:** Transportation  
**Location:** PA DEPT OF TRANSPORTATION, P. O. BOX 189, GREENSBURG, PA 15601  
**Duration:** 1 YEAR WITH 3 RENEWALS  
**Contact:** PAM JORDAN, (724) 832-5387



### Lodging/Meeting Facilities

**03-B-01** Conference Facility needed for 3-day conference to be held between the dates of June 19—29, 2001, depending on hotel availability. Services needed include meeting space for approximately 200 people, soda/coffee breaks, luncheon and audio/visual equipment. Overnight accommodations will be needed. Facility must be accessible to persons with disabilities in accordance with the Americans with Disabilities Act of 1990. Conference to be held in the Harrisburg, Hershey and Grantville area. Easy accessibility to major interstates & turnpike, free parking for overnight guests and commuters are requested. Interested parties can call or fax request to (717) 787-0688

**Department:** Labor and Industry  
**Location:** Department of Labor and Industry, Team PA CareerLink, 12 Floor, L & I Building, Harrisburg, PA 17121  
**Duration:** 3-days between June 19—29, 2001 depending of availability  
**Contact:** C Thomas/B Fenton, (717) 787-2788/(717) 787-2560



## Medical Services

**SP1345011007** CONTRACTOR WILL SUPPLY A LICENSED PHARMACIST TO FILL-IN DURING ABSENCES OF THE FACILITY PHARMACIST DUE TO SICKNESS, VACATION, OR OTHER UNFORESEEN CIRCUMSTANCES. PLEASE FAX REQUEST FOR BIDS TO (610) 948-2461 AND MARK TO THE ATTENTION OF THERESA BARTHEL.

**Department:** Military Affairs  
**Location:** SOUTHEASTERN VETERANS CENTER, 1 VETERANS DRIVE, SPRING CITY, PA 19475  
**Duration:** JULY 1, 2001 THROUGH JUNE 30, 2002  
**Contact:** THERESA BARTHEL, (610) 948-2493

**10671007** Provide services of psychiatric consultant with special expertise in the field of evaluation and treatment of patients with sexual deviant/inappropriate behavior. Request bid packet #10671007 for detailed specifications.

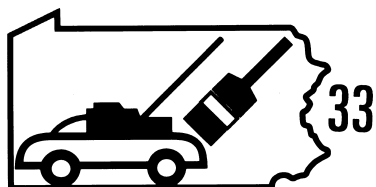
**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** 7/1/01—6/30/04 with 2 one year renewal options  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

**10776004** Provide wound care for our patients at the Allentown State Hospital. Wound Care will be needed to treat the patient whose wounds will not heal due a variety of reasons (constantly touching, ulcerated, etc.) Additional information can be attained by contacting the purchasing department at the Allentown State Hospital (610) 740-3425.

**Department:** Public Welfare  
**Location:** Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109-2498  
**Duration:** July 1, 2001 to June 30, 2005  
**Contact:** Bob Mitchell, Purchasing Agent, (610) 740-3425

**10974001** Contractor to provide portable X-ray Services

**Department:** Public Welfare  
**Location:** Warren State Hospital, 33 Main Dr., N. Warren, PA 16365  
**Duration:** 07/01/01—06/30/06  
**Contact:** Ms. Bobbie D. Muntz, PA III, (814) 726-4496



## Property Maintenance

**00718-000-00-AS-EXHIBIT-CANCELLATION** CANCELLATION OF PROJECT: Scope of Work: Renovation to lighting in the exhibit gallery. Project includes supply and installation of new lighting fixtures connected to existing panels, complete with controls system, at Somerset Historical Center, located in Somerset, PA, Somerset County.

**Department:** Historical and Museum Commission  
**Location:** Somerset Historical Center, 10649 Somerset Pike, Somerset, PA 15501  
**Duration:** May 1, 2001 to October 31, 2001  
**Contact:** Judi Yingling, (717) 772-2401

**0200-01** Furnish and install millwork cabinetry for new PHMC Library to house online catalog, specialized collection materials, and to provide additional study areas.

