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Volume 39 (2009)

Pennsylvania Bulletin  
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# PENNSYLVANIA BULLETIN

Volume 39

Number 15

Saturday, April 11, 2009 • Harrisburg, PA

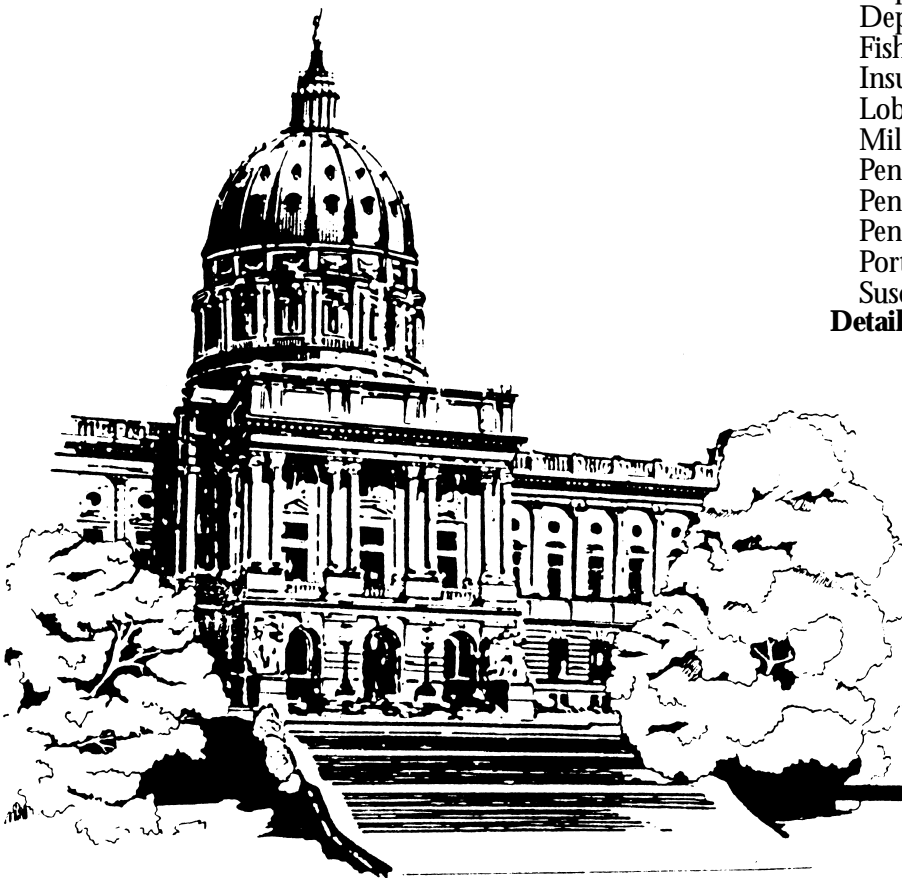
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**PENNSYLVANIA**



**BULLETIN**

(ISSN 0162-2137)

published weekly by Fry Communications, Inc. for the Commonwealth of Pennsylvania, Legislative Reference Bureau, 641 Main Capitol Building, Harrisburg, Pa. 17120, under the policy supervision and direction of the Joint Committee on Documents pursuant to Part II of Title 45 of the Pennsylvania Consolidated Statutes (relating to publication and effectiveness of Commonwealth Documents). Subscription rate \$82.00 per year, postpaid to points in the United States. Individual copies \$2.50. Checks for subscriptions and individual copies should be made payable to "*Fry Communications, Inc.*" Periodicals postage paid at Harrisburg, Pennsylvania.

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

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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.

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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.

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The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

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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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# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

Amendment of Pennsylvania Rules of Disciplinary Enforcement 321, 322, 324, 325, 327 and 328; No. 72; Disciplinary Rules; Doc. No. 1

### Order

*Per Curiam:*

And Now, this 26th day of March, 2009, Rules 321, 322, 324, 325, 327 and 328 of the Pennsylvania Rules of Disciplinary Enforcement are amended to read as set forth in Annex A.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect upon publication of this Order in the *Pennsylvania Bulletin*.

PATRICIA NICOLA,  
Chief Clerk  
Supreme Court of Pennsylvania

### Annex A

#### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

##### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

##### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter C. DISABILITY AND RELATED MATTERS

##### CONSERVATORS FOR INTERESTS OF CLIENTS

**Rule 321. Appointment of conservator to protect interests of clients of absent attorney.**

(a) Upon application of Disciplinary Counsel or any other interested person **with the written concurrence of Disciplinary Counsel**, the president judge of a court of common pleas shall have the power to appoint one or more eligible persons to act as conservators of the affairs of an attorney or formerly admitted attorney if:

(1) the attorney maintains or has maintained an office for the practice of law within the judicial district; **and**

(2) **[ [Reserved]. ] any of the following applies:**

(i) the attorney is made the subject of an order under Enforcement Rule 208(f) (relating to emergency interim suspension orders and related matters); **or**

(ii) the president judge of the court of common pleas pursuant to Enforcement Rule 217(g) (relating to formerly admitted attorneys) by order directs Disciplinary Counsel to file an application under this rule [ , ]; **or**

(iii) the attorney **abandons his or her practice, disappears, dies or** is transferred to inactive status because of incapacity or disability [ , **or disappears or dies** ]; **and**

(3) no partner or other responsible successor to the practice of the attorney is known to exist.

(b) A copy of the application for appointment of a conservator under this rule shall be personally served upon the absent attorney or the personal representative or guardian of the estate of a deceased or incompetent absent attorney. If personal service cannot be obtained, then a copy of the application shall be served in the manner prescribed by Enforcement Rule 212 (relating to substituted service).

(c) The president judge of the court of common pleas shall conduct a hearing on the application no later than seven days after the filing of the application. At the hearing the applicant shall have both the burden of production and the burden of persuading the court by the preponderance of the credible evidence that grounds exist for appointment of a conservator.

(d) Within three days after the conclusion of the hearing on the application, the president judge shall enter an order either granting or denying the application. The order shall contain findings of fact and a statement of the grounds upon which the order is based. If no appearance has been entered on behalf of the absent attorney, a copy of the order shall be served upon the absent attorney in the manner prescribed by [ **subdivision** ] **Subdivision** (b) of this rule.

(e) The conservator or conservators shall be appointed by the president judge, from among members of the bar of this Commonwealth [ **who** ], **subject to the following:**

**(1) non-disciplinary counsel conservators:**

[ (1) ] (i) [ **are not representing** ] **shall not represent** any party who is adverse to any known client of the absent attorney; **and**

[ (2) ] (ii) **shall** have no adverse interest or relationship with the absent attorney or his or her estate.

**Official Note: Nothing in the Rules of Professional Conduct relating to conflict of interest, confidentiality, or any other provision, shall prevent the Office of Disciplinary Counsel from serving as conservator, and from subsequently pursuing an investigation, and disciplinary prosecution of the absent attorney, based upon information gathered during the course of Disciplinary Counsel's service as a conservator.**

(f) The filing by Disciplinary Counsel **or any other interested person** of an application for the appointment of a conservator under these rules shall be deemed for the purposes of any statute of limitations or limitation on time for appeal as the filing in the court of common pleas or other proper court or magisterial district **court** of this Commonwealth on behalf of every client of the absent attorney of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the absent attorney if:

(1) the application for appointment of a conservator is granted, **and**

(2) substitute counsel actually files an appropriate document in a court or magisterial district **court** within 30 days after executing a receipt for the file relating to the matter.

**Official Note:** Under 42 Pa.C.S. § 5503(b) (relating to implementing court rules) the Supreme Court may define by rule the document which when filed constitutes the commencement of a matter for purposes of Chapter 55 of the Judicial Code (relating to limitation of time). Thus the application by Disciplinary Counsel under this rule is an omnibus pleading which stays the running of all statutes of limitations and appeal times pending a 30-day review of the files of the absent attorney.

**(g) The filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall operate as an automatic stay of all pending legal or administrative proceedings in this Commonwealth where the absent attorney is counsel of record until the earliest of such time as:**

**(1) the application for appointment of a conservator is denied;**

**(2) the conservator is discharged;**

**(3) the court, tribunal, magisterial district court or other government unit in which a matter is pending orders that the stay be lifted; or**

**(4) 30 days after the court, tribunal, magisterial district court or other government unit in which a matter is pending is notified that substitute counsel has been retained.**

**(h) As used in this rule, the term "government unit" has the meaning set forth in 42 Pa.C.S. § 102 (relating to definitions).**

#### **Rule 322. Duties of conservator.**

(a) The conservator shall take immediate possession of all files of the absent attorney. If such possession cannot be obtained peaceably, the conservator shall apply to the appointing court for issuance of a warrant authorizing seizure of the files. Probable cause for issuance of such a warrant shall be an affidavit executed by the conservator reciting the existence of the conservatorship and the fact that the persons in control of the premises where the files are or may be located will not consent to a search for them or their removal or other facts showing that the files cannot be obtained without the use of the process of the court.

(b) The conservator shall make a written inventory of all files taken into his or her possession.

(c) **[ The conservator shall send written notice to all clients of the absent attorney of the fact of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active. A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator**

**shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files. ]**

**(1) The conservator shall make a reasonable effort to identify all clients of the absent attorney whose files were opened within five (5) years of the appointment of the conservator, regardless of whether the case is active or not, and a reasonable effort to identify all clients whose cases are active, regardless of the age of the file. The conservator shall send all such clients, and former clients, written notice of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active.**

**(2) All clients whose files are identified by the conservator as both inactive and older than five (5) years shall be given notice by publication of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The specific method of publication shall be approved by the appointing court, as to both the method, and duration, of publication. The conservator shall deliver proofs of publication to the appointing court at the time of filing the application for discharge.**

**(3) A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files.**

(d) Neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

(1) Make any recommendation of counsel to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship.

(2) Represent such a client in connection with:

(i) any matter identified during the conservatorship; or

(ii) any other matter during or for a period of three years after the conclusion of the conservatorship.

(e) The conservator shall file a written report with the appointing court and the Board no later than 30 days after the date of appointment covering the matters specified in **[ subdivisions ] Subdivisions** (a) through (c) of this rule. If those duties have not been accomplished, then the conservator shall state what progress has been made in that regard. Thereafter, the conservator shall file a similar written report every **[ 30 ] 60** days until discharge.

**(f) In the case of a deceased attorney, the conservator shall notify the executor of the estate of the Disciplinary Board's need to be reimbursed by the estate for the costs and expenses incurred in accordance with Rule 328(b) (relating to compensation and expenses of conservator).**

**Rule 324. Bank and other accounts.**

(a) A conservator shall notify all banks and financial institutions in which the absent attorney maintained either professional or trustee accounts of the appointment of a conservator under these rules. Service on a bank or financial institution of a certified copy of the order of appointment of the conservator shall operate as a modification of any agreement or deposit among such bank or financial institution, the absent attorney and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the absent attorney with such bank or financial institution. The appointing court on application may by order direct that the conservator shall be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds.

(b) The conservator shall cause all funds of clients in the custody of the absent attorney to be returned to the clients as soon as possible, allowing for deduction of expenses or other proper charges owed by the clients to the absent attorney.

(c) The conservator may engage the services of a certified public accountant when considered necessary to assist in the bookkeeping and auditing of the financial accounts and records of the absent attorney.

**(1) If the state of the financial accounts and records of the absent attorney, or other relevant circumstances, render a determination as to ownership of purported client funds unreasonable and impractical, the conservator shall petition the appointing court for permission to pay all funds held by the absent attorney in any trust, escrow, or IOLTA account, to the Pennsylvania Lawyers Fund For Client Security. Any petition filed under this subsection shall be served by publication, the specific method and duration of which shall be approved by the appointing court.**

(d) Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the absent attorney, and otherwise to complete the conservatorship and pay its expenses authorized under Enforcement Rule 328 (relating to compensation and expenses of conservator), the conservator shall permit the absent attorney or his or her estate to take full possession of any remaining funds.

**Rule 325. Duration of conservatorship.**

Appointment of a conservator pursuant to these rules shall be for a period of no longer than six months. The appointing court shall have the power, upon application of the conservator and for good cause, to extend the appointment for an additional three months. Any order granting such an extension shall include findings of fact in support of the extension. **No additional extensions shall be granted absent a showing of extraordinary circumstances.**

**Rule 327. Liability of conservator.**

A conservator appointed under these rules shall:

(1) Not be regarded as having an attorney-client relationship with clients of the absent attorney, except that

the conservator shall be bound by the obligation of confidentiality imposed by the [ **Code of Professional Responsibility** ] **Rules of Professional Conduct** with respect to information acquired as conservator.

(2) Have no liability to the clients of the absent attorney except for injury to such clients caused by intentional, wilful, or grossly negligent breach of duties as a conservator.

(3) Be immune to separate suit brought by or on behalf of the absent attorney. Any objections by or on behalf of the absent attorney or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.

**Rule 328. Compensation and expenses of conservator.**

(a) A conservator [ **shall normally serve without compensation, but where a conservatorship is expected to be prolonged or require greater effort than normal the appointing court may, with the prior written approval of the Board Chairman, order that the conservator be compensated on an agreed basis. Any such agreement shall be filed with the Office of the Secretary** ] **not associated with the Office of Disciplinary Counsel shall be compensated pursuant to a written agreement between the conservator and the Board Chair. Compensation under such an agreement shall be paid at reasonable intervals, and at an hourly rate identical to that received by court-appointed counsel at the non-court appearance rate in the judicial district where the conservator was appointed. When the conservator believes that extraordinary circumstances justify an enhanced hourly rate, the conservator may apply to the Board Chair for enhanced compensation. Such an application shall be granted only in those situations in which extraordinary circumstances are shown to justify enhanced compensation.**

[ **(b) Upon the completion of a conservatorship, the appointing court, with the prior written approval of the Board Chairman, shall have the power to award compensation or to increase compensation previously agreed to upon application of the conservator and upon demonstration by the conservator that the nature of the conservatorship was extraordinary and that failure to award or increase previously agreed compensation would work a substantial hardship on the conservator. In such event, compensation shall be awarded only to the extent that the efforts of the conservator have exceeded those normally required or reasonably anticipated at the time the original compensation agreement was approved.**

(c) [ **(b) The necessary expenses (including, but not limited to, the fees and expenses of certified public accountant engaged pursuant to Enforcement Rule 324(c) and any compensation of a conservator or any attendant staff shall, if possible, be paid by the absent attorney or his or her estate. [ If not so paid, then upon certification by the president judge of the appointing court and approval by the Board Chairman, the ] Any expenses and any compensation of the conservator that are not reimbursed to the Board shall be paid as a cost of disciplinary administration and enforcement. [ See Enforcement Rule 219(a) (relating**

to periodic assessment of attorneys) ] Payment of any costs incurred by the Board pursuant to this rule that have not been reimbursed to the Board may be made a condition of reinstatement of a formerly admitted attorney or may be ordered in a disciplinary proceeding brought against the absent attorney.

[Pa.B. Doc. No. 09-662. Filed for public inspection April 10, 2009, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [ 231 PA. CODE CH. 3000 ]

#### Amendment of Rules 3111, 3137, 3145 and 3253 Governing; The Effect of Service of the Writ on the Garnishee; Proposed Recommendation No. 238

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 3111, 3137, 3145 and 3253 governing the effect of service of the writ on the garnishee be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than May 22, 2009 to:

Karla M. Shultz, Esquire  
Counsel  
Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
or E-Mail to  
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 3000. JUDGMENTS

#### Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

#### Rule 3111. Service of the writ on garnishee; effect.

(a) The writ shall be served by the sheriff upon the garnishee in the manner prescribed by Rule 402(a) except as otherwise provided by Rules 3112 and 3113. The sheriff shall furnish the garnishee with an additional copy of the writ for each defendant. If the garnishee served was not named in the writ he shall be added as a garnishee and return made accordingly.

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee on or before midnight on the service date of

the writ. [ It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against the garnishee even though no such property of the defendant was in the garnishee's possession at the time of service. ]

**Official Note:** For limitations on the power to attach tangible personal property see Rule 3108(a).

See Rule 3111.1 providing that service of the writ does not attach the defendant's funds on deposit in a bank or other financial institution in an account in which funds are deposited electronically on a recurring basis and are identified as funds which upon deposit are exempt from attachment.

(c) Service of the writ upon the garnishee shall also subject the garnishee to the mandate and injunctive orders of the writ restraining the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

(d) Violation of the mandate and injunctive orders of the writ may be punished as a contempt.

#### Rule 3137. Priority of distribution as between competing plaintiffs.

(a) When levies are made against the same personal property under two or more writs of separate plaintiffs, priority of distribution between them of the proceeds of a sheriff's sale thereof shall be determined by the time of delivery of their respective writs to the sheriff for execution.

(b) When property is attached by service upon the garnishee of two or more writs of separate plaintiffs, priority of distribution between them shall be determined by the [ date ] time of service of their respective writs upon the garnishee [ as to all property then in the hands of the garnishee or coming into the garnishee's possession up to the time of judgment against the garnishee ].

(c) When tangible personal property is both levied upon and attached under two or more writs of separate plaintiffs, priority of distribution as between the levying and attaching plaintiffs shall be determined by the time of delivery of the writ to the sheriff in the case of levy, and from the date of service of the writ upon the garnishee in the case of attachment.

**Official Note:** Under Rule 3115(a), a levy under any valid writ constitutes a levy by endorsement under every other valid writ then in the sheriff's hands. For limitations on attachment of tangible personal property see Rule 3108(a).

#### Rule 3145. Interrogatories[ ; ]. [ procedure ] Procedure.

(a) The procedure between the plaintiff and the garnishee shall, as far as practicable, be the same as though the interrogatories were a complaint and the answer of the garnishee were an answer in a civil action.

(b) The garnishee in the answer under "new matter" may include

(1) the defenses of the immunity or exemption of property;

(2) any defense or counterclaim which the garnishee could assert against the defendant if sued by the defendant but the garnishee may not assert any defense on behalf of the defendant against the plaintiff or otherwise attack the validity of the attachment;

**Official Note:** Objections to the attachment, other than the defenses of immunity or exemption, must be raised preliminarily. See Rule 3142.

(3) any claim which the garnishee could assert against the plaintiff if sued by the plaintiff.

**(c)(1) Except as provided in subdivision (c)(2), the answer of a garnishee, which is a bank or other financial institution, shall be signed by**

- (i) an attorney at law,
- (ii) an officer of the bank or other financial institution, or
- (iii) an employee or authorized agent of the bank or other financial institution with personal knowledge of the subject matter and written authorization from an officer or attorney at law for the bank or other financial institution to sign as its representative.

**(2) If the answer of a garnishee, which is a bank or other financial institution, includes new matter pursuant to Rule 3145(b)(2) or (3), the answer shall be signed by an attorney at law.**

#### Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS FORMS

##### **Rule 3253. Interrogatories in attachment.**

Interrogatories of the plaintiff to the garnishee shall be substantially in the following form:

[Caption]

Interrogatories to Garnishee

“To \_\_\_\_\_:  
(Garnishee)

“You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in judgment against you:

“1. **[At the time you were served or at any subsequent time ] On the date you were served, did you owe the defendant any money or were you liable to the defendant on any negotiable or other written instrument, or did the defendant claim that you owed the defendant any money or were liable to the defendant for any reason?**

“2. **[At the time you were served or at any subsequent time ] On the date you were served, was there in your possession, custody or control or in the joint possession, custody or control of yourself and one or more other persons any property of any nature owned solely or in part by the defendant?**

“3. **[At the time you were served or at any subsequent time ] On the date you were served, did you hold legal title to any property of any nature owned solely or in part by the defendant or in which defendant held or claimed any interest?**

“4. **[At the time you were served or at any subsequent time ] On the date you were served, did you hold as fiduciary any property in which the defendant had an interest?**

“5. At any time before or **[after ] on the date** you were served, did the defendant transfer or deliver any property to you or to any person or place pursuant to your direction or consent and if so what was the consideration therefor?

“6. At any time after you were served did you pay, transfer or deliver any money or property to the defendant or to any person or place pursuant to the defendant’s direction or otherwise discharge any claim of the defendant against you?”

7. If you are a bank or other financial institution, **[at the time you were served or at any subsequent time ] on the date you were served**, did the defendant have funds on deposit in an account in which funds are deposited electronically on a recurring basis and which are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law? If so, identify each account and state **the amount of funds in each account**, the reason for the exemption, **[the amount being withheld under each exemption ]** and the entity electronically depositing those funds on a recurring basis.

8. If you are a bank or other financial institution, **[at the time you were served or at any subsequent time ] on the date you were served**, did the defendant have funds on deposit in an account in which the funds on deposit, not including any otherwise exempt funds, did not exceed the amount of the general monetary exemption under 42 Pa.C.S. § 8123? If so, identify each account.

(The plaintiff may set forth additional appropriate interrogatories.)

#### **Explanatory Comment**

The Civil Procedural Rules Committee is proposing the amendment of Rule 3111 governing the effect of service of the writ on the garnishee. Currently, Rule 3111 provides that once served, a writ attaches all property in the possession of the garnishee at the time of service and all property that subsequently comes into the possession of the garnishee until judgment against the garnishee. The proposed amendment would limit the time period of the effectiveness of the attachment to all property in the possession of the garnishee on or before midnight on the service date of the writ.

The Committee is also proposing an amendment to Rule 3145 that designates the persons who may sign an answer to plaintiff’s interrogatories directed to a garnishee that is a bank or other financial institution.

Rules 3137 and 3253 have been amended to conform to the new requirements of Rule 3111.

[Pa.B. Doc. No. 09-663. Filed for public inspection April 10, 2009, 9:00 a.m.]

## **Title 237—JUVENILE RULES**

### **PART I. RULES**

#### **[ 237 PA. CODE CH. 4 ]**

#### **Proposed Amendments to Rule 407**

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 407 be adopted and

prescribed. The proposed modified Rule 407 adds a mandatory written admission colloquy in all cases. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the intent of this rule. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

We request that interested persons submit suggestions, comments or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.  
Staff Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than Friday, May 8, 2009.

By the Juvenile Court  
Procedural Rules Committee:

CYNTHIA K. STOLTZ, Esq.,  
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 4. ADJUDICATORY HEARING

Rule 407. Admissions.

A. Admissions. At any time after a petition is filed, the juvenile may tender an admission to the facts[ , ] and/or the adjudication of delinquency[ , and/or disposition ].

1) Requirements. Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly. The court[ , at a minimum, shall ask questions to elicit the following information:

- a) Does the juvenile understand the nature of the allegations to which he or she is admitting?
- b) Is there a factual basis for the admission?
- c) Does the juvenile understand that he or she has the right to a hearing before the judge?
- d) Does the juvenile understand that he or she is presumed innocent until found delinquent?
- e) Is the juvenile aware of the dispositions that could be imposed?
- f) Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?
- g) Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?
- h) Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?
- i) Has the juvenile had the opportunity to speak with a guardian about his or her decision? ] shall

ensure that the juvenile's attorney has reviewed the admission colloquy with the juvenile pursuant to paragraph (C).

2) Agreements. If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) Court action. If the court accepts the tender, the court [ shall ] may enter an order incorporating any agreement. If the court does not accept the [ tender ] agreement, the case shall proceed as if no tender had been made.

4) Limitations on withdrawals. An admission cannot be withdrawn after the court enters the dispositional order.

B. Incriminating statements. An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 et seq.

C. Written admission colloquy. If a juvenile is tendering an admission, the colloquy shall be as follows:

In re : \_\_\_\_\_ JD \_\_\_\_\_  
 (Juvenile) :  
 : Delinquent Act(s): \_\_\_\_\_  
 : \_\_\_\_\_  
 : \_\_\_\_\_  
 : \_\_\_\_\_

ADMISSION

You are before this court because you are admitting to some or all of the delinquent act(s) which have been petitioned against you. Answer all of the questions on this form. If you do not understand any question or the explanation given to you on this form, ask your attorney or the Judge to explain it to you.

I intend to admit to: (include grading of offenses)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

General information:

- 1) What is your full legal name? \_\_\_\_\_
- 2) Are you known by any other name, nickname, or alias? \_\_\_\_\_  
 If yes, please state: \_\_\_\_\_
- 3) How old are you today? \_\_\_\_\_
- 4) What grade have you completed in school? \_\_\_\_\_
- 5) Can you read, write, and understand the English language well enough to understand this form? \_\_\_\_\_
- a) Did your attorney read this colloquy to you and explain its contents? \_\_\_\_\_
- b) If you do not read well enough to understand this form, have you been provided with an interpreter or an attorney who speaks your native tongue? \_\_\_\_\_

\_\_\_\_\_ Initials (page 1 of 4)

**Voluntary admission:**

6) Are you currently a patient in a mental hospital or institution, or being treated for a mental illness? \_\_\_\_\_

If yes, where? \_\_\_\_\_

7) Are you under the influence of any drugs (prescription or illegal) and/or alcohol that would impair your ability to make an informed decision? \_\_\_\_\_

If yes, specify type of drugs and/or alcohol: \_\_\_\_\_

8) Is this admission voluntary? \_\_\_\_\_

a. Has anyone coerced, threatened, or forced you to sign this admission? \_\_\_\_\_

b. Have you been promised something in exchange for this admission? \_\_\_\_\_

**Understanding the admission:**

9) Has your attorney explained to you that your conduct is defined as the delinquent act(s) to which you are admitting? \_\_\_\_\_

10) By admitting to the delinquent act(s), do you understand that you are giving up the following rights?

a. You are presumed innocent until the Commonwealth proves you have committed the delinquent act(s) beyond a reasonable doubt. \_\_\_\_\_

b. You have the right to have a judge hear the testimony of witnesses, examine the evidence, and determine whether you have committed the delinquent act(s). \_\_\_\_\_

c. You have the right to remain silent and your silence can not be held against you. \_\_\_\_\_

d. You have the right to confront and cross-examine all Commonwealth witnesses. \_\_\_\_\_

e. You can, but are not obligated to, present witnesses or evidence as a defense to the delinquent act(s). \_\_\_\_\_

f. You may present any motions to the court. \_\_\_\_\_

11) Do you understand that before you can be adjudicated delinquent the court must find that you committed the delinquent act(s) and that you are also in need of "treatment, rehabilitation, and supervision?" \_\_\_\_\_

\_\_\_\_\_ Initials (page 2 of 4)

**Possible consequences:**

12) Do you understand that if you are adjudicated delinquent, the court may place you in a juvenile facility or on probation until your 21st birthday? \_\_\_\_\_

13) Are you aware that if you are admitting to \_\_\_\_\_

that your driving privileges will be suspended? \_\_\_\_\_  
(cross off or write n/a if this question is not applicable in this case).

14) Do you understand that the record of this admission can be used against you in any future proceeding in adult or juvenile court when appropriate and can result in a longer sentence in adult court? \_\_\_\_\_

15) Do you understand that certain information for some offenses is available to the public and when you apply for college or a job, your potential

college or employer may be able to see your juvenile record? \_\_\_\_\_

**Admission agreements:**

16) Are you aware that the court is not bound to any agreement between you, your attorney, and the District Attorney? \_\_\_\_\_

**Appeals:**

17) The appeal for an admission is limited to three grounds:

a) Your admission was not knowing, intelligent, and voluntary;

b) The court did not have jurisdiction to accept your admission; or

c) The court's disposition is beyond the maximum penalty authorized by law.

By admitting to the delinquent act(s), do you understand that you are giving up the right to appeal your case to a higher court, except on these three grounds? \_\_\_\_\_

**Attorney's Representation & Guardian's Knowledge**

18) Are you satisfied with the representation of your attorney? \_\_\_\_\_

19) Has your attorney explained to you the meaning of the terms in this document? \_\_\_\_\_

20) Have you spoken with your parent or guardian about your decision to admit to the delinquent act(s)? \_\_\_\_\_

Does your parent or guardian agree with your admission? \_\_\_\_\_

\_\_\_\_\_ Initials (page 3 of 4)

I affirm that I have read the above document in its entirety. I understand its full meaning and I am still admitting to the offenses specified. Also, my admission is knowingly, intelligently, and voluntarily made. I further affirm that my signature and initials on each page of this document are true and correct.

\_\_\_\_\_  
JUVENILE

\_\_\_\_\_  
PARENT OR GUARDIAN (if present)

\_\_\_\_\_  
DATE

I, \_\_\_\_\_, Esq., Attorney for \_\_\_\_\_ state that I have advised my client of the meaning of this document; that it is my belief that my client comprehends and understands what is set forth above; that I am prepared to try this case; and that the juvenile understands what he/she is doing by entering an admission.

\_\_\_\_\_  
ATTORNEY FOR JUVENILE

\_\_\_\_\_ Initials (page 4 of 4)

**Comment**

Under paragraph (A)(1), the court is to determine if the admission is voluntarily and knowingly made. [Nothing in this rule is intended to prevent the court from using a written form to ascertain the necessary information, provided the court asks questions of the juvenile, on the record, to authenticate the

**juvenile's completion and understanding of the form and the juvenile's agreement with the statements made. ]**

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the [ **tender** ] **agreement**, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

**Pursuant to paragraph (C), the attorney is to review this colloquy with the juvenile prior to entering the courtroom. The court is to ensure that the juvenile has voluntarily and knowingly made this admission by asking questions to ascertain the ability of the juvenile to comprehend this document and to enter into an admission.**

**If a guardian does not sign the admission colloquy, the court may still move forward and accept the admission. The signature of the guardian is only one factor that the court is to consider when determining whether the admission is made voluntarily and knowingly.**

**This admission colloquy is downloadable from the Court's web page at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>.**

**Official Note:** Rule 407 adopted April 1, 2005, effective October 1, 2005.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

**EXPLANATORY REPORT**

After debating whether the Rules should standardize a written admission colloquy or provide guidelines for the court to follow, the Committee decided that a mandatory standardized admission colloquy was necessary.

The Committee initially drafted a Rule that included a list of questions that the court must ask to elicit specific information from the juvenile in ascertaining whether the admission was made voluntarily and knowingly. In reviewing admission colloquies from several judicial districts, the Committee found that important information regarding the case and the juvenile's ability to comprehend the admission were omitted from the form. These areas of omission were also not being addressed by the court on the record.

In some judicial districts, juveniles are tendering admissions utilizing a written admission colloquy. The judge is asking a few questions concerning the colloquy and then entering the colloquy into the record. In other judicial districts, the juvenile is tendering an admission through an oral colloquy by the judge asking some basic questions on the record.

The Committee found that in both practices, several key issues are being excluded from the colloquy; therefore the court does not have all the facts to make an informed decision as compelled by the "made voluntarily and knowingly" requirement of the Rule.

To alleviate these concerns of the Committee and to enforce the necessity of a voluntary and knowing waiver of the right to an adjudicatory hearing, a mandatory admission colloquy has been included as part of the Admissions Rule.

This colloquy must not substitute questioning by the court to determine whether the admission is made voluntarily and knowingly. Pursuant to paragraph (A)(1), the court must ensure that the juvenile's attorney has reviewed the admission colloquy with the juvenile and that the admission is made voluntarily and knowingly.

To comply with this requirement, the court is required to review the admission. In paragraph (C), the admission colloquy is divided into eight specific areas. The areas include: 1) general information; 2) voluntary admission; 3) understanding the admission; 4) possible consequences; 5) admission agreements; 6) appeals; 7) attorney's representation and guardian's knowledge; and 8) the signature lines for the juvenile, guardian, and attorney acknowledging the contents and their understanding of the admission.

The court must review each area to determine if the admission is made voluntarily and knowingly. The court should weigh all the factors together. If the court is not satisfied with any part of the admission, the court must reject the admission and proceed to an adjudicatory hearing. If the court proceeds to an adjudicatory hearing, any incriminating statements may not be used against the juvenile. See paragraph (B).

If the court is satisfied with the following requirements discussed *infra*, the court may accept the admission and proceed to ruling on the offenses pursuant to Rule 408 and an adjudication of delinquency pursuant to Rule 409.

Under the first requirement, the court must determine who is the juvenile, the age of the juvenile, the juvenile's grade in school, and whether the juvenile reads, writes, and understands the English language well enough to comprehend the form.

If the juvenile does not read well enough to understand the colloquy, the attorney must read and explain this colloquy in terms that the juvenile understands. If English is not the primary language of the juvenile, an interpreter or attorney that speaks the juvenile's primary language must be provided. When possible, the admission colloquy can be transcribed into the juvenile's native language.

The second requirement compels the court to determine whether there is anything inhibiting the juvenile from making a voluntary admission. If the juvenile has a mental disability, is under the influence of drugs or alcohol that impairs his or her ability to make an informed decision, or has been coerced, threatened, forced, or promised something in exchange for the admission, the court is to prohibit the admission.

Under the third requirement, the court must ascertain if the juvenile understands the admission and all the rights that the juvenile is waiving when admitting to the delinquent acts.

Pursuant to the fourth requirement, the court must determine if the juvenile understands the possible consequences of admitting to the delinquent acts.

The fifth requirement explains that the court is not bound to any agreements made with the Commonwealth and the juvenile fully understands that the court can decide against any agreement.

The sixth requirement sets forth that when an appeal is taken, it is limited to three grounds.

The court must determine if the juvenile is satisfied with his or her representation and whether the guardian knows and agrees with the juvenile's decision. Whether



the guardian knows of the admission or is in agreement with the admission is only one factor the court must consider when determining whether the admission is made voluntarily and knowingly.

Finally, the juvenile, guardian, and attorney should sign the form. If the guardian does not sign the form, the admission colloquy can still be accepted by the court. In those instances, "refused to sign" or "not present" should be filled in on the guardian's signature line to notify the court.

[Pa.B. Doc. No. 09-664. Filed for public inspection April 10, 2009, 9:00 a.m.]

PART I. RULES  
[ 237 PA. CODE CH. 16 ]  
Proposed Amendments to Rule 1604

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that new Rule 1604 be adopted and prescribed. New Rule 1604 provides the procedures for submission of reports pursuant to the 42 Pa.C.S. § 6336.1(b). This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the intent of the rule. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

We request that interested persons submit suggestions, comments or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.  
Staff Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than Monday, April 27, 2009.

*By the Juvenile Court  
Procedural Rules Committee:*

CYNTHIA K. STOLTZ, Esq.,  
*Chair*

**Annex A**  
**TITLE 237. JUVENILE RULES**  
**PART I. RULES**  
**Subpart B. DEPENDENCY MATTERS**  
**CHAPTER 16. POST-DISPOSITIONAL PROCEDURES**

PART A. SUMMONS [ AND ], NOTICE, AND REPORTS

Rule	
1600.	Summons for the Permanency Hearing.
1601.	Permanency Hearing Notice.
<b>1604.</b>	<b>Submission of Reports.</b>
	<b>PART B. PERMANENCY HEARING</b>
1607.	Regular Scheduling of Permanency Hearing.
1608.	Permanency Hearing.
1609.	Court Order of Permanency Hearing Determinations.
1613.	Termination of Court Supervision.
1616.	Post-Dispositional Procedures; Appeals (Reserved).

PART A. SUMMONS [ AND ], NOTICE, AND REPORTS

*(Editor's Note: The following text is new and has been printed in regular print to enhance readability.)*

**Rule 1604. Submission of Reports.**

**A. Generally.**

1) A foster parent, preadoptive parent, or relative providing care for a child may submit a report regarding the child's adjustment, progress, and condition for review by the court.

**2) The report shall be submitted to the court designee at least seven days prior to the permanency hearing.**

**B. Designation by President Judge.** The President Judge of each judicial district shall designate a person, who is not a party to the proceeding, to receive these reports.

**C. Duties of the County Agency.** The county agency shall inform the foster parent, preadoptive parent, or relative providing care for a child of:

- 1) the right to submit a report;**
- 2) the name and address of the court designee who shall receive the reports; and**
- 3) the requirement to submit the report at least seven days prior to the permanency hearing.**

**D. Duties of Designee.** Within one business day of receiving the report, the court designee shall:

- 1) file a copy of the report with the clerk of courts; and**
- 2) distribute copies to the judge, attorneys, parties, and if appointed, the court-appointed special advocate.**

**E. Examination of Report.** Pursuant to Rule 1608(D), the court shall examine this report and consider its contents as it would consider any other evidence in the case.

**Comment**

Pursuant to paragraph(A)(1), a foster parent, preadoptive parent, or relative providing care for a child may submit a report regarding the child's adjustment, progress, and condition for review by the court. The Department of Public Welfare has designed a form to be used in submitting a report pursuant to this paragraph. See 42 Pa.C.S. § 6336.1(b)(3).

Pursuant to paragraph(A)(2), the report is to be submitted at least seven days prior to the hearing to ensure timely notice and distribution of the report pursuant to paragraph (D).

Pursuant to paragraph (B), the President Judge of each judicial district is to designate a person to receive these reports. This person may not be a party to the proceeding, such as the guardian ad litem or a county agency representative.

Pursuant to paragraph (C), the county agency is to provide the form designed by the Department of Public Welfare to the foster parent, preadoptive parent, or relative providing care for the child. See 42 Pa.C.S. § 6336.1(b).

See also 42 Pa.C.S. § 6341(d).

**PART B. PERMANENCY HEARING****Rule 1608. Permanency Hearing.**

A. *Purpose of hearing.* For every case, the court shall conduct a permanency hearing for purposes of determining or reviewing:

- 1) the permanency plan of the child;
- 2) the date by which the goal of permanency for the child might be achieved; and
- 3) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Court's findings.* At the permanency hearing, the court shall [ **making** ] **make** findings consistent with 42 Pa.C.S. § 6351(f).

C. *Recording.* The permanency hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

D. *Evidence.*

1) Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court; **and**

2) **If a report was submitted pursuant to Rule 1604, the court shall review and consider the report as it would consider all other evidence.**

E. *Family Service Plan or Permanency Plan.* The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall provide all parties and when requested, the court, with the modified plan at least fifteen days prior to the permanency hearing.

**Comment**

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 449 Pa. Super. 507, 674 A.2d 702 (1996) quoting *In re Quick*, 384 Pa. Super. 412, 559 A.2d 42 (1989).

To the extent practicable, the judge or master that presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearing for the same child.

Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral wel-

fare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if the child has been in placement for at least fifteen of the last twenty-two months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a motion to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child unless: a) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; b) the county agency has documented a compelling reason for determining that filing a motion to terminate parental rights would not serve the needs and welfare of the child; or c) the child's family has not been provided with necessary services to achieve the safe return to the child's guardian within the time frames set forth in the permanency plan.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 and 3130.63.

**Official Note:** Rule 1608 adopted August, 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1608 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**EXPLANATORY REPORT**

The new Rule 1604 provides for the procedures when submitting a report pursuant to 42 Pa.C.S. § 6336.1(b).

Act 109 of 2008 amended § 6336.1(b) of the Juvenile Act by creating a right for a foster parent, preadoptive parent, or relative providing care for a child to submit a report concerning the child's adjustment, progress, and condition to the court.

Paragraph (A) provides for this right and sets time limits for submitting the report to the court.

It is imperative that the court, attorneys, parties, and court-appointed special advocates have time to review this report prior to the proceeding. Therefore, pursuant to paragraph (A)(1), this report must be submitted at least seven days prior to the hearing. In addition, pursuant to paragraph (D), the court designee has one business day to file the report with the clerk of courts and distribute copies to the court, attorneys, parties, and court-appointed special advocates.

Paragraph (B) provides that the President Judge must designate a person to receive these reports on behalf of the court. This rule also provides that this designee may not be a party to the proceeding. The Committee anticipated that the court could designate the county agency to perform this function. The Committee concluded that there is an inherent conflict of interest for the county agency to receive these reports.

In many instances, the report will not agree or suggest the same outcome as the recommendation of the county agency. The Committee felt that a party should not be the recipient of any document on the court's behalf. The legislature went even further than the Committee's conclusions by suggesting retaliatory action by the county agency could be a concern. See 42 Pa.C.S. § 6336.1.

Pursuant to paragraph (C), the county agency must inform the foster parent, preadoptive parent, or relative

providing care for the child of: 1) the right to submit the report; 2) the name and address of the court designee who must receive the reports; and 3) the requirement to submit the report at least seven days prior to the permanency hearing.

The Department of Public Welfare has designed a form to be used by the foster parent, preadoptive parent, or relative providing care for the child in submitting the report. The county agency must provide the form to the foster parent, preadoptive parent, or relative providing care for the child.

Pursuant to paragraph (E), the court must examine this report and consider its contents as it considers any other evidence for the permanency hearing. The Committee discussed that the court uses hearsay evidence at dispositional, review, and permanency hearings but weighs the evidence according to its source and reliability. The Rules of Evidence frequently do not apply in many types of hearings. See Comment to Pa.R.E. Rule 101.

[Pa.B. Doc. No. 09-665. Filed for public inspection April 10, 2009, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

### PART I. GENERAL

#### [ 246 PA. CODE CH. 100 ]

#### Reliance on Advisory Opinions Rule 114

The Minor Court Rules Committee (Committee) is planning to recommend that the Supreme Court of Pennsylvania adopt an entirely new Rule 114 of the Rules of Conduct for Magisterial District Judges to specify what entity is responsible for providing advisory ethical opinions. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the Committee's considerations in formulating this proposal. The Committee's *Report* should not be confused with the Committee's Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

We request that interested persons submit written suggestions, comments or objections concerning this proposal to the Committee through counsel,

Pamela S. Walker, Counsel  
Minor Court Rules Committee  
Supreme Court of Pennsylvania  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055  
Fax: (717) 795-2175

or e-mail to: [minorcourt.rules@pacourts.us](mailto:minorcourt.rules@pacourts.us)

no later than May 29, 2009.

By the Minor Court Rules Committee:

M. KAY DUBREE,  
Chair

### Annex A

#### TITLE 246. MINOR COURTS CIVIL RULES CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICERS OF MAGISTERIAL DISTRICT JUDGES

#### Rule 114. Reliance on Advisory Opinions. (NEW)

The Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania is designated as the approved body to render advisory opinions regarding ethical concerns involving magisterial district judges and judges of the Traffic Court of the City of Philadelphia. Although such opinions are not per se binding upon the Judicial Conduct Board, the Court of Judicial Discipline, or the Supreme Court of Pennsylvania, actions taken in reliance upon these opinions shall be taken into account in determining whether discipline should be recommended or imposed.

**Official Note:** See Judicial Conduct Board Rules of Procedure No. 29, "Reliance on Advisory Opinions," which directs judicial officers to either the Ethics Committee of the Pennsylvania Conference of State Trial Judges or the Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania. *Compare with* "Reliance on Advisory Opinions" within the Code of Judicial Conduct.

Adopted and effective \_\_\_\_\_, 20\_\_\_\_.

#### REPORT

#### *Proposed New Rule 114 of the Rules Governing Standards of Conduct of Magisterial District Judges* ADVISORY OPINIONS FOR ETHICAL INQUIRIES

##### I. Background

In 2008, the Minor Court Rules Committee ("the Committee") was approached by a newly-elected magisterial district judge who was seeking advice about one of the Rules Governing Standards of Conduct of Magisterial District Judges ("Rules of Conduct"). This inquiry initiated a discussion among the Committee members about what entity should be providing "advisory opinions" on the Rules of Conduct. The Committee was aware that the Ethics and Professionalism Committee of the Special Court Judges' Association of Pennsylvania ("the Association") had historically provided such opinions. However, neither the Rules of Conduct nor the Code of Judicial Conduct specifically authorize the Association to provide such opinions. Instead, there is a reference to the Association's ability to render such opinions in the Judicial Conduct Board Rules of Procedure. In order to provide more clarity to magisterial district judges, the Committee is recommending an entirely new Rule 114 to specify directly in the Rules of Conduct that the Association is responsible for providing advisory opinions.

##### II. Discussion

The Committee reviewed the section entitled "Reliance on Advisory Opinions," which appears at the end of the Code of Judicial Conduct. This section, unlike the Canons, is unnumbered. The "Reliance on Advisory Opinions" section directs all "judges, justices and other judicial officers" to contact the Ethics Committee of the Pennsylvania Conference of State Trial Judges regarding ethical concerns. However, two sections before the "Reliance" section, another unnumbered section, entitled "Compliance with the Code of Judicial Conduct" states: "This Code shall not apply to magisterial district judges and judges of the Traffic Court of the City of Philadelphia." In the note to this section, it refers magisterial district

judges and traffic court judges to the Rules Governing Standards of Conduct for Magisterial District Judges.

Based upon the above, a magisterial district judge or traffic court judge attempting to obtain information about advisory opinions would be directed from the Code of Judicial Conduct to the Rules Governing Standards of Conduct for Magisterial District Judges. Unfortunately, no rule in the Standards of Conduct contains any reference to advisory opinions. Instead, there is a reference to the Association's ability to render such opinions in the Judicial Conduct Board Rules of Procedure. However, the Committee thought it was unlikely that magisterial district judges or traffic court judges would look in the Judicial Conduct Board Rules of Procedure for guidance.

### III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes a new Rule 114. The language of Rule 114 will substantially track the language of the "Reliance on Advisory Opinions" section of the Code of Judicial Conduct. The note will refer readers to the Code of Judicial Conduct for comparison. In addition, the note will direct judges to J.C.B.R.P. 29.

[Pa.B. Doc. No. 09-666. Filed for public inspection April 10, 2009, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### CARBON COUNTY

#### Appointment of District Court Administrator as Officer of the Court for Receipt of Reports Concerning Dependent Children in Carbon County pursuant to 42 Pa.C.S. § 6336.1; No. CP-13-AD-0000004-2009

##### Administrative Order No. 7-2009

*And Now*, this 26th day of March, 2009, pursuant to 42 Pa.C.S.A. § 6336.1, it is hereby *Ordered* and *Decreed*, that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, that the District Court Administrator be and is hereby *Appointed* Officer of the Court to receive any and all reports submitted to the Court prior to any permanency hearings. The District Court Administrator and/or Assistant Court Administrators *Shall Be Responsible* for the dissemination of reports to the Court, counsel for the child or other parties, to the guardian *ad litem*, to the parties, if unrepresented, and to the court-appointed special advocate, if appointed pursuant to 42 Pa.C.S.A. § 6342.

*It Is Further Ordered and Decreed* that said reports *Shall Be Directed* to the District Court Administrator, Carbon County Courthouse, P. O. Box 131, Jim Thorpe, Pennsylvania 18229.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File one (1) certified copy of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies, one (1) computer diskette and a copy of the written notification received from

the Juvenile Court Procedural Rules Committee with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Forward one (1) copy for publication in the *Carbon County Law Journal*.

4. Forward one (1) copy to the Carbon County Law Library.

5. Keep continuously available for public inspection copies of the Order in the Clerk of Courts' Office and the Office of Children and Youth.

*By the Court*

ROGER N. NANOVIC,  
*President Judge*

[Pa.B. Doc. No. 09-667. Filed for public inspection April 10, 2009, 9:00 a.m.]

### FAYETTE COUNTY

#### Booking Center Processing Fee; Criminal Division; No. 1 AD 2009

[Correction]

Errors appeared in a Fayette County local court order which appeared at 39 Pa.B. 1199 (March 7, 2009).

The correct version appears as follows, with ellipses referring to the existing text of the rule:

##### Administrative Order

\* \* \* \* \*

9. The RBC shall also serve as a processing center for all parties required to be registered and processed under the provisions of 42 Pa.C.S.A. § 9791, et.seq., commonly known as "Megan's Law," pursuant to 42 Pa.C.S.A. § 9795.2(d), if determined by the Pennsylvania State Police to be an "approved registration site" pursuant to 42 Pa.C.S.A. § 9799.1.

CONRAD B. CAPUZZI,  
*President Judge*

NOTE: Administrative Order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 09-404. Filed for public inspection March 6, 2009, 9:00 a.m.]

### MONROE COUNTY

#### Amendment to Local Rule of Civil Procedure 206.8(b)

##### Order

*And Now*, this 17th day of March, 2009, Monroe County Rule of Civil Procedure 206.8(b) is hereby amended as indicated in attachment (amendments noted in boldface) and become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The Court Administrator is directed to:

1. file seven (7) certified copies of the within Order and amended local rule with the Administrative Office of Pennsylvania Courts;
2. forward two (2) certified copies and a disk containing text of the amended local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. forward one (1) certified copy to the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania;

4. forward one (1) copy to the *Monroe County Legal Reporter* for publication.

Copies shall be kept continuously available for public inspection in the Office of the Monroe County Prothonotary, the Office of the Court Administrator and the Monroe County Law Library.

*By the Court*

RONALD E. VICAN,  
*President Judge*

**Rule 206.8(b). Petition for Appointment of School Police.**

(1) *Definitions:*

(i) "Applicant"—means the Board of School Directors of the school district requesting appointment of school police officers.

(ii) "School Police Officers"—includes any person who is hired by the school district for the purpose of enforcing good order in school buildings, on school buses and on school grounds located within the school district; including protecting the students and controlling large crowds at extra curricular student activities and events. (Definition derived from The Public School Code of 1949, as amended, 24 P. S. § 7-778(c).)

(iii) "Solicitor"—legal counsel for the school district.

(iv) "Appointee"—the person or persons to be employed by the Applicant as a school police officer.

(2) *Application for School Police:*

(i) An Applicant or the Solicitor on behalf of Applicant (hereafter "Applicant/Solicitor"), seeking appointment of school police officers pursuant to the Public School Code of 1949, as amended, 24 P. S. § 7-778 (hereafter "The School Code"), shall file an original and one copy of a Petition for Appointment of School Police with the Prothonotary.

(ii) Applicant must comply with all requirements set forth in The School Code and the Petition shall contain the following information:

(a) The name, address, social security number, date of birth, and dates of Act 34 clearance and the FBI investigation clearance for the Appointee(s) to be employed as a school police officer.

(b) The fingerprints of the Appointee(s).

(c) A report issued by the Federal Bureau of Investigation, United States Department of Justice, Investigation Division ("FBI") indicating that the Appointee(s) has no arrest record.

(d) A copy of the Request for Criminal History Record Check issued by the Pennsylvania State Police (PSP) indicating that the Appointee(s) has no arrest record.

(e) A statement by the Applicant representing that Appointee(s) is of good character and repute.

(f) A statement by the Applicant that the Appointee(s) has not resided outside the Commonwealth of Pennsylvania in any other jurisdiction since the FBI and PSP issued the reports verifying that the Appointee(s) does not have a criminal record.

(iii) The Prothonotary shall forward a copy of the Petition to the Court Administrator.