**Department:** Historical and Museum Commission  
**Location:** Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0054  
**Duration:** 6 months  
**Contact:** Tobl Gilson, (717) 772-8875

**CL-540** Clarion University of Pennsylvania is soliciting bids for installation of a wet pipe sprinkler system in a seven story dormitory, Wilkinson Hall, on the Clarion campus. The building is currently served by a six-inch water main which serves stand pipes and hose cabinets in each of the stair tower areas. Minor electrical work will consist of extending wiring from various signaling devices to a new fire alarm panel, furnished by the University. Reconnection of all existing signaling devices is also included in the project. One prime contract to be awarded. Bid packages available from contact person, 218 Carrier Hall, Clarion University, Clarion, PA 16214 with check in the amount of \$20, non-refundable, payable to the University. Pre-Bid Conference: 10 a.m., April 6, 2001. Bids Due: 2 p.m., April 16, 2001.

**Department:** State System of Higher Education  
**Location:** Clarion University, Clarion, PA  
**Duration:** 90 days for Notice to Proceed  
**Contact:** Judy McAninch, Contract Specialist, (814) 393-2240

**08171** Vendor to provide repairs to a small log structure on site at the Conrad Weiser Homestead. Repairs include roofing, carpentry, and masonry.

**Department:** Historical and Museum Commission  
**Location:** Conrad Weiser Homestead, 28 Weiser Rd., Womelsdorf, PA 19567  
**Contact:** James Lewars, (610) 582-4900

**SP-386225001** Remove (2) 24" butterfly valves and appurtenances and replace with (2) 24" knife-gate valves and appurtenances in the wet well of the fountain pumphouse at Point State Park (South building). Bid opening date has not been set.

**Department:** Conservation and Natural Resources  
**Location:** Point State Park, 101 Commonwealth Place, Pittsburgh, PA 15222-1003  
**Duration:** May 14, 2001 to June 30, 2001  
**Contact:** Carol Shirey, (724) 865-7854

**03958-001-00-AS-INS-1** Project Name: Masonry Cleaning & Pointing. Project Scope includes: Cleaning and spot re-pointing of exterior brick and stone walls at Fort Pitt Museum, Pittsburgh, PA., Allegheny County. Project includes in excess of 6,500 sf of surface area to be cleaned with sensitive cleaning methods. Spot pointing and misc. repairs are also involved in the project. A pre-bid meeting will be held on April 16, 2001 at 3:30 p.m. at the Fort Pitt Museum, Pittsburgh, PA for all firms interested in submitting bids for the project. For directions contact the site at (412) 281-9285 or the project manager, Ted Strosser at (717) 772-4992. All interested bidders should submit a \$25 (non-refundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053—ATTENTION: Judi Yingling (717) 772-2401 OR FAX (717) 214-2988. All proposals are due on Tuesday, May 1, 2001 at 11:45 a.m. Bid opening will be held in The Commonwealth Keystone Building, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053.

**Department:** Historical and Museum Commission  
**Location:** Fort Pitt Museum, 101 Commonwealth Place, Pittsburgh, PA 15222. Phone: (412) 281-9285  
**Duration:** May 1, 2001 to October 31, 2001  
**Contact:** Judi Yingling, (717) 772-2401

**SP382100014** Carpentry services are required for rehabilitation of two barns in Tyler State Park.

**Department:** Conservation and Natural Resources  
**Location:** Tyler State Park, Newtown Township  
**Duration:** 120 days after notice to proceed  
**Contact:** Sandra Lewis, (215) 453-5030

**00699-000-00-AS-5** Project Name: Roof Replacement. Scope of Work includes: replace wood shingle roofs on the Robert Fulton Birthplace & Restroom Building, Intersection of Route 222 & Swift Road, Quarryville, PA, Lancaster County. A pre-bid meeting will be held on Wednesday, April 18, 2001 at 10 a.m. at the Brick Warehouse located at Robert Fulton Birthplace, Intersection of Route 222 & Swift Road, Quarryville, PA, Lancaster County for all firms interested in submitting bids for the project. For directions to the site contact the Project Manager, Joe Lauver at (717) 787-6242. All interested bidders should submit a \$25 (non-refundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053—ATTENTION: Judi Yingling (717) 772-2401 OR FAX (717) 214-2988. All proposals are due on Wednesday, May 2, 2001 at 11:45 a.m. Bid opening will be held in The Commonwealth Keystone Building, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053.

**Department:** Historical and Museum Commission  
**Location:** Robert Fulton, Intersection of Route 222 & Swift Road, Quarryville, PA, Lancaster County.  
**Duration:** June 1, 2001 to October 31, 2001  
**Contact:** Judi Yingling, (717) 772-2401

**00718-000-00-AS-EXHIBIT** Scope of Work: Renovation to lighting in the exhibit gallery. Project includes supply and installation of new lighting fixtures connected to existing panels, complete with controls system, at Somerset Historical Center, located in Somerset, PA, Somerset County. For directions, contact the site at (814) 445-6077. All interested bidders should submit a \$25 (non-refundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053—ATTENTION: Judi Yingling (717) 772-2401 OR FAX (717) 214-2988. All proposals are due on Monday, April 16, 2001 at 11:45 a.m. Bid opening will be held in The Commonwealth Keystone Building, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053.

**Department:** Historical and Museum Commission  
**Location:** Somerset Historical Center, 10649 Somerset Pike, Somerset, PA 15501 Phone: (814) 445-6077  
**Duration:** May 1, 2001 to October 31, 2001  
**Contact:** Judi Yingling, (717) 772-2401

**MI-809** Project Name: Boyer Computer Center—Window Replacement Project. Scope: Furnish and install 3 new windows; cut masonry openings for new windows; construct new partition, fascias and soffits; modify existing partition, ceiling, and finishes; relocate existing conduit and 2 shelves; and other items as necessary. Prebid date/time/place: 03/30/01, 10 a.m., Boyer Room 231. Opening date/time/place: 04/11/01, 10 a.m., Dilworth Room 232. Plans Cost: no charge.

**Department:** State System of Higher Education  
**Location:** Millersville University, Millersville, PA 17551  
**Duration:** 30 calendar days from the date of the Notice to Proceed.  
**Contact:** Jill M. Coleman, (717) 872-3730

**4300-05008** SCI Greene will be issuing bids for Gymnasium Floor Resurfacing and Court Relining and painting. Work will involve sanding and sealing. On site visit will be required by all responsible bidders. Specifications will be issued with bid.

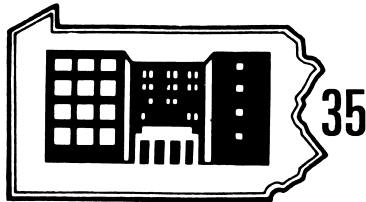
**Department:** Corrections  
**Location:** SCI Greene, 169 Progress Drive, Waynesburg, PA 15370  
**Duration:** Time needed to complete project. Will be finished before June 30, 2001  
**Contact:** Pat Nichols, (724) 852-5533

**043130** Flail mowing of state highways in District 4-3, Luzerne County. Two cycles per contract period, with an optional 3rd cycle. Approximately 536 acres per cycle.

**Department:** Transportation  
**Location:** PennDOT Maintenance District 4-3 (Luzerne County) 3450 Bear Creek Blvd., Bear Creek, PA 18602  
**Duration:** 6/16/01 through 6/15/02  
**Contact:** Robert Watkins, (570) 826-2386

**00709-000-00-AS-4—EXTENSION NOTE:** BID DATE HAS BEEN EXTENDED AND PRE-BID SCHEDULED AS LISTED BELOW. Project Name: Exterior Painting of Shutter and windows at the Mansion—Scope includes: Repair and paint 80 (approx.) historic wood window units and approximately 30 (approx.) pairs of historic wood shutters, at the Highlands, Fort Washington, PA, Montgomery County. For direction contact the Project Manager, Joe Lauver at (717) 787-6242. NOTE: THERE WILL BE A PRE-BID AT THE SITE ON APRIL 13, 2001 AT 10 a.m. All interested bidders should submit a \$25 (non-refundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053—ATTENTION: Judi Yingling, (717) 772-2401 OR FAX (717) 214-2988. All proposals are due on Monday, April 30, 2001 at 11:45 a.m. (NOTE: THIS DATE HAS BEEN EXTENDED) Bid opening will be held in The Commonwealth Keystone Building, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053.