(3) *Hearing on Petition:*

(i) Applicant/Solicitor shall submit to the Court a proposed order for hearing in the form set forth below in sub-paragraph (F).

(ii) The Court shall schedule a hearing to consider Applicant's Petition, at which time the Solicitor shall appear and report his/her recommendation.

(4) *Notice of Hearing:*

(i) Applicant/Solicitor shall ensure that notice of the hearing date is published once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing;

(ii) Applicant/Solicitor shall file an Affidavit of Publication, together with proofs of advertising, with the *Prothonotary*.

(5) Failure to comply with any provision of this rule may constitute sufficient grounds for the Court to dismiss the Petition and deny Applicant's request to appoint the Appointee(s) as school police officers.

(6) *Forms:* Order for Hearing

**Form—Order for Hearing—Petition for Appointment of School Police Officer**

**COURT OF COMMON PLEAS OF MONROE COUNTY  
FORTY-THIRD JUDICIAL DISTRICT  
COMMONWEALTH OF PENNSYLVANIA**

IN RE: : NO. \_ MISC. 2\_  
:  
PETITION FOR APPOINTMENT :  
OF SCHOOL POLICE :  
OFFICER(S) FOR THE :  
{Insert Name of School District} :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the within Petition for Appointment of School Police Officer(s) for the [Name of School District] and upon motion of \_\_\_\_\_, Solicitor for Applicant, a hearing is fixed on the application for the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m., in Courtroom No. \_\_\_\_\_, Monroe County Courthouse, Stroudsburg, Pennsylvania.

Applicant or Solicitor attorney shall publish Notice of the Hearing once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing; and shall file an Affidavit of Publication, together with proofs of advertising, with the *Prothonotary*.

By the Court:

\_\_\_\_\_  
J.

cc: (Applicant/Solicitor)  
District Attorney's Office

[Pa.B. Doc. No. 09-668. Filed for public inspection April 10, 2009, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[ 7 PA. CODE CH. 130f ]

Odor Management Certification

### Corrective Amendment to 7 Pa. Code Chapter 130f and § 130f.21(c)(1)

The Department of Agriculture has discovered a discrepancy between the agency text of 7 Pa. Code Chapter 130f (relating to odor management certification) and additionally § 130f.21(c)(1) (relating to determination of competence) as deposited with the Legislative Reference Bureau and as published at 38 Pa.B. 5849 (October 25, 2008) and the official text currently appearing in the *Pennsylvania Code*. The addition of this chapter was inadvertently omitted from the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 410, January 2009). Additionally, the text of § 130f.21(c)(1) was printed incorrectly at 38 Pa.B. 5853.

Therefore, under 45 Pa.C.S. § 901: The Department of Agriculture has deposited with the Legislative Reference Bureau a corrective amendment to 7 Pa. Code Chapter 130f and § 130f.21(c)(1). The corrective amendment adding Chapter 130f is effective January 3, 2009, the date the defective Master Transmittal Sheet No. 410 was announced in the *Pennsylvania Bulletin*. The corrective amendment to 7 Pa. Code § 130f.21(c)(1) is effective October 25, 2008, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 7 Pa. Code § 130f(c)(1) appears in Annex A, with ellipses referring to the existing text of the regulation.

DWIGHT-JARED SMITH,  
*Assistant Counsel*

#### Annex A

#### TITLE 7. AGRICULTURE

#### PART V. BUREAU OF PLANT INDUSTRY

#### CHAPTER 130f. ODOR MANAGEMENT CERTIFICATION

#### Subchapter B. CERTIFICATION

#### INDIVIDUAL ODOR MANAGEMENT SPECIALIST

#### § 130f.21. Determination of competence.

\* \* \* \* \*

(c) The competency evaluation will be administered by the Department or its designee. The Department or its designee will administer the competency evaluation in association with the orientation training course on an as needed basis, which will be determined by the number of requests for the training. At a minimum, the successful completion of the competency evaluation will demonstrate an examinee's technical knowledge relating to odor management planning and OMP development in the following areas:

(1) Application of an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

\* \* \* \* \*

[Pa.B. Doc. No. 09-669. Filed for public inspection April 10, 2009, 9:00 a.m.]

## Title 58—RECREATION

FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 69 ]

### Corrective Amendment to 58 Pa. Code §§ 69.11 and 69.12(a)—(c)

The Fish and Boat Commission has discovered a discrepancy between the agency text of 58 Pa. Code §§ 69.11 and 69.12(a)—(c) (relating to applicability of fishing regulations; and seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries), as deposited with the Legislative Reference Bureau, and the official text which currently appears in the *Pennsylvania Code* (Master Transmittal Sheet No. 411, February 2009). The existing text of those sections was inadvertently omitted during the preparation of Master Transmittal Sheet No. 411.

Therefore, under 45 Pa.C.S. § 901: The Fish and Boat Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code §§ 69.11 and 69.12(a)—(c). The corrective amendment to 58 Pa. Code §§ 69.11 and 69.12(a)—(c) is effective as of February 7, 2009, the date the defective text in Master Transmittal Sheet No. 411 was announced in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code §§ 69.11 and 69.12(a)—(c) appears in Annex A, with ellipses referring to the existing text of the regulations.

LAURIE E. SHEPLER,  
*Chief Counsel*

#### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

#### CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

#### Subchapter B. SPORT FISHING AND ANGLING

#### § 69.11. Applicability of fishing regulations.

Except as otherwise provided in this subchapter, this subpart applies to fish and sport fishing in Lake Erie and its tributaries.

#### § 69.12. Season, sizes and creel limits—Lake Erie and Lake Erie tributaries.

(a) It is unlawful to take, catch, kill or possess fish, except during the seasons specified in this section. It is not a violation of this section if a fish caught out of season from water where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess fish of less than the minimum size specified in this section. It is not a violation of this section if an undersized fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1-calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all the fish during 1-calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(5) Fish may be given to another person, but the fish will be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

\* \* \* \* \*

[Pa.B. Doc. No. 09-670. Filed for public inspection April 10, 2009, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [ 58 PA. CODE CHS. 51, 53, 63, 65, 69, 75, 101 AND 113 ]

#### General Provisions, Fishing and Boating

The Fish and Boat Commission (Commission) amends 58 Pa. Code Chapters 51, 53, 63, 65, 69, 75, 101 and 113. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code) and other authorities described as follows.

##### A. Effective date

This final-form rulemaking will go into effect immediately upon publication of this order in the *Pennsylvania Bulletin*.

##### B. Contact person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., (717) 705-7810, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

##### C. Statutory authority

These amendments are published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). These amendments also are published in accordance with section 204 of the act of July 31, 1968 (P. L. 769, No. 240) known as Commonwealth Documents Law (CDL), which provides that an agency may omit or modify the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property or if the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest.

##### D. Purpose and background

Under 58 Pa. Code § 51.5 (relating to correction of regulations), the Executive Director is authorized to take immediate corrective action on the Commission's behalf if the Executive Director or the Commission's staff discovers an error or omission in the text of a Commission regulation as published in the *Pennsylvania Code* or *Pennsylvania Bulletin*. A comprehensive review of the Commission's regulations has revealed that there are errors or inaccuracies in the text of several Commission regulations, as more particularly described in the summary of changes as follows. The purpose of this final-form rulemaking is to correct these errors and inaccuracies.

##### E. Summary of changes

(1) Section 51.105(c) (relating to amount of proposed civil penalty forfeiture) currently refers to the Department of Environmental Protection. It should refer to the Commission.

(2) Section 53.5 (relating to hunting and trapping), which regulates hunting and trapping on Commission property, refers to The Game Law, 34 P. S. §§ 1311.101—1311.1502. This section should reference current law, the Game and Wildlife Code, 34 Pa.C.S. §§ 101—2965.

(3) Section 53.8(h)(1)(iii) (relating to boats), which exempts from registration certain types of boats using Commission lakes or access areas, is not consistent with and does not track the code. The reference to public service boats should be limited to unpowered boats since motorboats owned by public service organizations are required to be registered (but exempt from fees) under section 5302(c) of the code (relating to exemptions). Therefore, they cannot be exempt from registration under § 53.8(h)(1)(iii). In addition, the reference to section 5302(a)(3) should be to 5302(c)(2).

(4) Section 63.9(b) (relating to snatch fishing, foul hooking and snag fishing) omits "crossbows" in its references to the provisions of § 63.8 (relating to long bows, crossbows, spears and gigs).

(5) Section 65.24 (relating to miscellaneous special regulations) requires two corrections. The miscellaneous special regulation applicable to Pymatuning Reservoir in Crawford County should have "crossbows" inserted into

the parenthetical description of § 63.8. The miscellaneous special regulation applicable to the West Branch, Clarion River in Elk County should reflect the current name of the special trout regulation area. The reference should be to the catch and release, fly-fishing only area, not the Delayed Harvest, Fly-fishing Only area. The Commission, by notice published at 35 Pa.B. 6469 (November 26, 2005), redesignated this area as a catch and release, fly fishing only area, effective January 1, 2006.

(6) Sections 69.12, 69.31 and 69.33 (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries; seasons; and use of trap nets) describes the season for walleye as January 1 to midnight March 15. These sections should be amended to read “January 1 to March 14” so that they are consistent with the description of the walleye season in § 61.1 (relating to Commonwealth inland waters).

(7) Section 75.4 (relating to special permits) refers to the Non-Game and Endangered Species Unit, Bureau of Fisheries. The Bureau of Fisheries underwent a reorganization a few years ago, and this unit is currently known as the Natural Diversity Section, Division of Environmental Services. The reference in this section should reflect the current name.

(8) Section 101.6(c) (relating to investigation reports by Commission officers) references section 234 of the code when the correct reference is to section 324 (relating to Commission records).

(9) Section 113.3 (relating to operation of boats) references § 103.3(d) (relating to restriction for special areas) when the correct reference is to § 103.3(c).

*F. Paperwork*

This final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

*H. Public Involvement*

Under section 204 of the CDL, an agency may omit the procedures specified in sections 201 and 202 of the CDL if the agency finds that these procedures are unnecessary or if the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property. The Commission, therefore, did not publish these amendments as a notice of proposed rulemaking or solicit public comment.

*Findings*

The Commission finds:

(1) Errors and inaccuracies were discovered in the text of 58 Pa. Code §§ 51.105, 53.5, 53.8, 63.9, 65.24, 69.12, 69.31, 69.33, 75.4, 101.6 and 113.3 as published in the *Pennsylvania Code*.

(2) Under § 51.5, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of an order to make the necessary correction, if the Executive Director or the Commission's staff discovers an error in the text of a Commission regulation as published in the *Pennsylvania Code*.

(3) Because the nature of the amendments is minor and designed to correct errors and inaccuracies and

because certain of the changes relate to agency organization, agency procedure or Commonwealth property, the Commission finds that the procedures of sections 201 and 202 of the CDL are unnecessary.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 51, 53, 63, 65, 69, 75, 101 and 113, are amended by amending §§ 51.105, 53.5, 53.8, 63.9, 65.24, 69.12, 69.31, 69.33, 75.4, 101.6 and 113.3 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Attorney General for approval as to legality as required by law.

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

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

DOUGLAS J. AUSTEN, PH.D.,  
*Executive Director*

**Fiscal Note:** 48A-211. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 51. ADMINISTRATIVE PROVISIONS**

**Subchapter K. CIVIL PENALTY FORFEITURE PROCESS**

**§ 51.105. Amount of proposed civil penalty forfeiture.**

(a) *Amount.* The amount of the proposed civil penalty forfeiture will be set forth in the order to show cause for civil penalty forfeiture. In determining the amount of the proposed forfeiture, the Executive Director or a designee will consider:

(1) *Health and safety of public.* The hazards posed to the health or safety of the public. The minimum proposed civil penalty forfeiture will be \$2,500 if the Executive Director or a designee determines, based on the uses of the waters, that the unmarked dam poses substantial danger to the angling, boating and wading public.

(2) *Negligence, recklessness or intentional failure.* Whether the violation was caused by a negligent, reckless or intentional failure to comply. A civil penalty of at least \$500 should be proposed in cases of negligent failure to comply. A civil penalty of at least \$2,000 should be proposed where there is probable cause to believe that the lack of compliance was based on reckless misconduct. A civil penalty of at least \$3,000 should be proposed when there is probable cause to believe that the lack of compliance was based on wilful or intentional misconduct.

(3) *Speed of compliance.* A credit will be given of up to \$1,000 based on the attempt of the owner or permittee to achieve rapid compliance after the owner or permittee knew or should have known of the violation. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) *Cost to the Commonwealth.* In proposing the amount of a civil penalty forfeiture, the costs to the Commonwealth will be considered. The costs may include:



- (i) Administrative costs.
- (ii) Costs of inspection.
- (iii) Costs of preventive or restorative measures taken by the Commission or the Department of Environmental Protection to prevent or lessen the threat of damage to persons or property.

(5) *Savings to the dam owner/permittee.* If the owner or permittee of the dam who fails to comply gains economic benefit as a result of the noncompliance, the proposed civil penalty may include an amount equal to the savings up to the statutory maximum for each violation.

(6) *History of previous violations.* In determining a proposed civil penalty for a violation, the Executive Director or a designee will consider previous noncompliance with the requirements of section 3510 of the code (relating to marking of dams) for which the same owner or permittee has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree that became final within the previous 3-year period. The penalty otherwise assessable for noncompliance shall be increased by a factor of 25% for each previous violation. The total increase in assessment based on the history of the previous violation will not exceed \$1,000.

(i) A previous instance of noncompliance will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision determining the previous violation has not expired.

(ii) Each previous instance of noncompliance will be counted without regard to whether it led to a civil penalty assessment.

(b) *Maximum penalty.* If consideration of the factors described in this section yields a penalty in excess of the statutory maximum, the maximum civil penalty will be proposed for that violation.

(c) *Revision of proposed civil penalty.* The Executive Director, upon his own initiative or upon written request received within 15 days of issuance of an order to show cause, may revise a proposed civil penalty calculated in accordance with the dollar limits in subsection (a). If the Executive Director revises the civil penalty, the Commission will use the general criteria in subsection (a) to determine the appropriate civil penalty. When the Executive Director has elected to revise a civil penalty, he will give a written explanation of the basis for the revised civil penalty to the dam owner or permittee to whom the order to show cause was issued.

#### CHAPTER 53. COMMISSION PROPERTY

##### § 53.5. Hunting and trapping.

Legal hunting and trapping are permitted on property owned or controlled by the Commission in conformance with 34 Pa.C.S. (relating to Game and Wildlife Code) and Part III (relating to Game Commission) unless otherwise posted.

##### § 53.8. Boats.

(a) An internal combustion engine may not be used to propel a boat or to provide energy to the motor on Commission lakes. Boats propelled by battery-powered electric motors and nonmechanically propelled boats, subject to restrictions on sailboats and inflatables, may be used either with or without internal combustion engines attached. Notwithstanding this subsection, internal com-

bustion engines may be used in the performance of official duties by persons authorized by the Commission.

(b) Occupants of sculls, shells and racing kayaks are required to carry or wear Coast Guard approved personal flotation devices.

(c) Overnight mooring of boats is permitted at designated mooring areas from April 1 to November 30. A boat utilizing mooring areas shall be registered and display the official registration number and current validation stickers described under Subpart C (relating to boating) and Part III of the code (relating to boats and boating). The mooring is at the sole risk of the owner.

(d) The Commission may refuse to permit the mooring of a boat considered unseaworthy. Boats may not be rented or offered for hire at Commission lakes except for boats owned and moored by authorized concessionaires.

(e) Boats abandoned, sunken, obviously unseaworthy or unidentifiable will be impounded. The district waterways conservation officer will notify the owner, if known, of the impoundment and require the removal of the vessel within 10 days. Impounded vessels will be sold or destroyed if not claimed by the owner within 3 months.

(f) Boats may not remain at boarding piers on Commission lakes or controlled property longer than the time necessary for loading and unloading.

(g) Inflatable boats used on Commission lakes shall be at least 7 feet in length, made of durable reinforced fabric and have at least two separate buoyancy chambers exclusive of any inflatable floor or bottom.

(h) A boat using a Commission lake or access area must be registered and display the official registration number and current validation stickers described under Subpart C and Part III of the code.

(1) This subsection does not apply to:

(i) Unpowered boats that display an official and valid use permit issued by the Commission under § 53.27 (relating to use permits for unpowered boats) or that display an official and valid watercraft launch or mooring permit issued by the Department of Conservation and Natural Resources for use of launch or mooring facilities at this Commonwealth's State parks and forests.

(ii) Noncommercial users of access areas on the West Branch of the Delaware River and the portion of the Delaware River upstream of the Interstate 84 Bridge.

(iii) Unpowered public service boats as defined under section 5302(c)(2) of the code (relating to exemptions from registration).

(iv) Unpowered boats participating in events authorized under § 109.6 (relating to special marine events).

(2) Registered unpowered kayaks, sculls, sailboards and other low volume boats of similar design are exempt from displaying registration numbers but shall display a current validation sticker.

#### Subpart B. FISHING

#### CHAPTER 63. GENERAL FISHING REGULATIONS

##### § 63.9. Snatch fishing, foul hooking and snag fishing.

(a) It is unlawful to take or attempt to take fish by the methods known as snatch fishing, foul hooking or snag fishing or to take or attempt to take fish with a snagging hook or device which may be used to capture the fish by engaging the device in, to, with, or around any part of the body of the fish. In addition, it is unlawful to possess a

snagging hook while in the act of fishing. A snagging hook is a fishing device that is designed or modified to facilitate the snagging of fish. It is either of the following:

(1) A hook with other than a single barb which is weighted on the shank at any point below the eye of the hook and above the barbs thereof.

(2) A hook that is otherwise designed or modified so as to make the snagging of fish more likely when it is used than if a normal hook or fishing device were used.

(b) Nothing in subsection (a) may be construed to prohibit the use of long bow, crossbow, spear and gigs as provided in § 63.8 (relating to long bows, crossbows, spears and gigs) or other net or devices specifically authorized by law or this subpart.

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Beaver	Hopewell Township Park Lake	Bass—15-inch minimum size limit and a 2 bass daily creel limit. Panfish (combined species): 10 fish daily creel limit. Use of live fish for bait is prohibited.
Blair, Huntingdon, Juniata, Mifflin and Perry	Juniata River and its tributaries	Rock bass—Daily creel limit is 10; open year-round; no minimum size limit.
Chester	Elk Creek (Big Elk Creek)	The maximum size limit for alewife and blueback herring is 8 inches. It is unlawful to take, catch, kill or possess, while in the act of fishing, blueback herring or alewife 8 inches or more in length.
Clarion	Beaver Creek Ponds	Closed to fishing from 12:01 a.m. January 1 to 12:01 a.m. the first Saturday after June 11 of each year. Bass—15-inch minimum size limit and a 2 bass daily creel limit for the total project area. Panfish (combined species) 10 fish daily creel limit for the total project area. Other species-inland regulations apply.
Columbia and Northumberland	South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42	This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught shall be immediately returned unharmed.
Crawford and Erie	Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
Crawford	Crazy Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
Crawford	Pymatuning Reservoir	Only carp and suckers may be taken by means of spearing or archery in compliance otherwise with § 63.8 (relating to long bows, crossbows, spears and gigs). Minnow seines and dip nets are restricted to no more than 4 feet in size, and the mesh of the nets shall measure no less than 1/8 nor more than 1/2-inch on a side. Float line fishing is prohibited.
Elk	West Branch, Clarion River	The following additional restrictions apply to the "Catch and Release, Fly-Fishing Only" area located on a 1/2-mile stream section from the intersection of S. R. 219 and S. R. 4003, upstream to the Texas Gulf Sulphur Property: Wading prohibited. Fishing permitted from east shore only.
Erie	E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	Trout (all species)-no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is the greater of 1 gallon of smelt by volume or 200 smelt by number.
Lackawanna	Lake Scranton	It is unlawful for a person to fish from the fishing pier designated for use by persons with disabilities unless the person is: totally blind; or so severely disabled that the person is unable to cast or retrieve a line or bait hooks or remove fish without assistance; or deprived of the use of both legs; or participating in a special fishing event for persons with disabilities under conditions approved by the owner of the lake. The person may fish with only one legal device and shall be within 10 feet of the device being used. A person authorized to fish from the fishing pier under this section may be attended by another individual who may assist the person with the disability in using the fishing device.
Luzerne	Harveys Lake	During the period from the first Saturday after April 11 through midnight March 31, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Fishing is prohibited from April 1 through 8 a.m. of the first Saturday after April 11. Warmwater/coolwater species, except as provided in this section-Inland regulations apply.
Mercer	Shenango River from the dam downstream to SR 3025, a distance of 1.5 miles.	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day: 5 trout per day; day after Labor Day to midnight, March 31 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.
Monroe and Pike	Delaware Water Gap National Recreation Area	The use of eel chutes, eelpots and fyke nets is prohibited. The taking of the following fishbait is prohibited: crayfish or crabs, mussels, clams and the nymphs, larva and pupae of all insects spending any part of their life cycle in the water. The taking, catching, killing and possession of any species of amphibians or reptiles within the boundaries of the Delaware Water Gap National Recreation Area is prohibited.
Somerset, Fayette, Westmoreland and Allegheny	Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river.  Youghiogheny River from Reservoir downstream to confluence with Casselman River.	Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day-5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.  Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day—5 trout per day; day after Labor day to midnight, March 31 of following year: 3 trout per day. Inland regulations apply to warmwater/coolwater species.
Warren	Allegheny River—8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek	Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the first Saturday after April 11 through midnight Labor Day, except during the period from the day after Labor Day to the first Saturday after April 11 of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.
Washington	Little Chartiers Creek from Canonsburg Lake Dam approximately 1/2 mile downstream to mouth of Chartiers Creek	Fishing is prohibited from 12:01 a.m. March 1 to 8 a.m. the first Saturday after April 11.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 16 until midnight of the Friday before the first Saturday after April 11. During the no-harvest artificial lures only season: 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood, or flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. 2. The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited. 3. The daily creel limit for trout is 0.
Westmoreland	Indian Lake	The following size and creel limits apply: Bass—15 inch minimum size limit; 2 bass per day creel limit (combined species). Panfish: 10 fish per day creel limit (combined species). Other species—Inland regulations apply.
Wyoming	Lake Winola	Bass—It is unlawful to take, catch, kill or possess bass that are 12 to 18 inches in length. The daily creel limit for bass less than 12 inches in length and greater than 18 inches in length is 6, only one of which may exceed 18 inches in length. Closed to all fishing from 12:01 a.m. March 1 to 8 a.m. the first Saturday after April 11.

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

**§ 69.12. Seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries.**

(a) It is unlawful to take, catch, kill or possess fish, except during the seasons specified in this section. It is not a violation of this section if a fish caught out of season from water where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess fish of less than the minimum size specified in this section. It is not a violation of this section if an undersized fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1-calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all the fish during 1-calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(5) Fish may be given to another person, but the fish will be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

(d) It is unlawful to fish in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11.

(e) It is unlawful to possess trout or salmon in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11.

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
MUSKELLUNGE and MUSKELLUNGE HYBRIDS PIKE Northern	Inland seasons apply: See § 61.1.	40 inches  24 inches	1
WALLEYE	January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31	15 inches	6
BASS Largemouth Smallmouth	January 1 to first Saturday after April 11 and first Saturday after June 11 until December 31 First Saturday after April 11 until first Saturday after June 11.*	15 inches	4 (combined species).
TROUT and SALMON	First Saturday after April 11 until midnight Labor Day. 12:01 a.m. the day after Labor Day until midnight on the Friday before the first Saturday after April 11	9 inches  15 inches	5 (combined species only 2 of which may be lake trout). 3 (combined species only 2 of which may be lake trout).
STURGEON	No open season	ENDANGERED SPECIES	
SUNFISH, CRAPPIES, CATFISH, ROCK BASS, SUCKERS, EELS, CARP, WHITE BASS	Open year round	None	50 (combined species)
YELLOW PERCH	From December 1 through March 31 From April 1 through November 30	7 inches  None	30  30
BAIT FISH FISH BAIT	Open year round	None	50 (combined species)
BURBOT (when taken by hook and line or when taken by SCUBA divers by use of nonmechanical spears or gigs at a depth of at least 60 feet)	Open year-round	None	5
SMELT (when taken by hook and line)	Open year-round	None	None
ALL OTHER SPECIES	Inland regulations apply: See § 61.1		

\* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to seasons for fishing tournaments)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from the first Saturday after April 11 until the first Saturday after June 11.

#### **Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS**

##### **§ 69.31. Seasons.**

(a) Commercial fishing in Pennsylvania waters of Lake Erie is permitted throughout the year. After December 31 and before June 1, commercial fishing may be limited by the Executive Director to fishing days as he deems necessary and appropriate to provide for the better protection and management of fish. It is unlawful to fish commercially or with a device subject to licensing under this chapter and section 2903 of the code (relating to boat and net licenses for boundary lakes) in the Pennsylvania waters of Lake Erie—including setting and lifting of nets or other activities—on days when the Executive Director restricts such fishing after December 31 and before June 1.

(b) The commercial fishing season for walleye is January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31. This season will close on the date established by the Executive Director as marking the probable attainment of the total allowable catch for walleye for that year. The total allowable catch for walleye for any year will be determined by the Executive Director and announced annually on or before March 1. After the announcement, the Executive Director may, from time to time, revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or a designee will monitor monthly, weekly and daily reports of catch of walleye and will declare the season to be closed on a date the Director determines will probably mark attainment of the total allowable catch. It is unlawful for a person fishing under a commercial fishing license or with a device subject to

licensing under section 2902 of the code (relating to net permits) to take, catch or attempt to catch walleye except during the walleye season established under this subsection. Walleye accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

(c) The commercial fishing season for yellow perch is January 1 until the date established by the Executive Director as marking the probable attainment of the total allowable catch for yellow perch for that year. The total allowable catch for yellow perch for any year will be determined by the Executive Director and announced on or before March 1. After the announcement, the Executive Director may revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or his designee will monitor the monthly, weekly and daily reports of catch of yellow perch and will declare the season to be closed on the date the Director determines will probably mark attainment of the total allowable catch. It is unlawful for any person fishing under a commercial fishing license or with a device subject to licensing under section 2902 of the code (relating to net permits), to take, catch, or attempt to catch yellow perch except during the yellow perch season established under this subsection. Yellow perch accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

**§ 69.33. Use of trap nets.**

(a) *Size.* Trap nets, cribs and associated leads shall be constructed of twine not lighter than number 12 thread/cord. A trap net lead or lifting crib with a mesh in violation of this section, whether being fished or held in possession, shall be subject to confiscation by the Commission.

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
Yellow perch ( <i>Perca flavescens</i> )	None	No closed season until the total allowable catch is taken
Walleye ( <i>Stizostedion vitreum</i> )	15 inches	January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken.
White fish ( <i>Coregonus spp.</i> )	17 inches	No closed season
White perch ( <i>Morone americana</i> )	No size limit	No closed season
Cisco ( <i>Coregonus spp.</i> except <i>C. artedii</i> )	No size limit	No closed season

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
White bass ( <i>Morone chrysops</i> )	No size limit	No closed season
Burbot ( <i>Lota lota</i> )	No size limit	No closed season
Sheepshead ( <i>Aplodinotus grunniens</i> )	No size limit	No closed season
Gizzard shad ( <i>Dorosoma cepedianum</i> )	No size limit	No closed season
Goldfish ( <i>Carassius auratus</i> )	No size limit	No closed season
Lake whitefish ( <i>Coregonus clupeaformis</i> )	No size limit	No closed season
Brown bullhead ( <i>Ictalurus nebulosus</i> )	No size limit	No closed season
Yellow bullhead ( <i>Ictalurus natalis</i> )	No size limit	No closed season
Rainbow smelt ( <i>Osmerus mordax</i> )	No size limit	No closed season
Channel catfish ( <i>Ictalurus punctatus</i> )	No size limit	No closed season
Suckers ( <i>Carpides sp.</i> , <i>Catostomus sp.</i> , <i>Ictiobus sp.</i> and <i>Moxmostoma sp.</i> )	No size limit	No closed season
Carp ( <i>Cyprinus carpio</i> )	No size limit	No closed season

(c) *Buoys/tags.* Marker buoys shall be attached to the beginning of each lead and to the back of the crib. A staff extending 8 feet above the water with a minimum size flag of 18 inches by 18 inches secured near the top shall be attached to the anchor for the beginning of the lead and a staff extending 8 feet above the water with 2 minimum size flags of 18 inches by 18 inches (double flags) shall be attached to the anchor for the crib. The licensee shall affix a metal, numbered tag provided by the Commission to each of the required staffs showing the name and address of the owner or the lessee. Licensees shall report a seal that is lost, misplaced or stolen orally within 24 hours of discovery and in writing to the Commission at Northwest Law Enforcement Region within 2 business days. Improperly marked or tagged nets shall be subject to confiscation by the Commission. Officers authorized to enforce the code and this part may mark trap nets for the purpose of determining the number of trap nets being used by a particular licensee.

(d) *Restricted period.* From January 1 through June 15, no part of a trap net may be set within 0.5 miles of Lake Erie shoreline, except between longitudes 80°00" and 80°10" where no part of a trap net may be set within 1.5 miles of the Lake Erie shoreline. From June 16 through December 31, no part of a trap net may be set within 1.5 miles of the Lake Erie shoreline.

(e) *Time.* Trap nets may be fished 24 hours a day, but it is unlawful to set or lift them during the period from 30 minutes after sunset to 30 minutes before sunrise. Trap nets may be set or fished, or both, from March 1 to November 30.

(f) *Description of trap net.*

(1) In the most general sense, a trap net is a compartmentalized trap, consisting of a lead, heart, tunnel and crib with wings and funnels. Fish are entrapped in the crib by swimming along a lead which directs the animal progressively through the heart, tunnel and into the crib. The netting and webbing which make up the crib shall be a single sheet external panel, subject to mesh size regulation to allow small, young fish a means of escape.

(2) A trap net fishing device is designed to catch fish by impoundment, as opposed to catching fish by entanglement, which is the action by which gill nets capture fish. Fish caught by impoundment remain alive and swimming for an extended period while confined within the trap net crib. Fish caught by entanglement are unable to free themselves of the net, cannot swim freely and cannot be expected to live while entangled in the gear. The elements of netting, webbing and twine (thread) size (diameter) used in the construction of a trap net shall be of design and dimension that will discourage, prohibit and preclude the enmeshing and entanglement of fish in the netting of any part of the trap net device. The netting of the crib shall be constructed as a single panel or sheet of webbing. Lawful trap nets may not have liners or covers which would make the external crib webbing two or more sheets in thickness.

(3) As used in this chapter, the term "trap net" includes hoop nets and fyke nets.

(g) *Setting or tending trap nets.* A boat engaged in the setting or tending of trap nets shall comply with Navigation Rule 26 (United States Coast Guard) from the time the boat leaves the dock until it arrives back at the dock.

**CHAPTER 75. ENDANGERED SPECIES****§ 75.4. Special permits.**

The Executive Director, or a designee, may issue special permits under section 2305 of the code (relating to threatened and endangered species) to take, catch, kill or possess threatened or endangered species upon written application on forms provided by the Commission.

(1) Special permits will be issued only upon a showing of unique or extraordinary circumstances justifying the permit and the applicant shows that the permitted action does one of the following:

(i) Has no demonstrable adverse impacts on the population of the species in this Commonwealth.

(ii) Is in the best interest of the protection, conservation and management of the species.

(iii) Is necessary and appropriate in the interests of public health and safety or promotes essential research or public education and information.

(2) Persons and institutions requesting special permits shall apply before taking, catching, killing, possessing or acquiring the threatened or endangered species. Application forms and information are available from the Natural Diversity Section, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616.

**Subpart C. BOATING****CHAPTER 101. BOATING ACCIDENTS****§ 101.6. Investigation reports by Commission officers.**

(a) The Commission may assign a waterways conservation officer or other employe to complete an accident investigation report when an accident involves loss of life,

disappearance, medical treatment given beyond first aid or in other circumstances in which the Executive Director, or a designee, directs an investigation.

(b) A boating accident investigation report will be completed without referring to the boating accident report submitted by the owner or operator of the boat.

(c) Under section 324 of the code (relating to Commission records), boating accident investigation reports are not considered public records and they will not be released except for the following:

(1) Pursuant to a valid subpoena.

(2) When 234 Pa. Code (relating to Rules of Criminal Procedure) requires production of the documents.

(3) To other government agencies for official purposes.

**CHAPTER 113. AIDS TO NAVIGATION AND OBSTRUCTIONS TO NAVIGATION****§ 113.3. Operation of boats.**

The Commission or the Executive Director acting under § 103.3(c) (relating to restriction for special areas), may establish or authorize establishment of control zones. Established control zones will be indicated by regulatory markers at the beginning, at the end and at appropriate intermediate points. It is unlawful for operators to operate a boat contrary to the restrictions of the controlled area.

[Pa.B. Doc. No. 09-671. Filed for public inspection April 10, 2009, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD****[ 58 PA. CODE CHS. 439a AND 465a ]****Corrective Amendment to 58 Pa. Code Chapters 439a and 465a**

The Pennsylvania Gaming Control Board has discovered a discrepancy between the agency text of 58 Pa. Code §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6), and (f) (relating to junket schedules; access badges and temporary access credentials; and personal check cashing), as deposited with the Legislative Reference Bureau and published at 38 Pa.B. 5652 (October 11, 2008) and the official text currently appearing in the *Pennsylvania Code*. The codification of the amendments set forth at 38 Pa.B. 5652 were inadvertently omitted from the *Pennsylvania Code Reporter* (Master Transmittal Sheet 409, December 2008).

Therefore, under 45 Pa.C.S. § 901: The Pennsylvania Gaming Control Board has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6). The corrective amendment to §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6), is effective as of December 6, 2008, the date the defective text of Master Transmittal Sheet—409 was announced in the *Pennsylvania Bulletin*.

The correct version of §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6) appears in Annex A, with ellipses referring to the existing text of the sections.

TROY L. BEAVERSON,  
Assistant Chief Counsel  
Pennsylvania Gaming Control Board

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 439a. JUNKET ENTERPRISES

§ 439a.7. Junket schedules.

\* \* \* \* \*

(b) A junket schedule shall be filed with the Office of Gaming Operations by a slot machine licensee by the 15th day of the month preceding the month in which the junket is scheduled. If a junket is arranged after the 15th day of the month preceding the arrival of the junket, an amended junket schedule shall be filed with the Office of Gaming Operations by the slot machine licensee by the close of the next business day.

\* \* \* \* \*

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 465A. ACCOUNTING AND INTERNAL CONTROLS

§ 465a.12. Access badges and temporary access credentials.

\* \* \* \* \*

(c) Slot machine licensees shall also establish procedures, in writing, for readily identifying each person permitted, under temporary or emergency circumstances, to have access to one or more restricted areas within the licensed facility.

\* \* \* \* \*

(3) The procedures must further include provisions expressly addressing temporary or emergency access by

licensed manufacturers, licensed manufacturer designees, licensed suppliers and registered and certified vendors.

\* \* \* \* \*

§ 465a.20. Personal check cashing.

\* \* \* \* \*

(b) Personal checks accepted under subsection (a) shall be presented by the patron directly to a slot cashier who shall:

\* \* \* \* \*

(6) Immediately exchange the personal check for cash in an amount equal to the amount for which the check is drawn or place the amount in a customer deposit account under § 465a.23 (relating to customer deposits) for subsequent use at the licensed facility. A slot machine licensee may not accept a check or multiple checks which in the aggregate exceed \$2,500 per patron per gaming day.

\* \* \* \* \*

(f) A slot machine licensee that charges a fee for cashing checks shall comply with the Check Casher Licensing Act (63 P. S. §§ 2301—2334).

(g) Prior to accepting personal checks, each slot machine licensee shall establish a comprehensive system of internal controls applicable to the acceptance of personal checks. The internal controls shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols). The internal controls submitted by the slot machine licensee must address procedures for complying with this section including the dollar limitation per gaming day contained in subsection (b)(6).

[Pa.B. Doc. No. 09-672. Filed for public inspection April 3, 2009, 9:00 a.m.]

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# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 62 ]

[L-2008-2069115/57-266]

### Licensing Requirements for Natural Gas Suppliers

The proposed rulemaking of the Pennsylvania Public Utility Commission which appeared at 39 Pa.B. 1657 (April 4, 2009) failed to include the Fiscal Note information. The information should have read as follows:

**Fiscal Note:** 57-266. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 09-620. Filed for public inspection April 3, 2009, 9:00 a.m.]

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## FISH AND BOAT COMMISSION

[ 58 PA. CODE CHS. 53, 91, 97, 101, 105, 109 AND  
111 ]

### General Provisions and Boating

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapters 53, 91, 97, 101, 105, 109 and 111. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments modify and update the Commission's boating regulations.

#### A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect immediately upon publication of an order in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposal is available electronically through the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendment to § 53.8 (relating to boats) is published under the statutory authority of section 741 of the code (relating to control of property). The proposed amendments to §§ 91.5, 97.1, 101.5, 105.3 and 109.1 are published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendment to § 109.6 (relating to special marine events) is published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics). The proposed amendments to §§ 111.17 and 111.20 (relating to Clearfield County; and Crawford County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

#### D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals. On October 21, 2008, the Commission's Boating Advisory Board considered each of the proposals and recommended that the Commission approve the publication of a notice of proposed rulemaking.

#### E. *Summary of Proposals*

(1) *Sections 53.8 and 97.1.* Section 97.1(f) (relating to personal flotation devices) of the Commission's regulations follows the Code of Federal Regulations that excludes racing shells, rowing sculls and racing kayaks from the requirements for personal flotation devices (PFDs). However, this subsection provides that the exemption does not apply on Commission and State Park owned or controlled boating waters. Section 53.8 of the Commission's regulations similarly requires occupants of skiffs, shells and racing kayaks to carry or wear Coast Guard approved PFDs on Commission property.

This type of boating is somewhat exclusive due to its nature. Most often, racing shells, sculls and kayaks are used by high school, college or university students or special clubs. They are, with few exceptions, very safe boaters, and the accident record for these boats does not point to a need for requiring PFDs for their occupants. Moreover, there is no support to require occupants of these boats to wear PFDs on small Commission lakes when they are not required to carry them onboard on larger waters.

Section 91.7(f) also provides detailed information on what type of PFDs must be carried by the safety boat accompanying the shells, sculls or racing kayaks. However, § 97.1(f) does not, and may not (because of the Federal regulations), require that there be a safety boat present. Accordingly, it does not make sense to stipulate requirements for safety boats when the safety boats are not required to be on the scene under the Federal regulations. Moreover, the accident record for these boats does not point to the need for requiring PFDs on safety boats. The Commission therefore proposes that §§ 53.8 and 97.1 be amended to read as set forth in Annex A.

(2) *Section 91.5.* The Commission's current regulations do not include a provision making it unlawful for a boat owner knowingly to allow someone to operate a boat without a boating safety education certificate onboard when the individual is required to have one. The Commission's law enforcement staff have requested that this requirement be added. The Commission therefore proposes that § 91.5 (relating to parental and boat owner responsibility) amended to read as set forth in Annex A.

(3) *Section 101.5.* The confidentiality of boating accident reports is covered in detail in § 5503 of the code (relating to accident reports) and in § 101.5 (relating to confidentiality of boating accident report). The Commission receives requests from time to time for certified abstracts for specific boating accidents. This is the only information that can be released from the Boating Accident Report (PFC-260) filed by the boat operator or owner who was involved in a reportable, recreational boating accident. Commission staff have always asked that these requests be in writing. The Commission therefore pro-

poses that language be added to § 101.5 to support the Commission's standard practice and clarify this matter to the inquiring public. The Commission proposes that § 101.5 be amended to read as set forth in Annex A.

(4) *Section 105.3.* The existing regulation concerning pontoon boats allows passengers to ride outside the normal passenger carrying area when the pontoon boat is travelling at slow, no wake speed. This is an unsafe practice because the passenger can very easily fall overboard, even at the reduced, slow, no wake speed. Because of the nature of the hull design of pontoon boats, slow, no-wake can be a faster speed than on single hull boats, such as a runabout. If the passenger is in the bow of the boat and falls overboard, he will most likely be struck by the boat's propeller with catastrophic results. This very scenario took place this year on a lake in western Pennsylvania when the pontoon boat operator unexpectedly hit a log, causing a boy who was riding on the bow outside of the normal passenger carrying area to fall overboard and be struck by the boat's propeller. This proposed amendment places no undue hardship on the operators or passengers of pontoon boats. It does allow the Commission officers to stop pontoon boats that have their passengers so exposed and to inform the operator that this is an unsafe practice. The Commission therefore proposes that § 105.3 (relating to unacceptable boating practice) amended to read as set forth in Annex A.

(5) *Section 109.1.* Section 109.1 (relating to air boats) of the Commission's regulations provides detailed standards for the construction of air boats. However, a recent technical inquiry by a member of the general public about this regulation could not be answered because there are no known sources for the content of this regulation. There are very few airboats in this Commonwealth, and the Commission's law enforcement staff have had few issues with operators of these unusual boats. The Commission therefore proposes that § 109.1 be rescinded as set forth in Annex A.

(6) *Section 109.6.* Section 109.6(b)(5) (relating to special marine events) of the Commission's regulations provides that the Commission will not issue a special activities permit for a marine event in a State Park unless the applicant first obtains written permission from the Bureau of State Parks, Department of Conservation and Natural Resources (DCNR) for the event. The Commission, however, issues permits for events occurring in State Forests, not just those in State Parks. The regulation goes on to state that for marine events held on waters under the ownership or control of other Federal or State agencies, the Commission will require evidence that the applicant has the permission of the controlling agency. To simplify the regulation, the Commission proposes that the regulation be revised to simply require the permission of the entity that owns or controls the waters on which the marine event will occur. The Commission routinely issues special activities for marine events that occur on private and public waters, including waters owned or controlled by DCNR, the Game Commission, the United States Army Corps of Engineers (USACOE), and county and municipal governments. The Commission therefore proposes that § 109.6 be amended to read as set forth in Annex A.

(7) *Section 111.17.* Curwensville Lake is a USACOE, Baltimore District impoundment of the West Branch of the Susquehanna River in central Clearfield County. It is managed jointly by the USACOE and the Clearfield County Recreation and Tourism Authority. The lake comprises 790 acres with 19 shoreline miles and unrestricted

horsepower. The lake provides open water adjacent to the dam with the majority of the water in a serpentine pattern based upon the original river contours. The lake narrows severely in its upper reaches. Use of the upper area is popular, but not conducive to unrestricted horsepower boating. These upper reaches, most of which are less than 200 feet in width, have been posted and enforced as a slow, no wake area but have never been defined by regulation. Giving clear and legal definition of the slow, no wake area is of joint interest of the agencies and will enhance fairness in public notice and enforceability. The USACOE has requested that the slow, no-wake area be marked in the area upriver of the cliff at Ferguson and the area between the old viaduct pillars. The Commission therefore proposes that § 111.17 (relating to Clearfield County) be amended to read as set forth in Annex A.

(8) *Section 111.20.* Pymatuning Lake is part of Pymatuning State Park. DCNR regulates the waterway's horsepower limit and has recently set it at 20 horsepower, like several other lakes owned or controlled by DCNR. In the past, the Commission removed all references to horsepower limits on DCNR waterways from Chapter 111 of the Commission's regulations. Removal of Pymatuning Lake will complete that process. The Commission therefore proposes that § 111.20 (relating to Crawford County) be amended to read as set forth in Annex A.

*F. Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

*H. Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/reg](http://www.fishandboat.com/reg) comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-210. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 53. COMMISSION PROPERTY**

**§ 53.8. Boats.**

\* \* \* \* \*

(b) [ Occupants of sculls, shells and racing kayaks are required to carry or wear Coast Guard approved personal flotation devices.

(c) Overnight mooring of boats is permitted at designated mooring areas from April 1 to November 30. A boat utilizing mooring areas shall be registered and display the official registration number and current validation stickers described under Subpart C (relating to boating) and Part III of the code (relating to boats and boating). The mooring is at the sole risk of the owner.

- [ (d) ] (c) \* \* \*
- [ (e) ] (d) \* \* \*
- [ (f) ] (e) \* \* \*
- [ (g) ] (f) \* \* \*
- [ (h) ] (g) \* \* \*

Subpart C. BOATING

CHAPTER 91. GENERAL PROVISIONS

§ 91.5. Parental and boat owner responsibility.

(a) It is unlawful for the owner of a boat knowingly to allow or permit a child 17 years of age or younger to operate [ a watercraft ] the boat in violation of this subpart.

(b) It is unlawful for a parent or guardian of a child 17 years of age or younger knowingly to allow or permit the child to operate a [ watercraft ] boat in violation of this subpart.

(c) It is unlawful for the owner of a boat knowingly to allow an individual who is required to have a boating safety education certificate to operate the boat without having a boating safety education certificate onboard.

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.1. Personal flotation devices.

\* \* \* \* \*

(f) This section does not apply to racing shells, rowing sculls and racing kayaks, such as manually propelled boats recognized by National racing associations for use in competitive racing, where the occupants row, scull or paddle with the exception of the coxswain, if one is provided, and which are not designed to carry and do not carry equipment not solely for competitive racing. [ Safety boats accompanying the boats shall carry a sufficient number of readily accessible Type I, II, III or V PFDs for the occupants of the shells, sculls or kayaks. This exemption does not apply on Commission and State Park owned or controlled boating waters. ]

\* \* \* \* \*

CHAPTER 101. BOATING ACCIDENTS

§ 101.5. Confidentiality of boating accident report.

\* \* \* \* \*

(b) An abstract which contains the date, time, location, weather conditions, names and addresses of the operators, passengers and witnesses and descriptions of the

watercraft involved is releasable upon written request. The Commission may charge a reproduction fee of 50¢ per page.

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3. Unacceptable boating practices.

It is unlawful to:

\* \* \* \* \*

(9) Operate a pontoon boat while a person is riding outside the passenger carrying area. The passenger carrying area is defined by continuous railings or enclosed spaces intended for persons to use while the pontoon boat is underway. The prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat [ or when the pontoon boat is underway at slow minimum height swell speed or less ].

\* \* \* \* \*

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.1. [ Air boats ] (Reserved).

[ Persons operating a type of boat with an airplane-type motor shall comply with the following:

(1) When the air propeller is capable of being turned laterally and used as a rudder as well as for propulsion, the propeller shall be completely enclosed with a protective housing. The housing shall be metal tubing or heavy wire, or both.

(2) When the boat is steered by a rudder and the propeller is located astern of—behind—the power unit, the propeller shall be housed as follows:

(i) It shall be enclosed at least 50% or 80° from the bottom upward, with two parallel curved metal rods or tubes of at least 1/2-inch diameter, the rods or tubes are to be fastened to the boat rather than to the power unit, and located so that the propeller turns within the enclosure formed by the rods or tubes. There shall be similar metal cross bars at intervals of not more than 30° along the 180° arc or at least six cross bars attached to the two curved parallel housing rods or tubes.

(ii) On these boats, there shall be stout metal rods turning from a point at or near the forward end of the engine or power unit, outward and rearward at an angle, so that if a person becomes overbalanced and falls backward toward a propeller, the person tends to be deflected away from the propeller.

(3) When tractor-type air drive is used, with the propeller located forward of the engine, the entire propeller shall be enclosed by parallel rod or tube housing, the rods or tubes are to be of material and size as previously described in this section. In addition, the 360° housing shall be crossed on the forward side by stout rod or wire sections, placed so that at no point is there an opening greater than 3 inches, vertically or horizontally, through which a person may by accident thrust a hand or arm. An arrangement of stout rods or tubes, as previously described from a forward point, fanning outward and upward to the rim of the nearer, or forward, of the 360° housing rods or tubes, shall be placed so

that a person falling backward tends to be thrown outward and away from the propeller.

(4) Regardless of the type of power unit employed, the propeller may not extend horizontally beyond the gunwales of the boat on which it is used. ]

§ 109.6. Special marine events.

\* \* \* \* \*

(b) Persons responsible for holding special marine events shall:

\* \* \* \* \*

[ (5) ] (c) The Commission will not issue a special activities permit for a marine event [ in a State Park ] unless the applicant first obtains written permission [ from the Bureau of State Parks, Department of Conservation and Natural Resources, ] for the event from the entity that owns or controls the waters on which the event will occur. [ For marine events held on waters under the ownership or control of other Federal or State agencies, the ] The Commission will require evidence that the applicant has the permission of the controlling [ agency ] entity unless that [ agency ] entity has delegated approval authority to the Commission.

[ (c) ] (d) The Executive Director may impose special regulations designed to protect the safety or limit the activity of either participants or nonparticipants. Regulations which would prohibit the special marine event may

be temporarily suspended upon a finding that the event will not significantly impact the long-term management of the resource, create a safety hazard or unreasonably limit the use of the area by other boaters. It shall be the responsibility of the sponsor to advertise these special conditions in a manner satisfactory to the Commission.

CHAPTER 111. SPECIAL REGULATIONS  
COUNTIES

§ 111.17. Clearfield County.

\* \* \* \* \*

(d) *Curwensville Lake*. Boats are limited to slow, no wake speeds in the following areas:

- (1) Upriver of the cliff at Ferguson.
- (2) Between the old viaduct pillars.

§ 111.20. Crawford County.

\* \* \* \* \*

(c) [ *Pymatuning Lake—Pymatuning State Park*. The use of motors in excess of 10 horsepower is prohibited.