**Department:** Historical and Museum Commission  
**Location:** The Highlands, 7001 Sheaff Lane, Fort Washington, PA 19034  
**Duration:** April 1, 2001 to October 31, 2001  
**Contact:** Judi Yingling, (717) 772-2401



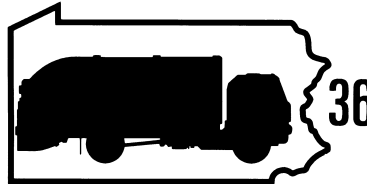
## Real Estate Services

**93201** LEASE OFFICE/BARRACKS SPACE TO THE COMMONWEALTH OF PA. Proposals are invited to provide the Pennsylvania State Police with 5,299 useable square feet of office/barracks space in Cameron County, PA with a minimum parking for 37 vehicles, within the following boundaries: (1) a 5 mile radius of SR120 & SR 155 or (2) a 5 mile radius of SR 120 & SR 46. For more information on SFP #93201 which is due on May 21, 2001 visit [www.dgs.state.pa.us](http://www.dgs.state.pa.us) or call (717) 787-4394.

**Department:** State Police  
**Location:** 505 North Office Building, Harrisburg, PA 17125  
**Contact:** John Hocker, (717) 787-4396

**93199** LEASE OFFICE SPACE TO THE COMMONWEALTH OF PA 4,927 sq. ft. of office space with 10 parking spaces, located within the Borough of McConnellsburg or Lincoln Way West/East between Back Run Road and Lincoln Highway; Great Cove Road between Confederate Lane and Lowery Drive; Cito Road between Lincoln Highway East and Thorton Drive; Buchanan Trail (Route 16) between Lincoln Highway East and Water Tank Lane, McConnellsburg, Fulton County. The Department of Public Welfare, Fulton County Assistance Office will occupy the space. Downtown locations will be considered. For more information on Solicitation #93199 which is due on April 30, 2001, visit [www.dgs.state.pa.us](http://www.dgs.state.pa.us) or call (717) 787-4394.

**Department:** Public Welfare  
**Location:** 505 North Office Building, Harrisburg, PA 17125  
**Contact:** Mrs. Cynthia T. Lentz, (717) 787-0952



## Sanitation

**RQ.0999** Cheyney University is seeking competitive bids from qualified vendors for the provision of daily trash removal and recycling services. Contractor shall provide 10—4 yard containers, four—8 yard containers and 1—40 yard container. Dumpsters shall be air tight and have lids. Bid price for construction dumpster per pickup when needed. Interested bidders to contact the Office of Contracts for a bid package.

**Department:** State System of Higher Education  
**Location:** Cheyney University, Cheyney and Creek Roads, Cheyney, PA 19319-0200  
**Duration:** July 1, 2001—June 30, 2003 with renewal options.  
**Contact:** Antonia Williams, (610) 399-2360

**061015** This work is supplying a total of two 30 cubic yard roll-off dumpsters to Pa. Dept. of Transportation (Bucks County) Stockpiles at Trevoise and Fallsington. This work includes picking up the full containers on an on-call basis (approximately every 3 to 4 weeks), properly disposing of the trash, and dropping off an empty container. The trash will include roadway debris, both bagged and loose, but will not include hazardous substances. The vendor must have an approved site for the trash. There will be a separate contract for each stockpile.

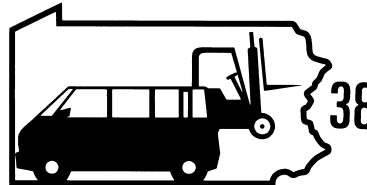
**Department:** Transportation  
**Location:** Maintenance District 6-1  
**Duration:** From 7/1/2001 to 6/30/2002 With an option for two additional 1 year renewals  
**Contact:** Michael Trouts, (215) 345-6060

**M-5275 WASTE REMOVAL OF DIETARY TRASH, GARBAGE AND SOLID WASTE**

**Department:** Corrections  
**Location:** State Correctional Institution at Rockview, Box A, Rt. 26, Bellefonte, PA 16823  
**Duration:** July 1, 2001 to June 30, 2002  
**Contact:** Cheryl Crispell, Purchasing Agent 2, (814) 355-4874, ext. 206

**061016** This work is supplying a total of two 30 cubic yard roll-off dumpsters to Pa. Dept. of Transportation (Bucks County) Stockpiles at Trevoise and Fallsington. This work includes picking up the full containers on an on-call basis (approximately every 3 to 4 weeks), properly disposing of the trash, and dropping off an empty container. The trash will include roadway debris, both bagged and loose, but will not include hazardous substances. The vendor must have an approved site for the trash. There will be a separate contract for each stockpile.

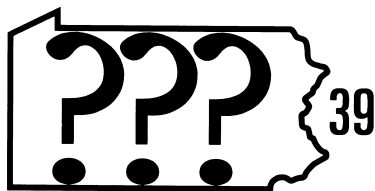
**Department:** Transportation  
**Location:** Maintenance District 6-1  
**Duration:** From 7/1/2001 to 6/30/2002 With an option for two additional 1 year renewals  
**Contact:** Michael Trouts, (215) 345-6060



## Vehicle, Heavy Equipment and Powered Machinery Services

**1375017005** On-call maintenance of overhead doors.

**Department:** Military Affairs  
**Location:** PA Air National Guard, 171st Refueling Wing, Pittsburgh International Airport, Coraopolis, PA  
**Duration:** 1 Oct 01—30 Sep 04  
**Contact:** Vicky Lengel, (717) 861-8579



## Miscellaneous

**SP-22010030** Statewide contract for maintenance, service, alterations, modifications, repairing of radio equipment & removal & installation of radio equipment. Repairing of tower equipment, including fabrication of necessary radio cabinets in connection with radio equipment. Engineering study for completion of required forms for FCC licenses throughout Pennsylvania.

**Department:** Fish and Boat Commission  
**Location:** Statewide  
**Duration:** July 1, 2001 to June 30, 2006  
**Contact:** Dennis Grove, (717) 705-7915

**SP3101002** The PA Emergency Management Agency is soliciting bids from a firm that provides a service that test for radiation exposure using Thermoluminescent Dosimeters (TLDs) or Permanent Record (PRD). One will be issued to workers to monitor readings and provide a permanent record of the amount of radiation received while working within the vicinity of this Nuclear Power and Generating Stations or during a radiation disaster. To receive a bid package please contact the Fiscal Management at (717) 651-2189 or send an email to [aschaeffer@state.pa.us](mailto:aschaeffer@state.pa.us) referencing SP3101002.

**Department:** PA Emergency Management Agency  
**Location:** PA Emergency Management Agency, Fort Indiantown Gap, Building 2-44, Annville, PA 17003  
**Duration:** July 1, 2001 through June 30, 2002  
**Contact:** Amy Schaeffer, (717) 651-2189

**1501** Repair to Military Vehicle Storage Compound (2500 SY) and security fence located at the PA Army National Guard Armory, 411 North Findley Street, Punxsutawney, PA.

**Department:** Military Affairs  
**Location:** PA Army National Guard Armory, 411 North Findley Street, Punxsutawney, PA 15767  
**Duration:** Work must be completed by June 30, 2001.  
**Contact:** Aimmee/Brenda, (717) 861-8519/2118

**X16442 & X16446** Provide and install 47 caps for 47 Ford Ranger pick-up trucks and 9 caps for 9 for F-150 bi-fuel pick-up trucks. These will be installed on the DEP premise in the Harrisburg area.

**Department:** Environmental Protection  
**Location:** Harrisburg, PA  
**Duration:** Need by June 1, 2001  
**Contact:** Sharon Peterson, (717) 783-5894

**LBLA-1273** Appliances—Washers, Dryers, Refrigerators

**Department:** Public Welfare  
**Location:** Selinsgrove Center, Box 500, Route 522, Selinsgrove, PA 17870  
**Contact:** Arletta K. Ney, Purchasing Agent, (570) 372-5670

**SP3881120008** Services required for installation of woven wire deer fence for Forest District #12, Lycoming County.

**Department:** Conservation and Natural Resources  
**Location:** Bureau of Forestry, Forest District #12, 423 East Central Avenue, South Williamsport, PA 17702  
**Duration:** The contract shall commence upon execution and terminate 12-31-01.  
**Contact:** Michael Palko, (570) 327-3450

**SP3101003** The PA Emergency Management Agency (PEMA) is soliciting bids to provide a series of training courses for hospital emergency departments and emergency medical services personnel on the evaluation and treatment of radiological contaminated injured individuals. To receive a bid package please contact Fiscal Management at (717) 651-2189 or send an email to [aschaeffer@state.pa.us](mailto:aschaeffer@state.pa.us) referencing SP3101003.

**Department:** PA Emergency Management Agency  
**Location:** Various locations within the Commonwealth of PA.  
**Duration:** July 1, 2001 through June 30, 2002  
**Contact:** Amy Schaeffer, (717) 651-2189

**SP 1114600005** Contractor to provide maintenance and service on various controls located in the Boiler Plant at State Correctional Institution at Laurel Highlands. An on-site visit is required. Complete bid on file at Institution.