(d) ] \* \* \*

[ (e) ] (d) \* \* \*

[ (f) ] (e) \* \* \*

\* \* \* \* \*

[Pa.B. Doc. No. 09-673. Filed for public inspection April 10, 2009, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF AGRICULTURE

### Interstate/International Quarantine Order; Avian Influenza

#### *Recitals.*

- A. Avian influenza is an infectious disease of poultry.
- B. Avian influenza is designated a "dangerous transmissible disease" of animals under 3 Pa.C.S. § 2321(d) (relating to Domestic Animal Law) (Law) (3 Pa.C.S.A. §§ 2301—2389).
- C. The Pennsylvania Department of Agriculture (PDA) has broad authority under the Law to regulate the keeping and handling of domestic animals in order to exclude, contain or eliminate dangerous transmissible diseases.
- D. Avian influenza has caused significant loss in the past to this Commonwealth's poultry industry.
- E. Avian influenza is of particular concern to this entire Commonwealth's poultry industry and may severely limit the market for this Commonwealth's product.
- F. Avian influenza sub-types H5 and H7 are of particular concern due to their potential for developing into a virulent (highly pathogenic) form of disease.
- G. Avian influenza exists, or is suspected to exist, outside this Commonwealth.
- H. The Law allows (at 3 Pa.C.S.A. § 2329(c)) for the establishment of an Interstate/International Quarantine under the circumstances described previously.
- I. Under that authority, the PDA issued its initial Interstate/International Quarantine Order addressing avian influenza on January 24, 2006. In the course of implementing and administering this initial Order, the PDA determined the need to refine the conditions of quarantine; and issued a February 7, 2008 Interstate/International Quarantine Order to supplant and rescind its initial Order.
- J. The PDA has again determined the need to refine the conditions of quarantine. Specifically, the PDA seeks to further clarify the testing requirements applicable to poultry flocks.

#### *Order.*

The PDA enters an Interstate/International Quarantine Order, incorporating the foregoing recitals. This order is entered under authority of the Law (at 3 Pa.C.S.A. § 2329) and section 1702 of The Administrative Code of 1929 (71 P.S. § 442), and establishes the following quarantine restrictions with respect to the shipment of live poultry into this Commonwealth:

1. For purposes of this Order, the term "poultry" includes all domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl and game birds, except doves and pigeons, or as otherwise defined under subpart A of the current version of the National Poultry Improvement Plan (NPIP) and Auxiliary Provisions, and shall be 3 weeks of age or older.
2. Poultry shall only be allowed into this Commonwealth under any of the following circumstances:
  - a. The poultry originate from a flock that participates in the current version of the NPIP and Auxiliary Provisions "U.S. Avian Influenza Clean" or "U.S. H5/H7 Avian

Influenza Clean" program and the shipment is accompanied by a USDA form 9-3 or other approved NPIP form; or

- b. The poultry originate from a flock in which a minimum of 30 birds, 3 weeks of age or older, were tested negative for avian influenza (serology, virus isolation or real-time reverse-transcriptase polymerase chain reaction (RRT-PCR)). The date of sample collection must be within 30 days of entry into this Commonwealth and the shipment must be accompanied by the test report. If there are fewer than 30 birds in the flock, all birds must be tested (RRT-PCR, virus isolation, or serology). For waterfowl, virus isolation (cloacal swabs) is required for entry. No untested birds shall have been added to the flock after sample collection and before entry into this Commonwealth.

- c. If a flock is serologically positive, poultry from that flock may be imported only if the flock is determined to be free of virus by virtue of a negative virus detection test (virus isolation or RRT-PCR) of oropharyngeal, tracheal and/or cloacal specimens from a minimum of 150 birds. If there are fewer than 150 birds in the flock, all birds must be tested. For waterfowl, virus isolation (cloacal swabs) is required for entry. The date of sample collection must be within 30 days of entry into this Commonwealth and the shipment must be accompanied by the test report. No untested birds shall have been added to the flock after sample collection and before entry into this Commonwealth.

3. Poultry 3 weeks of age and older, imported into this Commonwealth, shall meet all other import requirements required under PDA's regulations at Title 7 of the *Pennsylvania Code* (accessible through the following web site [www.pacode.com](http://www.pacode.com)).

4. Gallinaceous birds, water birds and ratites 3 weeks of age and older which are destined to be pet birds or destined to be part of a zoological or menagerie collection; and wild birds 3 weeks of age and older (gallinaceous birds, water birds, and ratites) destined for domestication, confinement, or as pets must be test negative for avian influenza (swabs tested using virus isolation or real-time reverse-transcriptase polymerase chain reaction (RRT-PCR) techniques). These birds may be individually tested for import. The date of sample collection must be within 30 days of entry into this Commonwealth and the shipment must be accompanied by the test report. For water birds, virus isolation (cloacal swabs) is required for entry.

5. All other imported gallinaceous birds, water birds and ratites 3 weeks of age and older must meet all AI testing requirements stated for poultry (includes birds intended for release). For water birds, virus isolation (cloacal swabs) is required for entry.

6. This Order shall not be construed as limiting the PDA's authority to establish additional quarantine or testing requirements on imported poultry and/or poultry products.

7. This Order is effective April 1, 2009, and supplants the referenced Interstate/International Quarantine Order of February 7, 2008.

DENNIS C WOLFF,  
*Secretary*

[Pa.B. Doc. No. 09-674. Filed for public inspection April 10, 2009, 9:00 a.m.]

# DEPARTMENT OF BANKING

## Actions on Applications

The Department of Banking (Department), 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 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending March 31, 2009.

Under section 503.E of the Department of Banking Code (71 P. S. § 733-503.E), any person wishing to comment on the following applications, with the exception of branch applications, may file their comments in writing with the Department of Banking, Corporate Applications Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290. Comments must be received no later than 30 days from the date notice regarding receipt of the application is published in the *Pennsylvania Bulletin*. The nonconfidential portions of the applications are on file at the Department and are available for public inspection, by appointment only, during regular business hours. To schedule an appointment, contact the Corporate Applications Division at (717) 783-2253. Photocopies of the nonconfidential portions of the applications may be requested consistent with the Department's Right-to-Know Law Records Request policy.

### BANKING INSTITUTIONS

#### Voluntary Dissolutions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-31-2009	Everest Trust Company Philadelphia Philadelphia County	Philadelphia	Approved
3-31-2009	Everest Trust Company Philadelphia Philadelphia County	Philadelphia	Certificate of Election for Voluntary Dissolution filed with Department of State

Institution shall cease to do business.

#### Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
3-27-2009	Northwest Bancorp, MHC, Warren, to acquire 100% of Keystone State Savings Bank, Sharpsburg	Warren	Filed
3-31-2009	Tower Bancorp, Inc., Greencastle, acquired 100% of Graystone Financial Corp., Lancaster	Greencastle	Effective

#### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-27-2009	Northwest Savings Bank, Warren, and Keystone State Savings Bank, Sharpsburg Surviving Institution: Northwest Savings Bank, Warren	Warren	Filed
3-31-2009	Graystone Bank, Lancaster, and The First National Bank of Greencastle, Greencastle Surviving Institution: Graystone Bank, Lancaster, with the resulting institution continuing under the name "Graystone Tower Bank"	Lancaster	Effective

#### Branch offices acquired by Graystone Tower Bank by means of merger:

40 Center Square Greencastle Franklin County	488 Gateway Avenue Chambersburg Franklin County
130 Mullen Street Fort Loudon Franklin County	4136 Lincoln Way West Chambersburg Franklin County

## NOTICES

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
	2001 Lincoln Way East Chambersburg Franklin County	11906 Buchanan Trail West Mercersburg Franklin County	
	7357 Anthony Highway Waynesboro Franklin County	11050 Buchanan Trail East Waynesboro Franklin County	
	1574 Buchanan Trail East Greencastle Franklin County	232 East Main Street Waynesboro Franklin County	
	187 Buchanan Trail McConnellsburg Fulton County	101 Lincoln Way West McConnellsburg Fulton County	
	8264 Great Cove Road Needmore Fulton County	1101 Professional Court Hagerstown Washington County, MD	
	131 West Main Street Hancock Washington County, MD	18233 Maugans Avenue Hagerstown Washington County, MD	

**Branch Applications****De Novo Branches**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-23-2009	Fulton Bank Lancaster Lancaster County	122 Eagle Point Bellefonte Centre County	Opened

**Branch Relocations**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-30-2009	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	<i>To:</i> 537 Baltimore Pike Springfield Delaware County  <i>From:</i> 410 West Baltimore Pike Clifton Heights Delaware County	Filed

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS****Community Charter Conversions**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
3-31-2008	Riverset Credit Union Pittsburgh Allegheny County	Pittsburgh	Filed

The credit union proposes to amend Article 8 of its Articles of Incorporation to serve a field of membership limited to the following community: Persons who live, work (regularly conduct business in), worship, attend school in and businesses and other legal entities in Allegheny, Beaver and Butler Counties, PA.

The Department's web site at [www.banking.state.pa.us](http://www.banking.state.pa.us) includes public notices for more recently filed applications.

STEVE KAPLAN,  
*Secretary*

[Pa.B. Doc. No. 09-675. Filed for public inspection April 10, 2009, 9:00 a.m.]

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

## Applications, Actions and Special Notices

### APPLICATIONS

#### THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

For NPDES renewal applications in Section I, 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 applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the Environmental Protection Agency (EPA) Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. 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 will also accept requests for a public hearing on applications. A public hearing may be held 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 within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<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>
PA0057622	Richard E. Javage, Jr. 241 Woodhill Lane Media, PA 19063	Delaware County Upper Providence Township	UNT Ridley Creek	Y
	Julie Saft 261 Woodhill Lane Media, PA 19063			



*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>
PAS212203 (Stormwater)	Rock Hill Concrete, Inc.— Bossardsville Plant 339 School Street Catasauqua, PA 18032	Monroe County Hamilton Township	UNT to Lake Creek 01E	Y
PA0062006 (Minor Sewage)	YMCA of Wilkes-Barre, Inc. Camp Kresge 40 West Northampton Street Wilkes-Barre, PA 18711	Luzerne County Dennison Townshp	Creasy Creek 05D	Y

Chesapeake Bay nutrient monitoring requirements for Ammonia Nitrogen, Kjeldahl Nitrogen, Nitrite-Nitrate as N, Total Nitrogen and Total Phosphorus are being added to this permit.

<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>
PA0031267 (Nonmunicipal Sewage)	Tri-Valley School District Hegins-Hublely Elementary School 110 West Main Street Valley View, PA 17983-9475	Schuylkill County Hegins Township	Pine Creek 06C	Y

Chesapeake Bay nutrient monitoring requirements for Ammonia Nitrogen, Kjeldahl Nitrogen, Nitrite-Nitrate as N, Total Nitrogen and Total Phosphorus are being added to this permit.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

<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>
PA0085197 (Sew)	Kampel Enterprises, Inc. 8930 Carlisle Road Wellsville, PA 17365-9735	York County Warrington Township	UNT North Branch Bermudian Creek 7F	Y
PA0085448 (Sew)	East Earl Sewer Authority— Goodville Industrial Center P. O. Box 339 East Earl, PA 17506	Lancaster East Earl Township	UNT Conestoga River 7J	Y
PA0082287 (Sew)	Pennsylvania—Delaware District Council Assemblies of God 430 Union Hall Road Carlisle, PA 17013-8303	Cumberland County North Middleton Township	Conodoguinet Creek 7-B	Y

*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>
PA0113913 SF	Irvin G. Hoover Irvin's Country Tinware 15 Cedar Lane Mt. Pleasant Mills, PA 17853-8016	Snyder County West Perry Township	UNT To North Branch Mahatango Creek 6C	Y

## II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**PA0057363**, Sewage, SIC 4952, **ARCCA Real Estate Corporation**, 2288 Second Street Pike, Penns Park, PA 18943. This existing facility is located in Wrightstown Township, **Bucks County**.

Description of Proposed Activity: Renewal of permit to discharge treated sewage effluent from a small flow treatment facility that serves a business office.

The receiving stream, a swale that drains to a UNT to Neshaminy Creek, is in the State Water Plan Watershed 2F and is classified for: WWF, MF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Aqua PA South East Division is located on Neshaminy Creek and is approximately 8 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 2,000 gpd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>					
(5-1 to 10-31)			10		20
(11-1 to 4-30)			20		40
Total Suspended Solids					
NH <sub>3</sub> -N			10		20
(5-1 to 10-31)			3.0		6.0
(11-1 to 4-30)			9.0		18.0
pH (Standard Units)			6.0 minimum		9.0
Fecal Coliform (Col/100 ml)			200		1,000*
Total Residual Chlorine			0.5		1.3
Dissolved Oxygen			3.0 minimum		
Total Phosphorus as P			Report		Report

\* Not to exceed 1,000 Col/100 ml in greater than 10% of the samples tested.

In addition to the effluent limits, the permit contains the following major special conditions:

1. Notification of Designation of Responsible Operator.
2. Abandon STP When Public Sewers Become Available.
3. Remedial Measures if Unsatisfactory Effluent.
4. No Stormwater to Sewers.
5. Necessary Property Rights.
6. Dry Stream Discharge.
7. Change in Ownership.
8. Chlorine Minimization.
9. Instantaneous Maximum Limitations.
10. Laboratory Certification.
11. Fecal Coliform Reporting.

**PA0011720**, Industrial Waste, SIC 2819, **Rhodia, Inc.**, CN 7500 Prospect Plains Road, Cranbury, NJ 08512-7500. This facility is located in Falls Township, **Bucks County**.

Description of Proposed Activity: renewal of an NPDES permit to discharge stormwater from the facility into Biles Creek.

The receiving stream, Biles Creek, is in the State Water Plan Watershed 2E-Common and is classified for WWF. The nearest downstream public water supply intake for LBJMA is located on Delaware River and is 4.0 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are as follows:

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>					Monitor and Report
COD					Monitor and Report
Oil and Grease					Monitor and Report
pH (Standard Units)					Monitor and Report
Total Suspended Solids					Monitor and Report
Total Kjeldahl Nitrogen					Monitor and Report
Total Phosphorus					Monitor and Report
Iron (Dissolved)					Monitor and Report

**PA0011568**, Industrial Waste, SIC 3312, 3398, **ArcelorMittal Plate, LLC**, 139 Modena Road, P. O. Box 3001, Coatesville, PA 19320-0911. This existing facility is located in the City of Coatesville, **Chester County**.

Description of Proposed Activity: This application is for a renewal NPDES permit for an existing discharge of treated industrial wastewater from the ArcelorMittal Plate Coatesville Plant.

The receiving streams, West Branch Brandywine Creek and Sucker Run, are in the State Water Plan Watershed 3H and are classified for: WWF and MF.

The proposed effluent limits for Outfall 001 are based on a flow of 0.326 mgd:

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	82	163	30	60	75
Oil and Grease	41		15		30
Lead, Total	0.04	0.12	0.015	0.045	0.045
Zinc, Total	0.33	1.00	0.12	0.37	0.37
Temperature					110° F
pH			6.0 minimum		9.0
Iron, Total	6.5	12.8	2.4	4.7	5.8
Iron, Dissolved	1.28	2.56	0.47	0.94	1.2
Total Residual Chlorine			0.5	1.0	1.2

The proposed effluent limits for Outfall 016 are based on a flow of 0.397 mgd:

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	99	199	30	60	75
Oil and Grease	50		15		30
Chromium, Total	5.7	14.2	Monitor and Report	Monitor and Report	4.30
Nickel, Total	0.52	1.04	0.157	0.314	0.392
Copper, Total	0.15	0.24	0.046	0.072	0.115
Fluoride			Monitor and Report	Monitor and Report	
Temperature					110° F
pH			6.0 minimum		9.0

Stormwater Outfalls 900, 960, 985, 988 and 992 have each been determined to be representative of a number of other stormwater outfalls with substantially identical effluents. The proposed monitoring requirements for these representative outfalls are as follows:

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	Monitor and Report	Monitor and Report			
COD	Monitor and Report	Monitor and Report			
Oil and Grease	Monitor and Report	Monitor and Report			
Total Suspended Solids	Monitor and Report	Monitor and Report			
Lead, Total	Monitor and Report	Monitor and Report			
Chromium, Total	Monitor and Report	Monitor and Report			
Copper, Total	Monitor and Report	Monitor and Report			
Cadmium, Total	Monitor and Report	Monitor and Report			
Arsenic, Total	Monitor and Report	Monitor and Report			
Iron, Dissolved	Monitor and Report	Monitor and Report			
Fluoride	Monitor and Report	Monitor and Report			
Nickel, Total	Monitor and Report	Monitor and Report			
Zinc, Total	Monitor and Report	Monitor and Report			
pH	Monitor and Report	Monitor and Report			

In addition to the effluent limits, the permit contains the following major special conditions:

1. Notification of Designation of Operator.
2. Remedial Measures if Unsatisfactory Effluent.
3. BAT/ELG Reopener.
4. Use of Chemical Additives.
5. Approved Chemical Additives and Usage Rates.
6. Thermal Requirements.
7. Discharge of Water from Fire Hydrants.
8. Change in Ownership.
9. Solids Handling.
10. TMDL/WLA Data.
11. I-max Requirements.
12. Requirements Applicable to Stormwater Outfalls.
13. Fluoride Monitoring at No. 4 Dam.

**PA0051161**, Sewage, SIC 4952, **Southco, Inc.**, 210 North Brinton Lake Road, Concordville, PA 19331. This proposed facility is located in Concord Township, **Delaware County**.

Description of Proposed Activity: renewal of an NPDES permit to discharge treated sewage from Southco STP.

The receiving stream, UNT to West Branch Chester Creek, is in the State Water Plan Watershed 3G and is classified for: TSF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Media Borough Auxiliary Intake is located on Chester Creek and is 7.5 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.013 mgd.

<i>Parameters</i>	<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub> (5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
TSS	10	20
Ammonia as N (5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Phosphorus, Total	Monitor and Report	Monitor and Report
Fecal Coliform	200/100 ml	1,000/100 ml
Dissolved Oxygen		5.0 (Instantaneous Minimum)
pH	6.0 to 9.0 Standard Units all the time	
Total Residual Chlorine	0.5	1.2

In addition to the effluent limits, the permit contains the following major special conditions:

1. Operator Notification.
2. Abandon STP when Municipal Sewers Available.
3. Remedial Measures if Unsatisfactory Effluent.
4. No Stormwater.
5. Acquire Necessary Property Rights.
6. Dry Stream Discharge.
7. Change of Ownership.
8. Chlorine Minimization.
9. Proper Sludge Disposal.
10. 2/Month Sampling.
11. Fecal Coliform Reporting.
12. Condition for Phasing Out.

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**PA#0065277**, Sewage, **Lisa Bodnar**, P. O. Box 25, Martins Creek, PA 18053-0025. This proposed facility is located in Forks Township, **Northampton County**.

Description of Proposed Activity: Discharge of 500 gpd of treated sewage.

The receiving stream, Delaware River, is in the State Water Plan Watershed 1D and is classified for: WWF, MF. The nearest downstream public water supply intake is greater than 20 miles downstream on the Delaware River.

The proposed effluent limits for Outfall 001 based on a design flow of 0.0005 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25.0		50.0
Total Suspended Solids	30.0		60.0
Dissolved Oxygen	A minimum of 4.0 mg/l at all times.		
Fecal Coliform	200/100 ml as a Geometric Mean		
pH	6.0 to 9.0 Standard Units at all times.		

**PA0065285**, Sewage, **Bear Creek Foundation, Inc.**, 2000 Bear Creek Boulevard, Wilkes-Barre, PA 18702. This proposed facility is located in Bear Creek Township, **Luzerne County**.

Description of Proposed Activity: NPDES Permit for a new, treated sewage discharge.

The receiving stream, a UNT to Deep Hollow, is in the State Water Plan Watershed 05B and is classified for: CWF. The nearest downstream public water supply intake for Danville Borough Water Authority is located on the Susquehanna River 40 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.0125 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10.0	20.0
Total Suspended Solids	10.0	20.0
NH <sub>3</sub> -N		
(5-1 to 10-31)	2.1	4.2
(11-1 to 4-30)	6.3	12.6
Dissolved Oxygen	A minimum of 6.0 mg/l at all times.	
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a Geometric Mean	
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean	
pH	6.0 to 9.0 Standard Units at all times.	
Total Residual Chlorine	Nondetectable	

#### Chesapeake Bay Tributary Strategy Nutrient Requirements

<i>Parameter</i>	<i>Concentration (mg/l)</i>		<i>Mass (lbs)</i>
	<i>Monthly Average</i>	<i>Monthly Load</i>	<i>Annual Load</i>
Ammonia-N	Report	Report	Report
Kjeldahl-N	Report	Report	Report
Nitrate-Nitrate as N	Report	Report	Report
Total Nitrogen	10.0, Offset by Credits	Report	Report
Total Phosphorus	5.0, Offset by Credits	Report	Report
Net Total Nitrogen		Report	0*
Net Total Phosphorus		Report	0*

\* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department of Environmental Protection's (Department) Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document No. 392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports submitted to the Department.

The applicant proposes to utilize nitrogen offsets based upon the retirement of existing septic systems. The applicant also proposes to purchase nitrogen and phosphorus credits from Red Barn Trading Company, LLC. An executed contract will be required before permit issuance.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**Application No. PA 0261254**, Sewage, **Tim Lougue**, 3256 Bean's Cove Road, Clearville, PA 16635. This facility is located in Southampton Township, **Bedford County**.

Description of activity: The application is for issuance of an NPDES permit for a new discharge of treated sewage.

The receiving stream, Wildcat Run, is in Watershed 13-A, and classified for HQ-CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Hancock, MD is located on the Potomac River, approximately 80 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.0004 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10		20
NH <sub>3</sub> -N			
(5-1 to 10-31)	5		10
(11-1 to 4-30)	15		30
Total Suspended Solids	20		40
Total Residual Chlorine	Report		Report
pH		From 6.0 to 9.0 inclusive	
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		

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0261289**, Sewage, **Garren Wilkins**, 10538 Hyndman Road, Manns Choice, PA 15537. This facility is located in Harrison Township, **Bedford County**.

Description of activity: The application is for issuance of an NPDES permit for a new discharge of treated sewage.

The receiving stream, Buffalo Run, is in Watershed 11-C, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Bedford Borough Water Authority is located on the Raystown Branch Juniata, approximately 7 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.0004 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 Residual Chlorine	Report	XXX
Dissolved Oxygen	Minimum of 5.0 at all times	
pH	From 6.0 to 9.0 inclusive	
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	

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0085782**, Sewage, **Ruscombmanor Township**, 204 Oak Lane, Fleetwood, PA 19522. This facility is located in Ruscombmanor Township, **Berks County**.

Description of activity: The application is for of an NPDES permit amendment to expand an existing discharge of treated sewage from 0.025 mgd to 0.05 mgd.

The receiving stream, a UNT to Furnace Creek, is in Watershed 3-D, and classified for CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Pennsylvania American Water Works is located on the Schuylkill River, approximately 40 miles downstream. The discharge is not expected to affect the water supply.

The proposed Interim effluent limits for Outfall 001 for a design flow of 0.025 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N			
(5-1 to 10-31)	5		10
(11-1 to 4-30)	15		30
Total Residual Chlorine	0.34		1.1
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a Geometric Average		
(10-1 to 4-30)	4,300/100 ml as a Geometric Average		

The proposed Final effluent limits for Outfall 001 for a design flow of 0.05 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N			
(5-1 to 10-31)	3.0		5.0
(11-1 to 4-30)	9.0		15.0
Total Residual Chlorine	0.076		0.218
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
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		

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0008541, Amendment No. 1**, Industrial Waste, SIC Code 3585, **Johnson Controls, Inc.**, P. O. Box 1592-082K, York, PA 17405. This facility is located in Spring Garden Township, **York County**.

Description of activity: The application is for an amendment of an NPDES permit for an existing discharge of treated industrial waste.

The receiving stream, Codorus Creek, is in Watershed 7-H, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is Wrightsville Water Supply Company located on the Susquehanna River, approximately 19 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfalls 003, 006, 008 and 011 based on a design flow of 0.096 mgd are:

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
pH (Standard Units)	Range of 6.0 to 9.0 Standard Units				
Temperature	XXX	XXX	XXX	Monitor and Report	XXX
TSS	XXX	XXX	XXX	Monitor and Report	XXX
Oil and Grease	XXX	XXX	XXX	Monitor and Report	XXX
Total Chromium	XXX	XXX	XXX	Monitor and Report	XXX
Total Copper	XXX	XXX	XXX	Monitor and Report	XXX
Total Zinc	XXX	XXX	XXX	Monitor and Report	XXX
Total Aluminum	XXX	XXX	XXX	Monitor and Report	XXX

For Outfalls 007, 009, 010 and 012 which receive stormwater only, a special permit requirement is included in Part C of the permit

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**PA0233722, Richard S. Zerby**, 303 Nittany Valley Drive, Bellefonte, PA 16823. This proposed facility is located in Worth Township, **Centre County**.

Description of Proposed Activity: An NPDES permit application has been submitted requesting authorization to discharge from a small flow treatment facility serving the Zerby residence.

The receiving stream, an Wills Hollow Run, is in the State Water Plan Watershed 9C and is classified for: TSF. The nearest downstream public water supply intake is near Milton is located on is on the West Branch of the Susquehanna River approximately 100 miles below the point of discharge.

The effluent limits for Outfall 001 are based on a design flow of 0.0004 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>			10		20
TSS			20		40
Fecal Coliforms			200 colonies/100 ml		
pH			Within the range of 6.0 to 9.0		
Flow			Monitor and Report		
UV Disinfection			Clean		

**NPDES Permit No. PA0233587**, Industrial Wastewater, SIC code 4941, **Emporium Hardwoods, LLC**, 15970 Route 120, Emporium, PA 15834. The proposed action is for the issuance of an NPDES permit authorizing the discharge (Outfall 002) of industrial stormwater to Driftwood Branch of Sinnemahoning Creek and a discharge (Outfall 001) of industrial stormwater and wastewater to a pond adjacent to Driftwood Branch of Sinnemahoning Creek, both of which are located in Shippen Township, **Cameron County**. This receiving stream is classified for TSF, aquatic life, water supply and recreation.

Facility Standard Industrial Classification (SIC): 24

#### Effluent Monitoring for Outfalls 001 and 002:

Discharge Parameter	Units	Sample Type	Measurement Frequency
C-Biochemical Oxygen Demand (5-day)	mg/l	1 Grab	1/year
Chemical Oxygen Demand	mg/l	1 Grab	1/year
Oil and Grease	mg/l	1 Grab	1/year
pH	Standard Units	1 Grab	1/year
Total Suspended Solids	mg/l	1 Grab	1/year
Total Kjeldahl Nitrogen	mg/l	1 Grab	1/year
Total Phosphorous	mg/l	1 Grab	1/year
Effluent Guideline Pollutants <sup>(1)</sup>	mg/l	1 Grab	1/year
Iron (Total)	mg/l	1 Grab	1/year

In addition to the previous monitoring requirements, the applicant will be required to monitor the chemical additive usage in the boiler blowdown associated with Outfall 001. The maximum chemical additive usage rates are:

<i>Chemical Additive</i>	<i>Proposed Usage Rate*</i>
PCT 5300B	5.0 lbs/day
PCT 5410	2.0 lbs/day
PCT 5718	7.5 lbs/day

\* The permittee will be required to monitor the daily usage of each approved chemical additive.

The EPA waiver will be in effect.

*Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA0001228-A1**, Industrial Waste, SIC 3621 and 3561, **Curtiss-Wright Corporation**, 1000 Cheswick Avenue, Cheswick, PA 15024-1300. This application is for amendment of an NPDES permit to discharge untreated process water from the Curtiss-Wright Electro-Mechanical Corporation in Harmar Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, UNT to Allegheny River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Oakmont, located at approximately, 2.0 miles below the discharge point.

*Outfall 903 and 113*: new discharge, design flow of 0.005 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	Monitor and Report				
Total Suspended Solids			30		60
Oil and Grease			15		30
Dissolved Oxygen			Minimum of 5.0		
Iron			Monitor and Report		7.0
pH			Monitor and Report		

The EPA waiver is in effect.

**PA0253987**, Industrial Waste, SIC, 4953, **Somerset Regional Water Resources, LLC**, 888 Stoystown Road, Somerset, PA 15501. This application is for issuance of an NPDES permit to discharge treated process water from Somerset Regional Water Resources Industrial Wastewater Treatment Plant in Somerset Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, East Branch Coxes Creek, classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Ohiopyle Borough Municipal Water Works, located at Ohiopyle, 42.3 miles below the discharge point.

*Outfall 001*: new discharge, design flow of 1.3 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	Monitor and Report				
Total Suspended Solids			Not Detectable		
BOD <sub>5</sub>			8.35	16.7	
Oil and Grease			Not Detectable		
Aluminum			Not Detectable		
Barium			0.24	0.48	
Iron			Not Detectable		
Manganese			Not Detectable		
Strontium			Not Detectable		
Benzene			0.001	0.002	
Ethylbenzene			Monitor and Report		
Toluene			Monitor and Report		
Xylenes			Monitor and Report		
Total BTEX			0.1	0.2	
Monoethylene			Monitor and Report		
Phenols			Not Detectable		
Acetone			4.37	8.74	
Acetophenone			0.0562	0.144	
2-Butanone			1.85	4.81	
o-Cresol			0.561	1.92	
p-Cresol			0.199	0.398	
Pyridine			0.182	0.370	
2, 4, 6-Trichlorophenol			0.006	0.012	



Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Boron			1.99	3.98	
Copper			0.011	0.022	
Lead			0.003	0.006	
Silver			0.003	0.006	
Zinc			0.095	0.190	
Naphthalene			0.053	0.106	
Total Dissolved Solids			500	750	
Chloride				250	
Sulfate				250	
Bromide			Monitor and Report		
Osmotic Pressure (mOs/kg)			62.4	124.8	
Acidity			Less than alkalinity		
Alkalinity			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0 Standard Units				

OTHER CONDITIONS: Special conditions concerning priority pollutant sampling, compliance with "not detectable" effluent limitations, residual/hazardous waste disposal, stormwater, oil-bearing wastewaters and chemical additives.

The EPA waiver is not in effect.

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### III. WQM 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, (717) 705-4707.*

**WQM Permit No. 2806404, Transfer No. 1, Sewerage, Christian Sease, 2753 Grand Point Road, Chambersburg, PA 17201.** This proposed facility is located in Greene Township, **Franklin County**.

Description of Proposed Action/Activity: Application for Transfer of Permit.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**WQM Permit No. 1408405, Sewerage 4952, Richard Zerby, 303 Nittany Valley Drive, Bellefonte, PA 16823.** This proposed facility is located in Worth Township, **Centre County**.

Description of Proposed Action/Activity: The applicant is proposing to construct and operate a 400 gpd single-residence small flow treatment facility that will discharge to Wills Run, a TSF. The treatment system will be comprised of a 1,000 gallon capacity concrete septic tank, a peat bio-filter and ultraviolet disinfection.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WQM Permit No. 5609402, Sewerage, Northeast District of the Brethren Church, 622 Main Street, Berlin Brethren Church, Berlin, PA 15530.** This proposed facility is located in Greenville Township, **Somerset County**.

Description of Proposed Action/Activity: Application for the construction and operation of a sewage treatment plant.

**WQM Permit No. 5685404-A1, Sewerage, Seven Springs Municipal Authority, 290 Lagoon Lane, Champion, PA 15622.** This existing facility is located in Middlecreek Township, **Somerset County**.

Description of Proposed Action/Activity: Application for permit amendment to construct a tertiary filter process at the existing sewage treatment plant.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 2588403, Sewerage, Amendment No. 3, Albion Borough Municipal Authority, 26 Smock Avenue, Albion, PA 16401.** This proposed facility is located in Conneaut Township, **Erie County**.

Description of Proposed Action/Activity: New bar screen; new RBC splitter box; rehab of the existing RBCs plus adding a third RBC; adding a new secondary clarifier; construction of a new blower building, sludge pump station, and effluent pump station; repair is to the existing anaerobic digester; new post aeration system; new SCADA system.

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### IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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### V. Applications for NPDES Wavier Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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**VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities**


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*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1509011	Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106-7676	Chester	Tredyffrin Township	Valley Creek EV
PAI01 5109001	Essington Avenue Partners II, LP 2701 Renaissance Boulevard King of Prussia, PA 19406	Philadelphia	City of Philadelphia	Schuylkill Tidal Watershed WWF-MF
PAI01 5109002	Essington Avenue Partners II, LP 2701 Renaissance Boulevard King of Prussia, PA 19406	Philadelphia	City of Philadelphia	Schuylkill Tidal Watershed WWF-MF
PAI01 5109003	Division of Aviation City of Philadelphia Department of Planning and Environmental Stewardship Philadelphia International Airport Terminal D 3rd Floor Philadelphia, PA 19153	Philadelphia	City of Philadelphia	Pennypack Creek WWF-MF

*Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

*Northampton County Conservation District: Greystone Building, Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024809004	Bath Borough Attn: George Gasper 160 Mill Street Bath, PA 18014	Northampton	Bath Borough	Monocacy Creek HQ-CWF

*Lehigh County Conservation District: Lehigh Agricultural Center, Suite 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023909011	Weisenberg Township Attn: Donald Breininger 2175 Seipstown Road Fogelsville, PA 18051	Lehigh	Weisenberg Township	Lyon Creek HQ-CWF, MF

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**VII. List of NOIs for NPDES and/or Other General Permit Types**


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PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

### STATE CONSERVATION COMMISSION

#### NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under the act of July 6, 2005 (Act 38 of 2005, 3 Pa.C.S. §§ 501—522) (hereinafter referred to as Act 38), and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (NOIs) for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92. This notice is provided in accordance with 25 Pa. Code Chapter 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Based upon preliminary reviews, the State Conservation Commission (SCC), or County Conservation Districts (CCD) working under a delegation agreement with the SCC, have completed an administrative review of NMPs described. These NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at

the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at [www.pacd.org/districts/directory.htm](http://www.pacd.org/districts/directory.htm) or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based.

The address for the SCC is Agriculture Building, Room 407, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons with a disability who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information should contact the SCC through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET—APPLICATIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal/New</i>
Eric Risser Meadow Vista Dairy, LLC 166 Risser Road Bainbridge, PA 17502	Lancaster	847.7	1,296.5	Dairy	NA	Renewal
Jeffrey Werner 897 North Lancaster Street Jonestown, PA 17038	Lebanon	476.5	489.6	Turkeys	NA	Renewal
Elvin Nolt 11 Seth Erb Road Richland, PA 17087	Lebanon	8.0	707	Swine	NA	Renewal

**PUBLIC WATER SUPPLY (PWS) PERMIT**

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. 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 permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**SAFE DRINKING WATER**

**Applications Received under the Pennsylvania Safe Drinking Water Act**

*Central Office: Bureau Director, Water Standards and Facility Regulation, P. O. Box 8467, Harrisburg, PA 17105-8467.*

**Permit No. 9996562**, Public Water Supply.  
 Applicant **Arctic Spring Bottlers, Inc.**  
 Township or Borough Lindenhurst, NY  
 Responsible Official Daryl Holzman, Vice President  
 Type of Facility Out-of-State Bottled Water System  
 Application Received Date March 24, 2009  
 Description of Action Applicant requesting the Department of Environmental Protection approval to sell bottled water in Pennsylvania under the brand name: Member's Mark Purified Drinking Water.

**Permit No. 9996563**, Public Water Supply.  
 Applicant **CG Roxane, LLC**  
 Township or Borough Norman, AR  
 Responsible Official George Castaneda  
 Corporate Quality Assurance Manager  
 Type of Facility Out-of-State Bottled Water System  
 Application Received Date March 25, 2009

Description of Action Applicant requesting the Department of Environmental Protection approval to sell bottled water in Pennsylvania under the brand name: Crystal Geyser Natural Alpine Spring Water.

*Northeast Region: Water Supply Management Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Application No. 4009509**, Public Water Supply.

Applicant **United Water Pennsylvania, Inc. Dallas Water System**  
Dallas Township  
**Luzerne County**

Responsible Official John Hollenbach  
United Water Pennsylvania, Inc.  
4211 East Park Drive  
Harrisburg, PA 17111

Type of Facility Public Water System

Consulting Engineer Arthur Saunders, P. E.

Application Received Date March 6, 2009

Description of Action The addition of caustic soda for pH adjustment at the country club well.

**Application No. 4009510**, Public Water Supply.

Applicant **United Water Pennsylvania, Inc. Dallas Water System**  
Dallas Township  
**Luzerne County**

Responsible Official John Hollenbach  
United Water Pennsylvania, Inc.  
4211 East Park Drive  
Harrisburg, PA 17111

Type of Facility Public Water System

Consulting Engineer Arthur Saunders, P. E.

Application Received Date March 6, 2009

Description of Action The addition of caustic soda for pH adjustment at the country club well.

*Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit No. 2808509**, Public Water Supply.

Applicant **Franklin County General Authority**

Municipality Greene Township

County **Franklin**

Responsible Official John M. VanHorn, P. G.  
Executive Director  
5540 Coffey Avenue  
Chambersburg, PA 17201

Type of Facility Public Water Supply

Consulting Engineer Yves E. Pollart BCEE, P. E.  
Rettew Associates, Inc.  
2500 Gettysburg Road  
Camp Hill, PA 17011

Application Received October 7, 2008

Description of Action Settling Basin and Filter Upgrades

**Permit No. 0608515**, Public Water Supply.

Applicant **Reading Area Water Authority**

Municipality Ontelaunee Township

County **Berks**

Responsible Official Dean Miller  
Executive Director  
815 Washington Street  
Reading, PA 19601

Type of Facility Public Water Supply

Consulting Engineer Max C. Kurbjun Jr., P. E.  
BCM Engineers  
920 Germantown Pike  
Plymouth Meeting, PA 19462

Application Received October 28, 2008

Description of Action Addition of more alum storage facilities and transfer pumps to transfer alum from new storage to existing day tanks with in the existing treatment building.

**Permit No. 3109501**, Public Water Supply.

Applicant **Huntingdon Borough Water Department**

Municipality Huntingdon Borough

County **Huntingdon**

Responsible Official Kenneth E. Myers  
Huntingdon Borough Manager  
530 Washington Street  
P. O. Box 592  
Huntingdon, PA 16652

Type of Facility Public Water Supply

Consulting Engineer Andrew H. Johnson, P. E.  
Gwin, Dobson & Foreman, Inc.  
3121 Fairway Drive  
Altoona, PA 16602-4475

Application Received March 19, 2009

Description of Action Installation of the Westminster Woods Pump Station.

*Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Application No. 1409502—Construction**, Public Water Supply.

Applicant **Blarney Stone Development**

Township or Borough Union Township

County **Centre**

Responsible Official Steven MacNamara, Owner  
200 Mac One Lane  
Julian, PA 16844

Type of Facility Public Water Supply—Construction

Consulting Engineer David Cunningham, P. E.  
Keller Engineers  
420 Allegheny Street  
P. O. Box 61  
Hollidaysburg, PA 16648

Application Received March 18, 2009

Description of Action New public water supply at existing residential development, including Well No. 1, aeration, disinfection, finished water storage and distribution system.

*Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Permit No. 3009502**, Public Water Supply.

Applicant **East Dunkard Water Association**  
P. O. Box 241  
SR 88  
Dilliner, PA 15327

Township or Borough East Dunkard

Responsible Official James Holbert, Plant Manager  
East Dunkard Water Association  
P. O. Box 241  
SR 88  
Dilliner, PA 15327

Type of Facility Water treatment plant

Consulting Engineer Dakota Engineering Associates, Inc.  
Etna Technical Center  
Suite 200  
35 Wilson Street  
Pittsburgh, PA 15223

Application Received Date March 31, 2009

Description of Action Replacement of three existing water filtration units with a new dual train unit, renovation of the existing backwash settling basin, modification to two booster stations and replacement of three water storage tanks.

**MINOR AMENDMENT**

*Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Application No. 6509503MA**, Minor Amendment.

Applicant **Highridge Water Authority**  
17 Maple Avenue  
Blairsville, PA 15717

Township or Borough West Wheatfield Township

Responsible Official George Sulkosky  
Executive Director  
Highridge Water Authority  
17 Maple Avenue  
Blairsville, PA 15717

Type of Facility Water storage tank

Consulting Engineer Gibson-Thomas Engineering Co., Inc.  
1004 Ligonier Street  
P. O. Box 853  
Latrobe, PA 15650

Application Received Date March 31, 2009

Description of Action Painting the Wheatfield water storage tank.

**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 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, 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, 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, contact the environmental

cleanup program manager in the Department regional office before 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. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**4 Pine Lane Property**, Union Township, **Lebanon County**. Liberty Environmental, Inc., 50 North 5th Street, Fifth Floor, Reading, PA 19601, on behalf of Paul and Judy Wengert, 987 Daffodil Drive, Lebanon, PA 17052, submitted a Notice of Intent to Remediate site soils contaminated with No. 2 heating oil from an underground storage tank. The site will be remediated to a Residential Statewide Health standard and will remain residential.

*Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**American Rock Salt Co., LLC**, City of Dubois and Sandy Township, **Clearfield County**. American Rock Salt Co., LLC, P. O. Box 190, Mt. Morris, PA 14510 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with volatile and semi-volatile compounds. The applicant proposes to remediate the site to meet the Statewide Health Standard. The property is intended to remain commercial/industrial.

#### **DETERMINATION FOR APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS**

**Application received for Determination of Applicability 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/or the Beneficial Use of Residual Waste Other Than Coal Ash.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**General Permit No. WMGR101SW001**, MultiServ North America, 8050 Rowan Road, Suite 600, Cranberry Township, PA 16066. Allegheny Ludlum Brackenridge Facility, Federal Street Gate 10, Natrona Heights, PA 15065. A residual waste general permit for the beneficial use of steel slag, iron slag, and refractory bricks that were co-disposed with slag ("slag"), reclaimed asphalt pavement materials (RAP) in quantities greater than 10 cubic yards and uncontaminated brick, block and concrete from sidewalk and highway projects as a construction material in Brackenridge Borough, **Allegheny County**, was received in the Regional Office on March 24, 2009.

Comments concerning the application should be directed to Diane McDaniel, Environmental Engineering Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Persons interested in obtaining more information about the general permit application may contact the Department of Environmental Protection (Department) Southwest Regional Office, Regional Files at (412) 442-4000. TDD users may contact the Department through the Pennsylvania

AT&T Relay Service at (800) 654-5984. Public comments must be submitted within 30 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 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 Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**Permit Application No. 101680. Waste Management Disposal Services of Pennsylvania, Inc.** (GROWS North Landfill), 1000 New Ford Mill Road, Morrisville, PA 19067. This minor permit modification application is for revisions to the Leachate Recirculation System at GROWS North Landfill, a municipal waste landfill located in Falls Township, **Bucks County**. The application was received by the Southeast Regional Office on March 19, 2009.

**Permit Application No. 101696. Swanson Rail Transfer Station**, 13 Pattison Avenue, Philadelphia, PA 19148, City of Philadelphia, **Philadelphia County**. This application proposes to construct and operate of a new waste transfer facility receiving a maximum of 2,500 tpd of Municipal Solid Waste and Construction and Demolition Waste then transferring by rail to a permitted disposal facility. The application was received by the Southeast Regional Office on August 15, 2008.

**Permit Application No. 101697. American C&D Logistics, LLC**, 3600 South 26th Street, Philadelphia, PA 19145, City of Philadelphia, **Philadelphia County**. This application is to operate a new waste transfer facility receiving a maximum of 1,000 tpd of Construction and Demolition (C&D) Waste then transferring the C&D waste by barge to a permitted facility for processing. The application was received by the Southeast Regional Office on March 26, 2009.

**Permit Application No. 101541. Delaware Valley Recycling, Inc.**, 3107 South 61st Street, Philadelphia, PA 19153-3501. This application is for 10-year permit renewal to continue operation at the Delaware Valley Recycling facility, an existing construction and demolition storage and processing facility, located in the City of Philadelphia, **Philadelphia County**. The application was received by the Southeast Regional Office on March 27, 2009.

**Permit Application No. 101549. Bucks County Resource Recovery Inc.**, 701 Penn Avenue, Marcus Hook, PA 19061-4604, Marcus Hook Borough, **Delaware County**. This major permit modification application is submitted requesting the approval to process "Sharps" and "Animal and Plant Health Inspection Services" wastes, which are waste categories presently not permitted for processing at the facility. The application was received by the Southeast Regional Office by on March 31, 2009.

## AIR QUALITY

### PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

#### NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) 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 the Department, 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 Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the 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 a proposed plan approval or operating permit must indicate their interest to the Department 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 Department 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. Comments or protests filed with the Department 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 the Department 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 before the application. TDD users should 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 121–143, the Federal Clean Air Act (act) and regulations adopted under the act.

#### PLAN APPROVALS

**Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, M. Gorog and B. Hatch, Environmental Engineer Managers, (412) 442-4163/5226.*

**03-00245A: TJS Mining, Inc.** (2340 Smith Road, Shelocta, PA 15774) on March 24, 2009, to install a coal processing facility at their Mine No. 6 near Gastown in Plumcreek Township, **Armstrong County**.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**28-05029B: Fayetteville Contractors, Inc.** (3185 Lincoln Way East, Fayetteville, PA 17222) for installation of a recycled asphalt processing section on the existing batch asphalt plant in Antrim Township, **Franklin County**. The plan approval will include emission limits along with work practice standards, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. The asphalt plant is subject to 40 CFR Part 60, Subpart I—Standards of Performance for Asphalt Concrete Plants.

**38-05003G: Carmeuse Lime & Stone** (3 Clear Springs Road, Annville, PA 17003) for use of resin flakes as a fuel in the three lime kilns at the Millard lime plant in North Londonderry Township, **Lebanon County**. The facility's emissions of SOx is expected to decrease from the use of the resin flakes. SOx emissions from the facility are limited to 685 tons per consecutive 12-month period. The plan approval and subsequent Title V operating permit amendment will include emission limits, monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. The facility is subject to 40 CFR Part 63, Subpart AAAAA—National Emission Standards for HAPs for Lime Manufacturing Plants.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, M. Gorog and B. Hatch, Environmental Engineer Managers, (412) 442-4163/5226.*

**PA-32-00059C: Reliant Energy Northeast Management Co.** (121 Champion Way, Suite 200, Canonsburg, PA 15317-7625) for construction and operation of an activated carbon injection system rated at 1,500 pph per unit for mercury control on Units 1 and 2 at their existing Conemaugh Power Plant in West Wheatfield Township, **Indiana County**.

Under 25 Pa. Code § 127.44(a), that the Department of Environmental Protection (Department) intends to issue a Plan Approval to Reliant Energy Northeast Management Company (121 Champion Way, Suite 200, Canonsburg, PA 15317-7625) to allow the construction and operation of an activated carbon injection system rated at 1,500 pph per unit for mercury control on Units 1 and 2 at their existing Conemaugh Power Plant located in West Wheatfield Township, Indiana County.

Copies of the application, the Department's analysis and other documents used in evaluation of the application are available for public inspection during normal business hours at the address as follows.

Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222

For the Department to assure compliance with all applicable standards, the Department proposes to place the following Special Conditions and General Conditions on the Plan Approval:

*SPECIAL CONDITIONS*

1. This Plan Approval is to allow the construction and operation of an activated carbon injection (ACI) system rated at 1,500 pph per unit on Units 1 and 2 at Reliant Energy Northeast Management Company's Conemaugh Power Plant located in the West Wheatfield Township, Indiana County (25 Pa. Code § 127.12b).

2. Air contamination sources covered by this Plan Approval include the following (25 Pa. Code § 127.12b):

- Two Sorbent Storage Silos
- Material Handling of Spent Sorbent Material
- Truck Traffic on Roads and Surfaces

3. Air pollution control equipment covered by this Plan Approval includes the following (25 Pa. Code § 127.12b):

- Hg Sorbent Injection Systems on Units No. 1 and No. 2, rated 1,500 lbs per hour per unit
- Two Griffin Model No. 54-LS (or equivalent) Bin Vent Collectors, approximately 760 ACFM each on Sorbent Storage Silos

4. Visible emissions from each Sorbent Storage Silo covered by this Plan Approval shall not 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 (25 Pa. Code § 127.12b).

5. The Owner/Operator shall not permit the emission into the outdoor atmosphere of any malodorous air contaminants from any source, in such a manner that the malodors are detectable outside the property of the facility (25 Pa. Code § 123.31).

6. There shall be no fugitive emissions from the facility contrary to 25 Pa. Code §§ 123.1 and 123.2.

7. All sorbent delivery trucks and spent sorbent disposal trucks shall travel on paved roads and designated truck haul routes. The Owner/Operator shall take all reasonable actions to prevent PM caused by truck traffic from becoming airborne (25 Pa. Code §§ 123.1 and 123.2).

8. The Owner/Operator shall perform a daily inspection for the presence of visible stack emissions, fugitive emissions and malodorous emissions from the emission sources covered by this plan approval. This requirement does not apply for any day in which no sorbent is delivered or consumed. Records of the inspections shall be maintained in a log and include any corrective actions taken (25 Pa. Code § 127.12b).

9. The Bin Vent Collectors shall be equipped with gauges to monitor pressure drop across the filters. Pressure drop readings shall be kept using either electronic recording devices or recorded manually on a daily basis whenever the control device is operating. This requirement does not apply for any day in which no sorbent is delivered or consumed (25 Pa. Code § 127.12b).

10. The Owner/Operator shall maintain each Bin Vent Collector by the manufacturer's recommendation. The maintenance schedule for each unit and records of all maintenance activities performed on each unit shall be maintained in a log (25 Pa. Code § 127.12b).

11. At a minimum, the Owner/Operator shall maintain records of the following (25 Pa. Code § 127.12b):

- a. Tons of sorbent delivered to the facility per month.
- b. Tons of sorbent used in Units No. 1 and No. 2 per month.
- c. Pressure drop readings on the Bin Vent Collectors.
- d. Visible stack emission, fugitive emission and malodorous emission inspection for the sources covered by this plan approval.
- e. The maintenance schedule for, and records of, all maintenance activities performed on each Bin Vent Collector.

12. Stack testing shall be conducted as follows (25 Pa. Code §§ 127.12b and 139.11):

a. Units No. 1 and No. 2: Within 60 days after achieving the normal production rate at which the sorbent injection will be operated, but not later than 180 days after initial start-up of the control device, the Owner/Operator shall perform total particulate testing to determine the filterable and condensable particulate concentration in the effluent both without the ACI system in operation and with the ACI system in operation.

b. Stack testing shall be conducted in accordance with the provisions of 25 Pa. Code Chapter 139 and the Department's Source Testing Manual.

c. The owner/operator shall submit three copies of a pretest protocol to the Department for review at least 60 days prior to the performance of any stack test. All proposed stack test methods shall be identified in the pretest protocol and approved by the Department prior to testing.

d. The owner/operator shall notify the Regional Air Quality Manager at least 15 days prior to any stack test so that an observer may be present at the time of the test.

e. All relevant operating parameters shall be recorded at appropriate intervals throughout the duration of stack test. Operating data recorded shall be sufficient to establish that the units and the air cleaning devices are operating at maximum routine operating conditions. A discussion of the recorded operating parameters and values shall be included in the test report.

f. The owner/operator shall submit three copies of the stack test report to the Department within 60 days of the completion of testing.