**Department:** Corrections  
**Location:** State Correctional Institution at Laurel Highlands, 5706 Glades Pike, P. O. Box 631, Somerset, PA 15501-0631  
**Duration:** 07/01/01 to 06/30/03  
**Contact:** Carole S. Kolesko PA II, (814) 445-6501 x: 347

**RFA** Application guidelines for the Education Mentoring Initiative, a component of the Governor's Project for Community Building, are available to interested parties who call the Bureau of Community and Student Services at (717) 787-4605. The Education Mentoring Initiative provides funding for non-profit, community based organizations working in partnership with schools to link responsible, caring adults with at-risk children and youth. The mentors provide role models to help ensure students stay in school and become positive role models themselves to others in their community. Guidelines for this initiative are also available through the Commonwealth of Pennsylvania, Department of Education's Internet web site at [www.pde.state.pa.us](http://www.pde.state.pa.us)

**Department:** Education  
**Location:** Bureau of Community and Student Services, 333 Market Street, 5th Floor, Harrisburg, PA 17126-0333  
**Contact:** Shirley Gould, (717) 787-4605

**62-23** West Chester University of Pennsylvania of the State System of Higher Education seeks responses to a Request for Interest (RFI) from qualified developers to submit information for consideration by the University to satisfy a need for off campus student housing for West Chester University students. The purpose of the RFI is to provide developers the potential opportunity to benefit from University resources such as connectivity to the University's computer and telephone network at standard minimum rates to be agreed upon, assistance in marketing through the Residence Life Office and the Off-Campus Housing Office at rates to be agreed upon. Should the information submitted be considered acceptable, a letter of notification, will be issued to the successful developer(s). To be considered, the proposed development must accommodate approximately and preferably 200 or more students at a single location in new construction, be suitably located and priced to attract students. The proposed development must meet all applicable building codes and zoning regulations, and must be constructed and available for leasing no later than August 1, 2004. A pre-submission conference will be held at 10 a.m. on April 18, 2001 meeting in room 252 of Sykes Student Union. Responses are due by 4 p.m. EST May 1, 2001. To obtain a copy of the RFI, contact Jacki Marthinsen, Contracts Manager, Contract Services Office, West Chester, PA phone (610) 436-2705, fax (610) 436-2720, e-mail [jmarthinsen@wcupa.edu](mailto:jmarthinsen@wcupa.edu).

**Department:** State System of Higher Education  
**Location:** In the vicinity of West Chester University  
**Duration:** Development must be available for leasing no later than August 1, 2004.

**Contact:** Jacki Marthinsen, Contracts Manager, (610) 436-2705

**025008** Universal Multigrade SAE 15W40 Motor Oil and Universal Tractor Fluid to be provided in bulk. We have 500 and 550 gallon storage tanks to be filled. Specifications for products will be provided in bid package. will probably be for a 1 year period. To included all transportation and delivery charges.

**Department:** Transportation  
**Location:** Pa. Dept. of Transportation, H.C. 1, Box 124, Cyclone, PA 16726  
**Duration:** 1 year  
**Contact:** Warren Buchanan, (814) 465-7754

**PDA454** To select commercial food distributors to provide various food items, packaged in household sizes, to the PA Department of Agriculture, but delivered to counties and lead agencies participating in the State Food Purchase Program.

**Department:** Agriculture  
**Location:** Statewide (Eight Agriculture Distribution Regions)  
**Duration:** Five (5) year contract July 1, 2001—June 30, 2005  
**Contact:** Beth Ann Hoagland, (717) 787-2689

**3881190009** Contractor to install 8,500 feet of 8 foot wire woven deer fence on state forest land in Greene Township, Pike County, PA.

**Department:** Conservation and Natural Resources  
**Location:** DCNR—Bureau of Forestry, Pike County, Pennsylvania  
**Duration:** Completion by November 15, 2001  
**Contact:** Tim Ladner, (570) 895-4000

**3881190008** Contractor to remove 6,650 feet of existing 5 & 6 wire electric deer fence. Contractor to reinstall three, 8 foot deer fences. These will be installed where removed fence existing. Approximately 13,000 feet of fence to be installed in three areas. Project is located on PA State Forest Lands in Palmyra Township, Pike County, PA.

**Department:** Conservation and Natural Resources  
**Location:** DCNR—Bureau of Forestry, Pike County, PA  
**Duration:** Completion by June 30, 2001  
**Contact:** Tim Ladner, (570) 895-4000

**3881190011** Contractor to install three 8 foot wire woven deer fences on State Forest Lands, Greene Township, Pike County, PA. Total of approximately 13,000 linear feet.

**Department:** Conservation and Natural Resources  
**Location:** DCNR-Bureau of Forestry, Pike County, PA  
**Duration:** Completion by July 31, 2001  
**Contact:** Tim Ladner, (570) 895-4000

**1509-03809** Empty out Two (2) grease traps at the Correctional Industries Meat Processing Plant on a monthly basis.

**Department:** Corrections  
**Location:** SCI—Camp Hill, C.I. Meat Processing Plant, 2500 Lisburn Road, Camp Hill, PA 17011  
**Duration:** 3 years  
**Contact:** Russ Ilgenfritz, (717) 975-4988

**SP-22010028** Service & parts to maintain the PA Fish & Boat Commission boats, motors & trailers. OMC factory trained service personnel and factory parts.

**Department:** Fish and Boat Commission  
**Location:** Southeastern Pennsylvania (Philadelphia area). Vendor may be required to pickup & deliver boats, motors & trailers at the Frankford Arsenal Facility, Philadelphia, PA 7/1/01 to 6/30/02, with four, one year options  
**Duration:** Dennis Grove, (717) 705-7915

**113001** NiCad Stationary Battery Set. (M-Range) Consisting of 96 cells supplied in stainless steel containers with intercell connection hardware and two tier battery rack. Batteries are used for power back-up between switching substations. Replacements for existing back-up system.

**Department:** Transportation  
**Location:** Liberty Tunnel Fan House, 99 Secane Street, Pittsburgh, PA 15211  
**Duration:** Delivery within 30 days after receipt of approved order  
**Contact:** Mark Powers, (412) 921-1010

**RFP 0R-08** Bidder Notification Service to provide a highly reliable and expedient service to notify perspective bidders of bid proposal changes for construction projects. For information on this project, fax to Roberta Cooper (717) 783-7971 the following: Your name, company name, address, phone number, fax number, and email address. Please reference RFP 0R-08.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** 3 Year Contract.  
**Contact:** Roberta Cooper, (717) 787-2491

**3881190010** Contractor to install four 8 foot wire woven deer fences. Three on State Forest Lands and one State Park Lands in Greene Township, Pike County, PA. Total of approximately 29,000 linear feet.

**Department:** Conservation and Natural Resources

**Location:** DCNR—Bureau of Forestry, Pike County, PA

**Duration:** Completion by October 30, 2001

**Contact:** Tim Ladner, (570) 895-4000

[Pa.B. Doc. No. 01-581. Filed for public inspection March 30, 2001, 9:00 a.m.]

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## DESCRIPTION OF LEGEND

- |  |   |
|--|---|
| <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:

<b>Requisition or Contract No.</b>	<b>PR Award Date or Contract Effective Date</b>	<b>To</b>	<b>In the Amount Of</b>
1275350-01	03/19/01	Exeter Supply Co.	28,089.59
1287380-01	03/19/01	Juniper Sys- tems div/ Harvestmaster	51,456.30
1306380-01	03/19/01	Rayco Mfg.	24,175.00
1315110-01	03/19/01	Atlantic Tex- tiles	37,620.00
1328810-01	03/19/01	EXP@NETS	18,506.25
1344110-01	03/19/01	Comeq Inc.	36,995.00
1345350-01	03/19/01	DH Instru- ments	30,762.00
1354230-01	03/19/01	Five Thousand Forms	55,200.00

<b>Requisition or Contract No.</b>	<b>PR Award Date or Contract Effective Date</b>	<b>To</b>	<b>In the Amount Of</b>
1355130-01	03/19/01	Dale Oxygen & Acetylene Service	84,900.00
1356110-01	03/19/01	Tabb Textile	56,400.00
1361220-01	03/19/01	Collins Plumb- ing & Heat- ing	68,275.00
1380220-01	03/19/01	Beacon t/a Beacon Light Ma- rina	40,000.00

GARY E. CROWELL,  
*Secretary*

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