13. The Owner/Operator shall install, certify, maintain and operate a CEM system for monitoring mercury (Hg) in accordance with the requirements of 25 Pa. Code Chapter 139 and the most recent version of the Department's Continuous Source Monitoring Manual during the term of the Plan Approval, including extensions, modifications and transfers (25 Pa. Code § 127.12b).

14. All logs and required records shall be maintained onsite for a minimum of 5 years and shall be made available to the Department upon request (25 Pa. Code § 127.12b).

15. This Plan Approval authorizes the operation of the physically changed sources covered by this Plan Approval provided the following conditions are met (25 Pa. Code § 127.12b):

- (a) Upon determination by the Owner/Operator that the sources covered by this Plan Approval are in compliance with all conditions of the Plan Approval the Owner/Operator shall contact the Department's reviewing engineer and schedule the Initial Operating Permit Inspection.



(b) Upon completion of Initial Operating Permit Inspection and determination by the Department that the sources covered by this Plan Approval are in compliance with all conditions of the Plan Approval the Owner/Operator shall submit an application for revision to Title V Operating Permit to the Department at least 60 days prior to the expiration date of the Plan Approval.

(c) If, at any time, the Department has cause to believe that air contaminant emissions from the sources listed in this plan approval may be in excess of the limitations specified in, or established under this plan approval or the permittee's operating permit, the permittee may be required to conduct test methods and procedures deemed necessary by the Department to determine the actual emissions rate. The testing shall be conducted in accordance with 25 Pa. Code Chapter 139, where applicable, and in accordance with any restrictions or limitations established by the Department at such time as it notifies the company that testing is required.

#### GENERAL CONDITIONS

1. Words and terms that are not otherwise defined in this plan approval shall have the meanings set forth in section 3 of the Air Pollution Control Act (APCA) (35 P. S. § 4003) and 25 Pa. Code § 121.1. (25 Pa. Code § 121.1)

2. The issuance of this plan approval does not prevent the future adoption by the Department of any rules, regulations or standards, or the issuance of orders necessary to comply with the requirements of the Federal Clean Air Act (CAA) or the Pennsylvania APCA, or to achieve or maintain ambient air quality standards. The issuance of this plan approval shall not be construed to limit the Department's enforcement authority. (25 Pa. Code § 127.12b(a)(b))

3. This plan approval authorizes temporary operation of the sources covered by this plan approval provided the following conditions are met.

(a) When construction, installation, modification or reactivation is being conducted, the permittee should provide written notice to the Department of the completion of the activity approved by this plan approval and the permittee's intent to commence operation at least 5 working days prior to the completion of said activity. The notice shall state when the activity will be completed and when the permittee expects to commence operation. When the activity involves multiple sources on different time schedules, notice is required for the commencement of operation of each source.

(b) Under 25 Pa. Code § 127.12b(d), temporary operation of the sources is authorized to facilitate the shakedown of sources and air cleaning devices, to permit operations pending the issuance of a permit under 25 Pa. Code Chapter 127, Subchapter F or G (relating to operating permits; and Title V operating permits) or to permit the evaluation of the air contaminant aspects of the source.

(c) This plan approval authorizes a temporary operation period not to exceed 180 days from the date of commencement of operation, provided the Department receives notice from the permittee under paragraph (a).

(d) The permittee may request an extension of the 180-day shakedown period if further evaluation of the air contamination aspects of the sources is necessary. The request for an extension should be submitted, in writing, to the Department at least 15 days prior to the end of the initial 180-day shakedown period 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. This temporary operation period will be valid for a limited time and may be extended for additional limited periods, each not to exceed 120 days. If, at any time, the Department has cause to believe that air contaminant emissions from the sources listed in this plan approval may be in excess of the limitations specified in, or established under this plan approval or the permittee's operating permit, the permittee may be required to conduct test methods and procedures deemed necessary by the Department to determine the actual emissions rate. Such testing shall be conducted in accordance with 25 Pa. Code Chapter 139, where applicable, and in accordance with any restrictions or limitations established by the Department at such time as it notifies the company that testing is required. (25 Pa. Code § 127.12b)

4. The permittee shall maintain and operate the sources and associated air cleaning devices in accordance with good engineering practice as described in the plan approval application submitted to the Department. (25 Pa. Code § 127.12(a)(10))

5. (a) The records, reports or information obtained by the Department or referred to at public hearings shall be available to the public, except as provided in paragraph (b) of this condition.

(b) Upon cause shown by the permittee that the records, reports or information, or a particular portion thereof, but not emission data, to which the Department has access under the act, if made public, would divulge production or sales figures or methods, processes or production unique to that person or would otherwise tend to affect adversely the competitive position of that person by revealing trade secrets, including intellectual property rights, the Department will consider the record, report or information, or particular portion thereof confidential in the administration of the act. The Department will implement this section consistent with sections 112(d) and 114(c) of the CAA (42 U.S.C.A. §§ 7412(d) and 7414(c)). Nothing in this section prevents disclosure of the report, record or information to Federal, State or local representatives as necessary for purposes of administration of Federal, State or local air pollution control laws, or when relevant in a proceeding under the act. (25 Pa. Code § 127.12(c) and (d) and 35 P. S. § 4013.2)

6. (a) This plan approval will be valid for a limited time, as specified by the expiration date contained on page 1 of this plan approval. Except as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), at the end of the time, if the construction, modification, reactivation or installation has not been completed, a new plan approval application or an extension of the previous approval will be required.

(b) If construction has commenced, but cannot be completed before the expiration of this plan approval, an extension of the plan approval must be obtained to continue construction. To allow adequate time for Departmental action, a request for the extension should be postmarked at least 30 days prior to the expiration date. The Department will not issue an extension after the plan approval expires. The request for an extension should include the following:

(i) A justification for the extension.

(ii) A schedule for the completion of the construction.

If construction has not commenced before the expiration of this plan approval, then a new plan approval

application must be submitted and approval obtained before construction can commence.

(c) If the construction, modification or installation is not commenced within 18 months of the issuance of this plan approval or if there is more than an 18-month lapse in construction, modification or installation, a new plan approval application that meets the requirements of 25 Pa. Code Chapter 127, Subchapters B, D and E (related to plan approval requirements; prevention of significant deterioration of air quality; and new source review) shall be submitted. (25 Pa. Code § 127.13)

7. (a) This plan approval may not be transferred from one person to another except when a change of ownership is demonstrated to the satisfaction of the Department and the Department approves the transfer of the plan approval in writing.

(b) Section 127.12a (relating to compliance review) applies to a request for transfer of a plan approval. A compliance review form shall accompany the request.

(c) This plan approval is valid only for the specific source and the specific location of the source as described in the application. (25 Pa. Code § 127.32)

8. (a) Under 35 P. S. § 4008, no person shall hinder, obstruct, prevent or interfere with the Department or its personnel in the performance of any duty authorized under the APCA.

(b) The permittee shall also allow the Department to have access at reasonable times to said sources and associated air cleaning devices with such measuring and recording equipment, including equipment recording visual observations, as the Department deems necessary and proper for performing its duties and for the effective enforcement of the APCA and regulations adopted under the act.

(c) Nothing in this plan approval condition shall limit the ability of the Environmental Protection Agency (EPA) to inspect or enter the premises of the permittee in accordance with § 114 or other applicable provisions of the CAA. (25 Pa. Code § 127.12(4) and 35 P. S. § 4008 and section 114 of the CAA)

9. This plan approval may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:

(a) The permittee constructs or operates the source subject to the plan approval in violation of the act, the CAA, the regulations promulgated under the act or the CAA, a plan approval or permit or in a manner that causes air pollution.

(b) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.

(c) The permittee fails to submit a report required by this plan approval.

(d) The EPA determines that this plan approval is not in compliance with the CAA or the regulations thereunder. (25 Pa. Code 127.13a)

10. (a) The permittee, or any other person, may not circumvent the new source review requirements of 25 Pa. Code Chapter 127, Subchapter E by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying or engaging in incremental construction, over a geographic area of a facility which, except for the pattern of ownership or development, would otherwise require a permit or submission of a plan approval application.

(b) No person may permit the use of a device, stack height which exceeds good engineering practice stack height, dispersion technique or other technique which, without resulting in reduction of the total amount of air contaminants emitted, conceals or dilutes an emission of air contaminants which would otherwise be in violation of this plan approval, the APCA or the regulations promulgated thereunder, except that with prior approval of the Department, the device or technique may be used for control of malodors. (25 Pa. Code §§ 121.9 and 127.216)

11. Reports, test data, monitoring data, notifications shall be submitted to the:

Regional Air Program Manager  
Department of Environmental Protection

(At the address given on the plan approval transmittal letter or otherwise notified) (25 Pa. Code § 127.12c)

12. (a) If required by section 112(r) of the CAA, the permittee shall develop and implement an accidental release program consistent with requirements of the CAA, 40 CFR Part 68 (relating to chemical accident prevention provisions) and the Federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Pub. L. No. 106-40).

(b) The permittee shall prepare and implement a Risk Management Plan (RMP) which meets the requirements of Section 112(r) of the CAA, 40 CFR Part 68 and the Federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act when a regulated substance listed in 40 CFR 68.130 is present in a process in more than the listed threshold quantity at the facility. The permittee shall submit the RMP to the EPA according to the following schedule and requirements:

(1) The permittee shall submit the first RMP to a central point specified by the EPA no later than the latest of the following:

(i) Three years after the date on which a regulated substance is first listed under § 68.130; or,

(ii) The date on which a regulated substance is first present above a threshold quantity in a process.

(2) The permittee shall submit any additional relevant information requested by the Department or the EPA concerning the RMP and shall make subsequent submissions of RMPs in accordance with 40 CFR 68.190.

(3) The permittee shall certify that the RMP is accurate and complete in accordance with the requirements of 40 CFR Part 68, including a checklist addressing the required elements of a complete RMP.

(c) As used in this plan approval condition, the term "process" shall be as defined in 40 CFR 68.3. The term "process" means any activity involving a regulated substance including any use, storage, manufacturing, handling or onsite movement of such substances or any combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process. (25 Pa. Code § 127.12(9) and 40 CFR Part 68)

Any person wishing to provide the Department with additional information that they believe should be considered prior to the issuance of the Plan Approval may submit the information to the Department at the address shown as follows. A 30-day comment period, from the date

of this publication, will exist for the submission of comments. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed Plan Approval (specify the Plan Approval number).
- Concise statements regarding the relevancy of the information or objections to issuance of the Plan Approval. Written comments should be directed to:

Mark A. Wayner, P. E.  
Regional Air Quality Program Manager  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
Southwest Region—Field Operations  
400 Waterfront Drive  
Pittsburgh, Pennsylvania 15222-4745

For additional information, persons may contact the following at the same address:

Nicholas J. Waryanka, P. E.  
Air Quality Program  
(412) 442-4172

**PA-26-00579A: Tri-State Bio Fuels, LLC** (Thompson Recovery Road, Lemont Furnace, PA 15456) to allow the construction and operation of a wood pellet manufacturing facility, in Lemont Furnace, North Union Township, **Fayette County**.

Notice is hereby given, under 25 Pa. Code § 127.44(a), that the Department of Environmental Protection (Department) intends to issue a Plan Approval to Tri-State Bio Fuels, LLC (Thompson Recovery Road, Lemont Furnace, PA 15456) to allow the construction and operation of a wood pellet manufacturing facility, located in Lemont Furnace, North Union Township, Fayette County. The facility will process up to 77,376 tons of raw sawdust, of which 14,976 tons will be used process heat, and has the potential to emit 38.1 tons of PM, 46.6 tons of PM10, 30.1 tons of CO, 29.8 tons of NOx, 13.0 tons of VOCs and 6.6 tons of HAPs per year.

Copies of the application, the Department's analysis and other documents used in evaluation of the application are available for public inspection during normal business hours at the address as follows.

Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222

For the Department to assure compliance with all applicable standards, the Department proposes to place the following General and Special Conditions on the Plan Approval:

*GENERAL CONDITIONS*

1. Words and terms that are not otherwise defined in this plan approval shall have the meanings set forth in section 3 of the APCA (35 P. S. § 4003) and 25 Pa. Code § 121.1. (25 Pa. Code § 121.1)

2. The issuance of this plan approval does not prevent the future adoption by the Department of any rules, regulations or standards, or the issuance of orders necessary to comply with the requirements of the Federal Clean Air Act (CAA) or the Pennsylvania Air Pollution Control Act (APCA), or to achieve or maintain ambient air quality standards. The issuance of this plan approval shall not be construed to limit the Department's enforcement authority. (25 Pa. Code § 127.12b(a)(b))

3. This plan approval authorizes temporary operation of the sources covered by this plan approval provided the following conditions are met.

(a) When construction, installation, modification, or reactivation is being conducted, the permittee should provide written notice to the Department of the completion of the activity approved by this plan approval and the permittee's intent to commence operation at least 5 working days prior to the completion of said activity. The notice shall state when the activity will be completed and when the permittee expects to commence operation. When the activity involves multiple sources on different time schedules, notice is required for the commencement of operation of each source.

(b) Under 25 Pa. Code § 127.12b(d), temporary operation of the sources is authorized to facilitate the shakedown of sources and air cleaning devices, to permit operations pending the issuance of a permit under 25 Pa. Code Chapter 127, Subchapter F or G (relating to operating permits; and Title V operating permits) or to permit the evaluation of the air contaminant aspects of the source.

(c) This plan approval authorizes a temporary operation period not to exceed 180 days from the date of commencement of operation, provided the Department receives notice from the permittee under paragraph (a).

(d) The permittee may request an extension of the 180-day shakedown period if further evaluation of the air contamination aspects of the sources is necessary. The request for an extension should be submitted, in writing, to the Department at least 15 days prior to the end of the initial 180-day shakedown period 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. This temporary operation period will be valid for a limited time and may be extended for additional limited periods, each not to exceed 120 days. If, at any time, the Department has cause to believe that air contaminant emissions from the sources listed in this plan approval may be in excess of the limitations specified in, or established under this plan approval or the permittee's operating permit, the permittee may be required to conduct test methods and procedures deemed necessary by the Department to determine the actual emissions rate. The testing shall be conducted in accordance with 25 Pa. Code Chapter 139, where applicable, and in accordance with any restrictions or limitations established by the Department at such time as it notifies the company that testing is required. (25 Pa. Code § 127.12b)

4. The permittee shall maintain and operate the sources and associated air cleaning devices in accordance with good engineering practice as described in the plan approval application submitted to the Department. (25 Pa. Code § 127.12(a) (10))

5. (a) The records, reports or information obtained by the Department or referred to at public hearings shall be available to the public, except as provided in paragraph (b) of this condition.

(b) Upon cause shown by the permittee that the records, reports or information, or a particular portion thereof, but not emission data, to which the Department has access under the act, if made public, would divulge production or sales figures or methods, processes or production unique to that person or would otherwise tend to affect adversely the competitive position of that person by revealing trade secrets, including intellectual property

rights, the Department will consider the record, report or information, or particular portion thereof confidential in the administration of the act. The Department will implement this section consistent with sections 112(d) and 114(c) of the CAA (42 U.S.C.A. §§ 7412(d) and 7414(c)). Nothing in this section prevents disclosure of the report, record or information to Federal, State or local representatives as necessary for purposes of administration of Federal, State or local air pollution control laws, or when relevant in a proceeding under the act. (25 Pa. Code § 127.12(c) and (d) and 35 P. S. § 4013.2)

6. (a) This plan approval will be valid for a limited time, as specified by the expiration date contained on page 1 of this plan approval. Except as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), at the end of the time, if the construction, modification, reactivation or installation has not been completed, a new plan approval application or an extension of the previous approval will be required.

(b) If construction has commenced, but cannot be completed before the expiration of this plan approval, an extension of the plan approval must be obtained to continue construction. To allow adequate time for Departmental action, a request for the extension should be postmarked at least 30 days prior to the expiration date. The Department will not issue an extension after the plan approval expires. The request for an extension should include the following:

- (i) A justification for the extension.
- (ii) A schedule for the completion of the construction.

If construction has not commenced before the expiration of this plan approval, then a new plan approval application must be submitted and approval obtained before construction can commence.

(c) If the construction, modification or installation is not commenced within 18 months of the issuance of this plan approval or if there is more than an 18-month lapse in construction, modification or installation, a new plan approval application that meets the requirements of 25 Pa. Code Chapter 127, Subchapters B, D and E (related to plan approval requirements; prevention of significant deterioration of air quality; and new source review) shall be submitted. (25 Pa. Code § 127.13)

7. (a) This plan approval may not be transferred from one person to another except when a change of ownership is demonstrated to the satisfaction of the Department and the Department approves the transfer of the plan approval in writing.

(b) Section 127.12a (relating to compliance review) applies to a request for transfer of a plan approval. A compliance review form shall accompany the request.

(c) This plan approval is valid only for the specific source and the specific location of the source as described in the application. (25 Pa. Code § 127.32)

8. (a) Under 35 P. S. § 4008, no person shall hinder, obstruct, prevent or interfere with the Department or its personnel in the performance of any duty authorized under the APCA.

(b) The permittee shall also allow the Department to have access at reasonable times to said sources and associated air cleaning devices with such measuring and recording equipment, including equipment recording visual observations, as the Department deems necessary and proper for performing its duties and for the effective enforcement of the APCA and regulations adopted under the act.

(c) Nothing in this plan approval condition shall limit the ability of the Environmental Protection Agency (EPA) to inspect or enter the premises of the permittee in accordance with section 114 or other applicable provisions of the CAA. (25 Pa. Code § 127.12(4) and 35 P. S. § 4008 and § 114 of the CAA)

9. This plan approval may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:

(a) The permittee constructs or operates the source subject to the plan approval in violation of the act, the CAA, the regulations promulgated under the act or the CAA, a plan approval or permit or in a manner that causes air pollution.

(b) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.

(c) The permittee fails to submit a report required by this plan approval.

(d) The EPA determines that this plan approval is not in compliance with the CAA or the regulations thereunder. (25 Pa. Code § 127.13a)

10. (a) The permittee, or any other person, may not circumvent the new source review requirements of 25 Pa. Code Chapter 127, Subchapter E by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying or engaging in incremental construction, over a geographic area of a facility which, except for the pattern of ownership or development, would otherwise require a permit or submission of a plan approval application.

(b) No person may permit the use of a device, stack height which exceeds good engineering practice stack height, dispersion technique or other technique which, without resulting in reduction of the total amount of air contaminants emitted, conceals or dilutes an emission of air contaminants which would otherwise be in violation of this plan approval, the APCA or the regulations promulgated thereunder, except that with prior approval of the Department, the device or technique may be used for control of malodors. (25 Pa. Code §§ 121.9 and 127.216)

11. Reports, test data, monitoring data, notifications shall be submitted to the:

Regional Air Program Manager  
Department of Environmental Protection

(At the address given on the plan approval transmittal letter or otherwise notified) (25 Pa. Code § 127.12c)

12. (a) If required by section 112(r) of the CAA, the permittee shall develop and implement an accidental release program consistent with requirements of the CAA, 40 CFR Part 68 (relating to chemical accident prevention provisions) and the Federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Pub. L. No. 106-40).

(b) The permittee shall prepare and implement a Risk Management Plan (RMP) which meets the requirements of section 112(r) of the CAA, 40 CFR Part 68 and the Federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act when a regulated substance listed in 40 CFR 68.130 is present in a process in more than the listed threshold quantity at the facility. The permittee shall submit the RMP to the EPA according to the following schedule and requirements:

(1) The permittee shall submit the first RMP to a central point specified by the EPA no later than the latest of the following:

(i) Three years after the date on which a regulated substance is first listed under 40 CFR 68.130; or,

(ii) The date on which a regulated substance is first present above a threshold quantity in a process.

(2) The permittee shall submit any additional relevant information requested by the Department or the EPA concerning the RMP and shall make subsequent submissions of RMPs in accordance with 40 CFR 68.190.

(3) The permittee shall certify that the RMP is accurate and complete in accordance with the requirements of 40 CFR Part 68, including a checklist addressing the required elements of a complete RMP.

(c) As used in this plan approval condition, the term "process" shall be as defined in 40 CFR 68.3. The term "process" means any activity involving a regulated substance including any use, storage, manufacturing, handling or onsite movement of such substances or any combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process. (25 Pa. Code § 127.12(9) and 40 CFR Part 68)

#### *SPECIAL CONDITIONS*

1. This Plan Approval authorizes the construction and temporary operation of air pollution sources and control devices associated with wood pellet manufacturing at the Tri-State Bio Fuels Lemont Pellet Plant located in North Union Township, Fayette County. (25 Pa. Code § 127.12b)

2. Air contamination sources covered by this plan approval include the following (25 Pa. Code § 127.12b):

(a) Webb 50 mmBtu Biomass burner fitted to MEC 60-12 Drum Dryer.

(b) Hammer mill.

(c) Feedstock sizing screen.

(d) Two pellet mills.

(e) Pellet cooler.

(f) Rotoshaker.

3. Air pollution control equipment at the Facility includes the following (25 Pa. Code § 127.12b):

(a) CGS 6-45 Type V2 6-Pack Multiclone, rated at 60,000 CFM.

(b) MAC 144LVS64 Baghouse, rated at 9,360 SCFM.

(c) Clark LP-120 LG 83-302 cyclone, rated at 10,000 ACFM.

(d) Wheelabrator A126893 baghouse, rated at 10,000 SCFM.

4. At no time shall visible emissions from each stack at the facility be equal to or greater than 20% opacity for a period or periods aggregating more than 3 minutes in any one hour, or equal to or greater than 60% opacity at any time (25 Pa. Code § 123.41).

5. The Owner/Operator shall not permit the emission of, into the outdoor atmosphere, malodorous air contaminants from any source, in such a manner that the malodors are detectable outside the property of the facility (25 Pa. Code § 123.31).

6. There shall be no fugitive emissions from the facility contrary to 25 Pa. Code §§ 123.1 and 123.2.

7. At no time shall any source at this facility be operated without the simultaneous operation of each associated control device (25 Pa. Code § 127.12b).

8. The owner/operator shall maintain the following records on a 12-month rolling basis to be made available to the Department upon request (25 Pa. Code § 127.12b):

(a) Monthly quantity of fuel used in the dryer (expressed in tons).

(b) Monthly quantity of wood pellets produced (expressed in tons).

(c) Monthly number of hours of dryer operation.

(d) Weekly, facility-wide visible (stack), fugitive and malodorous emissions inspections.

(e) The maintenance schedule for, and records of, all maintenance activities performed on the biomass burner and on each control device.

9. Emissions from the facility shall be limited to the following:

(a) PM10 9.6 lbs/hr 46.6 tpy

(b) NOx 0.14 lb/mmBtu 6.8 lbs/hr 29.8 tpy

(c) CO 0.14 lb/mmBtu 6.9 lbs/hr 30.1 tpy

10. PM emissions from the sawdust dryer multiclone shall not exceed 0.04 gr/dscf. (25 Pa. Code § 123.13)

11. Stack testing of the drum dryer shall be performed by an appropriately certified entity within 180 calendar days of initial start-up, but no later than 90 days of achieving maximum production, and retested a minimum of once every 5 years thereafter. Testing shall be conducted in accordance with the provisions of 25 Pa. Code § 139 and the Department's Source Testing Manual.

(a) Tests shall be conducted for the following regulated pollutants (25 Pa. Code § 139):

i. NOx (as NO<sub>2</sub>) expressed in lb/mmBtu and lbs/hr.

ii. CO expressed in lb/mmBtu and lbs/hr.

iii. PM10, expressed in gr/dscf and lbs/hr.

iv. EPA Method 9 visible emission readings, expressed as percent (%) opacity.

(b) At least 45 calendar days prior to commencing an emissions testing program, a test protocol shall be submitted to the Department for review and approval. The test protocol shall meet all applicable requirements specified in the most current version of the Department's Source Testing Manual. (25 Pa. Code § 139.3)

(c) One copy of the pretest protocol shall be submitted to the Regional Office and two copies of the pre-test protocol shall be submitted to the Department of Environmental Protection, Bureau of Air Quality, Division of Source Testing and Monitoring, 400 Market Street, 12th Floor, Rachael Carson State Office Building, Harrisburg, PA 17105-8468. (25 Pa. Code § 139.3)

(d) At least 15 calendar days prior to commencing an emission testing program, notification as to the date and time of testing shall be given to the appropriate Regional Office. Notification shall also be sent to the Division of Source Testing and Monitoring. Notification shall not be made without prior receipt of a protocol acceptance letter from the Department. (25 Pa. Code § 139.3)

(e) Test reports shall include a summary of the emission results on the first page of the report indicating if

each pollutant measured is within permitted limits and a statement of compliance or noncompliance with all applicable permit conditions. The summary results shall include, at a minimum, the following information: (25 Pa. Code § 139.53(b))

i. A statement that the owner or operator has reviewed the report from the emissions testing body and agrees with the findings.

ii. Permit numbers and conditions which provide the basis for the evaluation.

iii. Summary of results with respect to each applicable permit condition.

iv. Statement of compliance or noncompliance with each applicable permit condition.

(f) A complete test report shall be submitted to the Department no later than 60 calendar days after completion of the onsite testing portion of an emission test program. One copy of the test report shall be submitted to the Regional Office and two copies of the test report shall be submitted to the Department of Environmental Protection, Bureau of Air Quality, Division of Source Testing and Monitoring.

(g) All source testing submittals shall meet all applicable requirements specified in the most current version of the Department's Source Testing Manual. (25 Pa. Code § 139.3)

(h) Under 25 Pa. Code § 139.53(a)(1) and (3) all submittals, besides notifications, shall be accomplished through PSIMS\*Online available through [www.depgreen.port.state.pa.us/ecommm/Login.jsp](http://www.depgreen.port.state.pa.us/ecommm/Login.jsp) when it becomes available. If internet submittal can not be accomplished, three copies of the submittal shall be sent to the Department of Environmental Protection, Bureau of Air Quality, Division of Source Testing and Monitoring, 400 Market Street, 12th Floor, Rachael Carson State Office Building, Harrisburg, PA 17105-8468 with deadlines verified through document postmarks.

12. Notification as to the date and time of testing shall be provided to the appropriate Regional Office at least 15 calendar days prior to commencing an emission testing program. Notification shall also be sent to the Division of Source Testing and Monitoring. Notification shall not be made without prior approval of test protocol by the Department. (25 Pa. Code § 139.3)

13. The Department may revise the maximum allowable emission rates based upon stack test results and may require additional controls in the event that emission limitations are not met. (25 Pa. Code § 127.12b)

14. This Plan Approval authorizes temporary operation of the sources covered by this Plan Approval provided the following conditions are met.

(a) The Owner/Operator shall submit written Notice of the Completion of Construction and the Operator's intent to commence operation at least 5 days prior to the completion of construction. The Notice shall state the date when construction will be completed and the date when the Operator expects to commence operation.

(b) Operation of the sources covered by this Plan Approval is authorized only to facilitate the start-up and shakedown 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) Upon receipt of the written Notice of the Completion of Construction from the Owner/Operator the Depart-

ment shall authorize a 180-day Period of Temporary Operation of the sources from the date of commencement of operation. The Notice submitted by the Owner/Operator, 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 commencement of operation.

(d) Upon determination by the Owner/Operator that the sources covered by this Plan Approval are operating in compliance with all conditions of the Plan Approval the Owner/Operator shall contact the Department's reviewing engineer and schedule the Initial Operating Permit Inspection.

(e) Upon completion of Initial Operating Permit Inspection and determination by the Department that the sources covered by this Plan Approval are in compliance with all conditions of the Plan Approval the Owner/Operator shall submit an application for a State-only Operating Permit to the Department at least 60 days prior to the expiration date of the Plan Approval.

(f) The Owner/Operator may request an extension of the 180-day Period of Temporary Operation 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 the Period of Temporary Operation and shall provide a description of the compliance status of the source. The extension request shall include a detailed schedule for establishing compliance and the reasons compliance has not been established. This Period of Temporary Operation may be extended for additional limited periods, each not to exceed 120-days, by submitting an extension request as described previously.

(g) If, at any time, the Department has cause to believe that air contaminant emissions from the sources listed in this Plan Approval may be in excess of the limitations specified in, or established under this plan approval or the permittee's operating permit, the permittee may be required to conduct test methods and procedures deemed necessary by the Department to determine the actual emissions rate. Such testing shall be conducted in accordance with 25 Pa. Code Chapter 139, where applicable, and in accordance with any restrictions or limitations established by the Department at such time as it notifies the company that testing is required. (25 Pa. Code § 127.12b)

Any person wishing to provide the Department with additional information that they believe should be considered prior to the issuance of the Plan Approval may submit the information to the Department at the address shown as follows. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed Plan Approval (specify the Plan Approval number).
- Concise statements regarding the relevancy of the information or objections to issuance of the Plan Approval. Written comments should be directed to:

Mark A. Wayner, P. E.  
Regional Air Quality Program Manager  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
Southwest Region—Field Operations  
400 Waterfront Drive  
Pittsburgh, Pennsylvania 15222-4745

For additional information you may contact the following at the same address:

Devin Tomko  
Air Quality Program  
(412) 442-5231

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**61-187D: SMS Millcraft** (671 Colbert Avenue, Oil City, PA 16301) for replacement of the fume scrubber that controls the emissions from the existing hexavalent chrome plating operation in the Oil City Industrial Park in Oil City, **Venango County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department of Environmental Protection intends to issue a plan approval to: to replace the fume scrubber that controls the emissions from the existing hexavalent chrome plating operation in the Oil City Industrial Park located in Oil City, Venango County. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into a State-only operating permit through an administrative amendment at a later date.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.*

**AMS 08069: Camden Iron & Metal, Inc.** (2900 South Christopher Columbus Boulevard, Philadelphia, PA 19148) to install a 400 ton/hr metal shredding process in the City of Philadelphia, **Philadelphia County**. The process will consist of a shredder with an 8,000 hp electric motor and a computerized water injection system and a cascade cleaning chamber with a Zerto Bleed air classifier system and a cyclone. Total PM fugitive emissions from the transfer points are limited to 1.37 tons per rolling 12-month period. The plan approval will contain operating, monitoring, recordkeeping and reporting requirements to ensure operation within all applicable requirements.

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**Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**46-00160: Cognis Corp.** (300 Brookside Avenue, Ambler, PA 19002) for a renewal of the State-only (Natural Minor) Operating Permit in Lower Gwynedd Township, **Montgomery County**. Cognis Corporation operates and maintains 14 small natural gas- and/or No. 2 fuel oil-fired boilers and 17 natural gas-fired space heaters, from which the main pollutants emitted are NOx and PM. The actual emission rates of NOx and PM from the boilers and space heaters are each less than 2 tpy. No significant changes have occurred at the facility since the permit was originally issued on November 17, 2003. The renewed permit will include the same monitoring,

recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**23-00064: Lawn Croft Cemetery** (1000 West Ridge Road, Linwood, PA 19061) for operation of two human crematory units in Lower Chichester Township, **Delaware County**. This action is a renewal of the original State-only Operating Permit (Natural Minor), which was issued on July 12, 2004, and expires on July 31, 2009. Several typographical changes have been made to the permit. Recordkeeping requirements were standardized for both crematory units. The facility shall remain a natural minor facility. There have been no changes at the facility since the original Operating Permit was issued and therefore, no new sources are identified in the renewed Operating Permit. The permit includes monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2507.*

**40-00109: GRUMA Corp., d/b/a Mission Foods** (15 Elmwood Avenue, Mountaintop, PA 18707) for operation of bake ovens and chip fryers and associated air cleaning device at their facility in Wright Township, **Luzerne County**. This facility is currently operating under Operating Permits 40-317-024, 40-317-025 and 40-317-032. All permit requirements shall be included in the new State-only (Natural Minor) Operating Permit for this facility. This Operating Permit shall include emission restrictions, monitoring, recordkeeping and reporting requirements designed to ensure this facility complies with all applicable air quality regulations.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**06-05003: Stone Pointe Management Corp.** (2525 North 12th Street, Reading, PA 19605-2749) for operation of a convention center including four boilers and two emergency generators in Muhlenberg Township, **Berks County**. This is a renewal of the State-only operating permit issued in 2003.

**06-05087: Haines & Kibblehouse, Inc.** (2052 Lucon Road, P. O. Box 196, Skippack, PA 19474) for their asphalt plant at 1355 Reading Avenue, Bechtelsville, in Colebrookdale Township, **Berks County**. This is a renewal of the State-only operating permit issued in September 2004.

**06-05092: Reading Materials, Inc.** (2052 Lucon Road, P. O. Box 196, Skippack, PA 19474) for their asphalt plant at 148 Angstadt Lane in Cumru Township, **Berks County**. This is a renewal of the State-only operating permit issued in September 2004.

**38-05037: Zimmerman Chair Shop** (1486 Colebrook Road, Lebanon, PA 17042-9507) for their wood surface coating and manufacturing operation in North Cornwall Township, **Lebanon County**. The State-only operating permit will include monitoring, work practices, recordkeeping and reporting requirements designed to keep the fabrication shop operating within all applicable air quality requirements.

**67-03017: Yorktown Paperboard Corp.** (1001 Loucks Mill Road, York, PA 17405) for operation of a paper recycling and manufacturing facility in Spring Garden

Township, **York County**. This is a renewal of the State-only operating permit issued in 2004.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Barbara Hatch, Facilities Permitting Chief, (412) 442-4174.*

**63-00878: The Peoples Natural Gas Co.** (1201 Pitt Street, Wilkinsburg, PA 15221) for operation of a compressor station at Gibson Station in Fallowfield Township, **Washington County**. This is a renewal of the State-only operating permit issued in 2004.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, New Source Review Chief, (814) 332-6940.*

**25-01006: Lake Erie Biofuels, LLC** (1540 East Lake Road, Erie, PA 16511-1032) for the issuance of a synthetic minor operating permit in the City of Erie, **Erie County**. The significant sources are two process steam boilers, the biodiesel production, storage tanks, a high pressure steam generator for the fatty acid stripper and a parts washer. The conditions of the previous plan approvals 25-1006A and 25-1006B were incorporated into the operating permit. The permittee shall be a synthetic minor source of SO<sub>x</sub> emissions by accepting an elective throughput restriction on the quantity of residual oil combusted in the two process boilers (1.21 million gallons) based on a consecutive 12-month period. The permittee shall keep records of the SO<sub>x</sub> emissions based on the quantity of residual oil burned. The facility is a natural minor facility for the remaining pollutants.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Brawn, Chief, (215) 685-9476.*

## COAL AND NONCOAL 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 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 an informal conference, or a public hearing, as applicable, on a mining permit application 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 address of the district mining office indicated above each application 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.

Written comments or objections related to a mining permit application 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, or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code §§ 77.123 or 86.34, must contain the name, address and telephone number of the requestor; the 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.

Where a National Pollutant Discharge Elimination System (NPDES) number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. The Department has made a tentative determination to issue the NPDES permit in conjunction with the mining activity permit, but the issuance of the NPDES permit is contingent upon the approval of the associated mining activity permit.

For coal mining activities, NPDES permits, when issued, will contain effluent limits that do not exceed the technology-based effluent limitations. The proposed limits are listed in Table 1.

For noncoal mining activities, the proposed limits are found in Table 2. Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description below specifies the parameters. The limits will be in the ranges specified in Table 1.

More restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining that may occur, will be incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91—96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation—Memorandum of Understanding Concerning Water Quality Management, NPDES Program Implementation and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Loads (TMDLs).

Persons wishing to comment on an NPDES permit application should submit a statement to the Department at the address of the district mining office indicated previously each application within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must 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 will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92.61. The request or petition for a public hearing shall be filed within 30 days of this public notice and shall contain the name, address, telephone number and the interest of the party filing the request, and shall state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania*

*Bulletin* and a newspaper of general circulation within the relevant geographical area. In the case where a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

#### *Coal Applications Received*

*Effluent Limits*—The following range of effluent limits will apply to NPDES permits issued in conjunction with the associated coal mining activity permit and, in some cases, noncoal mining permits:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (Total)	1.5 to 3.0 mg/l	3.0 to 6.0 mg/l	3.5 to 7.0 mg/l
Manganese (Total)	1.0 to 2.0 mg/l	2.0 to 4.0 mg/l	2.5 to 5.0 mg/l
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Aluminum (Total)	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l
pH <sup>1</sup>		greater than 6.0; less than 9.0	
Alkalinity greater than acidity <sup>1</sup>			

<sup>1</sup>The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; and mined areas backfilled and revegetated; and drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

*California District Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.*

**30841313 and NPDES Permit No. PA0022594, Consolidation Coal Company**, (1000 Consol Energy Drive, Canonsburg, PA 15317), to revise the permit for the Dilworth Mine in Cumberland Township, **Greene County** for a 22.4 acres land use change at the Rices Landing Loading Facility and AMD Plant from unmanaged natural habitat to commercial/industrial. No additional discharges. Application received October 30, 2008.

**32951301 and NPDES Permit No. PA0215821, Rosebud Mining Company**, (301 Market Street, Kittanning, PA 16201), to revise the permit for the Toms Run Mine in Burrell Township, **Indiana County** to expand the underground permit and subsidence control plan area acreage. Underground Acres Proposed 386.6, Subsidence Control Plan Acres Proposed 386.6. No additional discharges. Application received February 6, 2006.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56090106 and NPDES No. PA0262765, Hardrock Coal Company**, 275 Saddle Ridge Road, Berlin, PA 15530, commencement, operation and restoration of a bituminous surface and auger mine in Brothersvalley Township, **Somerset County**, affecting 105.5 acres. Receiving streams: UNTs to/and Buffalo Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received March 16, 2009.

**56020105 and NPDES No. PA0249262, Black Resources, Inc.**, 162 Cumberland Street, Berlin, PA 15530, permit renewal for the continued operation and restora-

tion of a bituminous surface and auger mine in Brothersvalley Township, **Somerset County**, affecting 87.7 acres. Receiving streams: UNTs of Millers Run and Sandy Hollow classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received March 24, 2009.

**56030101 and NPDES No. PA0249360, Tomcat Coal**, 309 Coalyard Road, Rockwood, PA 15557, permit renewal for reclamation only of a bituminous surface mine in Milford Township, **Somerset County**, affecting 33.2 acres. Receiving streams: UNTs to South Glade Creek classified for the following use: WWF. There are no potable water supply intakes within 10 miles downstream. Application received March 25, 2009.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**24-08-03 and NPDES Permit No. PA0258725, Tamburlin Brothers Coal Co., Inc.** (P. O. Box 1419, Clearfield, PA 16830). Proposal to enter into a Governmental Financed Reclamation Construction Contract on a 90.0 acre site in Jay Township, **Elk County**. The proposal include total reclamation of 35.0 acres of abandoned mine land as well as 16.5 acres of coal removal incidental and necessary to the reclamation activities. Receiving streams: UNT to Dixon Run, classified for the following use: CWF. There are no potable surface water intakes within 10 miles downstream. Application received March 17, 2009.

**10990101 and NPDES Permit No. PA0241512, Amerikohl Mining, Inc.** (202 Sunset Drive, Butler, PA 16001). Renewal of an existing bituminous surface strip operation in Eau Claire Borough and Venango Township, **Butler County** affecting 35.0 acres. Receiving streams: South Fork Little Scrubgrass Creek and UNTs, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received March 25, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**54991301T and NPDES Permit No. PA0223964. Little Buck Coal Company**, (57 Lincoln Road, Pine Grove, PA 17963), transfer of an existing anthracite underground mine operation from Joliett Coal Company in Porter Township, **Schuylkill County** affecting 3.0 acres, receiving stream: Wiconisco Creek. Application received March 23, 2009.

**49840103R4. Reading Anthracite Company**, (P. O. Box 1200, Pottsville, PA 17901), renewal of an existing

anthracite surface mine operation in East Cameron Township, **Northumberland County** affecting 127.0 acres, receiving stream: none. Application received March 26, 2009.

*Noncoal Applications Received*

*Effluent Limits*—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

<i>Parameter</i>	<i>Table 2</i>		
	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

\* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56090801. Fieg Brothers**, 3070 Stoystown Road, Stoystown, PA 15563, commencement, operation and restoration of a small noncoal (industrial minerals) operation in Southampton Township, **Somerset County**, affecting 5 acres. Receiving streams: UNT to Rush Run. Application received February 27, 2009.

**0792801. Catharine Properties, Inc.**, One Eighth Street, Braddock, PA 15104, commencement, operation and restoration of a small noncoal (industrial minerals) operation in Catharine Township, **Blair County**, affecting 5 acres, receiving streams: UNT to Frankstown Branch Juniata River. Application received February 26, 2009.

**56050801. Ramblin' Hills**, 1504 Hillside Avenue, Windber, PA 15963, bond release on a small noncoal (industrial minerals) operation in Paint Township, **Somerset County**, affecting 3.0 acres. Receiving stream: no discharge. Application received January 9, 2009.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**57090301 and NPDES No. PA0257133. Ininger Excavating, Inc.** (3046 Dushore-Overton Road, Dushore, PA 18614), commencement, operation and restoration of a large noncoal operation in Forks Township, **Sullivan County**, affecting 20.0 acres. Receiving streams: UNT to Black Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received March 16, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**06920301C3 and NPDES Permit No. PA0595641. Martin Stone Quarries, Inc.**, (P. O. Box 297, Bechtelsville, PA 19505), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Washington Township, **Berks County**, receiving

streams: UNT to Swamp Creek, classified for the following use: TSF. Application received March 25, 2009.

**40090301 and NPDES Permit No. PA0224774. Cedar Rock Materials Corp.**, (7612 Columbia Boulevard, Berwick, PA 18603), commencement, operation and restoration of a quarry operation and NPDES Permit for discharge of treated mine drainage in Salem Township, **Luzerne County** affecting 252.0 acres, receiving streams: UNT to Schuylkill River and Schuylkill River, classified for the following use: CWF. Application received March 26, 2009.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) 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. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before 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. Individuals 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 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should 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 Floodplain Management Act (32 P. S. § 679.302) and requests for certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).**

#### WATER OBSTRUCTIONS AND ENCROACHMENTS

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**E23-475. Township of Chester**, 1150 Engle Street, Chester, PA 19013, Chester Township, **Delaware County**, United States Army Corps of Engineers, Philadelphia District.

To perform the following Water Obstruction and Encroachment activities within the Floodplain of Chester Creek (WWF, MF) associated with the Chester Creek Levee modification project:

- 1) To extend and maintain the existing flood protection levee from 1, 885 linear feet to 2,900 linear feet.
- 2) To place fill on the existing levee in order to increase its height to approximately 3 feet above the 100-year water surface elevation.
- 3) To construct and maintain a concrete wall levee to connect the two sections of the existing earthen levee.
- 4) To extend, modify, and maintain two existing outfall structures associated with the interior dewatering of the levee.

The levee construction commences at approximately 180 feet east of the intersection of Powell and Worrilow Roads and runs south, curving in the south easterly direction parallel to the creek and ends approximately 140 feet southeast of the intersection of Worrilow and Rainer Roads. The site is located along the shore of Chester Creek in the City of Chester, Delaware County (Marcus Hook, PA USGS Quadrangle N: 18:41 inches; W: 2:96 inches).

*Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**E39-493. City of Allentown**, 3000 Parkway Boulevard, Allentown, PA 18104, in City of Allentown, **Lehigh County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain new and reconstructed trails in the floodway of Cedar Creek (HQ-CWF). The project is associated with the City of Allentown's Department of Parks and Recreation Cedar Creek Parkway Reconstruction Project. The project is located on the south side of Parkway Boulevard approximately 1.48 miles from the intersection of SR 0229 and US Route 22 in the City of Allentown (Allentown West, PA Quadrangle Latitude: 40° 35' 22"; Longitude: 75° 31' 22").

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E04-326. Beaver County Corporation for Economic Development (CED)**, 250 Insurance Street, Suite 300, Beaver, PA 15009. To construct a new amphitheater, playground and parking lot in Monaca Borough, **Beaver County**, United States Army Corps of Engineers, Pittsburgh District (Beaver, PA Quadrangle N: 12.8 inches; W: 4.8 inches, Latitude: 40° 41' 44"; Longitude: 80° 17' 05") in Monaca Borough, Beaver County. The applicant proposes to construct and maintain a playground and a new parking lot that will be located at the existing parking lot, to construct and maintain an amphitheater on the right bank of the Ohio River (WWF) and to construct and maintain a walking path and three picnic pavilions on the left bank of said stream for the purpose of improving the existing Monaca Riverfront Park. The project is located on the north side of Atlantic Avenue, just north from the intersection of Atlantic Avenue and Sixth Street.

*Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481*

**E33-232, Borough of Punxsutawney**, 301 East Mahoning Street, Suite 1, Punxsutawney, PA 15767. Gaskill Avenue Stream Channel Repair, in Borough of Punxsutawney, **Jefferson County**, United States Army Corps of Engineers, Pittsburgh District (Punxsutawney, PA Quadrangle N: 40° 56' 23"; W: 78° 58' 18").

This project intends to address the repair of Gaskill Avenue stream channel erosion through the installation of the following structures:

- Approximately 183.2' of 54" HDPE CPP enclosing a UNT (known as Barrett Run) to the Mahoning Creek beginning at the Gaskill Avenue culvert and connecting to a United States Army Corp of Engineers Federal flood control project
- Three cast-in-place concrete boxes

## ACTIONS

### THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit 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. Permits 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 before the action.

Persons aggrieved by an 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 should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, 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 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 decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

## **I. NPDES Renewal Permit Actions**

*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>
PA0061832	Draka Cableteq, USA P. O. Box 347 Schuylkill Haven, PA 17972	Schuylkill Haven Borough Schuylkill County	Schuylkill River 3A CWF	Y
PA0027081 (Minor Sewage)	Lackawanna River Basin Sewer Authority P. O. Box 9068 Dickson City, PA 18515	Clinton Township Wayne County	Lackawanna River 5A	Y
PA0063100 (Sewage Municipal)	Harford Township Board of Supervisors P. O. Box 250 Harford, PA 18823	Susquehanna County Harford Township	Nine Partners Creek 04F	Y

Chesapeake Bay nutrient monitoring requirements for Ammonia Nitrogen, Kjeldahl Nitrogen, Nitrite-Nitrate as N, Total Nitrogen and Total Phosphorus are being added to this permit.

*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>
PA0113883 (Sewage)	George and Janet Bittner Bittner's Mobile Home Park STP 68 Route 14 Highway Trout Run, PA 17771	Lewis Township Lycoming County	Lycoming Creek TSF	Y

<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>
PA0115266 SP	Gregg Township Sewer Authority P. O. Box 103 Spring Mills, PA 16875-0103	Centre County Gregg Township	Penns Creek 6A	Y
<i>Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.</i>				
PA0093891 Sewage	Deer Creek Drainage Basin Authority P. O. Box 148 945 Little Deer Creek Valley Road Russellton, PA 15976	Allegheny County West Deer Township	Dawson Run	Y
PA0032247 Sewage	Department of Conservation and Natural Resources Bureau of State Parks 1454 Laurel Hill Park Road Somerset, PA 15501-5629	Somerset County Middlecreek Township	Laurel Hill Creek	Y
PA0093211 Sewage	Menallen Township Sewer Authority 427 Searights Hebert Road Uniontown, PA 15401-5137	Fayette County Menallen Township	Dunlap Creek	Y

## II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**NPDES Permit No. PA0013285**, IW, **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010, Schuylkill Township, **Chester County**.

The following notice reflects changes to the notice published at the October 18, 2008, *Pennsylvania Bulletin*:

Three outfalls, 010—012, are added to the permit authorizing discharge of backwash of the intake screens without any floating solids or visible foam.

**NPDES Permit No. PA0011274**, Industrial Waste, **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposed facility is located in Middletown Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal from a facility known as Neshaminy Creek Water Treatment Plant to discharge treated filter backwash into Neshaminy Creek in Watershed 2F.

**NPDES Permit No. PA0052906**, Industrial Waste, **Montenay Montgomery Limited Partnership**, 1155 Conshohocken Road, Conshohocken, PA 19428-1028. This proposed facility is located in Plymouth Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge stormwater from a retention basin into a UNT to Plymouth Creek in Watershed 3F.

**NPDES Permit No. PA0052434**, Sewage, **Coventry Crossing, LP**, 4900 South Broad Street, Philadelphia, PA 19112. This proposed facility is located in Chester Heights Borough, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated sewage to a UNT to west Branch of Chester Creek in Watershed 3G.

**NPDES Permit No. PA0051004**, Sewage, **Lower Salford Township Authority**, 57 Main Street, P. O. Box 243, Harleysville, PA 19438. This proposed facility is located in Lower Salford Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge from a facility known as Indian Hill STP into the West Branch Skippack Creek in Watershed 3E.

**NPDES Permit No. PA0052787**, Sewage, **Quakertown United Mennonite Church**, 180 Thatcher Road, Quakertown, PA 18951. This proposed facility is located in Richland Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated sewage from the STP into the Thohickon Creek in Watershed 2D.

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**NPDES Permit No. PA0027065**, Sewage, **Lackawanna River Basin Sewer Authority**, P. O. Box 9068, Dickson City, PA 18515. This proposed facility is located in Archbald Borough, **Lackawanna County**.

Description of Proposed Action: Issuance of NPDES Permit.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**NPDES Permit No. PA0084212**, Sewage, **Leacock Township Sewer Authority**, P. O. Box 558, Intercourse, PA 17534. This proposed facility is located in Leacock Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to Muddy Run in Watershed 7-J.

**NPDES Permit No. PA0088285, Amendment No. 1**, CAFO, **Noah W. Kreider & Sons, LLP**, 1461 Lancaster Road, Manheim, PA 17545. This proposed facility is located in Penn Township, **Lancaster County**.

Description of size and scope of Proposed Operation/Activity: Authorization to operate a 9,546-Animal Equivalent Unit dairy and poultry operation.

**NPDES Permit No. PA0259888, Transfer 1**, CAFO, **Jonathon King, Jonathon King Farm**, CAFO, 252 Blanks Lane, Ickesburg, PA 17037. This proposed facility is located in Northeast Township, **Perry County**.

Description of size and scope of Proposed Operation/Activity: Transfer of Permit.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**PA0233633**, Sewerage, **Michael C. Dyke**, 260 Baney Road, Julian, PA 16834. This approved facility will be located in Union Township, **Centre County**.

Description of Activity: An NPDES permit application has been approved to discharge from a small flow treatment facility serving the Michael Dyke residence.

The receiving stream, a UNT to Dewitt Run, is in the State Water Plan Watershed 9C and is classified for: CWF. The nearest downstream public water supply intake is near Milton is located on the West Branch of the Susquehanna River approximately 95 miles below the point of discharge.

The effluent limits for Outfall 001 are based on a design flow of 0.0004 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>			10		20
TSS			10		20
Fecal Coliforms			200 colonies/100 ml		
pH			Within the range of 6.0 to 9.0		
Flow			Monitor		
TRC			Monitor and Report		

## II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Actions

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**NPDES Permit No. PA0036994**, Sewage, **Amendment No. 1, Borough of Pleasantville**, P. O. Box 150, 114 West State Street, Pleasantville, PA 16341-0150. This existing facility is located in Pleasantville Borough, **Venango County**.

Description of Proposed Action/Activity: Amendment of an NPDES Permit for an existing discharge of treated sewage.

**NPDES Permit No. PA0263460**, Sewage, **Joseph Landis**, 414 Freeport Street, Saxonburg, PA 16056. This proposed facility is located in Clinton Township, **Butler County**.

Description of Proposed Action/Activity: Permit to discharge treated sewage from a private residence to an HQ-CWF Stream.

**NPDES Permit No. PA0035289**, Sewage, **Glen Lakes Estates MHP**, 1037 Barkeyville Road, Grove City, PA 16127. This proposed facility is located in Pine Township, **Mercer County**.

Description of Proposed Action/Activity: New NPDES permit to discharge treated sewage from an existing mobile home park.

## III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**WQM Permit No. 3608406**, Sewage, **Leacock Township Sewer Authority**, P. O. Box 558, Intercourse, PA 17534. This proposed facility is located in Leacock Township, **Lancaster County**.

Description of Proposed Action/Activity: Permit approval for the construction/modification/operation of sewerage facilities consisting of: The addition of another sequencing batch reactor, aerobic sludge digester, ultraviolet disinfection and other modifications to expand treatment to 0.54 mgd maximum monthly design flow.

**WQM Permit No. 3685414, Amendment 09-1**, Sewage, **New Holland Borough**, 436 East Main Street, New Holland, PA 17557. This proposed facility is located in Earl Township, **Lancaster County**.

Description of Proposed Action/Activity: Permit amendment approval for the construction, modification and operation of sewerage facilities consisting of: The conversion of the existing oxidation ditch for denitrification by using an oxic and anoxic staged process operation (WWTP BNR Upgrade).

**WQM Permit No. 3808403**, Sewage, **HMS Host Corporation**, P. O. Box 8, Middletown, PA 17057. This proposed facility is located in South Londonderry Township, **Lebanon County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of: An extended aeration package plant with equalization, tertiary sand filter and chlorine disinfection at the Lawn Turnpike Plaza Wastewater Treatment Facilities.

**WQM Permit No. 6783411, Amendment 08-1**, Sewage, **Dover Borough**, 46 Butter Road, Dover, PA 17315. This proposed facility is located in Dover Borough, **York County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewerage facilities consisting of: Replacing the screens, adding EQ tank, adding an aeration tank, adding a final clarifier and adding a UV disinfection unit.

**WQM Permit No. 0509403**, Sewage, **Municipal Authority of the Borough of Bedford**, 244 West Penn Street, Bedford, PA 15522. This proposed facility is located in Bedford Borough, **Bedford County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of: Construction of a new Headworks building to house two new fine screens and grit removal system, demolition of the existing comminutor and grit chamber, construction of four circular Sequencing Batch Reactors for nutrient removal, construction of a new 50' diameter primary anaerobic digester, replacement of two digester covers and piping associated with the two existing anaerobic digesters, construction of a new building to house a new Rotary Fan Press for sludge dewatering and polymer feed system, construction of a new building to house UV disinfection system and construction of a 50' by 50' bio-filter to neutralize odorous gases throughout various buildings. The existing aeration units and the existing chlorine contact tank will be demolished. The proposed project is designed to treat Maximum Daily Flow of 3.75 mgd, Maximum Peak hourly flow of 4.5 mgd and influent TKN and TP of 35 mg/l and 5 mg/l respectively. The project is designed to meet Chesapeake Bay effluent limit requirement of 6 mg/l and 0.8 mg/l respectively for TN and TP.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**WQM Permit No. 1408401**, Sewerage 4952, **Michael Dyke**, 260 Baney Road, Julian, PA 16844. This facility will be located in Union Township, **Centre County**.

Description of Action/Activity: The applicant is approved to construct and operate a 400 gpd single residence small flow treatment facility that will consist of a 1,000 gallon two compartment septic tank, Ecoflo peat based bio-filter, erosion chlorination with chlorine contact tank and discharge to a UNT of Dewitt Run.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WQM Permit No. 0307202-A1**, Industrial Waste, **Reliant Energy Northeast Management Company**, 121 Champion Way, Suite 200, Canonsburg, PA 15317. This existing facility is located in Plumcreek Township, **Armstrong County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a pipeline.

**WQM Permit No. 0269412-A3**, Sewerage, **Borough of Sewickley**, 601 Thorn Street, Sewickley, PA 15143-0428. This existing facility is located in Sewickley Borough, **Allegheny County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of new headworks and dewatering facilities.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. WQG018683**, Sewerage, **Fred P. Kaeberlein**, 190 Kraus Drive, Erie, PA 16511. This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a Single-Residence Sewage Treatment Plant.

**WQM Permit No. 6188404**, Sewerage, **Amendment No. 1, Borough of Pleasantville**, P. O. Box 150, 114 West State Street, Pleasantville, PA 16341. This existing facility is located in Pleasantville Borough, **Venango County**.

Description of Proposed Action/Activity: This is an amendment of a permit which requires new construction. The major components of this project would involve the replacement of the barscreen with a fine screen, replacement/upgrading of Sequencing Batch Reactor and digester components, replacement of chlorination with ultraviolet disinfection and upgrades to the existing Sludge Drying Beds and addition of a sludge storage area.

**WQM Permit No. 1008402**, Sewerage, **Joseph Landis**, 414 Freeport Street, Saxonburg, PA 16056. This proposed facility is located in Clinton Township, **Butler County**.

Description of Proposed Action/Activity: Issuance of a Single-Residence Sewage Treatment Plant.

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#### **IV. NPDES Stormwater Discharges from MS4 Permit Actions**

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#### **V. NPDES Waiver Stormwater Discharges from MS4 Actions**

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**VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1508025	Oxford Commons, LP 120 West Germantown Pike Plymouth Meeting, PA 19462	Chester	Lower Oxford Township	Leech Run TSF-MF Little Elk Creek HQ-TSF-MF
PAI01 1508009	Pine Hill Associates, Inc. P. O. Box 608 Reagent Center Lionville, PA 19353	Chester	East Brandywine Township	UNT East Branch Brandywine Creek HQ-TSF-MF
PAS10- J034-R	YMCA of Philadelphia and Vicinity 2000 Market Street Philadelphia, PA 19103	Delaware	Middletown Township	Rocky Run HQ

*Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024503001R	James P. Ertle R. R. 2 Box 30 Kunkletown, PA 18058	Monroe	Stroud and Hamilton Townships	Pocono Creek HQ-CWF
PAI024508007	Hamilton FC Associates, LP 633 West Germantown Pike Suite 200 Plymouth Meeting, PA 19462	Monroe	Hamilton and Stroud Townships	Tributary to Pocono Creek HQ-CWF
PAI024508010	Pleasant Valley Assembly of God P. O. Box 797 Brodheads ville, PA 18321	Monroe	Chestnuthill Township	Pohopoco Creek HQ-CWF

*Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062509001	FedEx Ground Terminal C Tucker Copes & Associates 170 Duquesne Street Columbiana, OH 44408	Erie	McKean Township	Bear Creek WWF

*Central Office: Bureau of Abandoned Mine Reclamation, 400 Market Street, Floor 5, P. O. Box 8476, Harrisburg, PA 17105-8476.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI101009001	BAMR P. O. Box 8476 Harrisburg, PA 17105-8476 (717) 783-1311	Butler County	Muddy Creek Township	Bear Run to Muddy Creek HQ-CWF

**VII. Approvals to Use NPDES and/or Other General Permits**

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).

**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-4	General Permit for Discharges From Small Flow Treatment Facilities
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 Nonexceptional 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 Residential Septage 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)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

*General Permit Type—PAG-2**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Doylestown Borough Bucks County	PAG200 0908091	Central Bucks School District 20 Weldon Drive Doylestown, PA 18901	Cooks Run WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Sadsbury Township Chester County	PAG200 1509007	Transcontinental Gas Pipe Line Corporation (Transco) 2800 Post Oak Road P. O. Box 1396 Houston, TX 77056	Bucks Run/West Branch Brandywine Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Marlborough Township Chester County	PAG200 1503108-R	R. Joseph R. Scott 538 North Mill Road Kennett Square, PA 19348	Tributary West Branch Red Clay Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Coventry Township Chester County	PAG200 1508072	88 Wells Road, LLC 562 Ridge Road Spring City, PA 19475	Schuylkill River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Perkiomen Township Montgomery County	PAG200 4605133-1	Spring Hill Realty, Inc. 528 Main Street Harleysville, PA 19438	Schuylkill River WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Hanover Township Montgomery County	PAG200 4608157	New Hanover Township 2943 North Charlotte Street Gilbertsville, PA 19525	UNT West Branch Swamp Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Hanover Township Montgomery County	PAG200 4607162	Paul W. Moyer & Sons, Inc. 2412 Swamp Pike Gilbertsville, PA 19525	Swamp Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Merion Township Montgomery County	PAG200 4609008	Main Line Hospitals, Inc. 130 South Bryn Mawr Avenue Bryn Mawr, PA 19010	Indian Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Merion Township Montgomery County	PAG200 4608153	Versa Capital Management, Inc. Circa Centre 2929 Arch Street Philadelphia, PA 19104	Mill Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG201 5107051	Philadelphia Water Department Aramark Tower 1101 Market Street Philadelphia, PA 19107-2994	Cresheim Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

## NOTICES

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<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
City of Philadelphia Philadelphia County	PAG201 5108024	Community College of Philadelphia 1700 Spring Garden Street MG-17 Philadelphia, PA 19130	Poquessing Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG201 5108032	AP/BSI—A Joint Venture, LLC 1080 North Delaware Avenue Suite 1500 Philadelphia, PA 19125	Delaware River WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Pine Grove Borough Pine Grove Township Schuylkill County	PAG2005404014R	Pine Vista Estates 45 Tremont Road Pine Grove, PA 17963	Daubert Creek CWF	Schuylkill County Conservation District (570) 6223742
Pine Grove Borough Schuylkill County	PAG2005406010(1)	Pine Grove Area School District Attn: Alan Baxter 103 School Street Pine Grove, PA 17963	Upper Little Swatara Creek CWF	Schuylkill County Conservation District (570) 622-3742
Throop Borough Lackawanna County	PAG2003509005	Thomas Lukasewicz Throop Borough 436 Sanderson Street Throop, PA 18512-1224 and Thomas Rich Gould Electronics, Inc. 34929 Curtis Boulevard East Lake, OH 44095-4001	Tributary to Lackawanna River CWF	Lackawanna County Conservation District (570) 281-9495
Centre County Boggs Township	PAG2001409001	Daniel Fisher Bald Eagle Area School District 751 Eagle Valley Road Wingate, PA 16823	Bald Eagle Creek TSF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Lycoming County Muncy Township	PAG2004109002	Blaise Alexander 125 Allendale Drive Montoursville, PA 17754	Turkey Run WWF Twin Run WWF	Lycoming County Conservation District 542 County Farm Road Suite 202 Montoursville, PA 17754 (570) 433-3003
Snyder County West Perry Township	PAG2005509002	Robert Maneval 4146 Buckwheat Valley Road Richfield, PA 17086	UNT to West Branch Mahantango CWF	Snyder County Conservation District 403 West Market Street Middleburg, PA 17842 (570) 837-0007, Ext. 5
Union County Buffalo Township	PAG2006009001	Daryl Beiler 7249 Furnace Road Mifflinburg, PA 17844	Beaver Run CWF	Union County Conservation District Union County Government Center 155 North 15th Street Lewisburg, PA 17837 (570) 524-3860
Somerset County Conemaugh Township	PAG2005608010	Cocca Development, Ltd. 100 DeBartolo Place Suite 400 Boardman, OH 44512	UNT to Quemahoning Creek CWF	Somerset County Conservation District (814) 445-4652

*Facility Location:  
Municipality &  
County*Butler County  
Cranberry Township

Permit No.

PAG2001008023

*Applicant Name &  
Address*The Village at  
Cranberry Woods  
Donald Rodgers  
FRA Development  
215 Executive Drive  
Suite 300  
Cranberry Township, PA  
15238*Receiving  
Water/Use*UNT Brush Creek  
WWF*Contact Office &  
Phone No.*Butler County  
Conservation District  
(724) 284-5270Crawford County  
Vernon Township

PAG2002008006

Nick Patel, Staralliance  
Hotels, Inc.  
14424 Clearfield  
Shawville Highway  
Clearfield, PA 16830Van Horne Creek  
WWFCrawford County  
Conservation District  
(814) 763-5269Erie County  
Millcreek Township

PAR10K206R(1)

Sterling Ridge Phase V  
Maleno Developers, Inc.  
2340 West Grandview  
Boulevard  
Erie, PA 16506UNT Millcreek  
WWFErie County Conservation  
District  
(814) 825-6403Jefferson County  
Young Township

PAG2003308006

Graystone Court  
Punxsutawney, LLC  
R. D. 1  
Box 426  
Tyrone, PA 16686Mahoning Creek  
WWFJefferson County  
Conservation District  
(814) 849-7463*General Permit Type—PAG-3**Facility Location:  
Municipality &  
County*Juniata County  
Beale Township

PAR213550

*Applicant Name &  
Address*Marstellar Oil and  
Concrete  
P. O. Box 210  
Port Royal, PA 17082*Receiving  
Water/Use*Markee Creek  
CWF*Contact Office &  
Phone No.*DEP—SCRO  
909 Elmerton Avenue  
Harrisburg, PA 17110  
(717) 705-4707Union City Borough  
Erie County

PAR228336

Ames True Temper, Inc.  
465 Railroad Avenue  
Camp Hill, PA 17011UNT to the South  
Branch of French CreekDEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942*General Permit Type—PAG-4**Facility Location:  
Municipality &  
County*Plumstead  
Township  
Bucks County

PAG040109

*Applicant Name &  
Address*Lois Lawrence  
5650 Tollgate Road  
Pipersville, PA 18947*Receiving  
Water/Use*Three Mile Run  
Watershed 2D*Contact Office &  
Phone No.*Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401Thornbury  
Township  
Delaware County

PAG040114

Mary Anne Powell  
31 Timber Lane  
Thornton, PA 19373UNT to West Branch of  
Chester Creek  
Watershed 3GSoutheast Regional Office  
2 East Main Street  
Norristown, PA 19401Pine Township  
Allegheny County

PAG046397

Sean W. Hile  
419 Patsy Drive  
Gibsonia, PA 15044

UNT to Montour Run

Southwest Regional Office  
Water Management  
Program Manager  
400 Waterfront Drive  
Pittsburgh, PA  
15222-4745  
(412) 442-4000Harborcreek  
Township  
Erie County

PAG049503

Fred P. Kaeberlein  
190 Kraus Drive  
Erie, PA 16511Storm sewer tributary to  
Lake Erie  
15DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Fort LeBoeuf Township Erie County	PAG048732	Mark A. Stone 6350 US Route 6 Union City, PA 16438	UNT to French Creek 16A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-8 (SSN)*

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Eldred Township Monroe County and Lower Towamensing Township Carbon County	PAG09-2207	Jody Borger R. R. 1 Box 1473 Saylorsburg, PA 18353	JR Borger Farm R. R. 2 Box 404 Kunkletown, PA 18058	DEP—NERO 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511

**PUBLIC WATER SUPPLY (PWS) PERMITS**

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an 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 should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, 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 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 decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**SAFE DRINKING WATER**

**Actions taken under the Pennsylvania Safe Drinking Water Act**

*Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<b>Permit No. 1508508</b> , Public Water Supply.	
Applicant	<b>London Britain Township</b> P. O. Box 215 Kemblesville, PA 19347
Township	London Britain
County	<b>Chester</b>
Type of Facility	PWS
Consulting Engineer	Evans Mill Environmental, LLC P. O. Box 735 Uwchland, PA 19480
Permit to Construct Issued	September 30, 2008
<b>Permit 4609513</b> , Public Water Supply.	
Applicant	<b>Superior Water Company</b> 1885 Swamp Pike Suite 109 Gilbertsville, PA 19525
Township	New Hanover
County	<b>Montgomery</b>
Type of Facility	PWS
Consulting Engineer	Entech Engineering 4 South Fourth Street P. O. Box 32 Reading, PA 19603-0032
Permit to Construct Issued	March 19, 2009
<b>Permit 0908515</b> , Public Water Supply.	
Applicant	<b>Logan Square Condominium Associates</b> P. O. Box 106 New Hope, PA 18938
Township	Solebury
County	<b>Bucks</b>
Type of Facility	PWS
Consulting Engineer	Boucher & James, Inc. P. O. Box 313 Kulpsville, PA 18901
Permit to Construct Issued	November 12, 2008

*Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit No. 0108513**, Public Water Supply.

Applicant **York Springs Municipal Authority**  
 Municipality **Huntingdon Township**  
 County **Adams**  
 Type of Facility Installation of a 300,000-gallon raw water storage tank and spring collection wetwell with lift pump station.  
 Consulting Engineer Janet R. McNally, P. E.  
 William F. Hill & Assoc., Inc.  
 207 Baltimore Street  
 Gettysburg, PA 17325  
 Permit to Construct Issued March 30, 2009

**Permit No. 3808505 MA, Minor Amendment**, Public Water Supply.

Applicant **Eastern Lebanon County School District**  
 Municipality **Myerstown Borough**  
 County **Lebanon**  
 Type of Facility Permit application is for Installation of a pH control system at the ELCO Middle School for lead and copper corrosion control. pH adjustment will be accomplished using sodium hydroxide.  
 Consulting Engineer John T. Boyer Sr., P. E.  
 The Boyer Partnership, Inc.  
 1435 11th Avenue  
 Altoona, PA 16601  
 Permit to Construct Issued March 27, 2009

**Operations Permit** issued to **David L. Fite Realty, LTD**, 7360182, Providence Township, **Lancaster County** on March 16, 2009, for the operation of facilities approved under Construction Permit No. 3607512.

**Operations Permit** issued to **Roberts Investment Group, LLC**, 7500040, Centre Township, **Perry County** on March 25, 2009, for the operation of facilities approved under Construction Permit No. 5003502.

**Operations Permit** issued to **Mt. Rock Manor, LLC**, 7280053, Southampton Township, **Franklin County** on March 25, 2009, for the operation of facilities approved under Construction Permit No. 2808506 MA.

**Operations Permit** issued to **Conestoga Wood Specialties Corporation**, 7360885, East Earl Township, **Lancaster County** on March 9, 2009, for the operation of facilities approved under Construction Permit No. 3608514.

**Operations Permit** issued to **David L. Fite Realty, Ltd.**, 7360182, Providence Township, **Lancaster County** on March 16, 2009, for the operation of facilities approved under Construction Permit No. 3608518 MA.

**Operations Permit** issued to **Perry County NPHC; Perlo Ridge Apartments**, 7500036, Tyrone Township, **Perry County** on March 19, 2009, for the operation of facilities approved under Construction Permit No. 5009501 MA.

*Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Municipal Authority Borough of Catawissa**, (Public Water Supply), **Columbia County**. The Wellhead Protection program for this Municipal Authority Borough of Catawissa has been approved as of March 23, 2009. Municipal Authority Borough of Catawissa personnel are to be commended for taking these proactive steps to protect these water sources for their community. Development of the program was funded, in part, by a Source Water Protection grant (David W. Garg, (570) 321-6581).

**Municipal Authority of the Borough of Turbotville**, (Public Water Supply), **Northumberland County**. The Source Water Protection (SWP) program for Municipal Authority of the Borough of Turbotville has been approved as of March 23, 2009. Municipal Authority of the Borough of Turbotville personnel are to be commended for taking these proactive steps to protect these water sources for their community. Development of the SWP program was funded, in part, by a SWP grant (David W. Garg, (570) 321-6581).

*Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335.*

**Wellhead Protection Program Approval** issued to **East Brady Borough**, 502 Ferry Street, Suite 15, East Brady, PA 16028, PWSID No. 6160003, East Brady Borough, **Clarion County** on March 31, 2009.

#### SEWAGE FACILITIES ACT PLAN APPROVAL

**Plan Approvals Granted under section 5 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)**

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

#### Plan Location:

Borough or Township	Borough or Township Address	County
Guilford Township	115 Spring Valley Road Chambersburg, PA 17201	Franklin

*Plan Description:* The approved plan entitled Penn National Pump Station Redirect, DEP Code No. A3-28908-536-3, provides for the redirection of flows of 50,600 gpd from the Penn National Pump Station to the Quincy Sewer Authority collection system. The Department of Environmental Protection's review of the sewage facilities planning module has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the owners.

*Southwest Regional Office, Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Vanport Township	477 State Avenue Vanport, PA	Beaver
Brighton Township	1300 Brighton Road Beaver, PA	Beaver

*Plan Description:* The approved Act 537 Plan provides for expansion of the Vanport Township Sewage Treatment Plant serving both Brighton and Vanport Townships. The expansion would modify the existing headworks and include expansion of the activated sludge, disinfection and aerobic sludge digestion processes. The expansion would be designed for an Average Daily Flow of 2.0 mgd and a Peak Instantaneous Flow of 6.5 mgd. The discharge point is the Ohio River, classified as WWF. Any required NPDES Permits or WQM Permits must be obtained in the name of the applicant as appropriate. The Department of Environmental Protection's review of the sewage facilities revision has not identified any significant impacts resulting from this proposal.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Butler Township	290 South Duffy Road Butler, PA 16001	Butler

*Plan Description:* The approved plan provides for construction of a gravity sewer system to serve 11 existing single-family residential structures along Dutchtown Road in the southern portion of Butler Township along the Penn Township border. The newly constructed sewer line will be tributary to the Butler Area Sewer Authority.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Millcreek Township	3608 West 26th Street Erie, PA 16506	Erie

*Plan Description:* The approved plan provides for the installation of a gravity sewer system to serve 35 existing residential properties in the Overlook Heights subdivision. DEP Code No. M6-08-074.

**Plan Disapprovals Granted under section 5 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)**

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

*Plan Location:* Located at the intersection of Montgomery Church and Garnes Roads, Montgomery Township, Franklin County.

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Montgomery Township	11364 Fort Loudon Road Mercersburg, PA 17236	Franklin

*Plan Description:* The Official Plan Revision, entitled Fort Maxwell Estates, DEP Code No. A3-28915-394-2, proposing eight single-family residential lots using individual onlot sewage disposal systems, plan was disapproved because the preliminary hydrogeologic evaluation

contained in the planning module is flawed as it did not adequately assess the background Nitrate-Nitrogen concentrations beneath Lots 8, 8a, 8b, 9b and 10b, nor did it adequately assess whether these lot sizes are sufficient to keep Nitrate-Nitrogen concentrations in the groundwater below 10mg/l. Potential pollution of the waters of this Commonwealth is a violation of The Clean Streams Law. Such a condition is considered a nuisance and is prohibited.

**LAND RECYCLING AND ENVIRONMENTAL REMEDIATION**

**UNDER ACT 2, 1995**

**PREAMBLE 2**

**The following plans and 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 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 act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a Site-Specific Standard remediation. 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. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Armco Sawhill Tube (John Maneely Company—Sharon Pipe Plant), City of Sharon, Mercer County.** ENVIRON International Corporation, 214 Carnegie Center, Princeton, NJ 08540-6284 and The Payne Firm, Inc., 11231 Cornell Park Drive, Cincinnati, OH 45242 on behalf of the John Maneely Company, 1 Council Avenue,

Wheatland, PA 16161 has submitted a Revised Risk Assessment Report concerning remediation of soil contaminated with ethyl benzene, tetrachlorethene, trichloroethene, xylenes (total), benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzofuran, naphthalene, N-nitroso-di-n-propylamine, Aroclor-1248, Aroclor-1254, antimony, arsenic, cadmium, chromium (total), cobalt, lead, mercury, selenium, zinc and site groundwater contaminated with 1,2,4-Trichlorobenzene, 1,4-Dichlorobenzene, 2,3,7,8-TD equivalent, benzene, chlorobenzene, cis-1,2-dichloroethene, tetrachloroethene, trichloroethene, vinyl chloride, 2-Picoline, benzo(a)pyrene, bis(2-Ethylhexyl)phthalate, dibenz(a,h)anthracene, phenanthrene, Aroclor-1242, Aroclor-1254, Aroclor-1260, antimony, arsenic, barium, beryllium, cadmium, chromium III, chromium VI, copper, lead, manganese, mercury, nickel, selenium, sulfate, thallium, zinc. The Report is intended to document remediation of the site to meet the Site-Specific Standard.

## 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), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of 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 act. 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 nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. 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 reuse 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. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. 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, contact the Environmental Cleanup Program manager in the Department regional office before 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. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**George V. Seiple & Son Co., Inc.—Lot 55, 321 South Nulton Avenue and 3600 Hartley Street, Palmer Township, Northampton County.** Louis F. Vittorio, Jr., EarthRes Group, Inc., P. O. Box 468, Pipersville, PA 18947 submitted a Final Report (on behalf of his client, Thomas P. Stitt, George V. Seiple & Son Co., Inc., P. O. Box 483, Easton, PA 18044-0483), concerning the remediation of soils and groundwater found to have been impacted by arsenic and pesticides. The report documented attainment of both the Nonresidential Statewide Health Standard for soil and the Site-Specific Standard for soil and groundwater and was approved on March 17, 2009.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Pennfield Corporation/Diesel Fuel Release, Mount Joy Borough, Lancaster County.** GemChem, Inc., 53 North Cedar Street, P. O. Box 384, Lititz, PA 17543-0384, on behalf of Pennfield Corporation, 711 Rohrerstown Road, Lancaster, PA 17604 and Kline's Services, 5 Holland Street, Salunga, PA 17538, submitted a Final Report concerning remediation of site soils contaminated with diesel fuel released during a tractor trailer fire. The Final Report demonstrated attainment of the Residential Statewide Health Standard and was approved by the Department of Environmental Protection on March 23, 2009.

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Caparo Steel, City of Farrell, Mercer County.** Tetra Tech NUS, Inc., 661 Andersen Drive, Pittsburgh, PA 15220-2745 on behalf of Caparo Steel Company, 15 Roemer Boulevard, Farrell, PA 16121 and Bull Moose Tube, 1819 Clarkson Road, Chesterfield, MO 63017 has submitted a Final Report concerning remediation of site groundwater contaminated with antimony, benzene, benzo[a]anthracene, beryllium, BIS[2-Ethylhexyl]phthalate, cadmium, chrysene, cyanide free and thallium. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on March 23, 2009.

**Windfall Road—St. Marys, 1115 Windfall Road, City of Saint Marys, Elk County.** Insite Group, Inc., 611 South Irvin Avenue, Sharon, PA 16146 on behalf of Lad Kornacki, 1115 Windfall Road, Saint Marys, PA 15857 has submitted a Final Report concerning remediation of site soil contaminated with cadmium. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on November 21, 2008.

## HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

**Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a hazardous waste storage, treatment or disposal facility.**

*Southwest Regional Office, Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**Permit ID No. PAD004344222, Tecumseh Redevelopment, Inc.**, Iron Street, Johnstown, PA 15901. Permit renewal for the closure and postclosure care of a closed hazardous waste landfill and inactive spent pickle liquor treatment and disposal area at the Riders Disposal Area in East Taylor Township and the City of Johnstown, **Cambria County** issued by the Regional Office on March 31, 2009.

### DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

**Determination of Applicability for General Permit issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); section 1904 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**General Permit No. WMGR019SW003. Allegheny Recovery Corporation**, One Library Place, Box 2, Duquesne, PA 15110. A residual waste general permit for the beneficial use of waste foundry system sand as: (i) a roadway construction material; (ii) a component or ingredient in the manufacturing of concrete or asphalt products; (iii) a soil additive or soil substitute; and (iv) a nonroadway construction material in the City of Duquesne, **Allegheny County**, was deemed administratively complete on January 30, 2009, and approved by the Regional Office on February 19, 2009.

Persons interested in reviewing the general permit should contact Diane McDaniel, P. E., Environmental Engineering Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, TDD users should contact the Department of Environmental Protection through the Pennsylvania Relay AT&T Service, (800) 654-5984.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permit Issued 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 Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**Permit No. 101432. Waste Management of Pennsylvania, Inc.**, 444 Oxford Valley Road, Langhorne, PA 19047-8300. This minor permit modification is issued to

operate a single-stream recycling center and an e-Depot for the collection and transfer of electronic waste at the Norristown Transfer Station located at 310 Washington Street in Norristown Borough, **Montgomery County**. The permit was issued by the Southeast Regional Office on March 23, 2009.

## AIR QUALITY

**General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**GPA-1-46-0272: SmithKline Beechman Corp.—d/b/a GlaxoSmithKline** (709 Swedeland Road UE 4021, Building 40, King of Prussia, PA 19406-2711) on March 31, 2009, to operate a small gas and No. 2 oil fired combustion unit in Upper Merion Township, **Montgomery County**.

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2531.*

**40-317-032A: Gruma Corp.—DAB Mission Foods** (15 Elmwood Road, Mountaintop, PA 18707) on March 19, 2009, to modify the snack food process at their facility in Wright Township, **Luzerne County**.

**66-315-050: Procter & Gamble Paper Products** (P. O. Box 32, Mehoopnay, PA 18629) on March 16, 2009, to increase operating hours at the facility in Washington Township, **Wyoming County**.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**09-0007C: Waste Management Disposal Service of PA, Inc.** (1000 New Ford Mill Road, Morrisville, PA 19067-3704) on March 24, 2009, to operate landfill—route collected gases in Falls Township, **Bucks County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**41-302-050: Wirerope Works, Inc.** (100 Maynard Street, Williamsport, PA 17701) on March 16, 2009, to operate two 15 mmBtu/hr anthracite coal-fired boilers on a temporary basis until September 12, 2009, in the City of Williamsport, **Lycoming County**. The plan approval has been extended.



*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, M. Gorogl and B. Hatch, Environmental Engineer Managers, (412) 442-4163/5226.*

**65-302-071: Arcelormittal Monessen, LLC** (345 Donner Avenue, Monessen, PA 15062-1156) on March 25, 2009, to allow for continued temporary operation of two coke oven gas/natural gas boilers at their Monessen Coke Plant, in the City of Monessen, **Westmoreland County** until September 25, 2009. The plan approval has been extended.

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**Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

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*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Norman Frederick, Facilities Permitting Chief, (570) 826-2507.*

**40-00017: PPL Martins Creek, LLC—Jenkins CTG** (2 North Ninth Street, Allentown, PA 18101-1139) on March 26, 2009, to renew a Title V Operating Permit for operation of an electric generating substation in Laflin Borough, **Luzerne County**.

**40-00022: PPL Martins Creek, LLC—Harwood CTS** (2 North Ninth Street, Allentown, PA 18101-1139) on March 24, 2009, to renew a Title V Operating Permit for operation of an electric generating substation in Hazle Township, **Luzerne County**.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**21-05021: Arnold Fuel Oil, Inc.** (P. O. Box 2621, Harrisburg, PA 17105-2621) on March 26, 2009, to construct a loading rack controlled by a vapor combustion unit at Mechanicsburg North Terminal at 127 Texaco Road, Silver Spring Township, **Cumberland County**. This is a renewal of the State-only operating permit.

**22-05054: Eldorado Properties Corp.** (P. O. Box 2621, Harrisburg, PA 17105-2621) on March 24, 2009, for a bulk petroleum product storage and loading facility in Lower Swatara Township, **Dauphin County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**41-00058: Charles Construction Co.** (838 East Central Avenue, Jersey Shore, PA 17740) on March 30, 2009, to issue a State-only (synthetic minor) operating permit for their "Jersey Shore Asphalt Plant" facility in Limestone Township, **Lycoming County**. The facility's main sources include hot mix asphalt plant and various heaters. The State-only (synthetic minor) operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, Facilities Permitting Chief, (814) 332-6940.*

**25-00946: PSB Industries, Inc.** (1202 West 12th Street, Erie, PA 16501) on March 25, 2009, to re-issue the Natural Minor Operating Permit to operate the facility's air contamination sources consisting of: 5.6 mmBtu/hr

Miscellaneous Natural Gas Space Heaters, Sand Blast Booth, Glass Bead Blast Room, Paint Booth for surface coating metal products and two parts washers in the City of Erie, **Erie County**.

**42-00197: Atlas Pipeline McKean, Inc.—Irishtown Plant** (309 San Road, Lewis Run, PA 16738) on March 27, 2009, to re-issue the Natural Minor Operating Permit for operation of the facility's air contamination sources consisting of: a 275 mmBtu/hr natural gas Reboiler, two-384 hp Compressor Engines, one 272 hp compressor engine and one 425 hp compressor engine in Lafayette Township, **McKean County**. The facility is subject to 40 CFR Part 60, Subpart KKK and Subpart VV pertaining to VOC equipment leak check.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.*

**S09-002: Smurfit Stone Container Enterprises** (9820 Bluegrass Road, Philadelphia, PA 19114) on March 30, 2009, to operate a manufacturing corrugated box facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include include two 12.55 mmBtu/hr boilers, two cyclones, one 50" flexographic printing press.

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**Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**23-00098: SAP America, Inc.** (3999 West Chester Pike, Newtown Square, PA 19073) on March 24, 2009, to operate boilers, emergency generators and a water heater at their facility in the Newtown Square office building in Newtown Township, **Delaware County**. Administrative Amendment of State-only Operating Permit was issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450. The amendment incorporates reference to various sources exempt from plan approval requirements, including Source ID 102 (600-kW Emergency Generator) and Source ID 033 (five Boilers (2.6 mmBtu/hr each)). The amendment also addresses reference to two natural gas water heaters rated at 600,000 Btu/hr (Section G). Work Practice Standards from 25 Pa. Code §§ 129.203 and 129.204 have been added to Source ID 101 (four Emergency Generators). The Responsible Official has been updated to James Clark, Vice President of Global Facility Management. The facility is currently operating under the non-Title V (State-only) Operating Permit No. 23-00098. The facility caps NOx to less than 25 tpy; therefore the facility is a Synthetic Minor. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**41-00051: Wire Rope Works, Inc.** (100 Maynard Street, Williamsport, PA 17701) on March 26, 2009, for the minor modification of SMOP No. 41-00051 for their facility in Williamsport, **Lycoming County**. The State-only (Synthetic Minor) Operating Permit was modified to increase the number of cold batch (Safety Kleen) degreasers comprising Source P107 from two to 13 and to incorporate

Source P110 (three ultrasonic batch vapor degreasers) and Source P111 (75 5-gallon degreasing buckets) into the operating permit.

**49-00007: Cherokee Pharmaceuticals, LLC** (100 Avenue C, Riverside, PA 17868) on March 27, 2009, issued a revised Title V Operating Permit for their pharmaceutical production facility in Riverside Borough, **Northumberland County**. The revision of this permit incorporates the requirements of plan approval, 49-00007E into the Title V Operating Permit. The title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, Facilities Permitting Chief, (814) 332-6940.*

**33-00137: VL Greenhouses, LLP—Pennsylvania Division** (568 Tomato Drive, Punxsutawney, PA 15767) on March 24, 2009, for an administrative amendment of this Natural Minor Operating Permit to document a change of ownership from Village Farms to VL Greenhouses in Ringgold Township, **Jefferson County**. The facility's primary sources of emissions are three Auxiliary Boilers used to produce heat for a greenhouse.

#### **De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Barbara Hatch, Facilities Permitting Chief, (412) 442-4174.*

**TVOP-65-00016: Latrobe Specialty Steel Co.** (2626 South Ligonier Street, Latrobe, PA 15650-6359) on March 24, 2009, per 25 Pa. Code § 127.449(i), for the following de minimis emission increases at the Latrobe Specialty Steel Company, Latrobe Plant, located in Latrobe, **Westmoreland County**.

Less than 0.11 tpy of PM10 resulting from the construction and operation of one Slag Handling Operation consisting of one Mesto Screen, rated at 150 tph, with a maximum annual throughput of 15,000 tons.

Less than 0.48 tpy of PM10 resulting from the construction and operation of one Torch Cutting Operation which will be conducted within a building and controlled by a 6,000 ACFM dust collector.

The list of previously authorized de minimis increases at the facility is as follows:

October 2003: TIV Power Source Upgrade.

### **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); and 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 and the NPDES permit application. Mining activity permits issued in response to the 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 Actions*

*California District Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.*

**17851501 and NPDES Permit No. PA0215694, RES Coal, LLC**, (224 Grange Hall Road, P. O. Box 228, Armagh, PA 15920), to transfer the permit and related NPDES permit for Clearfield Siding in Boggs Township, **Clearfield County** from Sky Haven Coal, Inc. to RES Coal, LLC. No additional discharges. Application received November 17, 2008. Permit issued March 30, 2009.

**32031701 and NPDES Permit No. PA0235555, EME Homer City Generation, LP**, (1750 Power Plant Road, Homer City, PA 15748-9558), to operate the Dixon Run Central Treatment Facility in Cherryhill Township, **Indiana County** and related NPDES permit and to install a sludge borehole. Surface Acres Proposed 23.8. Receiving stream: Two Lick Reservoir, classified for the following uses: TSF, PWS. Application received May 15, 2003. Permit issued March 30, 2009.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56010105 and NPDES No. PA0249068, Godin Brothers, Inc.**, P. O. Box 216, Boswell, PA 15531, revision of an existing bituminous surface mine to change land use from woodland to unmanaged natural habitat in Jenner Township, **Somerset County**, affecting 34.8 acres. Receiving streams: UNTs to/and Quemahoning Creek classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning SW1. Application received January 21, 2009. Permit issued March 23, 2009.

**56940106 and NPDES No. PA0212903, Fieg Brothers**, 3070 Stoystown Road, Stoystown, PA 15563, revision of an existing bituminous surface mine to add mining on the Lower Pittsburgh coal seam in Brothersvalley Township, **Somerset County**, affecting 77.4 acres. Receiving streams: UNTs to/and Buffalo Creek and UNTs to/and Hays Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received May 21, 2008. Permit issued March 23, 2009.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**03040101 and NPDES Permit PA0250597, AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15650). Renewal issued for continued reclamation only of a bituminous surface mining site located in Gilpin Township, **Armstrong County**, affecting 62.1 acres. Receiving streams: UNT to Allegheny River. Application received January 29, 2009. Reclamation only renewal issued March 24, 2009.

**03803044 and NPDES Permit PA126375, State Industries, Inc.** (P. O. Box 1022, Kittanning, PA 16201). Renewal issued for continued operation and reclamation of a bituminous surface/auger mining site located in East Franklin Township, **Armstrong County**, affecting 97.9 acres. Receiving streams: UNT to Limestone Run to Allegheny River. Application received February 3, 2009. Renewal issued March 25, 2009.

*Noncoal Permits Actions*

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56920302 and NPDES Permit No. PA0212326. New Enterprise Stone & Lime Company, Inc.**, P. O. Box 77, New Enterprise, PA 16664, renewal of NPDES Permit in Shade Township, **Somerset County**. Receiving streams: Laurel Run classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Stonycreek SWL. Application received January 7, 2009. Permit issued March 25, 2009.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**37030305. Glacial Sand & Gravel Co.** (P. O. Box 1022, Kittanning, PA 16201) Renewal of NPDES Permit No. PA0242543 in Plain Grove Township, **Lawrence County**. Receiving streams: UNT to Jamison Run. Application received February 4, 2009. Permit issued 23, 2009.

**5380-10960301-E-3. Quality Aggregates, Inc.** (4955 Steubenville Pike, Suite 245, Pittsburgh, PA 15205) Application for a stream encroachment to conduct mining activities within 100 feet of Blacks Creek in Marion Township, **Butler County**. Receiving streams: UNTs to Blacks Creek and UNT to Slippery Rock Creek. Application received February 20, 2009. Permit issued March 25, 2009.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**18061002. Maxwell Trucking & Excavating, Inc.** (689 East College Avenue, Bellefonte, PA 16823), noncoal mining operation in Dunnstable Township, **Clinton County**. Restoration of 4.0 acres. Receiving streams: Big Plum Run, tributary to West Branch Susquehanna. Application received February 27, 2009. Final bond release March 20, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**58080826. Dean M. Mack**, (R. R. 2, Box 199, Kingsley, PA 18826), commencement, operation and restoration of a quarry operation in Brooklyn Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received April 17, 2008. Permit issued March 24, 2009.

**58082817. Douglas G. Kilmer**, (R. R. 1, Box 85 K, Union Dale, PA 18470-9728), commencement, operation and restoration of a quarry operation in Great Bend Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received October 9, 2009. Permit issued March 24, 2009.

**58090801. Duane C. Holbrook**, (R. R. 3, Box 348, Montrose, PA 18801), commencement, operation and restoration of a quarry operation in Bridgewater Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received January 12, 2009. Permit issued March 24, 2009.

**58090802. Duane C. Holbrook**, (R. R. 3, Box 348, Montrose, PA 18801), commencement, operation and restoration of a quarry operation in Bridgewater Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received January 12, 2009. Permit issued March 24, 2009.

**ACTIONS ON BLASTING ACTIVITY APPLICATIONS**


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**Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151-161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.**

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*Blasting Permits Actions*

*Greensburg District Mining Office: Armbrust Professional Center; 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**04094001. Joseph J. Brunner, Inc.** (211 Brunner Road, Zelienople, PA 16063), blasting activity permit for construction to the Joseph J. Brunner Landfill, located in New Sewickley Township, **Beaver County**. The expected duration of blasting is 1 year. Permit issued March 23, 2009.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**27094001. Pennsylvania General Energy Corp.** (208 Liberty Street, Warren, PA 16365), blasting activity permit for stone removal in Howe Township, **Forest County**. This blasting activity permit will expire on December 1, 2009. Application received March 23, 2009. Permit issued March 23, 2009.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**14094002. Junior Coal Contracting** (2330 Six Mile Run, Philipsburg, PA 16866), blasting on the Ridge GFCC#-14-07-01 located in Rush Township, **Centre County**. Permit issued March 25, 2009. Permit expires October 31, 2011.

**41094001. Great Lakes Geophysical, Inc.** (P. O. Box 127, Williamsburg, MI 49690), seismic survey blasting (shot hole) for Lycoming-09-02-Swath A, Lycoming-09-03-Swath B, Lycoming-09-04-Swath C and Lycoming-09-05-Swath D located in Anthony and Cogan House Townships, **Lycoming County**. Permit issued March 26, 2009. Permit expires April 30, 2009.

**41094002. Great Lakes Geophysical, Inc.** (P. O. Box 127, Williamsburg, MI 49690), seismic survey blasting (shot hole) for Lycoming-09-Tombs Run-D1 and Lycoming-09-Tombs Run-D2 located in Mifflin and Cummings Townships, **Lycoming County**. Permit issued March 26, 2009. Permit expires April 30, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**36094111. Keystone Blasting Service**, (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for a single dwelling in West Earl Township, **Lancaster County** with an expiration date of April 30, 2009. Permit issued March 23, 2009.

**36094112. Keystone Blasting Service**, (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for a single dwelling in West Earl Township, **Lancaster County** with an expiration date of April 30, 2009. Permit issued March 23, 2009.

**40094001. Napcon, Inc.**, (190 Mundy Street, Wilkes-Barre, PA 18702) and **Orica USA**, (971 Mountain Road, Bloomsburg, PA 17815), construction blasting at the Curry Hill—Avondale Mine Reclamation Site in Plymouth

Township, **Luzerne County** with an expiration date of March 17, 2010. Permit issued March 26, 2009.

**36094113. Gerlach's Drilling & Blasting**, (172 Bender Mill Road, Lancaster, PA 17603), construction blasting for a manure pit in Manheim Township, **Lancaster County** with an expiration date of December 31, 2009. Permit issued March 26, 2009.

**46094007. Brubacher Excavating, Inc.**, (P. O. Box 528, Bowmansville, PA 17507), construction blasting for West Mont Soccer in Limerick Township, **Montgomery County** with an expiration date of March 20, 2010. Permit issued March 26, 2009.

**67094106. J Roy's, Inc.**, (P. O. Box 125, Bowmansville, PA 17507), construction blasting for Special Industries Warehouse in Windsor Township, **York County** with an expiration date of March 26, 2010. Permit issued March 26, 2009

### FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation 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.

Persons aggrieved by an 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 should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, 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 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 decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**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 P. S. §§ 691.1—**

**691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

#### WATER OBSTRUCTIONS AND ENCROACHMENTS

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**E09-920. Waterside Bensalem Development, Inc.**, 2310 Terwood Road, Huntingdon Valley, PA 19006, Bensalem Township, **Bucks County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with a proposed waterside mixed-use residential and retail redevelopment proposed along the Delaware River Waterfront (WWF-MF):

1. To place fill within 0.321-acre of wetland (PFO1) associated with the construction of the proposed Dock Street Road and elevated boardwalk around the eastern portion of the proposed development.

2. To place fill within an approximately 415-linear-foot-long drainage channel located on the center of the property and to divert stream flows through the proposed stormwater collection system.

3. To construct and maintain a boat dock and associated mooring area situated riverward of the existing bulkhead within the Delaware River. The work consists of a series of floating docks and precast concrete block sections.

4. Work also includes the construction and maintenance of stormwater management facilities and associated outfalls at several locations along the Delaware River.

The project will impact a total of 415 linear feet of watercourse and 0.321 acre of wetlands. Compensation will consist of 0.34 acre of wetland replacement and 0.77 acre of wetland restoration. The project is located at a former industrial site on the east side of State Road (Beverly, PA Quadrangle N: 12.4 inches; W: 9.4 inches) in Bensalem Township, Bucks County.

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

*Northeast Regional Office: Watershed Management Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**E54-328. Kirk A. Strouse**, P. O. Box 107, Summit Station, PA 17979. Wayne Township, **Schuylkill County**, United States Army Corps of Engineers, Baltimore District.

To construct and maintain a 400-foot long stream enclosure in a tributary to Bear Creek (CWF) consisting of a 4-foot diameter smooth-lined corrugated polyethylene pipe. The project is located on the southwest corner of the intersection of SR 0183 and SR 0895 (Friedensburg, PA Quadrangle Latitude: 40° 33' 45"; Longitude: 76° 12' 27"). (Subbasin: 7D)

**E39-470. West Hills Partners, LP**, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240. Weisenberg Township, **Lehigh County**, United States Army Corps of Engineers, Philadelphia District.

1. To construct and maintain a 138-foot long stream enclosure in a tributary to Lyon Creek (HQ-CWF) consisting of a 10-foot by 5-foot concrete box culvert depressed 6-inches below streambed elevation, an R-5 riprap apron and the placement of fill in 0.05-acre of wetlands.

2. To construct and maintain a 265-foot long stream enclosure in a tributary to Lyon Creek consisting of a 6-foot diameter reinforced concrete pipe depressed 6-inches below streambed elevation, an R-7 riprap apron and the placement of fill in 0.30-acre of wetlands.

3. To construct and maintain a 2.5-inch diameter PVC sanitary line crossing of a tributary to Lyon Creek and a 1.5-inch diameter PVC sanitary line crossing of a second tributary to Lyon Creek.

4. To construct and maintain a 12-inch diameter water-line crossing of two tributaries to Lyon Creek.

5. To construct and maintain various stormwater outfalls varying in size from 18-inch diameter to 42-inch diameter in the floodway of tributaries to Lyon Creek.

The permittee is required to provide 0.35 acre of replacement wetlands.

The project is located on the north side of I-78 between Golden Key Road (SR 0863) and Kecks Road (SR 4003) (Topton, PA Quadrangle Latitude: 40° 35' 7"; Longitude: 75° 41' 57") in Weisenberg Township, Lehigh County. (Subbasin: 2C)

**E40-682. Transcontinental Gas Pipe Line Corporation**, 2800 Post Oak Boulevard, Houston, TX 77056. Salem Township, **Luzerne County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain the following Water Obstructions and Encroachments associated with the Sentinel Expansion—Conyngham Loop Gas Pipe Line Project which includes 1.93 miles of 42-in diameter gas pipe line in Salem Township, Luzerne County.

1. (W-CO-003) a temporary equipment crossing of PEM wetlands with 0.05 acre of temporary wetland impacts (Lat: 41° 06' 42"; Long: 76° 08' 26").

2. (W-CO-007) a gas pipeline of approximately 50 feet of PEM wetlands and a temporary equipment crossing of the same wetland with 0.08 acre of temporary wetland impacts (Lat: 41° 06' 42"; Long: 76° 08' 25").

3. (W-CO-001) a gas pipeline of approximately 182 feet of PEM wetlands and a temporary equipment crossing of the same wetland with 0.36 acre of temporary wetland impacts (Lat: 41° 06' 49"; Long: 76° 10' 13").

4. (S-CO-003) a gas pipe line crossing and temporary equipment crossing of a 20-foot wide tributary to the Susquehanna River (CWF), with 92 feet of channel impacts (Lat: 41° 06' 42"; Long: 76° 08' 25").

5. (S-CO-002) a gas pipe line crossing and temporary equipment crossing of a 14-foot wide tributary to the Susquehanna River (CWF) with 94 feet of channel impacts (Lat: 41° 06' 50"; Long: 76° 08' 48").

6. (S-CO-001) a temporary equipment crossing of a 3-foot wide tributary to the Susquehanna River (CWF) with 38 feet of channel impacts (Lat: 41° 06' 51"; Long: 76° 10' 06").

The project will temporarily impact 0.49 acre of wetlands and 224 feet of stream channel. Disturbed stream banks will be permanently stabilized with riprap.

The project begins near the intersection of SR 0011 and Mingle Inn Road (Berwick, PA Quadrangle Lat: 41° 06'

39"; Long: 76° 08' 17") and ends approximately 0.2 mile northwest of the intersection of Stone Church and Mingle Inn Roads (Berwick, PA Quadrangle Lat: 41° 06' 53"; Long 76° 10' 31") in Salem Township, Luzerne County. (Subbasin: 5D)

**E45-517. Stewart and Gloria Martin**, R. R. 2, Box 2750, Canadensis, PA 18325. Barrett Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To place fill in a de minimis area of PSS wetlands equal to 0.02 acre and to construct and maintain a steel I-beam bridge, having a 24-foot span and a 5-foot underclearance across Stony Run (EV). The project is located on the eastern side of Lower Ceese Hill Road, approximately 2.4 miles northeast of its intersection with SR 447 (Skytop, PA Quadrangle Latitude: 41° 11' 05"; Longitude: 75° 12' 24"). (Subbasin: 1E)

**E40-693. Schiel Development, LLC**, 30 Hanover Street, Wilkes-Barre, PA 18702. Hanover Township, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

To place fill in 0.02 acre of wetlands for the purpose of constructing townhouses within the Fairway Estates residential subdivision. The project is located northwestern side of North Main Street approximately 1.5 miles northeast of the exit ramp of SR 0029 (Wilkes-Barre West, PA Quadrangle Latitude: 41° 13' 8"; Longitude: 75° 55' 34"). (Subbasin: 5B)

**E54-355. Wayne Township Municipal Authority**, P. O. Box 97, Friedensburg, PA 17933. Wayne Township, **Schuylkill County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with the Wayne Township Municipal Authority Sanitary Sewer Collection System Project, which includes 26 utility crossings of a Long Run and tributaries to the Long Run in Wayne Township, Schuylkill County.

1. (Crossing A) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (CWF) (Lat: 40° 36' 51.8"; Long: 76° 12' 28.3").

2. (Crossing B) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 46"; Long: 76° 12' 42.5").

3. (Crossing C) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 44.6"; Long: 76° 12' 44.8").

4. (Crossing D) An 8" diameter concrete encased PVC gravity sanitary sewer main across Long Run (Lat: 40° 36' 44"; Long: 76° 12' 45.8").

5. (Crossing E) An 8" diameter ductile iron with mechanical joint gravity sanitary sewer main across Long Run (Lat: 40° 36' 39.6"; Long: 76° 12' 58.2").

6. (Crossing F) An 8" diameter concrete encased PVC gravity sanitary sewer main across Long Run (Lat: 40° 36' 36.6"; Long: 76° 12' 59.9").

7. (Crossing G1) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (CWF) (Lat: 40° 36' 42.3"; Long: 76° 13' 2.8").

8. (Crossing G2) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 39.7"; Long: 76° 13' 9.1").

9. (Crossing G3) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 38.5"; Long: 76° 13' 1.2").

10. (Crossing H) An 8" diameter concrete encased PVC gravity sanitary sewer main across Long Run (Lat: 40° 36' 34.6"; Long: 76° 13' 9.5").

11. (Crossing J) An 8" diameter concrete encased PVC gravity sanitary sewer main across Long Run (Lat: 40° 36' 32.9"; Long: 76° 13' 14.9").

12. (Crossing K) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 32"; Long: 76° 13' 20.6").

13. (Crossing L) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 32.9"; Long: 76° 13' 14.9").

14. (Crossing M) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 30.3"; Long: 76° 13' 23.6").

15. (Crossing N) An 8" diameter concrete encased PVC gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 24.8"; Long: 76° 13' 42.3").

16. (Crossing O) An 8" diameter ductile iron with mechanical joints gravity sanitary sewer main across Long Run (Lat: 40° 36' 24.8"; Long: 76° 13' 42.3").

17. (Crossing P) An 8" diameter ductile iron with mechanical joints gravity sanitary sewer main across Long Run (Lat: 40° 36' 22.6"; Long: 76° 13' 55.1").

18. (Crossing Q) An 8" diameter PVC concrete encased gravity sanitary sewer main across a UNT to Long Run (Lat: 40° 36' 12.3"; Long: 76° 14' 12.5").

19. (Crossing R) An 8" diameter ductile iron with mechanical joints gravity sanitary sewer main across Long Run (Lat: 40° 36' 10.9"; Long: 76° 14' 16").

20. (Crossing S) A 6" diameter concrete encased PVC gravity sanitary sewer lateral across Long Run (Lat: 40° 36' 7.6"; Long: 76° 14' 25.7").

21. (Crossing T) A 6" diameter concrete encased PVC gravity sanitary sewer lateral across Long Run (Lat: 40° 36' 12.3"; Long: 76° 14' 13.2").

22. (Crossing U) A 6" diameter concrete encased PVC gravity sanitary sewer lateral across Long Run (Lat: 40° 36' 12.7"; Long: 76° 14' 11.9").

23. (Crossing V) A 6" diameter concrete encased PVC gravity sanitary sewer lateral across Long Run (Lat: 40° 36' 13"; Long: 76° 14' 11.2").

24. (Crossing W) A 6" diameter concrete encased PVC gravity sanitary sewer lateral across Long Run (Lat: 40° 36' 14.8"; Long: 76° 14' 7").

25. (Crossing X) A 6" diameter concrete encased PVC gravity sanitary sewer lateral across Long Run (Lat: 40° 36' 19.4"; Long: 76° 14' 58").

26. (Crossing Y) A 6" diameter concrete encased PVC gravity sanitary sewer lateral across a UNT to Long Run (Lat: 40° 36' 13.6"; Long: 76° 14' 13.6").

27. (Wetland A1 Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 706 linear feet of PEM wetland with temporary wetland impacts of 0.47 acre (Lat: 40° 36' 24"; Long: 76° 13' 41").

28. (Wetland A2 Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 780 linear feet of PEM wetland with temporary wetland impacts of 0.47 acre (Lat: 40° 36' 26"; Long: 76° 13' 33").

29. (Wetland C Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 166 linear feet of PEM wetland with temporary wetland impacts of 0.15 acre (Lat: 40° 36' 32"; Long: 76° 13' 14").

30. (Wetland D Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 188 linear feet of PFO wetland with temporary wetland impacts of 0.05 acre (Lat: 40° 36' 32"; Long: 76° 13' 15").

31. (Wetland E west side Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 43 linear feet of PEM wetland with temporary wetland impacts of 0.02 acre (Lat: 40° 36' 34"; Long: 76° 13' 9").

32. (Wetland E east side Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 127 linear feet of PEM wetland with temporary wetland impacts of 0.12 acre (Lat: 40° 36' 37"; Long: 76° 13' 1").

33. (Wetland F & G Impact) An 8" and 6" diameter gravity sanitary sewer main crossing of approximately 200 linear feet of PSS wetland with temporary wetland impacts of 0.18 acre (Lat: 40° 36' 39"; Long: 76° 12' 58").

34. (Wetland I Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 107 linear feet of PEM wetland with temporary wetland impacts of 0.09 acre (Lat: 40° 36' 46"; Long: 76° 12' 42").

35. (Wetland J1 Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 622 linear feet of PEM wetland with temporary wetland impacts of 0.53 acre (Lat: 40° 36' 51"; Long: 76° 12' 28").

36. (Wetland J2 Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 274 linear feet of PEM wetland with temporary wetland impacts of 0.24 acre (Lat: 40° 36' 52"; Long: 76° 12' 27").

37. (Wetland K Impact) An 8" diameter gravity sanitary sewer main crossing of approximately 640 linear feet of PEM wetland with temporary wetland impacts of 0.50 acre (Lat: 40° 36' 53"; Long: 76° 12' 25").

The project will temporarily impact 2.84 acres of wetlands. Disturbed streambanks will be permanently stabilized with riprap or jute matting and vegetation.

The project begins 0.04 mile west of intersection of Stone Mountain Road and SR 0443 (Friedensburg, PA Quadrangle Lat: 40° 36' 7"; Long: 76° 14' 46") and ends 0.05 mile southwest of the intersection of SR 0443 and Bensing Road (Friedensburg, PA Quadrangle Lat: 40° 36' 55"; Long: 76° 12' 22") in Wayne Township, Schuylkill County. (Subbasin: 3A)

*Northcentral Region: Water Management Program Manager: 208 West Third Street, Williamsport, PA 17701, (570) 327-3636*

**E60-199. Department of Transportation**, Engineering District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. SR 3004 Segment 0150 Bridge Structure Replacement over a UNT to Cold Run, Lewis Township, **Union County**, United States Army Corp of Engineers, Baltimore District (Hartleton, PA Quadrangle N: 40° 52' 45.1"; W: 77° 08' 51.8").

The applicant proposes to replace an existing single span, concrete slab bridge over a UNT to Cold Run with a 53" by 83" precast horizontal elliptical reinforced concrete pipe. The existing structure has a normal clear span of 12.0 feet, a curb-to-curb width of 16.0 feet and a maximum under clearance of 3 feet 1 inch. Cold Run has a Chapter 93 water use protection designation of TSF. The project will result in impacts to 56 linear feet of stream

and 0.048 acre of PEM wetlands. This permit also includes 401 Water Quality Certification.

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1585-A1 (originally published under E02-1601). Pennsylvania American Water Company**, 852 Wesley Drive, Mechanicsburg, PA 17055-4475. To construct and replace a water main under Becks Run in two locations in the City of Pittsburgh and Baldwin Borough, **Allegheny County**, United States Army Corps of Engineers, Pittsburgh District (Pittsburgh East, PA Quadrangle N: 6.3 inches; W: 11.7 inches, Latitude: 40° 24' 35"; Longitude: 79° 57' 33" second; N: 6.0 inches; W: 12.4 inches and Latitude: 40° 24' 29"; Longitude: 79° 57' 51"). To construct and maintain a 42 inch diameter water main under the bed and across the channel of Becks Run (WWF) at two locations for the purpose of replacing the existing aged water mains and convey raw water from the Becks Run Raw Water Pump Station to the Hays Mine Station Water Treatment Plant. The project is located approximately 2,000.0 feet upstream from the intersection of Becks Run Road and SR 837 and will impact approximately 118.0 linear feet of stream channel.

**E11-334. Game Commission**, 4820 Route 711, Boliver, PA 15923-2420. To construct a stream crossing in Chest Township, **Cambria County**, United States Army Corps of Engineers, Baltimore District (Coalport, PA Quadrangle N: 2.9 inches; W: 15.9 inches, Latitude: 40° 38' 31.9"; Longitude: 78° 36' 51.5"). To construct and maintain a stream crossing consisting of five 17" by 13" by 20' corrugated steel arch culverts across Beaverdam Run (CWF) for the purpose of providing access to portions of State game lands. The project is located on approximately 3,400 feet north of Gendale Lake Road on State Game Lands 108.

**E63-608. Meadows Landing Associates, LLP**, 650 Washington Road, Suite 400, Pittsburgh, PA 15228. To construct a stream enclosure and fill wetlands in South Strabane Township, **Washington County**, United States Corp of Engineers, Pittsburgh District (Washington East, PA Quadrangle N: 14.88"; W: 10.43", Latitude: 40° 12' 25.6"; Longitude: 80° 11' 25.6"). To construct and maintain a 700' stream enclosure on a UNT to Chartiers Creek (WWF), a 160' stream enclosure on a UNT to Chartiers Creek, both with drainage areas under 100 acres, (total length of enclosures is 860'); to place and maintain fill in 0.03 acre of wetland and to place and maintain fill in 0.48 acre of wetland, both in the

Chartiers Creek Watershed (total wetland impact 0.51 acre, for the purpose of constructing a commercial/office development. To mitigate these impacts, a 0.57 acre replacement wetland and 1,720' of stream improvement on 3 UNTs to Chartiers Creek will be constructed.

**E65-916. Kriebel Minerals, Inc.**, P. O. Box 765, Clarion, PA 16214. To construct a stream crossing in East Huntingdon Township, **Westmoreland County**, United States Army Corps of Engineers, Pittsburgh District (Mount Pleasant, PA Quadrangle N: 8.65 inches; W: 14.0 inches, Latitude: 40° 10' 22"; Longitude: 79° 36' 1.7"). To construct and maintain a stream crossing, consisting of two 60" corrugated plastic culvert sections, across Buffalo Run (WWF), for the purpose of providing access to a gas well site. The project is located approximately 1,800' southwest of the intersection of T-469 and T-471.

**EROSION AND SEDIMENT CONTROL**

The following Erosion and Sediment Control Permits have been issued.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies), 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 should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, 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.

If individuals want to challenge this action, their appeal must reach the Board within 30 days. Individuals do not need a lawyer to file an appeal with the Board. Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. If individuals cannot afford a lawyer, they may qualify for free pro bono representation. Call the Secretary to the Board (717) 787-3483 for more information.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

<i>ESCP No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
ESCGP-1 0809810	Tracy L. Gregory Fortuna Energy, Inc. 337 Daniel Zanker Drive Horseheads, NY 14845	Bradford	Troy Township	South Branch Sugar Creek TSF

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>ESCP No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
ESC42098001	Marcellus Gas Well Potato Creek 2H Open Flow Gas Supply Corp. 90 Beaver Drive Drawer J DuBois, PA 15801-0297	McKean	Norwich Township	Hamlin Run HQ

<i>ESCP No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
ESC42098002	Marcellus Gas Well Potato Creek 5H Open Flow Gas Supply Corp. 90 Beaver Drive Drawer J DuBois, PA 15801-0297	McKean	Norwich Township	Sackett Hollow CWF
ESC42098003	Marcellus Gas Well Potato Creek Open Flow Gas Supply Corp. 90 Beaver Drive Drawer J DuBois, PA 15801-0297	McKean	Norwich Township	East Branch Potato Creek Lyman Run HQ
ESC42098004	Marcellus Gas Well Potato Creek 1H Open Flow Gas Supply Corp. 90 Beaver Drive Drawer J DuBois, PA 15801-0297	McKean	Norwich Township	Colegrove Brook HQ

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## SPECIAL NOTICES

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### Drinking Water State Revolving Fund

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#### Special Notice under the Federal Safe Drinking Water Act (SDWA) 42 U.S.C. § 300f et seq.

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*Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

*Project Location:*

<i>Applicant</i>	<i>Applicant Address</i>	<i>County</i>
Lansford-Coaldale Joint Water Authority	1 East Ridge Street Lansford, PA 18323	Carbon and Schuylkill Counties

*Project Description:* The Pennsylvania Infrastructure Investment Authority (PENNVEST), which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The Lansford-Coaldale Joint Water (LCJWA) proposes the LCJWA 2009, Upgrade Project (PENNVEST ID No. 13024030903-CW) which consists of storage tanks and distribution system improvements. The Department of Environmental Protection's (Department) review of the project and the information received for the project has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby approves the Categorical Exclusion.

[Pa.B. Doc. No. 09-676. Filed for public inspection April 10, 2009, 9:00 a.m.]

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### Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords: "Technical Guidance"). The "Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2009.

#### *Ordering Paper Copies of Department Technical Guidance*

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. 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 questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

#### *Final Technical Guidance*

DEP ID: 391-2000-017. Title: Implementation Guidance Temperature Criteria. Description: The guidance has been updated to provide guidance applicable to 316(a) demonstrations; provide for consideration of incomplete mix between the discharge flow and the receiving water under some conditions; update the screening criteria for when thermal limits should be applied; address temperature issues regarding discharges to HQ/EV and CWF streams; expand guidance on recommended thermal monitoring frequencies; and provide guidance for addressing the maximum 2° F per hour delta requirement in Chapter 93.

Notice of the draft technical guidance document, including a request for public comment, was published at 38 Pa.B. 6227 (November 8, 2008). A 60-day public comment period was provided, which concluded on January 7, 2009. Comments on the draft guidance were received from Citizens for Pennsylvania's Future (PennFuture). Based on comments received during the public comment period, several additional changes were made to the proposed document. In Section IV, the guidance describing the Department's appropriate actions when adequate ambient data are not available was modified. Additionally, minor



clarifications were made relating to Q7-10 on page 8 and relating to 316(a) demonstration on page 11. Contact: Questions regarding the final guidance document should be directed to Thomas Starosta at (717) 787-4317 or by e-mail at tstarostastate.pa.us. Effective Date: April 11, 2009.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 09-677. Filed for public inspection April 10, 2009, 9:00 a.m.]

### Bid Opportunity

**AMD 11(0821)101.1, Abandoned Mine Reclamation Project, Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County.** The principal items of work and approximate quantities include 3.0 each of vertical turbine pumps for pump station and force main system, 1,070.0 cubic yards of cast-in-place concrete for pre-aeration and ferrous reactors, 2,565.0 cubic yards of cast-in-place concrete and flocculating clarifier for clarifier (flocculating), 282.0 cubic yards of cast-in-place concrete, hydrated lime system, and polymer feed system for treatment building, hydrated lime system and polymer system, treatment building plumbing with appurtenances and accessories, treatment building HVAC and appurtenances, treatment building structural and accessories for treatment building, earthwork/excavation for polishing pond and outfall, 5,550.0 square yards of earthwork/excavation (roadway), 11.3 acres of earthwork/excavation (refuse pile regrading) for site work and other utilities and electrical and system integration. This project issues on April 10, 2009, and bids will be opened on July 9, 2009, at 2 p.m. Bid documents cost \$125 per set and will not be mailed until payment has been received. A mandatory prebid conference is planned for this project and a tentative date has been set for May 28, 2009. Use the contact information contained in this advertisement to find out more about the prebid. Failure to attend will be cause for rejection of the bid. This project is financed by the Federal Government under the authority given it by Pub. L. No. 95-87 dated August 3, 1977, The Surface Mining Control and Reclamation Act of 1977, and is subject to that Law, and to the Federal Grant for this project. Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 09-678. Filed for public inspection April 10, 2009, 9:00 a.m.]

### Draft Assessment and Listing Methodology Notice of Availability for Public Comment

The Department of Environmental Protection (Department) is making available for public comment its draft Assessment and Listing Methodology (methodology). Sections 303(b) and 305(b) of the Federal Clean Water Act require states to report on the condition of all their waters in the biennial Integrated Report (report). The report combines the comprehensive section 305(b) report

status of water quality in this Commonwealth and the section 303(d) list of waters for which Total Maximum Daily Loads are required.

Stream and lake evaluations presented in the report must be supported by assessment methodologies based on sound science and technical procedures that are clear and complete. The methodology is a compilation of the protocols being used to assess waters that will appear in the 2010 Pennsylvania Integrated Water Quality Monitoring and Assessment Report.

The protocols comprising the methodology describe the field data collection procedures and data analysis methods used to obtain and evaluate water quality data. The individual protocols apply to a wide range of water resource types, data sources and environmental indicators.

The draft methodology is available on the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us). Select "Water Topics" in the top menu bar, then "Water Quality" in the drop down menu, and finally 2009 Assessment Methodology. The previous 2007 Assessment Methodology, and the accompanying comment-response document, are also available for comparison. Because of the large number of pages, the methodology will not be available in hardcopy.

There will be a 60-day comment period. Persons wishing to comment on the draft methodology may do so in writing to the Bureau of Water Standards and Faculty Regulation or by e-mail no later than June 11, 2009. Comments should be mailed or e-mailed to Amy Williams, Division of Water Quality Standards, P. O. Box 8467, Harrisburg, PA 17105-8467, (717) 772-4045, amywilli@state.pa.us. Comments received by facsimile will not be accepted.

The Department will consider all public comments regarding the appropriateness of the narrative, collection methods and data analyses protocols contained in the methodology.

Persons in need of accommodations as provided for in the American With Disabilities Act of 1990 should contact Amy Williams directly at (717) 772-4045 or through the Pennsylvania AT&T Relay Service at (800) 654-5894 (TTD) to discuss how the Department may accommodate their needs.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 09-679. Filed for public inspection April 10, 2009, 9:00 a.m.]

### Marcellus Shale Wastewater Partnership; Public Meeting

The Department of Environmental Protection (Department) announces a public meeting of the Marcellus Shale Wastewater Partnership on April 15, 2009, at 1 p.m. in the 2nd Floor Auditorium of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Marcellus Shale Wastewater Partnership is a collaborative effort of the Marcellus Shale Committee and the Department to examine wastewater issues facing the natural gas industry and identify technologies and treatment techniques that will ensure adequate protection of our water resources while allowing for the treatment and disposal of wastewater generated during extraction.

At this meeting, the Department will present a Permitting Strategy for High Total Dissolved Solids (TDS)

Wastewater Discharges (Permitting Strategy). The goal of this permitting strategy is that new sources of High TDS wastewaters will be prohibited from this Commonwealth's waters by January 2011. To achieve this goal, the Department proposes to amend 25 Pa. Code Chapter 95 (relating to wastewater treatment requirements) to establish new effluent standards. In addition, to assure the protection and attainment of all designated stream uses, the Department proposes to develop new numeric water quality criteria for TDS and Chlorides, and amend 25 Pa. Code Chapter 93 (relating to water quality standards) to include these criteria. Amendments to 25 Pa. Code Chapters 93 and 95 will be completed prior to January of 2011 through separate regulatory processes. Those processes will allow for public participation and comment.

Meeting materials for the April 15, 2009, meeting, including a copy of the draft Permitting Strategy, may be obtained by contacting Ron Furlan of the Division of Planning and Permitting at (717) 787-8184 or [rfurlan@state.pa.us](mailto:rfurlan@state.pa.us). A copy of the meeting materials is also available on the Department's web site at: <http://www.depweb.state.pa.us/watersupply/cwp/view.asp?a=1260&Q=545730&watersupplyNav=|30160>

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Ronald Furlan at (717) 787-8184 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 09-680. Filed for public inspection April 10, 2009, 9:00 a.m.]

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### Solar Workgroup Meeting

The Solar Workgroup (Workgroup) will hold a meeting on April 27, 2009, at 10 a.m. in the 2nd Floor Training Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

The agenda and materials for the April 27, 2009, meeting will be available at the meeting. Questions concerning this meeting should be directed to Libby Dodson, Office of Energy and Technology Deployment, Division of Energy Promotion, 400 Market Street, Harrisburg, PA 17101, (717) 772-8907, [ldodson@state.pa.us](mailto:ldodson@state.pa.us).

Persons with a disability who require accommodations to attend the April 27, 2009, meeting of the Workgroup should contact Angela Rothrock at (717) 772-8911 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department of Environmental Protection may accommodate their needs.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 09-681. Filed for public inspection April 10, 2009, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Autism Coverage; Notice 2009-03

This notice is issued to advise all entities subject to section 635.2 of the act of The Insurance Company Law of 1921 (added by section 2 of Act 62 of 2008) (Act 62) (40 P. S. § 764h) of their obligations under Pennsylvania law in the provision of coverage for autism benefits. Pennsylvania law, in Act 62, requires coverage of the diagnostic assessment and treatment of autism spectrum disorders by certain group insurance policies or contracts. The Insurance Department (Department) has been asked how the "general exclusions or limitations" language in the Act should be applied. Accordingly, the Department releases the following guidance concerning the provision of benefits under the Act 62.

Act 62 mandates coverage of the "treatment of autism spectrum disorders," and defines that term to include "medically necessary pharmacy care, psychiatric care, psychological care, rehabilitative care and therapeutic care" prescribed and provided in accordance with Act 62. See 40 P. S. § 764h(f)(14). In addition, Act 62 also provides that the autism coverage "shall not be subject to any limits on the number of visits to an autism service provider for treatment of autism spectrum disorders." See 40 P. S. § 764h(b). However, Act 62 does allow a carrier to apply "general exclusions or limitations" to the autism spectrum disorder coverage "to the same extent as other medical services covered by the policy." See 40 P. S. § 764h(c). The Department has been asked whether these three subsections are incongruent. They are not. The Department interprets these provisions to be in consonance with each other as follows:

- Those types of treatment for autism spectrum disorders specifically delineated by Act 62—"pharmacy care, psychiatric care, psychological care, rehabilitative care and therapeutic care"—must be provided to the extent such treatments are medically necessary and prescribed and provided as set forth in the law, irrespective of whether those types of care are otherwise excluded by the policy.

- Those types of services or treatments for autism spectrum disorders not specified by Act 62 may be subject to "general exclusions" of a policy under 40 P. S. § 764h(c), provided they are excluded "to the same extent" as for other medical services covered by the policy. By way of example, if a policy generally excludes acupuncture treatment, and an autism provider believes that acupuncture may provide some benefit to his autism patient, that particular treatment may nonetheless be excluded from the mandated coverage.

- A policy may impose general limitations, such as scope and duration limitations, on coverage for autism spectrum disorders so long as such limitations are imposed "to the same extent" as those imposed upon other medical services covered by the policy. For example, if a policy or contract requires all medical services to be provided by a participating provider as a prerequisite for payment of services, autism services may also be required to be provided by a participating provider as a prerequisite for payment of those services.

- Specific limitations on number of visits are impermissible under 40 P. S. § 764h(b) (disallowing a limitation on the "number of visits to an autism service provider for treatment of autism spectrum disorders").

Finally, the Department has been asked whether autism is a mental health condition subject to the Paul

Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Pub. L. No. 110-343, 122 Stat. 3881 (October 3, 2008) at sections 511 and 512, amending, inter alia, section 2705 of the Public Health Service Act (42 U.S.C. § 300gg-5). The Federal government is anticipated to issue regulations addressing this question on or before October 3, 2009. (See § 512(d)) The Department will continue to monitor developments at the Federal level, but is not taking any action on the limitations (including the monetary cap) issues at this time.

Questions regarding this notice may be addressed to Shelley D. Bain, J. D., Director, Bureau of Accident & Health Insurance, Insurance Department, 13th Floor, Strawberry Square, Harrisburg, PA 17120 by letter or by means of e-mail at RA-in-autism@state.pa.us.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-682. Filed for public inspection April 10, 2009, 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) (Act 68) in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of Act 68; 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). The administrative hearings will be held in the Insurance Department's regional office in Philadelphia, PA. Failure by an appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Philadelphia Regional Office, Room 1701, State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Alvenia and Thomas Baldwin; file no. 09-215-63667; Victoria Fire and Casualty Company; Doc. No. PH09-03-006; June 17, 2009, 11 a.m.

Appeal of Carol A. Robinson and Clarence C. Norwood; file no. 09-217-64601; Erie Insurance Exchange; Doc. No. PH09-03-002; June 17, 2009, 1 p.m.

Parties may appear with or without counsel and offer relevant testimony 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.

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 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 previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Donna R. Fleischauer, Human Resources Director, at (717) 705-3873.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-683. Filed for public inspection April 10, 2009, 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 companies' termination of the insureds' policies. The administrative hearing will be held in the Insurance Department's regional office in Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Philadelphia Regional Office, Room 1701, State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Thomas and Ellen McGarrigle; file no. 09-216-67165; Travelers Insurance Company; Doc. No. PH09-03-021; June 17, 2009, 2 p.m.

Parties may 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.

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 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 previously-referenced administrative hearing and require

an auxiliary aid, service or other accommodation to participate in the hearing, contact Donna R. Fleischauer, Human Resources Director, at (717) 705-3873.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-684. Filed for public inspection April 10, 2009, 9:00 a.m.]

## MILK MARKETING BOARD

### Hearing and Presubmission Schedule for All Milk Marketing Areas; Over-Order Premium

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Areas 1—6 on May 6, 2009, at 1:15 p.m. in Room 202 of the Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning the level and duration of the Class I over-order premium to be effective July 1, 2009.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 4 p.m. on April 16, 2009, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 4 p.m. on April 16, 2009, notification of their desire to be included as a party. Parties may indicate in their notices of appearance if alternate means of service, that is, e-mail or fax, are acceptable. Notices of appearance filed electronically should be directed to [deberly@state.pa.us](mailto:deberly@state.pa.us).

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 additional copies made available for the use of nonparties attending the hearing.

1. By 4 p.m. on April 20, 2009, the petitioner shall file with the Board, in person or by mail, one original and eight copies and ensure receipt by all other parties of one copy of:

a. A list of witnesses who will testify for the petitioner, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise. For expert witnesses there shall also be filed a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on April 27, 2009, each responding party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

3. By 4 p.m. on May 4, 2009, parties shall file and serve as set forth in paragraph 1 information concerning surrebuttal witnesses and copies of surrebuttal exhibits.

The Board may exclude witnesses or exhibits of a party that fails to comply with the previous requirements. In addition, the parties shall have available in the hearing room at least 20 additional copies made available for the use of nonparties attending the hearing.

Parties that wish to offer in evidence documents on file with the Board, public documents, or records in other proceedings before the Board, or wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on April 28, 2009.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

KEITH BIERLY,  
*Secretary*

[Pa.B. Doc. No. 09-685. Filed for public inspection April 10, 2009, 9:00 a.m.]

## PENNSYLVANIA ENERGY DEVELOPMENT AUTHORITY

### \$21 Million Funding Opportunity Available

On behalf of Governor Edward G. Rendell, Acting Secretary Hanger announces that on April 13, 2009, the Pennsylvania Energy Development Authority (PEDA) will open a \$21 million solicitation for innovative, advanced energy projects and for businesses interested in locating their advanced energy operations in this Commonwealth.

For purposes of this financial assistance opportunity, eligible projects may include: solar energy; wind; low-impact hydropower; geothermal; biologically derived methane gas, including landfill gas; biomass; fuel cells; coal-mine methane; waste coal; integrated gasification combined cycle; demand management measures, including recycled energy and energy recovery, energy efficiency and load management; and clean, alternative fuels for transportation. Priorities include distributed generation for critical public infrastructure.

Under this solicitation, PEDA may award financial assistance in the form of grants of up to \$1.5 million. Funding for projects may be used for capital equipment, construction associated with capital projects and land acquisition.

For grants under this solicitation, the following entities are eligible to apply: corporations, partnerships, associations and other legal business entities; nonprofit corporations; colleges and universities of this Commonwealth; municipalities of this Commonwealth; and any public corporation, authority or body whatsoever.

This is a competitive solicitation and funding will be determined by vote of the Board of Directors. Guidelines and applications may be viewed and downloaded from the

PEDA web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us), Keyword "PEDA." Applications will be accepted from April 13, 2009, through May 29, 2009.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 09-686. Filed for public inspection April 10, 2009, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Gas Service

**A-2009-2094828. Mountain Energy, Ltd.** Application of Mountain Energy, Ltd. for approval of the abandonment or discontinuance of retail gas service to six gas service customers located in the Aleppo area of Greene County, PA, who have signed Buyout Agreements with Mountain Energy, Ltd.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before April 27, 2009. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicant:* Mountain Energy, Ltd.

*Through and By Counsel:* J. William Hook, Attorney, Hook and Hook, 189 West High Street, Post Office Box 792, Waynesburg, PA 15370

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 09-687. Filed for public inspection April 10, 2009, 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. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by April 27, 2009. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

**Application of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under the application.**

**A-2009-2097361. Germantown Cab Co.** (800 Chestnut Street, Philadelphia, Philadelphia County, PA

19107)—a corporation of the Commonwealth—for the additional right to transport, as a common carrier, by motor vehicle, persons in paratransit service, from points in City and County of Philadelphia, to points in Pennsylvania, and return. *Attorney:* David P. Temple, Esquire, Gallagher, Malloy & Georges, Suite 1100, 1760 Market Street, Philadelphia, PA 19103-4104.

**Application of the following for approval to begin operating as a broker for transportation of persons as described under the application.**

**A-2009-2097537. Sharon M. Ault, t/a Sharon Ault Tours** (2400 Elwood Circle West, Williamsport, PA 17701)—or a brokerage license evidencing the Commission's approval of the beginning of the right and privilege to operate as a broker, to arrange for the transportation of persons, between points in Pennsylvania.

**Application of the following for the approval of the right and privilege to discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under the application.**

**A-2009-2097546. Eugene H. Graybill** (110 Dawn Street, Lot 25A, Quarryville, Lancaster County, PA 17566)—for the discontinuance of service and cancellation of his certificate as a common carrier, persons in paratransit service, whose personal convictions prevent them from owning or operating motor vehicles, between points in the County of Lancaster, and from points in said county, to points in Pennsylvania, and return.

*Pennsylvania Public Utility Commission, Bureau of  
Transportation and Safety v. Eugene Vandergrift;  
Doc. No. C-2009-2086505*

### COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That all authority issued to Eugene Vandergrift (respondent) is under suspension effective January 28, 2009, for failure to maintain evidence of insurance on file with this Commission.
2. That respondent maintains a principal place of business at 15045 Milford Street, Philadelphia, PA 19116.
3. That respondent was issued a Certificate of Public Convenience by this Commission on June 04, 2001, at A-00117808.
4. That respondent has failed to maintain evidence of Liability insurance and Cargo insurance on file with this Commission. The penalty is \$250 and cancellation of the Certificate of Public Convenience.
5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

*Wherefore*, unless respondent pays the penalty of \$250 and causes its insurer to file evidence of insurance with

this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff will request that the Commission issue an Order which: (1) cancels the Certificate of Public Convenience held by respondent at A-00117808 for failure to maintain evidence of current insurance on file with the Commission; (2) fines Respondent the sum of two hundred and fifty dollars (\$250.00) for the illegal activity described in this Complaint; (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration; and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

#### VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services and Enforcement  
Bureau of Transportation and Safety

#### NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Cover Letter for this Complaint and Notice, 52 Pa. Code § 1.56(a). An Answer is a written explanation of circumstances wished to be considered in determining the outcome. The Answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your Answer must be verified and the original and three (3) copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty (20) days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or Order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations **and by paying the \$250 fine** proposed in the Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Transportation and Safety  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Acord Certificates of Insurance and Faxed Form Es and Hs are **Unacceptable** as Evidence of Insurance.

The fine payment must be made to the Commonwealth of Pennsylvania and forwarded to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations.

Upon receipt of the evidence of insurance from your insurer **and receipt of your fine payment**, the Complaint proceeding shall be closed.

D. If you file an Answer which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty, which may include the cancellation of your Certificate of Public Convenience. Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional fine set forth above.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

JAMES J. MCNULTY,  
Secretary

[Pa.B. Doc. No. 09-688. Filed for public inspection April 10, 2009, 9:00 a.m.]

## PORT OF PITTSBURGH COMMISSION

### Independent Auditors' Report

Board of Directors  
Port of Pittsburgh Commission:

We have audited the statement of net assets of Port of Pittsburgh Commission (Commission), a component unit of the Commonwealth of Pennsylvania, as of June 30, 2008, and the related statement of activities for the year then ended (not presented herein). These financial statements are the responsibility of the Commission's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to

obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The condensed statement of net assets as of June 30, 2008, and the related condensed statement of activities for the years then ended, presented below, are presented as a summary and, therefore, do not include all of the

information required by accounting principals generally accepted in the United States of America.

In our opinion, because of the significance of the omission of the information referred to in the preceding paragraph, the condensed financial statements referred to above do not present fairly, in conformity with accounting principles generally accepted in the United States of America, the financial position of the Port of Pittsburgh Commission as of June 30, 2008, or the results of its operations for the year then ended.

Parente Randolph, LLC  
Pittsburgh, Pennsylvania  
March 12, 2009

**PORT OF PITTSBURGH COMMISSION**  
**CONDENSED STATEMENT OF NET ASSETS**  
**JUNE 30, 2008**

**Assets:**

Cash and investments	\$4,215,028
Capital assets, net of accumulated depreciation	1,378,425
Other assets	<u>\$260,530</u>

**Total Assets**

**\$5,853,983**

**Liabilities and Net Assets:**

Liabilities	\$2,212,989
Net assets:	
Restricted for economic development	4,262,569
Invested in capital assets, net of related debt	<u>(621,575)</u>

**Total Liabilities and Net Assets**

**\$5,853,983**

**PORT OF PITTSBURGH COMMISSION**  
**CONDENSED STATEMENT OF ACTIVITIES**  
**FOR THE YEAR ENDED JUNE 30, 2008**

<b><u>Functions:</u></b>	<b><u>Expenses</u></b>	<b><u>Charges for Services</u></b>	<b><u>Program Revenues Operating Grants and Contributions</u></b>	<b><u>Net Revenue/ (Expense) and Change in Net Assets Governmental Activities</u></b>
Government Activities,				
Port development	<u>\$994,722</u>	<u>\$153,627</u>	<u>\$1,610,301</u>	\$ 769,206
General Revenues				151,430
Change in Net Assets				920,636
Net Assets, Beginning of Year				2,720,358
Net Assets, End of Year				<u>\$3,640,994</u>

JAMES R. MCCARVILLE,  
*Executive Director*

[Pa.B. Doc. No. 09-689. Filed for public inspection April 10, 2009, 9:00 a.m.]

# SUSQUEHANNA RIVER BASIN COMMISSION

## Public Hearing and Meeting

The Susquehanna River Basin Commission (Commission) held a public hearing as part of its regular business meeting on March 12, 2009, in Scranton, PA. At the public hearing, the Commission: 1) approved, modified and tabled certain water resources projects; 2) rescinded approvals for three water resources projects; and 3) adopted a "Records Processing Fee Schedule." Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

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### *Supplementary Information*

In addition to the public hearing and its related action items identified as follows, the following items were also presented or acted on at the business meeting: 1) recognition of Brig. Gen. Todd Semonite for his 2 1/2 years of outstanding service as the United States Member of the Commission; 2) a special presentation by Bob Hainly, Assistant Director, USGS Pennsylvania Water Science Center, on obtaining real-time stream flow data using a stream velocity measurement method; 3) a report on the present hydrologic conditions of the basin indicating below normal precipitation and the development of dry conditions heading into Spring 2009; 4) adoption of an Annual Water Resources Program for 2009 implementing the recently revised comprehensive plan; 5) presentation of the William Jeanes Award to Robert Hughes, Director of the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation in recognition of his dedicated involvement in numerous projects to restore abandoned mines and improve the water quality of abandoned mine drainage degraded streams; 6) approval/ratification of three grants related to water resources management; 7) adoption of a set of "By-Laws" governing the internal organization, operation, and procedures of the Commission; and 8) tabling of three agenda items, including an "Application Fee Policy for Mine Drainage Withdrawals," an "Access to Records Policy," and revision of the FY 2010 budget. The Commission also heard counsel's report on legal matters affecting the Commission, during which the Commission authorized the execution of a proposed settlement agreement on a Federal court appeal by East Hanover Township, Dauphin County, PA, and tabled until the June 2009 meeting an administrative appeal by Mark Givler regarding Commission approval of a gas drilling project for Chief Oil & Gas, LLC. The Commission also convened a public hearing and took the following actions:

### *Public Hearing—Projects Approved*

1. Project Sponsor and Facility: ALTA Operating Company, LLC (Snake Creek), Liberty Township, Susquehanna County, PA. Surface water withdrawal of up to 0.099 mgd.

2. Project Sponsor and Facility: ALTA Operating Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, PA. Surface water withdrawal of up to 3.000 mgd.

3. Project Sponsor and Facility: Anadarko E&P Company, LP (Pine Creek), Cummings Township, Lycoming County, PA. Surface water withdrawal of up to 0.720 mgd.

4. Project Sponsor and Facility: Anadarko E&P Company, LP (West Branch Susquehanna River-1), Chapman Township, Clinton County, PA. Surface water withdrawal of up to 0.720 mgd.

5. Project Sponsor and Facility: Anadarko E&P Company, LP (West Branch Susquehanna River-2), Renovo Borough, Clinton County, PA. Surface water withdrawal of up to 0.720 mgd.

6. Project Sponsor and Facility: Anadarko E&P Company, LP (West Branch Susquehanna River-3), Nippenose Township, Lycoming County, PA. Surface water withdrawal of up to 0.720 mgd.

7. Project Sponsor and Facility: Cabot Oil & Gas Corporation (for operations in Susquehanna and Wyoming Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080904).

8. Project Sponsor: CAN DO, Inc. Project Facility: Corporate Center, Hazle Township, Luzerne County, PA. Groundwater withdrawal of 0.547 mgd from Well 1.

9. Project Sponsor and Facility: Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, PA. Consumptive water use of up to 0.999 mgd.

10. Project Sponsor and Facility: Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, PA. Surface water withdrawal of up to 34.392 mgd from the North Branch Susquehanna River.

11. Project Sponsor and Facility: Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, PA. Groundwater withdrawal of 0.600 mgd for treatment of groundwater contamination.

12. Project Sponsor and Facility: Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, NY, and Bradford, Susquehanna and Wyoming Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080902).

13. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Bradford County, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080911).

14. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Lycoming County, PA) Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080934).

15. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Clearfield County, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081201).

16. Project Sponsor and Facility: Chief Oil & Gas, LLC (Sugar Creek), West Burlington Township, Bradford County, PA. Surface water withdrawal of up to 0.053 mgd.

17. Project Sponsor and Facility: Citrus Energy (for operations in Wyoming County, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081204).



18. Project Sponsor and Facility: Delta Borough, Peach Bottom Township, York County, PA. Groundwater withdrawal of 0.019 mgd from Well DR-2.

19. Project Sponsor and Facility: East Resources, Inc. (for operations in Elmira, NY, Area). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080603).

20. Project Sponsor and Facility: East Resources, Inc. (for operations in Mansfield, PA, Area). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080608).

21. Project Sponsor and Facility: EOG Resources, Inc. (Bennett Branch-1, Sinnemahoning Creek), Jay Township, Elk County, PA. Surface water withdrawal of up to 0.171 mgd.

22. Project Sponsor and Facility: EOG Resources, Inc. (Bennett Branch-2, Sinnemahoning Creek), Jay Township, Elk County, PA. Surface water withdrawal of up to 0.152 mgd.

23. Project Sponsor and Facility: EOG Resources, Inc. (Chemung River-2), Athens Township, Bradford County, PA. Surface water withdrawal of up to 0.322 mgd.

24. Project Sponsor and Facility: EOG Resources, Inc. (Sugar Creek-1), Burlington Borough, Bradford County, PA. Surface water withdrawal of up to 0.099 mgd.

25. Project Sponsor and Facility: EOG Resources, Inc. (Sugar Creek-2), North Towanda Town, Bradford County, PA. Surface water withdrawal of up to 0.099 mgd.

26. Project Sponsor and Facility: EOG Resources, Inc. (Susquehanna River-1), Athens Borough, Bradford County, PA. Surface water withdrawal of up to 0.322 mgd.

27. Project Sponsor and Facility: EOG Resources, Inc. (Susquehanna River-2), Ulster and Sheshequin Townships, Bradford County, PA. Surface water withdrawal of up to 0.322 mgd.

28. Project Sponsor and Facility: EOG Resources, Inc. (West Creek), Benzinger Township, Elk County, PA. Surface water withdrawal of up to 0.096 mgd.

29. Project Sponsor and Facility: Fortuna Energy, Inc. (for operations in Southern Tier of NY, and Tioga and Bradford Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080601).

30. Project Sponsor and Facility: Fortuna Energy, Inc. (Sugar Creek), West Burlington Township, Bradford County, PA. Surface water withdrawal of up to 0.250 mgd.

31. Project Sponsor and Facility: Global Tungsten & Powders Corp., Towanda Borough, Bradford County, PA. Consumptive water use of up to 0.170 mgd.

32. Project Sponsor: IBM Corp. Project Facility: Endicott, Village of Endicott, Broome County, NY. Groundwater withdrawal of 1.010 mgd for treatment of groundwater contamination.

33. Project Sponsor and Facility: J-W Operating Company (for operations in Cameron, Clearfield and Elk Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081211).

34. Project Sponsor and Facility: J-W Operating Company (Sterling Run), Lumber Township, Cameron County, PA. Surface water withdrawal of up to 0.499 mgd.

35. Project Sponsor: New Enterprise Stone & Lime Co., Inc. Project Facility: Ashcom Quarry, Snake Spring Valley

Township, Bedford County, PA. Modification of consumptive water use, groundwater and surface water withdrawal approval (Docket No. 20031204).

36. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (for operations in Potter and McKean Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080921).

37. Project Sponsor and Facility: Range Resources—Appalachia, LLC (for operations in Bradford, Centre, Clinton, Lycoming, Sullivan and Tioga Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080931).

38. Project Sponsor and Facility: Rex Energy Corporation (for operations in Centre and Clearfield Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080941).

39. Project Sponsor and Facility: Turm Oil, Inc. (for operations in Susquehanna County, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081223).

40. Project Sponsor and Facility: Ultra Resources (for operations in Tioga and Potter Counties, PA). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081228).

41. Project Sponsor and Facility: Ultra Resources (Pine Creek), Pike Township, Potter County, PA. Surface water withdrawal of 0.430 mgd.

42. Project Sponsor and Facility: Water Treatment Solutions, LLC (West Branch Susquehanna River), Williamsport, Lycoming County, PA. Surface water withdrawal of 0.100 mgd.

#### *Public Hearing—Projects Tabled*

1. Project Sponsor and Facility: ALTA Operating Company, LLC (DuBois Creek), Great Bend Township, Susquehanna County, PA. Application for surface water withdrawal of up to 0.010 mgd.

2. Project Sponsor and Facility: Anadarko E&P Company, LP (West Branch Susquehanna River-4), Burnside Township, Centre County, PA. Application for surface water withdrawal of up to 0.720 mgd.

3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, PA. Application for surface water withdrawal of up to 0.999 mgd.

4. Project Sponsor and Facility: EOG Resources, Inc. (Bennett Branch-3, Sinnemahoning Creek), Huston Township, Clearfield County, PA. Application for surface water withdrawal of up to 0.290 mgd.

5. Project Sponsor and Facility: EOG Resources, Inc. (Chemung River-1), Chemung Town, Chemung County, NY. Application for surface water withdrawal of up to 0.322 mgd.

6. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, PA. Application for a withdrawal of up to 0.432 mgd from the Gordon Well.

7. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill

County, PA. Applications for: 1) an out-of-basin diversion to the Delaware River Basin for water supply; 2) an existing into-basin diversion of wastewater of up to 1.100 mgd from the Delaware River Basin (existing water sources in the Delaware Basin are the Kaufman Reservoir that has an allocation of 0.500 mgd and the Mount Laurel Reservoir that has an allocation of 0.600 mgd); and 3) inclusion of the project in the Commission's Comprehensive Plan.

*Public Hearing—Project Withdrawn*

1. Project Sponsor and Facility: EOG Resources, Inc. (Kersey Run), Jay Township, Elk County, PA. Application for surface water withdrawal of up to 0.070 mgd.

*Public Hearing—Rescinded Project Approvals*

1. Project Sponsor: Harristown Development Corporation. Project Facility: Strawberry Square (Docket No. 20030410), City of Harrisburg, Dauphin County, PA.

2. Project Sponsor and Facility: Millennium Pipeline Company, LLC (Docket No. 20080301), Broome, Tioga and Chemung Counties, NY.

3. Project Sponsor and Facility: Millennium Pipeline Company, LLC (Docket No. 20080302), Town of Windsor, Broome County, and Town of Horseheads, Chemung County, NY.

*Public Hearing—Records Processing Fee Schedule*

Following a brief hearing, the Commission adopted a "Records Processing Fee Schedule" to recover costs associated with meeting records requests.

*Authority:* Pub. L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808. Dated: March 23, 2009.

THOMAS W. BEAUDUY,  
*Deputy Director*

[Pa.B. Doc. No. 09-690. Filed for public inspection April 10, 2009, 9:00 a.m.]



# RULES AND REGULATIONS

## Title 51—PUBLIC OFFICERS

### LOBBYING DISCLOSURE REGULATIONS COMMITTEE

[ 51 PA. CODE CHS. 51, 53, 55, 57, 59, 61, 63, 65,  
67 AND 69 ]

#### Lobbying Disclosure

The Lobbying Disclosure Regulations Committee (Committee) adopts Chapters 51, 53, 55, 57, 59, 61, 63, 65, 67 and 69 to read as set forth in Annex A. The rulemaking implements the act of November 1, 2006 (P. L. 1213, No. 134) (act), which added 65 Pa.C.S. Chapter 13A (relating to lobbying disclosure).

Notice of proposed rulemaking was published at 38 Pa.B. 435 (January 19, 2008). Publication was followed by a 30-day public comment period. The Committee received eight comments from the following organizations: the Pennsylvania Bar Association (PBA), the Philadelphia Bar Association, O'Melveny and Myers, the Pennsylvania Association of Government Relations (PAGR), the Pennsylvania Association of Nonprofit Organizations (PANO), the Pennsylvania Association of Resources: Autism (PAR), Common Cause and the Pennsylvania State Education Association (PSEA). On March 24, 2008, the Committee held a public hearing and invited all of the groups that had provided comments on the proposed regulations to testify. The Committee considered all comments received directly or indirectly in February and March of 2008. The Committee also considered the comments that were received verbally during the public comment period at the end of each committee meeting. The Independent Regulatory Review Commission (IRRC) submitted comments on the proposed rulemaking on March 20, 2008. Neither the House Judiciary Committee nor the Senate State Government Committee submitted comments, thereby deeming the proposed final-form regulations approved.

On November 6, 2008, the IRRC disapproved the regulations, finding that the final-form regulations exceeded the authority of the act. The Committee invited the public to submit comments and on November 25, 2008, the Committee held a meeting and considered all comments received. On February 9, 2009, the Committee resubmitted the regulations to IRRC the Senate State Government Committee and the House Judiciary Committee. On February 26, 2009, IRRC voted to approve the regulations. The Committee did not receive comments from the Senate State Government Committee or the House Judiciary Committee, thereby deeming the final-form regulations approved.

#### *Statutory Authority*

The final-form rulemaking is authorized under 65 Pa.C.S. § 13A10(d) (relating to registration fees; fund established; system; regulations) which requires comprehensive regulations to be promulgated by a committee comprised of the Attorney General, who is designated as the Chairperson of the Committee, the Chairperson of the Pennsylvania State Ethics Commission (Commission), the chief counsel of the Disciplinary Board of the Supreme Court of Pennsylvania (Board), the Secretary of the Commonwealth, an individual appointed by the President Pro Tempore of the Senate, an individual appointed by the Minority Leader of the Senate, an individual appointed by the Speaker of the House of Representatives,

an individual appointed by the Minority Leader of the House of Representatives, or their designees, and a lobbyist appointed by the Governor.

#### *Summary of Comments and Responses to Proposed Rulemaking*

##### *Chapter 51. General Provisison.*

The Committee adopted Chapter 51 by adding 11 sections which include general provisions regarding: definitions; filing deadlines to fall on Commonwealth business days; registration periods and reporting periods; delinquency; deficiency; biennial review of exemption threshold and reporting threshold; forms, records and Department publications; amended filings; filings to be originals signed under oath or affirmation; electronic filing; parent corporations and subsidiaries.

##### *§ 51.1. Definitions.*

“Administrative action.”—The PAR commented that subparagraph (ii) should be removed because information submitted for review under the Regulatory Review Act is already public and should not be included in the definition. Subparagraph (ii) tracks the definition in the act in 65 Pa.C.S. § 13A03 (relating to definitions), which defines

“Administrative action” to include “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act.”—Therefore, the Committee declined to make the suggested amendment because the regulation tracks the act.

The IRRC, PANO and PAGR commented that subparagraph (vi) which included “grants, the release of funds from the capital budget, loans and investment of funds” in the definition of “administrative action” should be removed because it broadens the definition. The commentators believed that subparagraph (vi) should be removed because the Procurement Code in 62 Pa.C.S. § 102(a) (relating to application of part) does not apply to the investment of funds, 62 Pa.C.S. § 102(f) does not apply to grants and 62 Pa.C.S. § 102(f.1) does not apply to loans. The Committee agreed with the comments and amended the definition of “administrative action” by removing subparagraph (vi) from the final regulation.

“Anything of value.”—Common Cause commented that earlier drafts of the definition included items explaining the scope of the definition such as “a discount or rebate not extended to the public generally,” which provided perspective. PAGR commented that the regulation should state whether or not the forgiveness of a loan is considered to be a “gift.” Then, at a public meeting, a representative of PAGR commented that the forgiveness of a loan would probably be considered “anything of value,” rather than a “gift.” The definition of “anything of value” states that the term includes any of the following: gifts, hospitality, transportation, lodging, services, loans and money. The Committee considered the comments and decided not to add all of the previous examples of what is included in “anything of value,” but did decide to add that “anything of value” includes the forgiveness of a loan.

“Audit contract period.”—The Committee amended this definition by changing the term to “audit period” defined as the previous calendar year. The Committee reasoned that because 65 Pa.C.S. § 13A08(f)(2) (relating to administration) requires a drawing after the close of each fourth quarter reporting period, the audit subjects should only be audited for the previous calendar year.

“Direct communication”—IRRC commented that subparagraph (ii) does not appear in the act’s definition, and should be removed from the definition in the regulations. Subparagraph (ii) listed items that the term “direct communication” did not include. The Committee amended the definition by moving the language in subparagraph (ii) of the definition to § 55.1(g)(3)(ii) to explain what the term does not include.

“Gift”—PAGR asked whether or not the forgiving of a loan is a gift. The definition of gift in 65 Pa.C.S. § 13A03 and § 51.1(ii)(B) of the regulations states that a “gift” does not include “a commercially reasonable loan made in the ordinary course of business.” While, the forgiving of a loan without receiving compensation would probably be considered to be a gift, the definition of “gift” is set forth by statute and, while the Committee may clarify the definition in the regulations, it may not change or expand the definition. Therefore, the Committee declined to make the suggested amendment.

IRRC commented that subparagraph (ii)(C) and (E)—(G) significantly expand the scope of the act’s definitions and therefore should be removed from the definition in the regulations. The subparagraph explained what the term does not include. The Committee amended the definition by moving the language in subparagraph (ii)(C) and (E)—(G) to § 55.1(g)(3)(ii) to clarify what the term does not include.

“Effort to influence administrative action or legislative action”—IRRC, PAGR, PANO, PAR and the Philadelphia Bar Association commented that the retainer language in subparagraph (i) should be removed because it exceeds the act. The proposed regulation stated that an “effort to influence” included paying a lobbyist or lobbying firm a retainer or other compensation, even if that lobbyist or lobbying firm does not make direct or indirect communications or take any other action. The comments stated that there must be an action taken to constitute an effort to influence. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a) (relating to registration), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee then amended the definition of “effort to influence administrative action or legislative action” to use the statutory language of administrative action, legislative action and lobbying. For example, the Committee amended the definition to state that an effort to influence legislative action or administrative action includes paying an individual or entity economic consideration for lobbying services. The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

On November 6, 2008, IRRC rejected the final-form regulations, in part based on the language in subparagraph (i) of the definition of “effort to influence legislative or administrative action.” The language had stated that “[t]he term includes paying an individual or entity economic consideration for lobbying services.” IRRC, in its

order rejecting the final-form regulations, found that the language exceeded the act and that the phrase “lobbying services” “lacks clarity because the regulation does not specify what constitutes ‘lobbying services.’” To address IRRC’s concerns, the Committee further amended subparagraph (i) by removing the term “lobbying services,” and replacing the remaining language in subparagraph (i) with “the term includes engaging a lobbyist.” The Committee believed that the new language is clear and explains that engaging a lobbyist is considered to be an effort to influence legislative action or administrative action.

IRRC, PAGR, PANO, PAR, the Philadelphia Bar Association and the PSEA commented that the language on monitoring in subparagraph (ii) exceeded the act and should be removed. The proposed regulation stated that an effort to influence includes the monitoring of legislation, legislative action or administrative action. The comments stated that monitoring alone is not lobbying. The Committee decided to amend the definition of “effort to influence administrative action or legislative action” to clarify that monitoring alone is not lobbying. However, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying. The Committee reasoned that the second sentence of 65 Pa.C.S. § 13A05(b)(2) (relating to reporting) requires that expense reports shall include monitoring in the total costs of personnel expenses, among other things. The definition of “personnel expense” in 65 Pa.C.S. § 13A03 includes “research and monitoring staff.” Therefore, it is reasonable that principals and their lobbyists be required to disclose the time that they and their staff spent monitoring once it occurs with activity that constitutes lobbying.

“Engaging a lobbyist”—The Committee removed the phrase “or otherwise arranging for the services of” from the definition of “engaging a lobbyist.” The Committee left in the word “contracting” and changed the definition to “contracting in any form with a lobbyist or lobbying firm for lobbying on behalf of a principal for economic consideration.” The Committee believed that this amended language sufficiently covered any type of agreement that may be made to engage a lobbyist or lobbying firm to lobby on behalf of a principal. Additionally, the Committee added the phrase “in any form” to be clear that the contract is not limited to written contracts.

“Hospitality”—PAGR commented that the terms “recreation” and “entertainment” should be included within the proposed definition of “hospitality” as follows: “(C) Recreation and entertainment. Entertainment includes, but is not limited to, performances like concerts, theater productions, motion pictures or sporting events. Recreation includes, but is not limited to, hobbies like boating, hunting, fishing, golf, skiing and tennis.” Also, PAGR commented that the distinction between “lodging” and “hospitality” must be clarified. First, the definition of “hospitality” is set forth by statute and, while the Committee may clarify the definition by regulation, it may not change or expand the act’s definition. Therefore, the Committee declined to make the suggested amendment. Secondly, the Committee believed that the distinction between “lodging” and “hospitality” was already clear in the definition in stating that “hospitality” includes meals and beverages but does not include lodging. Therefore, the Committee declined to make the suggested amendment.

IRRC commented that subparagraph (ii)(B) and (C) significantly expanded the scope of the act’s definition

and therefore should be removed from the definition in the regulation. The paragraph listed items that the term did not include. The Committee amended the definition by moving the language in subparagraph (ii)(B) and (C) to § 55.1(g)(3)(ii) to explain what the term does not include.

“Indirect communication”—IRRC commented that subparagraph (vi) does not appear in the act’s definition, and should be removed from the definition in the regulation. The subparagraphs listed items that the term does not include. The regulation also changes the order of the paragraphs in the regulations to track the order of the paragraphs in the act. The Committee amended the definition by moving the language in subparagraph (vi) to § 55.1(g)(3)(ii) to explain what the term does not include and amended the order of the subparagraphs in the definition to track the definition in the act.

“Items”—PAGR commented that the term “items” needed to be defined as it relates to § 55.1(k)(1), which refers to hospitality “items.” The Committee considered the suggestion but decided that it was not necessary to define the term “items” in the regulation. However, if further clarification is needed, a registrant may ask for an advisory from the Ethics Commission.

“Legislation”—IRRC commented that including the phrase “including draft legislation” in subparagraph (i), the term “legislative” in subparagraph (ii) and all of subparagraph (iii) depart from the act’s definition of “legislation.” The Committee amended the definition by removing the phrases from within the definition to track the definition in the act. The Committee then moved the phrases in question to explain what “any other matter which may become the subject of action by either chamber of the General Assembly” includes. The Committee considered including the language regarding the “release of funds from the capital budget” and the “investment of funds” in the definition of “legislation.” However, after receiving comments from the Philadelphia Bar Association, the Committee reconsidered and determined the placement of that language to be beyond the scope of the act. Nevertheless, as noted in the preamble for the definition of “legislative action,” lobbying for the inclusion of funds in the capital budget is an effort to influence legislative action. Therefore, any costs related to lobbying for the inclusion of funds in the capital budget must be reported.

“Legislative action”—IRRC, PAGR and PANO commented that subparagraph (v), regarding the “grants, the release of funds from the capital budget, loans and investment of funds,” should be removed from the term because the Procurement Code in 62 Pa.C.S. § 102(a) does not apply to investment of funds, 62 Pa.C.S. § 102(f) does not apply to grants and 62 Pa.C.S. § 102(f.1) does not apply to loans. The Committee also removed the language on the “release of funds from the capital budget” and the “investment of funds,” recognizing that the “release of funds” and the “investment of funds” are actions taken by the executive branch of government, rather than the legislative branch. However, lobbying for the inclusion of funds in the capital budget is an effort to influence legislative action because it would be considered lobbying on legislation. Therefore, any costs related to lobbying for the inclusion of funds in the capital budget must be reported.

“Lobbying”—IRRC commented that the term “lobbying firm” appears in the regulation, but not in the act’s definition. The definition of “lobbying” in 65 Pa.C.S. § 13A03(3) provides: “providing any gift, hospitality, transportation or lodging to a State official or employee

for the purpose of advancing the interest of the lobbyist or principal.” This language exactly tracks the language in the repealed Lobbying Disclosure Act of 1998. The new lobbying disclosure act requires lobbying firms to register and report, so it seems logical to add lobbying firms to the definition. Therefore, the Committee declined to amend the definition of “lobbying.”

“Lobbyist”—The Philadelphia Bar Association commented that the regulation needed to clarify that volunteers are not lobbyists. The definition of “lobbyist” is set forth by statute, and while the Committee may clarify the definition by regulation, it may not change or expand the definition in the act. However, the Committee added language to § 55.1(a) and (g)(1), to clarify that individuals or entities that are exempt under 65 Pa.C.S. § 13A06 (relating to exemption from registration and reporting) of the act do not have to register and report.

“Materially correct”—The Committee added the definition of “materially correct,” defining the term as being free from material misstatements, as it is used in 65 Pa.C.S. § 13A08(f)(3) (relating to administration) and in § 61.2(a), both of which relate to audits. The Committee added the definition because auditors use the phrase “being free from material misstatements,” and the Committee wanted to clarify that “materially correct” includes the phrase “being free from material misstatements.”

“Office expense”—PAGR commented that the definition needed to be clarified with the following language: “An expenditure for an office, equipment or supplies *reasonably allocated* for lobbying.” The definition in the regulations tracks the definition in 65 Pa.C.S. § 13A03. Therefore, the Committee declined to make the suggested amendment.

“Personnel expense”—IRRC commented that “lawyers” was added to this definition, but does not appear in the act’s definition. The definition of “personnel expenses” in the regulation provides that: “[a]n expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, *lawyers*, publications and public relations staff, technical staff, clerical and administrative support staff. . . .” (Emphasis added). The addition of “lawyers” to the definition of “personnel expenses” merely enumerates another category of individuals whose salaries, and the like should be reported as personnel expenses when lawyers engage in lobbying. Therefore, the Committee declined to amend the definition.

*§ 51.2. Filing deadlines to fall on Commonwealth business days.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 51.3. Registration periods and reporting periods.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 51.4. Delinquency.*

IRRC commented that the reliability of § 51.4(a)(1) is questionable and it is not clear why filers need to be able to file hard copies of their filings after 5 p.m., when filers can file electronically after 5 p.m. Also, because § 51.4(a)(1) states that The Department of State of the Commonwealth (Department) will have a designee on the date that registration statements or reports are due, a designee would have to be available every day because a

registration statement could be filed every day. The Committee decided to continue to allow for hard copies of only quarterly expense reports to be filed after 5 p.m. as a convenience for registrants. Then, the Committee amended § 51.4(a)(1) to state that the only time a registrant has the option of filing a hard copy between 5 p.m. and midnight with the Department's designee are on the days that the quarterly expense reports are due.

IRRC found that § 51.4(a)(1) is not clear regarding filing with a designee. Because the regulation provides that filing is required with a designee "as noted on the Department's publications or on its website," it is unclear which to consult, and these can be changed without notice. IRRC commented that the regulation should provide a definite filing location to file documents with the designee. The Committee decided to clarify the regulation and amended § 51.4(a)(1) to state that the filing location and the Department's designee will be noted on the Department's web site.

IRRC also commented that § 51.2 stated that the filing dates will be extended until the next business day even if the deadline falls on a weekend or a holiday. However, § 51.4(c) provided that photographs and filing fees may be received "within 5 Commonwealth business days." IRRC recommended using calendar days throughout the regulations to improve the clarity of deadlines. The Committee agreed with the suggestion and amended § 51.4 to clarify that all deadlines shall be calculated by using calendar days.

*§ 51.5. Deficiency.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 51.6. Biennial review of exemption threshold, reporting threshold and filing fees.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 51.7. Forms, records and Department publications.*

IRRC commented that § 51.7(b) was not clear when it stated that "additional sheets of equal size on forms prescribed by the Department may be attached to any hard copy form filed under the act, if more space is needed." IRRC questioned whether the section meant that a person can attach any 8.5 inch by 11 inch paper, or must the attachment be on a form prescribed by the Department? The Committee agreed that the section may cause confusion, so the Committee amended § 51.7(b) to clarify that paper filers may attach additional forms prescribed by the Department if more space is required.

IRRC commented that a cross-reference to the language of 65 Pa.C.S. § 13A08 which stated that "the Department shall make all registrations and reports available on a publicly accessible internet website" needed to be added to § 51.7(c). The Committee agreed and added the suggested cross-reference to the Department's web site.

*§ 51.8. Amended filings.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 51.9. Signing and designation of certain filings.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 51.10. Electronic filing.*

IRRC commented that in § 51.10(a), in the sentence, "the use of an electronic signature shall have the same force and effect as a manual signature upon acceptance by the filer," (emphasis added) it is not clear what the phrase "upon acceptance by the filer" meant. The Committee agreed that the phrase "upon acceptance by the filer" is unclear and removed the phrase from § 51.10(a).

*§ 51.11. Enforcement of Commission orders.*

IRRC commented that this section, which stated that "[t]he Commission through its staff may take appropriate action to enforce its orders," was vague. The Committee agreed and withdrew what was § 51.11 in the proposed regulations because it did not clarify a specific action. The Committee then renumbered the following section.

*§ 51.11 (formally § 51.12). Parent corporations and subsidiaries.*

IRRC commented that this section should include a cross-reference to the eligibility standards of the Internal Revenue Service. The Committee agreed and amended § 51.11 to add a cross-reference in this section referring to the eligibility standards of the Internal Revenue Service in 26 U.S.C.A. § 1501. In accordance with 1 Pa.C.S. § 1937 (relating to references to statutes and regulations), if the citation in the Internal Revenue Code changes, the current citation will be referring to the cite dealing with Internal Revenue Service eligibility standards for filing on a consolidated basis.

*Chapter 53. Registration and Termination.*

*§ 53.1. Biennial filing fee.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 53.2. Principal registration.*

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer is not "lobbying" and statements stating that accepting a retainer is lobbying in these sections should be deleted. IRRC also commented that the phrase "for purposes including lobbying" should be rewritten to clearly require lobbying to be the action that requires registration. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration "within ten days of acting in any capacity as a lobbyist, lobbying firm or principal," could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations and removed the phrase "for purposes including lobbying." The Committee then amended § 53.2(a)(1) to use the statutory language regarding lobbying. For example, the Committee amended § 53.2(a)(1) to state that "engaging an individual or entity for lobbying services or paying economic consideration to an individual or entity for lobbying services constitutes acting in the capacity of a principal." The Committee opted to use the term "economic consideration" because it is a defined term in the statute, and it includes both compensation and reimbursement.

On November 6, 2008, IRRC rejected the final-form regulations, in part based on the language in § 53.2(a)(1). The language had stated that “[e]ngaging an individual or entity for lobbying services or paying economic consideration to an individual or entity for lobbying services constitutes acting in the capacity of a principal.” IRRC, in its order rejecting the final-form regulations, found that that the language exceeded the act and that the phrase “lobbying services” “lacks clarity because the regulation does not specify what constitutes ‘lobbying services.’” To address IRRC’s concerns, the Committee removed the term “lobbying services” from the final-form regulations replacing it with the term “lobbying,” which is a defined term in the act. The Committee then amended the language in § 53.2(a)(1), to state that an individual or entity must register upon the earlier of the following: contracting in any form for lobbying or engaging in lobbying, unless exempt under 65 Pa.C.S. § 13A06.

The Committee believes that the amended language in § 53.2(a)(1) clarifies when an individual or entity must register and provides a “bright line” for the regulated community to follow, as requested by some of the Commissioners on November 6, 2008 when they discussed the final-form regulation. Additionally, the Committee believes that the language addresses IRRC’s comments and some of the other public comments that the previous language may have led individuals and entities to believe that they must register for actions that are not covered by the act. The amended language now clearly states that the individual or entity must register when the individual or entity contracts in any form for *lobbying* or is engaging in *lobbying*, unless an exemption applies. The Committee also added the phrase “in any form” to be clear that the contract is not limited to written contracts.

IRRC made similar comments about §§ 53.3(a)(1) and 53.4(a)(1). The Committee amended the language in those sections to match the amended language in § 53.2(a)(1) for the same reasons.

IRRC commented that § 53.2(b) should contain a cross-reference to § 51.7(a) because the section required that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.2(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulation stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists required the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.2(c) to match the registration forms and require the permanent business address of each filer.

#### § 53.3. Lobbying firm registration.

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer was not “lobbying” and statements to the effect that accepting a retainer was lobbying in these sections should be deleted. IRRC also commented that the phrase “for purposes including lobbying” should be rewrit-

ten to clearly require lobbying to be the action that requires registration. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee amended § 53.3(a)(1) to use the statutory language regarding lobbying. For example, the Committee amended § 53.3(a)(1) to state that “accepting an engagement to provide lobbying services or accepting economic consideration to provide lobbying services constitutes acting in the capacity of a lobbying firm.” The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

On November 6, 2008, IRRC rejected the final-form regulations, in part based on the language in § 53.3(a)(1). The Committee amended the language in § 53.3(a)(1) similarly to how the language in § 53.2(a)(1) was amended, for the same reasons as stated previously.

IRRC commented that § 53.3(b) should contain a cross-reference to § 51.7(a) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.3(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulation stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists requires the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.3(c) to match the registration forms and require the permanent business address of each filer.

#### § 53.4. Lobbyist registration.

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer is not “lobbying” and statements stating that accepting a retainer is lobbying in these sections should be deleted. IRRC also commented that the phrase “for purposes including lobbying” should be rewritten to clearly require lobbying to be the action that requires registration. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving, and the like could



exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee amended § 53.4(a)(1) to use the statutory language regarding lobbying. For example, the Committee amended § 53.4(a)(1) to state that “accepting an engagement to provide lobbying services or accepting economic consideration to provide lobbying services constitutes acting in the capacity of a lobbyist.” The Committee opted to use the term “economic consideration” because it is a defined term in the statute and it includes both compensation and reimbursement.

On November 6, 2008, IIRC rejected the final-form regulations, in part based on the language in § 53.4(a)(1). The Committee amended the language in § 53.4(a)(1) similarly to how the language in §§ 53.2(a)(1) and 53.3(a)(1) was amended, for the same reasons as stated previously.

The Philadelphia Bar Association suggested that a new paragraph (5) be added to § 53.4(a), to clarify that “a lawyer rendering *pro bono publico* services in activities for improving law as provided in Rule 1.6 of the Pennsylvania Rules of Professional Conduct, when such activity is not undertaken for compensation, is not engaging in lobbying as defined in the act and is not required to register as a lobbyist.” The Committee considered the comment, but decided that by cross-referencing 65 Pa.C.S. § 13A06 in § 53.4(a), it is unnecessary to specifically exempt lawyers who render *pro bono publico* services. Also, it is possible that a lawyer who renders *pro bono publico* services to still be compensated. For example, if a lawyer renders *pro bono publico* services and the lawyer’s law firm counts the time as billable hours, the lawyer has been compensated. Therefore, the Committee decided to generally reference the exemptions contained in 65 Pa.C.S. § 13A06 and declined to make the suggested amendment.

IIRC commented that § 53.4(b) should contain a cross-reference to § 51.7(a) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.4(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulations stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists requires the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.4(c) to match the registration forms and require the permanent business address of each filer.

#### § 53.5. Amended registration statements.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### § 53.6. Termination.

IIRC commented that § 53.6(a) should contain a cross-reference to § 51.7(a) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

#### § 53.7. Public inspection and copying.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### Chapter 55. Reporting.

##### § 55.1. Quarterly expense reports.

The PBA and the Philadelphia Bar Association commented that in § 55.1(a), the sentence “[t]he threshold of \$2,500 includes any retainers or other compensation paid by a principal to a lobbying firm, whether or not the lobbying firm or lobbyist then spends the retainer” should be deleted. The comments stated that the language on retainers exceeded the act. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language on retainers from the regulations. The Committee then amended § 55.1(a) to use the statutory language regarding lobbying. For example, the Committee amended § 55.1(a) to state that the threshold of \$2,500 includes any economic consideration paid by a principal to a lobbying firm or lobbyist. The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

In § 55.1(a), IIRC commented that due to the concerns from commentators about grassroots activities, § 55.1(a) should include a cross-reference to all of the exemptions in 65 Pa.C.S. § 13A06. The Committee agreed with the suggestion and amended 65 Pa.C.S. § 55.1(a) to include a cross-reference to the exemptions in 65 Pa.C.S. § 13A06. This includes individuals who travel to Harrisburg to lobby and remain exempt under 65 Pa.C.S. § 13A06. However, the principal shall report the expenses of the individuals who are exempt from registration and reporting, as provided in § 55.1(i)(4).

The PBA commented that in § 55.1(a), the section should clearly state that the economic consideration paid by principals to lobbying firms or lobbyists is for lobbying. The Committee amended the section to add the phrase “for lobbying” at the end of the second sentence in § 55.1(a) to clarify that the threshold for reporting includes the economic consideration paid by principals to lobbying firms or lobbyists for lobbying.

In § 55.1(e)(1), Common Cause commented that the subsection should be changed to read “[i]f within 30 days of the due date, a principal amends its quarterly expense report to include the omitted lobbying expenses of its lobbyists or lobbying firm in compliance with § 51.8(c) . . .” The Committee considered the suggestion

but decided that the language in the subsection is clear. Therefore, the Committee declined to make the suggested amendment.

PANO, PBA and the Philadelphia Bar Association commented that § 55.1(g)(1) should state that principals only have to list those lobbyists or lobbying firms that are *required to register* to prevent any interpretation that grassroots participants or volunteers who accept the benefit of indirect communication are lobbyists. The Committee agreed with the suggestion and amended the section to add the suggested language and add a cross reference to all of the exemptions in 65 Pa.C.S. § 13A06. The added language clarifies that only those individuals or entities who are required to register and who are not exempt have to be listed by principals on the principal's quarterly expense report.

Common Cause requested that in § 55.1(g)(2), when a principal checks off one of the boxes, the principal should be required to provide a general explanation of the position taken on the general issue to provide useful information to the public. The regulation in § 55.1(g)(2) tracks the act in 65 Pa.C.S. § 13A05(b)(1), which states that the expense report shall include "the general subject matter or issue being lobbied." Because IRRC has cautioned the Committee about adding requirements to the statute, the Committee declined to make the suggested amendment.

The PBA commented that in § 55.1(g)(3), the phrase "including retainers or other compensation paid by principals to lobbying firms or lobbyists, whether or not the lobbying firm or lobbyist then spends the retainer" should be removed because it exceeds the act. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration "within ten days of acting in any capacity as a lobbyist, lobbying firm or principal," could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee then amended § 55.1(g)(3) to use the statutory language regarding lobbying. For example, the Committee amended § 55.1(g)(3) by adding subparagraph (iii) to address how lobbying costs include the amount of economic consideration paid by principals to lobbying firms or lobbyists. The Committee opted to use the term "economic consideration" because it is a defined term in the statute, and it includes both compensation and reimbursement. Although a registrant is only required to report the amount of economic consideration that is attributable to lobbying in this Commonwealth, the entire amount shall be reported unless the principal, lobbying firm or lobbyist maintains records that establish the portion attributable to lobbying, as well as the portion attributable to non-lobbying services.

The PBA also commented that in § 55.1(g)(3)(iii), the section should clearly state that only the economic consideration paid by principals to lobbying firms or lobbyists for lobbying must be included in lobbying costs. The Committee amended the section to add the phrase "for lobbying" at the end of the first sentence in § 55.1(g)(3)(iii) to clarify that only the economic consideration

paid by principals to lobbying firms or lobbyists for lobbying must be included in lobbying costs.

IRRC commented that subparagraphs in § 51.1(ii)(C) and (E)—(G) on gifts, hospitality, direct communication and indirect communication expanded the scope of the act's definitions and therefore should be removed from the definitions section in the regulations. The Committee removed the sections from § 51.1(ii), and added them to § 55.1(g)(3)(ii)(A)—(D), to clarify what the terms include and do not include when allocating expenses.

In considering the comments on monitoring from IRRC, PAGR, PANO, PAR, the Philadelphia Bar Association and PSEA, the Committee amended § 55.1(g)(3) by adding subparagraph (iv), to add language on monitoring to clarify that monitoring alone is not lobbying. However, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying. The Committee reasoned that the second sentence of 65 Pa.C.S. § 13A05(b)(2) requires that expense reports shall include monitoring in the total costs the costs of personnel expenses, among other things. The definition of "personnel expense" in 65 Pa.C.S. § 13A03 includes "research and monitoring staff." Therefore, it is reasonable that principals and their lobbyists be required to disclose the time that they and their staff spent monitoring once it occurs with activity that constitutes lobbying.

Common Cause commented that if § 55.1(g)(6) meant that a principal does not have to track, record, and report expenses for gifts, hospitality, transportation or lodging that are under \$10, it seemed contrary to the language of the act, and there appeared to be no authority for the exemption. The Committee believed that it was reasonable to exempt from disclosure small gifts, hospitality, transportation and lodging valued at \$10 or less provided to State officials or employees or their immediate families. However, when the amount is over \$10 to more than one State official or employee, it must be disclosed on the principal's quarterly expense report. Without such a reasonable threshold, principals, lobbying firms and lobbyists would be required to report the small amounts that would be of little concern to the public viewing the reports. As a relevant point of reference, the gift rules for the United States House of Representatives and Senate have a similar \$10 exemption for gifts given to members, officers or employees of the United House of Representatives and United Senate. Therefore, the Committee declined to make the suggested amendment.

In § 55.1(g)(6), IRRC commented that the reporting limit of \$10 needed to be clarified. Within the section, the specified limits are "a value not exceeding \$10" and "\$10 or more" making the limits overlap at \$10. The Committee amended the section to clarify that gifts, hospitality, transportation and lodging that are \$10 or less are exempt from disclosure. However, when the amount is more than \$10 to more than one State official or employee, it must be disclosed on the principal's quarterly expense report.

In § 55.1(h), PAGR commented that the wording of the section indicated that an agency engages in the bidding of contracts, which it does not; rather, agencies award bids to contractors. PAGR commented that the section should read as follows: "A registered principal that attempts or that retains a lobbying firm or lobbyist to attempt to influence an agency's preparing and awarding bidding and entering into or approving a contract pursuant to 62 Pa.C.S. (relating to procurement) shall ensure that the expenses are included in calculating totals references by

subsection (g)(3).” The Committee agreed and amended the section to clarify that agencies award bids and approve contracts pursuant to 62 Pa.C.S. (relating to procurement).

In § 55.1(i)(4), the Committee added a sentence stating that reportable expenses must include transportation, food and lodging paid for any individuals in furtherance of lobbying. The Committee reasoned that the amendment clarifies that a principal must report all expenses for any individuals in furtherance of lobbying, even if those individuals are exempt from registration and reporting. For example, a principal busses 30 individuals, who are volunteering and are exempt from registration and reporting under 65 Pa.C.S. § 13A06, to come and spend a day at the Capitol promoting the principal’s legislative agenda. The costs associated with the individuals lobbying activities, including the bus trip, would have to be reported on the principal’s next quarterly expense report.

Common Cause commented that in § 55.1(j)(3)(ii) and (4)(ii), the “source of the gift” and “source of the payment” needed clarification as to what source means. Section 55.1(j) requires that a quarterly expense report must identify State officials or employees who received anything of value over the thresholds. Section 55.1(j)(3) refers to reporting the costs for gifts and subparagraph (ii) states that a registrant is required to list the “name and the source of the gift.” Section 55.1(j)(4) refers to reporting the costs for transportation, lodging and hospitality and subsection (ii) states that a registrant is required to list the “name and address of the source of the payment.” The section is merely asking where the gift or payment came from. These sections seem to be clear. Therefore, the Committee declined to make the suggested amendment.

PAGR commented that § 55.1(k)(1) was silent as to whether a State official or employee can partially reimburse a registrant to drop below the \$650 threshold and guidance was needed. The Committee considered the comment but found that it is clear that an item that is returned, declined or fully reimbursed does not have to be reported. Therefore, the Committee declined to make the suggested amendment.

Common Cause suggested that in § 55.1(k)(2), a registrant should have to report the face value of the ticket because the public official benefits in the same manner as the person who pays the full face value of the ticket. Section 55.1(k)(2) in the proposed regulations stated that “the valuation of a complimentary ticket to a fundraiser must be based upon the reasonable amount of the goods or services received by the State official or employee. The valuation may not include a political contribution, which is otherwise reportable as required by law.” Section 13A06(14) provides that “[e]xpenditures and other transactions subject to reporting under Article XVI of the act of June 3, 1927 . . . , known as the Pennsylvania Election Code” are not required by the act to be reported on quarterly expense reports. The campaign finance provisions of the Election Code are separate requirements from the reporting of lobbying activity subject to reporting by state or local candidates or political committees, including political action committees (PACs). The first sentence of this subsection refers to how a *complimentary* ticket to a fundraiser is to be reported under the lobbying law. The second sentence is referring to how a political contribution should be reported under the Election Code. To clarify, the second sentence has been amended to state that, “this provision shall not apply to expenditures and other transactions subject to reporting under section 1626 of the Election Code.”

IRRC commented that in § 55.1(k)(2), there was a phrase “as required by law,” which should include a reference to the law. The Committee amended § 55.1(k)(2) by referencing section 1626 of the Election Code.

PAGR commented that § 55.1(k)(3)—(4) arbitrarily distinguished between those registrants who purchase tickets earlier in time from those registrants who purchased last-minute tickets to sporting events or concerts without a rational basis. Also, § 55.1(k)(3)—(5) did not provide a clear calculation for valuing the costs of luxury box tickets at a sporting event or concert. Therefore, PAGR requested that more guidance was needed in the regulation. Section 55.1(k)(3)—(5) describe how to value gifts, transportation, lodging or hospitality in different circumstances. Paragraph (3) describes how to value gifts, and the like when a registrant purchased the item in market place transactions; paragraph (4) describes how to value gifts, etc. when the registrant did not actually purchase the item, but perhaps was given the item; and subparagraph (5) states that when neither paragraph (3) or (4) apply, use any reasonable method. The paragraphs do not distinguish between when a ticket is purchased, as the comment suggested. Therefore, the Committee declined to make the suggested amendment. As for how to value luxury box tickets, the Committee decided against listing specific examples in the regulation. However, in general, the Committee decided to consider providing additional examples in the manual, which the Committee must prepare and publish to set forth guidelines on accounting and reporting in accordance with 65 Pa.C.S. § 13A10(d)(5) (relating to registration fees; fixed established; system registration).

IRRC commented that §§ 55.1(m), (m)(1)(3)(n)(2) and 55.2(a)(1) require information “on a form prescribed by the Department,” and for clarity, all of the provisions should cross-reference § 51.7(a). The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

IRRC commented that § 55.1(n)(6) required the lobbyist to “promptly” provide a copy to the principal and the regulation should specify a specific time period. The Committee agreed with the suggestion and amended the section to state that a lobbying firm or lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall provide it to the principal contemporaneous with filing it with the Department.

#### *§ 55.2. Records, maintenance, retention and availability.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### *§ 55.3. Public inspection and copying.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### *§ 55.4. Reliance on documents.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

### *Chapter 57. Exemption from Registration and Reporting.*

#### *§ 57.1. General rule.*

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

*§ 57.2. Qualifications for exemption.*

In § 57.2(a)(1), PAR commented that to balance the need for accountability and transparency with the need for nonprofit organizations to carry out their mission-critical activities involving education and advocacy, the following sentence should be deleted: “[t]o the extent an individual or entity, which is otherwise required to register and report under the act, engages in those activities, the individual or entity does not qualify for the exemption under this subsection.” PAR suggested that the sentence should be replaced with: “[s]ubmitting material in connection with the Regulatory Review Act and similar activities where materials are *already subject to public scrutiny*, such as comments submitted to an agency on an administrative action, shall be exempt from reporting and registration.” Section 57.2(a)(1) discusses the exemption from registration and reporting in section 13A06(1) which states that if the “lobbying activities consist of preparing testimony and testifying before the General Assembly or participating in an administrative proceeding,” the individual or entity is exempt.

The exemption is based on the type of lobbying activity in which the individual or entity participates. If the individual or entity is only testifying or participating in an administrative proceeding, then the individual or entity is exempt from registration and reporting, which would cover any costs for materials for those specific activities. However, if the individual or entity participates in other lobbying activities aside from testifying or participating in an administrative proceeding, the individual or entity must register and report the total costs for all lobbying activities, including costs for testifying or participating in an administrative proceeding. The sentence that the comment suggested should be added would make any *material* subject to public scrutiny exempt from reporting and registration. However, 65 Pa.C.S. § 13A03 defines “administrative action” to include “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act.” If materials are submitted in an effort to influence “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act,” and the individual or entity does not qualify for this exemption, then the total costs for the materials must be reported. Therefore, the Committee declined to make the suggested amendment.

Common Cause commented that in § 57.2(a)(1), the exemption for those who give testimony before legislative committees, must be limited to those situations in which the comments are presented to an agency at a properly sunshined public meeting. Otherwise the activity should be considered subject to registration and reporting standards unless exempt under another exemption. The language in the regulation closely tracks the exemption as stated in 65 Pa.C.S. § 13A06(1), which does not state that the meeting must be properly sunshined. Because IRRC has cautioned the Committee against adding requirements to the statute, the Committee declined to make the suggested amendment.

PAR commented that in § 57.2(a)(4), the sentence “[t]his economic consideration must be for lobbying in which an agent of the principal actually engages on behalf of the principal” should be added to this section. The section states that: “[t]he exemption in section 13A06(4) of the act is limited to an individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.” The language appears to already state that the economic consideration is for

lobbying as the comment suggests. Therefore, the Committee declined to make the suggested amendment.

PSEA commented that in § 57.2(a)(3) and (4), the “reimbursement of expenses” should be excluded from “economic consideration” in determining whether employees of the principal who are otherwise exempt under § 57.2(a)(3) and (4), need to register as lobbyists. The act in 65 Pa.C.S. § 13A03 defines “economic consideration” as “anything of value offered or received. The term includes compensation and reimbursement of expenses.” Therefore, the Committee declined to make the suggested amendment.

O’Melveny & Myers, LLP commented that in § 57.2(b)(2), the clause “between the vendor’s and the covered agency’s contracting officer” is unclear as to whether it applies to the final action (“communications concerning the procurement process”) or to any or all of the proceeding actions (“submission of questions, participation in a site visit, prebid or preproposal conference”). To clarify, the Committee amended the section by adding semicolons between the clauses so that it is clear that the clause “between the vendor’s and the covered agency’s contracting officer” applies to “communications concerning the procurement process.”

O’Melveny & Myers, LLP commented that in § 57.2(b)(4), the section does not exempt a class of vendor activities that are necessary and incidental to performing an existing contract or business arrangement and therefore should be expanded to exempt ordinary and customary communications and activities undertaken pursuant to the servicing of existing contracts with covered state agencies. The Committee intended that activities necessary and incidental to performing an existing contract be exempt. Therefore, the Committee amended § 57.2(b)(2), which was previously subsection (b)(4), to clarify that the following activities and communications are exempt: those that are necessary or incidental to performing an existing contract or the demonstration of products or services authorized by an existing contract to covered agencies that may order from the contract.

*Chapter 59. Opinions and Advices of Counsel.*

The Committee did not receive any comments on this chapter and did not make any changes. Therefore, the Committee adopted this chapter as proposed.

*Chapter 61. Compliance Audits.*

The Committee did not receive any comments on this chapter. However, the Committee amended this chapter to clarify the scope of the compliance audit. Section 13A08(f)(2) of the act addresses the random selection of 3% of all completed registrants and expense reports filed with the Department for an audit. In § 61.1(a) (relating to lotteries), the Committee amended the section to state that the Department will randomly select 3% of all principals, 3% of all lobbying firms and 3% of all lobbyists who have completed registration statements and reports filed with the Department. The Committee reasoned that the audit should include registrants who are principals, lobbying firms and lobbyists.

In § 61.2(b) (relating to compliance audits), the Committee amended the section to clarify that the audit will be limited in time to the previous calendar year. The Committee reasoned that because 65 Pa.C.S. § 13A08(f)(2) requires a drawing after the close of each fourth quarter reporting period, the audit subjects should only be audited for the previous calendar year. However, when the audit falls in the second year of a registration period, the audit must include the registration statement

filed in the previous year. The Committee reasoned that a registration statement filed in the previous year of the registration period should be included in the audit because the 65 Pa.C.S. § 13A08(f)(3) requires an audit of each registration statement and expense report.

In § 61.3(a)—(c), the Committee specified which general procedures for audits will be employed by the Department and which will be employed by the independent auditor. The Committee reasoned that the sections needed to distinguish which procedures will be employed by the Department and the independent auditor.

In § 61.3(c), the Committee removed paragraph (1) and subsection (d), reasoning that because the audit will be conducted in accordance with generally accepted auditing standards, the regulation should not state what the audit may include. The first sentence of § 61.3(c)(2) was amended to become the new subsection (d), stating that the registrant who is the subject of the audit shall cooperate fully in the audit. The Committee added, to what is now subsection (d), that the audit shall be conducted in accordance with generally accepted auditing standards, reasoning that the amendment clarifies how the audit will be conducted. The Committee further amended § 61.3(2), by moving the second sentence of paragraph (2) and making it subsection (e). Subsection (e) now states that if the independent auditor believes that the audit subject is not cooperating, the independent auditor shall inform the Department in writing. This statement was amended from the proposed regulation to state that the independent auditor shall inform the Department in writing if the audit subject “is not cooperating,” rather than if the audit subject “is delaying the submission of requested records.” The Committee reasoned that the amendment clarifies that the independent auditor should make the Department aware, in writing, if the audit subject is not cooperating in any manner. The Committee also reasoned that the reorganization and renumbering clarified § 61.3(2).

*Chapter 63. Commission Referrals, Investigative Proceedings and Noninvestigative Proceedings.*

*§ 63.1. Commission referrals.*

In § 63.1(c), regarding conflicts of interest, Common Cause commented that the section appeared to misinterpret the statute and the rules for professional conduct. Common Cause commented that the Attorney Disciplinary Board and the Ethics Commission have concurrent authority under 65 Pa.C.S. § 1307(d)(8). The section referred to matters referred to the Board for its exclusive review under 65 Pa.C.S. § 13A07(d)(8) (relating to prohibited activities). The section 13A07(d)(8) of the act states that: “[c]omplaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” Section 63.1(c) closely tracks the act and states that the Commission will refer any alleged violation of section 13A07(d) to the Board. Therefore, the Committee declined to make the suggested amendment.

Common Cause commented that § 63.1(g) is errant and the phrase “[e]xcept for a matter under section 1307A(d)(8) of the act,” should be deleted to make it accurate. Section 63.1(g) states that: “[e]xcept for a matter under section 13A07(d)(8) of the act, a referral by the Commission or the Office of Attorney General to the Board will not preclude the referring agency from also conducting its own enforcement proceeding under the

act.” Section 13A07(d)(8) of the act states that: “Complaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” (Emphasis added). Due to the language in the act in section 13A07(d)(8), § 63.1(g) is not errant. Therefore, the Committee declined to make the suggested amendment.

*§ 63.2. Commission proceedings regarding prohibited activities under section 13A07 of the act.*

In § 63.2(a) and (b), regarding conflicts of interest, Common Cause commented that the section appeared to misinterpret the statute and the rules for professional conduct. Common Cause commented that the Attorney Disciplinary Board and the Ethics Commission have concurrent authority under 65 Pa.C.S. § 13A07(d)(8). The section refers to matters referred to the Board for its exclusive review under 65 Pa.C.S. § 13A07(d)(8). Section 13A07(d)(8) of the act states that: “[c]omplaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” Section 63.1(c) closely tracks the act and states that the Commission will refer any alleged violation of 65 Pa.C.S. § 13A07(d) to the Board. Therefore, the Committee declined to make the suggested amendment.

*Chapter 65. Prohibition Against Lobbying for Economic Consideration as a Sanction.*

The Committee did not receive any comments on this chapter and did not make any changes. Therefore, the Committee adopted this chapter as proposed.

*Chapter 67. Prohibited Activities.*

*§ 67.1. Prohibited activities.*

Common Cause commented that the regulation did not currently contain a section dealing directly with section 13A07 of the act on “prohibited activities.” Common Cause found that including a delineation of the unlawful acts in the regulations would establish a single source reference and make it easier for lobbyists to understand and comply with their obligations. Section 13A07 of the act delineates the unlawful acts under the act. The regulations do not necessarily need to repeat this section of the act. However, to the extent that it informs the regulated community where prohibited activities can be found in the act, the Committee added § 67.1 to cross-reference 13A07 of the act.

*Chapter 69. Severability.*

*§ 69.1. Severability.*

In 1 Pa.C.S. § 1925 of the Statutory Construction Act (relating to constitutional construction of statutes), it states that the provisions of every statute are severable. The Committee added § 69.1 to clarify that the provisions of the regulations are also severable.

*Fiscal Impact*

*Commonwealth*

The final-form rulemaking will impose an additional fiscal impact upon the Commonwealth and specifically upon the Office of Attorney General (OAG), the Department, the Commission and the Board. The OAG costs are derived from personnel, operating and program expenses (which include travel, office furnishings and real estate rental) needed for chairing the Committee and for investigating and prosecuting violations of the act. The Depart-

ment costs are derived from administrative costs (which include the collection and processing of fees, registrations and reports), personnel and office expenses needed for staffing the Committee and fulfilling its obligations under the proposed rulemaking and the act. The Commission costs are derived from nonrecurring expenses which include new computer workstations and office furniture and recurring expenses such as staffing and travel expenses needed for being a member of the Committee and for conducting investigations and holding hearings related to alleged violations of the act, as well as performing other duties under the act. The Board's expenses are derived from potential cases and the funding will come from attorney registration fees.

*Local Government*

Local government will not have any expenses associated with these regulations. However, if a local government is required to register as a principal, the local government would have the cost of the registration fee, which is \$100, and would then be considered to be part of the regulated community. Thus, it will have administrative costs to comply with the act, as described in the next section.

*Private Sector*

The regulated community will have expenses in the form of a registration fee of \$100. There will also be costs for the regulated community for administrative staff to prepare the reports. However, the costs are too speculative to be quantified at this time. Costs for compliance with the act may include costs for: determining whether or not a person or entity is required to register; administrative staff; and time spent allocating costs for indirect communication, direct communication, hospitality, transportation and gifts. These costs will vary greatly between lobbyists, lobbying firms and principals.

*Paperwork Requirements*

*Commonwealth*

The final-form rulemaking will change the previous registering and reporting requirements. Because the previous Lobbying Disclosure Act was ruled unconstitutional in 2002 by the Pennsylvania Supreme Court, there were not any requirements for registering and reporting until the act went into effect on January 1, 2007. The final-form rulemaking, in accordance with the act, now requires that all registrations and reports for principals, lobbying firms and lobbyists be filed with the Department.

*Local Government*

Local government will not have any paperwork requirements associated with this final-form rulemaking. However, if a local government is required to register as a principal and file expense reports, the local government would have paperwork requirements but would then be considered to be part of the regulated community.

*Regulated Community*

The final-form rulemaking, in accordance with the act, requires that all principals, lobbying firms and lobbyists register with and report to the Department.

*Regulatory Review Act Requirements*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 9, 2009, the Committee submitted a copy of this final-form rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate State Government Committee and the House Judiciary Committee.

In compliance with section 5(c) of the Regulatory Review Act, the Committee also provided IRRC, the Senate State Government Committee and the House Judiciary Committee with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Committee considered all comments from IRRC, the Senate State Government Committee, the House Judiciary Committee and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 25, 2009, the final-form rulemaking was deemed approved by the Senate State Government Committee and the House Judiciary Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 26, 2009, and approved the final-form rulemaking.

*Contact Person*

Additional information may be obtained by contacting Louis Lawrence Boyle, Deputy Chief Counsel, Department of State, 301 North Office Building, Harrisburg, PA 17120-0029 or llboyle@state.pa.us.

*Findings*

The Lobbying Disclosure Committee 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 the regulations promulgated under those sections 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 in drafting this final-form rulemaking.

(3) These amendments to the proposed lobbying disclosure regulations are necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

*Order*

The Committee therefore orders that:

(a) Title 51 of the Pa. Code is amended by adding §§ 51.1—51.11, 53.1—53.7, 55.1—55.4, 57.1, 57.2, 59.1—59.3, 61.1—61.6, 63.1—63.7, 65.1, 65.2, 67.1 and 69.1 to read as set forth in Annex A.

(b) The Committee shall submit this order and Annex A to the Office of Attorney General for approval as required by law.

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

(d) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ROBERT A. MULLE,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 1369 (March 14, 2009).)*

**Fiscal Note:** Fiscal Note 16-40 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 51. PUBLIC OFFICERS

PART III. LOBBYING DISCLOSURE

Chap.		Sec.
51.	GENERAL PROVISIONS .....	51.1
53.	REGISTRATION AND TERMINATION .....	53.1
55.	REPORTING .....	55.1
57.	EXEMPTION FROM REGISTRATION AND REPORTING .....	57.1
59.	OPINIONS AND ADVICES OF COUNSEL .....	59.1
61.	COMPLIANCE AUDITS .....	61.1
63.	INVESTIGATIONS, HEARINGS AND REFERRALS .....	63.1
65.	PROHIBITION AFAINST LOBBYING AS A SANCTION .....	65.1
67.	PROHIBITED ACTIVITES .....	67.1
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CHAPTER 51. GENERAL PROVISIONS

Sec.	
51.1.	Definitions.
51.2.	Filing deadlines to fall on Commonwealth business days.
51.3.	Registration periods and reporting periods.
51.4.	Delinquency.
51.5.	Deficiency.
51.6.	Biennial review of exemption threshold, reporting threshold and filing fees.
51.7.	Forms, records and Department publications.
51.8.	Amended filings.
51.9.	Signing and designation of certain filings.
51.10.	Electronic filing.
51.11.	Parent corporations and subsidiaries.

§ 51.1. Definitions.

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

*Act*—65 Pa.C.S. Chapter 13A (relating to lobbying disclosure).

*Administrative action*—The term includes one or more of the following:

(i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy; approval or rejection of a regulation; or procurement of supplies, services and construction under 62 Pa.C.S. (relating to procurement).

(ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

(iii) The Governor's approval or veto of legislation.

(iv) The nomination or appointment of an individual as an officer or employee of the Commonwealth.

(v) The proposal, consideration, promulgation or rescission of an executive order.

*Affiliated political action committee*—

(i) Includes a "political action committee" as defined in section 1621(l) of the Election Code (25 P. S. § 3241(l)), which has an officer who:

(A) Is a chairperson or treasurer.

(B) Is one or more of the following:

(I) A principal.

(II) An officer or employee of a principal.

(III) A lobbyist.

(IV) An employee of a lobbyist.

(ii) The term does not include a Federal political action committee registered only with the Federal Election Commission, which is not required to register as a political committee in this Commonwealth under section 1624(a) of the Election Code (25 P. S. § 3244(a)).

(iii) If an employee of a registrant serves as the officer of a political action committee in what is clearly a personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, the political action committee will not be considered an affiliated political action committee.

*Agency*—The term includes the following:

(i) A department of the Executive Department of the Commonwealth, as described in Article IV, Section 1 of the Pennsylvania Constitution.

(ii) Any Commonwealth:

(A) Agency, as defined at 42 Pa.C.S. § 102 (relating to definitions), to include any executive agency or independent agency.

(B) Board.

(C) Commission.

(D) Authority.

*Amendment*—The term means a change in any filing including:

(i) Any change in the information required for the registration statement under section 13A04(b) and (c) of the act (relating to registration) including any changes in the relationships between principals, lobbying firms and lobbyists such as:

(A) In the case of a principal, when engaging a new lobbyist or lobbying firm or when ceasing to engage a lobbyist or lobbying firm.

(B) In the case of a lobbying firm, when the lobbying firm is engaged by a new principal, when the lobbying firm engages a new lobbyist, when the lobbying firm ceases to be engaged by a principal or when the lobbying firm ceases to engage a lobbyist.

(C) In the case of a lobbyist, when the lobbyist is engaged by a new principal or new lobbying firm or when the lobbyist ceases to be engaged by a principal or lobbying firm.

(ii) Any change in the information required in the quarterly expense reports under section 13A05(b) of the act (relating to reporting).

(iii) Any change in the information required for a statement of limited knowledge under section 13A05(b)(6) of the act.

(iv) Any change in the information required for a notice of termination under section 13A04(e) of the act. See also § 53.6(d) (relating to termination) on amending a notice of termination.

*Anything of value*—

(i) For the limited purpose of reporting gifts, transportation, lodging or hospitality under section 13A04 or 13A05 of the act, these terms include any tangible or intangible item of worth. See § 55.1(g)(6) (relating to quarterly expense reports).

(ii) The term includes any of the following:

(A) Gifts.

(B) Hospitality.

(C) Transportation.

(D) Lodging.

(E) Services.

(F) Loans or the forgiveness of a loan.

(G) Money.

*Association—*

(i) An “association” as defined in the Association Code in 15 Pa.C.S. § 102 (relating to definitions).

(ii) The term includes two or more persons associated in a common enterprise or undertaking and a corporation, a partnership, a limited liability company or a business trust.

(iii) The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans’ court division in general).

*Attorney at law—*An individual admitted to practice law by a court of record of the Commonwealth.

*Audit period—*A time span of the previous calendar year.

*Bidder—*As defined in 62 Pa.C.S. § 103 (relating to definitions).

*Board—*The Disciplinary Board of the Supreme Court of Pennsylvania.

*Candidate—*Any candidate for State office, as defined in section 1621(a) of the Election Code.

*Candidate political committee—*A “candidate’s political committee” as defined in section 1621(m) of the Election Code, and a candidate’s political action committee (PAC) which includes any political committee formed by or on behalf of a specified candidate or authorized by the candidate.

*Child—*The term includes adopted and biological children.

*Commonwealth business day—*The time from midnight to the next midnight on a day when the Commonwealth offices are open.

*Commission—*The State Ethics Commission of the Commonwealth.

*Compensation—*Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.

*Complaint—*A complaint on a form prescribed by the Commission, or the equivalent of the form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints as defined under §§ 11.1 and 21.1 (relating to definitions; and complaints).

*Conflict of interest—*When, during a given session of the General Assembly one of the following occurs:

(i) The representation of one principal by a registrant is directly adverse to another principal.

(ii) The representation of one or more principals is materially limited by the lobbying firm’s or lobbyist’s responsibilities to another principal, a previous principal or a third person or by a personal interest of the lobbyist.

*Contractor—*As defined in 62 Pa.C.S. § 103.

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

*Direct communication—*An effort, whether written, oral or by another medium, made by a lobbyist, lobbying firm or principal, directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action. The term may include personnel expenses and office expenses.

*Docket—*The term includes the official listing of entries to the record of a matter before the Commission, and the initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the record of a matter before the Commission.

*Economic consideration—*

(i) The term includes anything of value offered or received.

(ii) The term includes compensation and reimbursement for expenses.

*Effort to influence legislative action or administrative action—*Any attempt to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action on behalf of a principal for economic consideration.

(i) The term includes engaging a lobbyist.

(ii) Monitoring of legislation, monitoring of legislative action or monitoring of administrative action is not lobbying. However, for an individual or entity that is not exempt, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying.

*Election Code—*The Election Code (25 P. S. §§ 2600—3591).

*Employee—*An individual from whose wages an employer is required under the Internal Revenue Code (26 U.S.C.A.) to withhold Federal Income Tax. For the limited purpose of determining exemption under section 13A06(2) of the act (relating to exemption from registration and reporting), the term “employee” includes an “independent contractor” under the Internal Revenue Code, when the employee engages in the activity of gathering, commenting on and disseminating the news.

*Engaging a lobbyist—*Contracting in any form with a lobbyist or lobbying firm for lobbying on behalf of a principal for economic consideration.

*Engaging in lobbying—*Any act by a lobbyist, lobbying firm or principal that constitutes an effort to influence legislative action or administrative action in this Commonwealth, as defined in the definition of “lobbying” in section 13A03 of the act (relating to definitions).

*Entity—*

(i) Something that has a separate and distinct existence, from its members, if any.

(ii) The term includes, but is not limited to, a governmental unit.

*Ethics Act—*65 Pa.C.S. §§ 1101—1113 (relating to Public Official and Employee Ethics Act).

*Filed—*Registration statements, reports and other official statements or papers under the act are filed on the date they are received at the Department office whether filed electronically or delivered by United States mail, express carrier or hand-delivery. Documents filed with the Commission under the act are deemed filed on the date they are received at the Commission office whether filed electronically or delivered by United States mail, express carrier or hand-delivery or by fax.

*Fund—*The Lobbying Disclosure Fund established in section 13A10(b) of the act (relating to registration fees; fund established; system; regulations).



*Gift—*

(i) Anything that is received without consideration of equal or greater value.

(ii) The term does not include any of the following:

(A) A political contribution otherwise reportable as required by law.

(B) A commercially reasonable loan made in the ordinary course of business.

(C) Hospitality, transportation or lodging.

*Hospitality—*

(i) The term includes the following:

(A) Meals.

(B) Beverages.

(C) Recreation and entertainment.

(ii) The term does not include:

(A) Gifts.

(B) Transportation or lodging.

*Immediate family*—An individual's spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law and daughter-in-law.

*Indirect communication—*

(i) An effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action.

(ii) The term includes letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues.

(iii) The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

(iv) The term may include personnel expenses and office expenses.

*Intentional*—The term has the meaning set forth in 18 Pa.C.S. § 302(b) (relating to general requirements of culpability).

*Legislation*—Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives. The term includes any other matter which may become the subject of legislative action by either chamber of the General Assembly. Any other matter includes:

(i) Draft legislation.

(ii) Any bills, resolutions, amendments and nominations pending or proposed by any State official or employee.

*Legislative action*—An action taken by a State official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of any of the following:

(i) Legislation.

(ii) Legislative motions.

(iii) A veto by the Governor.

(iv) Confirmation of appointments by the Governor or of appointments to public boards or commissions by a member of the General Assembly.

*Lobbying—*

(i) An effort to influence legislative action or administrative action in this Commonwealth.

(ii) The term includes the following:

(A) Direct or indirect communications.

(B) Office expenses.

(C) Providing any gift, hospitality, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist, lobbying firm or principal.

*Lobbying firm*—An entity that engages in lobbying for economic consideration on behalf of a principal other than the entity itself.

*Lobbyist*—An individual, association, corporation, partnership, business trust or other entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney at law while engaged in lobbying. Membership in an association alone is not sufficient to make an association member a lobbyist.

*Marketplace transaction*—Includes the costs for:

(i) *Goods*. The usual and normal charge for goods purchased in an arms-length transaction in the market in which they ordinarily would have been purchased.

(ii) *Services*. The hourly or piecemeal charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

*Materially correct*—Being free from material misstatements, as it is used in section 13A08(f)(3) (relating to administration) of the act and in § 61.2(a) (relating to scope of compliance audits).

*Negligence*—The absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances.

*Offeror*—As defined in 62 Pa.C.S. § 103.

*Office expense*—An expenditure for an office, equipment or supplies utilized for lobbying.

*Person*—Includes a corporation, partnership, limited liability company, business trust, other association, government entity, estate, trust, foundation or natural person.

*Personnel expense*—An expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, lawyers, publications and public relations staff, technical staff, clerical and administrative support staff and includes individuals who engage in lobbying but are exempt from reporting under section 13A06 of the act. For an individual for whom lobbying is incidental to regular employment, the term means a good faith prorated estimate based on the value of the time devoted to lobbying.

*Political subdivision*—The term as defined in section 1102 of the Ethics Act (relating to definitions).

*Principal—*

(i) An individual, association, corporation, partnership, business trust or other entity, including a Commonwealth agency or political subdivision on whose behalf a lobbying

firm or lobbyist engages in lobbying, or that engages in lobbying on the principal's own behalf.

(ii) Membership in an association alone is not sufficient to make an association member a principal.

*Reception—*

(i) An event attended by invited State officials or State employees that is hosted by a registered lobbyist, lobbying firm or principal in which items such as appetizers, beverages or light fare are served for afternoon or evening events and items such as coffee, juice, pastries or bagels are served for morning events. A related hospitality event will not be considered or included as part of a reception.

(ii) The cost per individual shall be based on the invoiced amount for prospective attendees, irrespective of the actual number of attendees, and may not be greater than \$75 unless the reception takes place in a high-cost locality as classified by the Internal Revenue Service in Publication 1542, in which case the cost per individual may not exceed \$125. On a biennial basis, beginning April 11, 2009, the Department will have the authority to review these amounts, and subject to the concurrence of the Commission, to increase them if it is deemed appropriate. For purposes of determining the cost per individual herein, the guidelines found in § 55.1(k)(6) are not applicable.

(iii) The term does not include an event subject to the reporting requirements under Article XVI of the Election Code (25 P. S. §§ 3241—3260(b)).

(iv) This definition will not be interpreted as eliminating the obligation of the principal, lobbying firm or lobbyist to maintain records for purposes of disclosing total hospitality expenses in quarterly expense reports.

*Registrant—*A registered lobbyist, registered lobbying firm or a registered principal.

*Regulation—*Any rule, regulation or order in the nature of a rule or regulation, including formal and informal opinions of the Attorney General, of general application and future effect, promulgated by an agency under statutory authority in the administration of a statute administered by or relating to the agency, or prescribing the practice or procedure before the agency.

*Regulatory Review Act—*71 P. S. §§ 745.1—745.12.

*Reporting period—*Any of the following periods:

- (i) January 1 through March 31.
- (ii) April 1 through June 30.
- (iii) July 1 through September 30.
- (iv) October 1 through December 31.

*Respondent—*The subject of a complaint, notice of alleged noncompliance, investigation or formal proceeding before the Commission.

*Service (of official papers)—*Official papers are deemed served by the Commission, or by a division thereof, on the date of mailing if delivered by United States mail; the pickup date if delivered by express carrier; or the date received from the Commission if hand-delivered.

*State budget process—*The consideration and passage of acts relating to expenditures of funds and the generation of revenues by the General Assembly.

*Statement of policy—*The term includes a guideline, as defined in 1 Pa. Code § 1.4 (relating to definitions).

*State official or employee—*An individual elected or appointed to a position in State government or employed

by State government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

*Sua sponte—*Being done on one's own volition.

*Termination—*That point in time when the registration of a lobbyist, lobbying firm or principal ends in this Commonwealth, as provided at section 13A04(e) of the act.

*Total resources—*

(i) Includes all receipts by the principal during the reporting period.

(ii) The term includes dues and grants received by the principal.

*Transportation and lodging or hospitality received in connection with public office or employment—*Transportation, lodging or hospitality received in the course of, or incident to, the performance of official duties or responsibilities, or received on the basis of the status of the recipient as a public official or employee or State official or employee as those terms are defined under the Ethics Act or the act, respectively.

*Vendor—*

(i) An offeror, bidder or contractor that, for economic consideration, sells or provides a service or supply or engages in construction.

(ii) The term does not include an attorney at law, a lobbyist or a lobbying firm.

**§ 51.2. Filing deadlines to fall on Commonwealth business days.**

When the deadline for filing a registration statement, report, answer, brief or other official paper, under the act, with either the Department or Commission, falls on a weekend or holiday, or on another day that the office of the filing location is closed or closes early, the deadline for the filing will be extended to the following Commonwealth business day.

**§ 51.3. Registration periods and reporting periods.**

(a) Registration under section 13A04 of the act (relating to registration) shall be biennial. The first registration period which commenced January 1, 2007, continues through December 31, 2008. Subsequent registrations shall commence on January 1 of each odd numbered year.

(b) Reporting under section 13A05 of the act (relating to reporting) shall be quarterly within each calendar year: for January through March; April through June; July through September; and October through December. Quarterly expense reports shall be filed on or before the 30th day after the quarterly reporting period ends.

**§ 51.4. Delinquency.**

(a) A registration statement or report required to be filed under section 13A04 or 13A05 of the act (relating to registration; and reporting) is delinquent if not received by the Department on the date due as follows:

(1) Hard copy filings must be received by 5 p.m. in the office. For quarterly expense reports, from 5 p.m. until 12 a.m. midnight, a hard copy filing may be filed with the Department's designee. The filing location and the Department's designee will be on the Department's web site.

(2) Electronic filings may be filed until 12 a.m. midnight.

(b) A failure to timely file a registration statement, a quarterly expense report, a separate expense report, a

notice of termination or an amendment to one of these filings constitutes a failure to register or report as required by the act; delinquency continues until the filing is received by the Department in proper form.

(c) A registration statement will not be considered delinquent if the Department receives a registration statement electronically by the due date and the required photograph (in the case of a lobbyist's registration statement) and the filing fee, if due, are received by the Department within 5 calendar days of the Department's receipt of the original electronic filing, in accordance with § 51.10(b) (relating to electronic filing). If the 5 days end on a weekend or holiday, or on another day that the office of the filing location is closed or closes early, the deadline for the filing will be extended to the following Commonwealth business day.

#### § 51.5. Deficiency.

(a) A registration statement, expense report or notice of termination required to be filed under section 13A04 or 13A05 of the act (relating to registration; and reporting) is deficient if one or more of the following exist:

- (1) It does not fully and accurately include and disclose all that is required by the act and this part.
- (2) It includes a false statement.
- (3) It is illegible.
- (4) The filer fails to use the appropriate form prescribed by the Department.
- (5) The filer fails to date the registration statement, expense report or notice of termination.
- (6) The filer fails to sign the expense report under oath or affirmation as set forth in § 51.9 (relating to signing and designation of certain filings).

(b) The filing of a deficient registration statement constitutes a failure to register as required by the act.

(c) The filing of a deficient expense report constitutes a failure to report as required by the act.

(d) The filing of a deficient notice of termination shall be ineffective.

(e) A deficient registration statement, expense report or notice of termination continues to be deficient until it is amended to fully and accurately disclose all of the information that is required to be disclosed by the act and this part.

#### § 51.6. Biennial review of exemption threshold, reporting threshold and filing fees.

(a) On a biennial basis commencing in January 2009, the Department will review the threshold under section 13A06 of the act (relating to exemption from registration and reporting) for registration under section 13A04 of the act (relating to registration) and the threshold for reporting under section 13A05(d) of the act (relating to reporting), and, if appropriate, will increase these amounts prospectively to rates deemed reasonable for assuring appropriate disclosure.

(b) On a biennial basis commencing in January 2009, the Department will review the filing fee established under section 13A10 of the act (relating to registration fees; fund established; system; regulations) and may by regulation under section 13A08(j) of the act (relating to administration), adjust this amount if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act.

(c) Changes to the thresholds made under this section will become effective prospectively as determined by the Department. Changes to the thresholds will not be effective until the beginning of a calendar quarter.

(d) The Department will publish adjusted threshold amounts in the *Pennsylvania Bulletin* by June 1, 2009, and by June 1 every 2 years thereafter, as necessary.

#### § 51.7. Forms, records and Department publications.

(a) Blank forms for filing or amending registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, or notices of termination under the act may be obtained by contacting the Department at: Bureau of Commissions, Elections and Legislation, 210 North Office Building, Harrisburg, Pennsylvania 17120, (717) 787-5280; or by visiting the Department's office during business hours on Commonwealth business days. Forms are also available at the Department's web address: [www.dos.state.pa.us](http://www.dos.state.pa.us).

(b) Paper filers may attach additional forms prescribed by the Department if more space is required.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, and notices of termination filed with the Department will remain on file for 4 years and will be available for public inspection at the office of the Department in Harrisburg, Pennsylvania during business hours on Commonwealth business days. The Department will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost. All registrations and reports will also be available on the Department's web site at [www.dos.state.pa.us](http://www.dos.state.pa.us).

(d) Payments to the Commonwealth for charges under subsection (c) shall be deposited into the Fund established by section 13A10(b) of the act (relating to registration fees; fund established; system; regulations).

(e) Under section 13A08(d) of the act (relating to administration), the Department will prepare and publish the following in a searchable electronic format:

(1) An annual report of lobbying activities in this Commonwealth.

(2) An annual listing of principals, which will identify affiliated political action committees, lobbying firms and lobbyists that are registered to lobby for the principals.

(3) An annual listing of lobbying firms and lobbyists not associated with lobbying firms, which will identify affiliated political action committees and the principals for whom the lobbying firm or lobbyist is registered to lobby.

(4) An annual listing of registered lobbyists for each lobbying firm, which will identify affiliated political action committees and principals.

(5) A biennial directory of all registered lobbyists, which will include photographs, as well as registered lobbying firms.

(i) The directory will be produced and distributed on or before May 1 of each odd-numbered year.

(ii) Revenue received by the Commonwealth from sales of this directory will be deposited into the Fund established by section 13A10(b) of the act.

(6) Paper copies of the directory and annual reports will be made available to the public at a price not to exceed the actual cost of production.

(7) Any of the items in paragraphs (1)—(4) may, at the discretion of the Department, be supplemented or be combined in a single publication.

**§ 51.8. Amended filings.**

(a) Filings under the act may be amended.

(b) When there is a change in information required for the registration statement under section 13A04(b)(3) of the act (relating to registration), an amended registration statement will be filed with the Department within 14 days of the end of the year in which the change occurs.

(c) When amending registration statements or quarterly expense reports, principals, lobbyists and lobbying firms need only complete those portions of their registration statements or quarterly expense reports requiring amendment, in addition to the identification of the principal, lobbyist or the lobbying firm filing the amendment.

(d) Amended registration statements must conform to the additional requirements detailed in § 53.5 (relating to amended registration statements).

(e) Amended filings will not affect the Commission's authority to conduct investigations, hearings or other proceedings under the act.

**§ 51.9. Signing and designation of certain filings.**

(a) *Signing of certain filings.*

(1) Quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge and amendments to these forms filed with the Department must be signed originals bearing the signature of the filer. See § 51.10 (relating to electronic filing) for requirements when filing electronically.

(i) A document will be deemed to be a signed original if it is filed electronically under § 51.10 or if it bears an original manual signature in ink.

(ii) Except as noted in subsection (b)(2), principals, lobbying firms or lobbyists that are individuals shall sign their own filings.

(iii) Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(iv) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(v) The signature must appear on the line indicated on the form as prescribed by the Department.

(2) Registration statements are not required to be signed.

(3) Registration statements, quarterly expense reports, separate expense reports, notices of termination and amendments to these filed under the act must include an affirmation subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the information provided therein is true and correct to the best of the filer's knowledge, information and belief.

(4) A lobbyist who signs a principal's quarterly expense report or amendment, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information pro-

vided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(5) A lobbyist attaching a statement to a principal's quarterly expense report or an amendment, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided in the statement is true and correct to the best of the lobbyist's knowledge, information and belief.

(b) *Designation of certain filings.* A principal, lobbying firm or lobbyist may designate another individual or firm to complete any of its filings on the following conditions:

(1) The principal, lobbying firm or lobbyist designating another individual or firm to complete any of its filings is still responsible for the timely filing and accuracy of the information in the filing.

(2) When a principal, lobbying firm or lobbyist designates another individual or firm to complete a form on its behalf, the principal, lobbying firm or lobbyist shall make that designation on the registrant's registration statement.

(3) A signature of an individual not included on a registrant's registration statement filed with the Department is not a valid signature as to the registrant.

(4) Signing a principal's quarterly expense report on behalf of the principal does not satisfy the requirements of section 13A05(b)(4) of the act (relating to reporting), pertaining to attestation of principal expense reports by lobbying firms and lobbyists not associated with lobbying firms.

**§ 51.10. Electronic filing.**

(a) Forms that are required to be filed under the act may be filed electronically. The use of an electronic signature shall have the same force and effect as a manual signature.

(1) Lobbyists, lobbying firms and principals shall be deemed to comply with section 13A10(c) of the act (relating to registration; fees; fund established; system; regulations) for the remainder of the calendar year if they submit a registration statement, an amended registration statement or an expense report electronically using the Department's online filing on its web site.

(2) In submitting a registration statement, an amended registration statement or an expense report electronically using the Department's online filing on its web site, the applicant will be deemed to agree to all of the following:

(i) For any registration statement, amended registration statement or notice of termination that the applicant files with the Department electronically, the typing of the applicant's name in the electronic submission constitutes the applicant's affirmation as set forth in § 51.9(a)(3) (relating to signing and designation of certain filings).

(ii) For any quarterly expense report, separate quarterly expense report or amended quarterly expense report that the applicant files with the Department electronically, the electronic signature constitutes the applicant's signature under oath or affirmation as set forth in § 51.9(a)(3).

(iii) The use of the electronic signature to "sign" a quarterly expense report, or amendment filed by another constitutes the applicant's affirmation as set forth in § 51.9(b).

(iv) The use of the electronic signature to attach a statement to a quarterly expense report, or an amend-

ment to the quarterly expense report filed by another constitutes the applicant's affirmation as set forth in § 51.9(b).

(b) A registration statement or an amended registration statement that is submitted to the Department electronically is filed on the date the Department receives the document electronically if the Department receives the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 calendar days.

(1) If the Department does not receive the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 calendar days from the date of receiving the document electronically, the registration statement or amended registration statement is filed on the date the Department receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

#### § 51.11. Parent corporations and subsidiaries.

(a) Subject to the requirements of subsection (b), a parent corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service, in 26 U.S.C.A. § 1501, for filing a consolidated corporate tax return.

(b) When registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly expense reports, and notices of termination must disclose with particularity all of the required information as to the parent corporation and the subsidiaries.

(c) If a parent corporation and its subsidiaries file separately, each shall pay the registration fee and file all subsequent quarterly expense reports separately until the filing of a notice of termination.

### CHAPTER 53. REGISTRATION AND TERMINATION

Sec.	
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#### § 53.1. Biennial filing fee.

(a) Under section 13A10(a) of the act (relating to registration fees; fund established; system; regulations), a principal, lobbying firm or lobbyist required to be registered under the act shall pay a biennial filing fee of \$100 to the Department, made payable to the "Commonwealth of Pennsylvania."

(1) The biennial filing fee shall be tendered to the Department with the filing of the principal's, lobbying firm's or lobbyist's first registration statement in each registration period. However, if the Department receives the filing fee within 5 calendar days of the filing of a registration statement, the registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency).

(2) The biennial filing fee will be a flat fee for the registration period in which paid. A registrant will not be required to pay more than one biennial filing fee in any

given biennial registration period, unless a registrant terminates and attempts to reregister during the same biennial registration period.

(3) A separate biennial filing fee shall be paid for each principal, lobbying firm or lobbyist required to be registered, even if employed by a firm, association, corporation, partnership, business trust or business entity that is also required to register and that has paid or will pay the fee.

(4) The biennial filing fee is nonrefundable and non-transferable.

(5) Filing fees expire at the end of each registration period, regardless of when paid.

(b) The failure to pay a biennial filing fee as required by the act and this section will constitute a failure to register as required by the act.

(c) Money received from biennial filing fees will be deposited in the Fund.

#### § 53.2. Principal registration.

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a principal shall register with the Department within 10 days of the earlier of the following:

(1) Contracting in any form with an individual or entity for lobbying.

(2) Engaging in lobbying.

(b) Lobbying by a principal on the principal's own behalf constitutes acting in the capacity of a principal.

(1) A principal that is required to register and that engages in lobbying solely on its own behalf need only register as a principal. However, a principal that engages in lobbying on behalf of others also would be required to register as a lobbyist or lobbying firm.

(2) Unless exempt under section 13A06 of the act, members or employees of a principal who engage in lobbying on behalf of the principal shall register as lobbyists under § 53.4 (relating to lobbyist registration).

(c) A principal shall register by filing a registration statement with the Department, on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications), which discloses at least the following information:

(1) The name, permanent address, daytime telephone number, email address, if available, and name and nature of the business of the principal.

(2) The name, registration number and acronyms of all "affiliated political action committees" as defined in section 13A03 of the act (relating to definitions).

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf. The principal need not list individuals exempt under section 13A06 of the act.

(4) If the principal is an organization or association, the number of its dues-paying members in the past calendar year.

(5) The name, permanent business address, daytime telephone number, fax number and email address of every lobbying firm which represents the principal.

(6) The registration number of the principal when available.

(d) For each address that is to be disclosed on a registration statement, the filer shall include the permanent business address. If the filer has more than one permanent business address, indicate the primary business address of the filer.

(e) The registration statement must include the principal's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Department.

(f) The registration statement must include a statement that the principal has received, read and understands the requirements and prohibitions of the act.

(g) The registration statement must also include a statement that the information on the principal's statement is true, correct and complete to the best of the registrant's knowledge, information and belief, and the affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(h) A principal will not be considered registered until the completed registration statement and the biennial filing fee, in proper form as required by the act and this section, are received by the Department. However, if the Department receives the filing fee within 5 calendar days of the filing of a registration statement, the registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency).

(i) Unless terminated, a registration statement filed under the act is effective from the date of filing through the final day of the registration period then in effect. The principal shall file a new registration statement after that date, to the extent the principal is required to be registered under the act and this section.

(j) A person who is a principal as defined in section 13A03 of the act (relating to definitions) consents to receive service of process, even if that person is located out-of-State under 42 Pa.C.S. § 5322 (relating to the bases of personal jurisdiction over persons outside this Commonwealth).

**§ 53.3. Lobbying firm registration.**

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a lobbying firm shall register with the Department within 10 days of the earlier of one of the following:

- (1) Contracting in any form to engage in lobbying.
- (2) Engaging in lobbying.

(b) Lobbying by a lobbying firm on a principal's behalf constitutes acting in the capacity of a lobbying firm.

(1) A lobbying firm that is required to register and that engages in lobbying on its own behalf shall also register with the Department as a principal.

(2) Unless exempt under section 13A06 of the act, members or employees of a lobbying firm who engage in lobbying on behalf of the lobbying firm shall register as lobbyists with the Department under § 53.4 (relating to lobbyist registration).

(c) A lobbying firm shall register by filing a registration statement with the Department, on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications), which discloses at least the following information:

(1) The name, permanent address, daytime telephone number, email address if available, and name and nature of business of the lobbying firm.

(2) The name, registration number and acronyms of all "affiliated political action committees" as defined in section 13A03 of the act (relating to definitions).

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf. The lobbying firm need not list individuals exempt under section 13A06 of the act.

(4) The name, permanent business address, daytime telephone number and registration number when available of every principal that the lobbying firm represents.

(5) The registration number of the lobbying firm when available.

(d) For each address that is to be disclosed on a registration statement, the filer shall include the permanent business address. If the filer has more than one permanent business address, indicate the primary business address of the filer.

(e) The registration statement must include the lobbying firm's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Department.

(f) The registration statement must include a statement that the lobbying firm, through its authorized representative, has received, read and understands the requirements and prohibitions of the act.

(g) The registration statement must also include a statement that the information on the lobbying firm's statement is true, correct and complete to the best of the registrant's knowledge, information and belief, and the affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(h) A lobbying firm will not be considered registered until the completed registration statement and the biennial filing fee, in proper form as required by the act and this section, are received by the Department. However, if the Department receives the filing fee within 5 calendar days of the filing of a registration statement, the registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency).

(i) Unless terminated, a registration statement filed under the act is effective from the date of filing through the final day of the registration period then in effect. The lobbying firm shall file a new registration statement after that date, to the extent the lobbying firm is required to be registered under the act and this section.

(j) A person who is a lobbying firm as defined in section 13A03 of the act consents to receive service of process, even if that person is located out-of-State under 42 Pa.C.S. § 5322 (related to bases of personal jurisdiction over persons outside this Commonwealth).

**§ 53.4. Lobbyist registration.**

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a lobbyist shall register with the Department within 10 days of the earlier of one of the following:

- (1) Contracting in any form to engage in lobbying.
- (2) Engaging in lobbying.

(b) When a firm, association, corporation, partnership, business trust or business entity is engaged as a lobbyist or lobbying firm, it and each of its members or employees that engage in lobbying on behalf of the principal shall register with the Department, unless exempt under section 13A06 of the act.

(c) When a lobbyist engages in lobbying on the lobbyist's own behalf, the lobbyist shall also register as a principal.

(d) A lobbyist shall register by filing a registration statement with the Department on a form prescribed by the Department, as required under § 51.7(a) (relating to forms, records and Department publications), which includes and discloses at least the following information:

(1) The name, permanent business address, email address, if available, and daytime telephone number of the lobbyist. The filer shall also indicate if the lobbyist is a licensed attorney, and, if so, whether the attorney is licensed in this Commonwealth.

(2) A recent passport-sized (approximately 2 inches x 2 inches) photograph of the lobbyist, the specifications of which will be determined by the Department and published on its web site.

(3) The name, permanent business address, daytime telephone number and registration number when available of each principal the lobbyist represents.

(4) The name, registration number and acronyms of all "affiliated political action committees," as defined in section 13A03 of the act (relating to definitions).

(5) The name and registration number when available of every lobbying firm with which the lobbyist has a relationship involving economic consideration.

(6) The name, registration number and acronym of any non-Federal candidate's political committee of which the lobbyist is an officer who must be included in a registration statement under section 1624(b)(2) and (3) of the Election Code (25 P. S. § 3244(b)(2) and (3)), regarding registration.

(7) The registration number of the lobbyist when available.

(e) For each address that is to be disclosed on a registration statement, the filer shall include the permanent business address. If the filer has more than one permanent business address, indicate the primary business address of the filer.

(f) The registration statement must include the lobbyist's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Department.

(g) The registration statement must include a statement that the lobbyist has received, read and understands the requirements and prohibitions of the act.

(h) The registration statement must also include a statement that the information on the lobbyist's statement is true, correct and complete to the best of the registrant's knowledge, information and belief, and the affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(i) A lobbyist registering on behalf of an association will not be required to register on behalf of each member of that association. However, if a lobbyist represents a member in a separate capacity, both the lobbyist and the member shall file the appropriate registrations.

(j) A lobbyist will not be considered registered until the completed registration statement, the biennial filing fee and a photograph of the lobbyist, in proper form as required by the act and this section, are received by the Department. However, if the Department receives the filing fee and a photograph of the lobbyist within 5 calendar days of the filing of a registration statement, the

registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency). If the 5 days end on a weekend or holiday, or on another day that the office of the filing location is closed or closes early, the deadline for the filing will be extended to the following Commonwealth business day.

(k) Unless terminated, a registration statement filed under the act is effective from the date of filing through the final day of the registration period then in effect. The lobbyist shall file a new registration statement after that date, to the extent the lobbyist is required to be registered under the act and this section.

(l) A person who is a lobbyist as defined in section 13A03 of the act (relating to definitions) consents to receive service of process, even if that person is located out-of-State under 42 Pa.C.S. § 5322 (related to bases of personal jurisdiction over persons outside this Commonwealth).

### § 53.5. Amended registration statements.

(a) A principal required to be registered under the act shall file an amended registration statement whenever there is a change in the information required to be disclosed on the principal's registration statement. The amended registration statement shall be filed with the Department within 14 days after the change occurs, except that if the change is solely as to the number of dues-paying members in the past calendar year, the amended registration statement shall be filed with the Department within 14 days of the end of the year in which the change occurs.

(b) A lobbyist or lobbying firm required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the lobbyist's or the lobbying firm's registration statement. The amended registration statement shall be filed within 14 days after the change occurs.

(c) Principals, lobbyists and lobbying firms shall amend only those portions of their registration statements that need to be amended, in addition to the identification of the principal, lobbyist and the lobbying firm, as provided in § 51.8 (relating to amended filings).

### § 53.6. Termination.

(a) A lobbyist, lobbying firm or a principal may terminate its registration by filing with the Department a completed notice of termination on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications).

(b) A separate notice of termination is required for each registration statement.

(c) A notice of termination must identify the registration number of the principal, lobbying firm or lobbyist terminating registration.

(d) A notice of termination may be amended, but cannot be withdrawn.

(e) A registration statement cannot be revived or otherwise made effective after a notice of termination as to the registration statement has been filed.

(f) Lobbying may not occur after the filing of a notice of termination unless the lobbying is under a separate registration statement which has already been filed with the Department and which, at the time of the lobbying, has not been terminated.

(g) After a review of the notice of termination, the Department will issue to the lobbyist, lobbying firm or principal who filed the notice of termination a letter stating that the registrant has terminated registration. The letter will be issued within 15 days after the Department's receipt of the notice of termination.

(h) The filing of a notice of termination or a termination report, or the issuance of a Department letter stating that the registrant has terminated registration, does not affect the Department's authority to conduct audits, or the Commission's, the Attorney General's or the Board's authority to conduct investigations, hearings or other proceedings under the act and this part.

(i) Nothing in this subsection shall be construed to exempt a lobbyist, lobbying firm or principal from any of the requirements in section 13A05 of the act (relating to reporting).

**§ 53.7. Public inspection and copying.**

(a) The Department will make completed registration statements and notices of termination, which have been filed with the Department, available for public inspection and provide copies of these documents at a price not in excess of the actual cost of copying.

(b) The Department will make all registrations and notices available on a publicly accessible Internet web site. Documents maintained and reproducible in an electronic format will be provided in that format upon request.

(c) The Department will make electronically submitted documents available either on paper or electronically. The Department will make documents submitted on paper available both on paper and electronically.

**CHAPTER 55. REPORTING**

Sec.	
55.1.	Quarterly expense reports.
55.2.	Records maintenance, retention and availability.
55.3	Public inspection and copying.
55.4	Reliance on documents

**§ 55.1. Quarterly expense reports.**

(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal, registered lobbying firm or registered lobbyist lobbying on the principal's behalf, together, exceed \$2,500 in a quarterly reporting period. The threshold of \$2,500 includes any economic consideration paid by a principal to a lobbying firm or lobbyist for lobbying. Individuals exempt under section 13A06 of the act (relating to exemption from registration and reporting) need not register or report.

(b) For a quarterly reporting period in which the total lobbying expenses of a registered principal, registered lobbying firm or registered lobbyist lobbying on the principal's behalf, together, are \$2,500 or less, a statement to that effect shall be filed with the Department by checking the appropriate block on the quarterly expense report form.

(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under section 13A05 of the act (relating to reporting), section 13A05(b)(2.1) of the act permits filers to use any reasonable methods of estimation and allocation.

(d) The principal shall file a quarterly expense report or statement of failure to meet the reporting threshold on or before the 30th day after the quarterly reporting period ends.

(e) Under section 13A05(b)(6) of the act and as detailed in subsection (n), a lobbyist or lobbying firm required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if during the reporting period, the lobbyist or the lobbying firm engaged in lobbying which was not contained in any report filed by a principal represented by the lobbyist or lobbying firm. The deadline for filing a separate report shall be the 30th day after the due date of the principal's report. The following apply to filing a separate expense report by a lobbyist or a lobbying firm:

(1) If within 30 days of the due date, a principal amends its quarterly expense report in compliance with § 51.8(c) (related to amended filings), a lobbyist or lobbying firm need not file a separate quarterly expense report as to the principal's expenses.

(2) The filing of a separate quarterly expense report by a lobbyist or lobbying firm does not relieve a principal of any reporting requirements.

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense reports by lobbyists or lobbying firms and amendments to these shall be filed on forms prescribed by the Department.

(g) A quarterly expense report of a principal required to be registered under the act must include at least the following information:

(1) The names and, when available, the registration numbers of all lobbyists or lobbying firms that are required to be registered, by whom the lobbying is conducted on behalf of the principal. If a lobbyist is a lobbying firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal shall be included. Individuals exempt under section 13A06 of the act need not be included.

(2) The general subject matter or issue being lobbied shall be indicated by checking the appropriate block on the form or completing the category designated "other." A principal, lobbying firm or lobbyist engaged in procurement may include this subject under the "other" category. Examples of items that need not be reported include:

(i) A listing indicating which lobbyists are lobbying on which matters.

(ii) The specific bill numbers for which the lobbying is being done.

(iii) The specific contents of any communications or the identity of those with whom the communications take place.

(3) The total costs of all lobbying for the period. The total must include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to State officials or employees, and any other lobbying costs.

(i) The total amount reported under this paragraph shall be allocated in its entirety among the following categories:

(A) The costs for gifts, hospitality, transportation and lodging given to or provided to State officials or employees or their immediate families.

(B) The costs for direct communication.

(C) The costs for indirect communication.

(ii) Registrants shall use a good faith effort to allocate expenses required to be reported under this subsection to



one of the three categories listed herein. A given expense may not be included in more than one category. When allocating expenses:

(A) Gifts should not include expenses for the following:

(I) Direct communication or indirect communication.

(II) Personnel expenses and office expenses, as defined in the act and this section.

(III) Services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of his office or employment.

(IV) Information received by a legislator or other State official or employee within the scope of his office or employment, except to the extent that the medium in which the information was received has a fair market value itself.

(B) Hospitality should not include expenses for the following:

(I) Personnel expenses and office expenses, as defined in the act and this section.

(II) Direct communication or indirect communication.

(C) Direct communication should not include expenses for the following:

(I) Gifts or hospitality.

(II) Transportation or lodging.

(D) Indirect communication should not include expenses for the following:

(I) Gifts or hospitality.

(II) Transportation or lodging.

(iii) Lobbying costs include the amount of economic consideration paid by principals to lobbying firms or lobbyists for lobbying. Although a registrant is only required to report the amount of economic consideration that is attributable to lobbying in the Commonwealth, the entire amount shall be reported unless the principal, lobbying firm or lobbyist maintains records that establish the portion attributable to lobbying, as well as the portion attributable to nonlobbying services.

(iv) Monitoring of legislation, monitoring of legislative action or monitoring of administrative action is not lobbying. However, for an individual or entity which is not exempt, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying.

(4) The information required to be disclosed under section 13A05(b)(3) of the act, as detailed by paragraph (3)(i), and subsections (j) and (k).

(5) The name, permanent business address and daytime telephone number of any individual, association, corporation, partnership, business trust or other business entity which contributed more than 10% of the total resources for lobbying received by the principal during the reporting period. The term "total resources" includes all contributions to the principal during the reporting period. The term also includes dues and grants received by the principal.

(6) The total costs for gifts, hospitality, transportation and lodging, given to or provided to State officials or employees or their immediate families, except that any cost under this paragraph which is of a value not exceeding \$10 need not be reported under section

13A05(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to more than one State official or employee, the aggregate economic value of which is more than \$10, that value shall be included in the appropriate totals reported under section 13A05(b)(2) of the act.

(h) A registered principal that attempts or that retains a lobbying firm or lobbyist to attempt to influence an agency's preparing, awarding of a bid, entering into or approving a contract pursuant to 62 Pa.C.S. (relating to procurement) shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(3).

(1) There is no prohibition against lobbyists or vendors being paid fees for procurement lobbying contingent upon the successful outcome of their lobbying.

(2) With certain exceptions, provided in 31 U.S.C. § 1352 (relating to limitation on the use of appropriated funds to influence certain Federal contracting and financial institutions), Federal funds cannot be spent by any recipient of a Federally-funded contract to pay any person for lobbying a Federal agency, employee or member of Congress.

(i) Within the total costs of all lobbying for the period reported in subsection (g)(3), the amount spent for office and personnel expenses must include salaries and other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses for those involved in lobbying, and costs for offices, equipment and supplies utilized for lobbying.

(1) Any reasonable method may be used to determine how to allocate among direct and indirect communications.

(2) Because the definitions of "gift" and "hospitality" in section 13A03 of the act (relating to definitions) do not explicitly include personnel expenses and office expenses, if a principal sponsors an event for public officials and employees, the principal's expenses for mailing invitations, and the time its staff spends planning this event should be reported as direct or indirect communications.

(3) Reportable personnel costs include costs for expenditures for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, lawyers, publications and public relations staff and technical staff, as well as clerical and administrative support staff and individuals who engage in lobbying but who are exempt from reporting under section 13A06 of the act.

(4) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying. These expenses include transportation, food and lodging paid for any individuals in furtherance of lobbying.

(5) If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a prorated estimate based on the value of the time devoted to lobbying.

(j) A quarterly expense report must also identify, by name, position and each occurrence, the State officials or employees, or both, who received from a principal, lobbying firm or lobbyist anything of value which must be included in the statement of financial interests under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests) as implemented by section 1105(d) of the Ethics Act.

(1) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per calendar year.

(2) Each occurrence must include the date and the circumstances of the gift and the payment or reimbursement for transportation, lodging or hospitality.

(3) The reporting of the provision of gifts in the aggregate of \$250 or more per calendar year to a State official or employee must identify:

(i) The name and position of the State official or employee, including the governmental body of the State official or employee.

(ii) The name and address of the source of the gift.

(iii) The value of the gift.

(iv) The circumstances of the gift, including the nature of the gift.

(4) The reporting of the provision of transportation/lodging/hospitality in the aggregate exceeding \$650 per calendar year to a State official or employee in connection with public office or employment must identify the following:

(i) The name and position of the State official or employee, including the governmental body of the State official or employee.

(ii) The name and address of the source of the payment.

(iii) The value of the transportation, lodging or hospitality.

(5) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act does not include the cost of a reception which the State official or employee attends in connection with public office or employment. However, a principal, lobbying firm or lobbyist shall maintain records for purposes of disclosing the total costs of a reception as hospitality expenses in quarterly expense reports, in compliance with section 13A05(b)(2)(i) of the act and subsection (g)(3)(i).

(6) For purposes of the act, there is no requirement under section 13A05 to disclose anything of value received from immediate family when the circumstances make it clear that motivation for the action was the personal or family relationship.

(k) For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 13A05 of the act, the following apply:

(1) Any gift, transportation, lodging or hospitality item that is returned unused, declined or is fully reimbursed to the registrant within 30 days of the date of receipt need not be reported. For a gift, the date of receipt is the date the State official or employee first has possession or control of the gift. For purposes of calculating the 30 days for fully reimbursing an item of transportation, lodging or hospitality, the date of receipt is the date the State official or employee actually receives the benefit of the item.

(2) The valuation of a complimentary ticket to a fundraiser must be based upon the reasonable value of the gifts, hospitality, transportation or lodging received by the State official or employee. This provision does not apply to expenditures and other transactions subject to reporting under section 1626 of the Election Code (25 P. S. § 3246).

(3) The value of gifts, transportation, lodging or hospitality must equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging or hospitality must equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality.

(6) When more than one individual is benefited incident to an occasion or transaction, the registrant may calculate the value of the gifts, transportation, lodging or hospitality provided to a particular individual by one of the following:

(i) Calculating the actual benefit provided to that individual.

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that individual.

(iii) Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.

(l) The filer of the quarterly expense report or amended quarterly expense report shall give written notice to each State official or employee of the State official's or employee's inclusion in the report at least 7 days prior to the submission of the report to the Department. The notice must include the information which will enable the public official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act. The notice may not include the cost of a reception that the State official or employee attends in connection with State office or employment.

(m) A lobbying firm or lobbyist not associated with a lobbying firm, required to be registered under the act, shall sign the quarterly expense reports or amended quarterly expense reports submitted by the principals represented to attest to the validity and accuracy of the reports to the best of the lobbying firm's or lobbyist's knowledge. If the principal is unable to secure the signature of a lobbyist or authorized representative of a lobbying firm, the principal shall attach a statement to the report, setting forth the attempts made and the reasons for the inability to obtain the signature. The statement must be on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications).

(1) A lobbying firm or lobbyist may attach a statement to the quarterly expense report or amended quarterly expense report of any principal, describing the limits of the lobbyist's or lobbying firm's knowledge concerning the expenditures contained in the report. Lobbying firms' or lobbyists' statements as to limitations of knowledge must be on a form prescribed by the Department as required under § 51.7(a), and describe the limitations and the reasons for the limitations with specificity.

(2) An individual in a lobbying firm, a lobbyist or any other individual may also sign the quarterly expense

report of the principal on behalf of the principal, attesting to the accuracy of the report, with authorization by the principal on its registration statement. The registration statement will designate all individuals who may sign expense reports on behalf of the principal.

(i) If an individual or lobbyist signs a principal's quarterly expense report on the principal's behalf without authorization by the principal on its registration statement, the quarterly expense report will not be considered a valid filing by the principal.

(ii) A principal that authorizes an individual to sign the quarterly expense reports of the principal on behalf of the principal on its registration statement is still responsible for the accuracy and timely filing of the quarterly expense report.

(iii) When an individual signing the principal's quarterly expense report, attesting to the accuracy of the report, is an official or employee of the principal who also serves as one of the principal's registered lobbyists as indicated on the report, that signatory shall still be required to affirm the accuracy of the report as a lobbyist of the principal, as provided by section 13A05(b)(4) of the act.

(n) When a lobbying firm or lobbyist is required to file a separate report under subsection (e), the following apply:

(1) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the 30th day after the due date of the principal's report.

(2) Separate quarterly expense reports and separate amended quarterly expense reports shall be filed on a form prescribed by the Department as required under § 51.7(a).

(3) A separate quarterly expense report or separate amended quarterly expense report must contain the identity of the principal for whom the lobbying was performed.

(4) A separate quarterly expense report must include the information required by section 13A05(b)(2), (3) and (7) of the act.

(5) A separate quarterly expense report or separate amended quarterly expense report may include a statement which specifies the limitations of the lobbying firm's or the lobbyist's knowledge and the reasons for the limitations.

(6) A lobbying firm or lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall provide it to the principal contemporaneously with filing it with the Department.

(7) A lobbying firm or lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall give written notice to each State official or employee of the State official's or employee's inclusion in the report at least 7 days prior to the submission of the report to the Department. The notice must include the information which will enable the State official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act.

(8) An individual in a lobbying firm, a lobbyist or any other individual may also sign the quarterly expense report of the lobbying firm or lobbyist on behalf of the lobbying firm or lobbyist, attesting to the accuracy of the report, with authorization by the lobbying firm or lobbyist on the lobbying firm's or lobbyist's registration statement.

The registration statement will designate all individuals who may sign expense reports on behalf of the lobbying firm or lobbyist.

(i) If an individual or lobbyist signs a lobbying firm's or lobbyist's quarterly expense report on the lobbying firm's or lobbyist's behalf without authorization by the lobbying firm or lobbyist on the lobbying firm's or lobbyist's registration statement, the quarterly expense report will not be considered a valid filing by the lobbying firm or lobbyist.

(ii) A lobbying firm or lobbyist that authorizes an individual to sign the quarterly expense report of the lobbying firm or lobbyist on the lobbying firm's or lobbyist's registration statement is still responsible for the accuracy and timely filing of the quarterly expense report.

(o) Whenever any person makes an expenditure for indirect communication under this section, for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, automated telephone calls, print or electronic media advertisement, billboard, publication or education campaign, the communication must clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.

#### **§ 55.2. Records maintenance, retention and availability.**

(a) A registrant shall maintain records reasonably necessary to substantiate the filings of lobbying activity made under sections 13A04 and 13A05 of the act (relating to registration; and reporting).

(1) The Department will prescribe standardized forms for reports, which shall be used by all principals, lobbying firms and lobbyists required to be registered under the act.

(2) In maintaining records, registrants may use any reasonable methods of estimation and allocation.

(3) Records of lobbying activity may be kept under any reasonable accounting basis, which includes:

(i) *Cash basis.* Revenue and related assets are recognized when received and expenses are recognized when payment is disbursed. For example, payroll costs are reported when paid, not when the associated hours are worked.

(ii) *Accrual basis.* Income is recognized when earned and expenses when incurred. For example, payroll is recognized when the associated hours are worked regardless of when payment is made.

(iii) *Modified accrual basis.* Recognizes an economic transaction or event as revenues in the operating statement when the revenues are both measurable and available to liquidate liabilities of the current period. Available means collectible in the current period or soon enough thereafter to be used to pay liabilities of the current period. Similarly, expenditures are generally recognized when an event or transaction is expected to draw on current spendable resources.

(4) Records of lobbying activity shall be maintained in sufficient detail to enable the registrant to fully comply with the act and this part.

(5) The records must identify the general subject matter or issue being lobbied. The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded or maintained.

(6) A registrant should keep its records on the same accounting basis for the 2-year period covering its registration under the act. If a registrant changes its accounting basis, then it should make an internal record noting the date of the change and the reason for the change.

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's nonlobbying activity. A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.

(1) Records that integrate both lobbying and nonlobbying activities shall be retained and made available for inspection or audit under this section and Chapter 61 (relating to compliance audits).

(2) An expenditure incurred partially in connection with lobbying may be prorated by any reasonable accounting method, but the method used shall be described in detail in the records maintained as to the expenditure.

(3) A registrant may value time spent lobbying in using any of the following examples of viable options as long as the method selected is a reasonable method of estimation and allocation:

(i) A registrant may employ a good faith estimate by using any reasonable method of estimation and allocation.

(ii) A registrant may keep a record of all of the time spent lobbying.

(iii) A registrant may use the entire fee expended for lobbying.

(c) A registrant shall retain the documents used in recordkeeping reasonably necessary to substantiate the filings to be made under section 13A04 or 13A05 of the act for 4 years from the date of filing.

(1) The documents to be used in recordkeeping include, but are not limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts, subcontracts, business diaries and calendars and other related written or computerized records.

(2) Original source records received by the registrant shall be retained in their original form to the extent possible.

(3) Records prepared by the registrant under this section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained to enable the Department, the Commission, the Office of Attorney General or the Board to access in readable form all of the information reasonably necessary to substantiate the registration statements or reports.

(5) Affidavits may be used if actual records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources. An affidavit must be as complete and detailed as is reasonably possible, and include the specific reasons for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent they are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry or other written or electronic form of record to document the expenditure. The record must include a notation of the reason an original source document was not available.

(e) The documents and records maintained and retained to substantiate expenditures must reflect for each reportable item, the following information:

(1) The full names of the payor and payee.

(2) The date of the transaction.

(3) The dates and forms of payments.

(4) The full name and official position of each State official or employee who was a beneficiary, and the amount of the expenditure reasonably attributable to each of them.

(5) The number of immediate family members of a State official or employee, who were beneficiaries, and the amount of the expenditures reasonably attributable to them.

(6) A description of the goods or services or other consideration for which the expenditure was made or incurred.

(f) Contributions of resources which are reportable under section 13A05(b)(5) of the act shall upon receipt be promptly documented by the registered principal through the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

(g) Documents and records maintained and retained to substantiate contributions of resources reportable under section 13A05(b)(5) of the act must reflect for each reportable item, the following information:

(1) The full names of the donor and donee.

(2) The amount or value and date of the contribution.

(3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided.

(4) Instructions, directions, conditions, restrictions, limitations or controls provided or imposed by the donor as to the use or disposition of the contribution.

(h) Upon written request by the Office of Attorney General, the Department, the Commission or the Board, documents reasonably necessary to substantiate filings made under sections 13A04 and 13A05 of the act shall be made available for inspection and copying within 30 days.

(1) The Office of Attorney General, the Department, the Commission or the Board may extend this 30-day deadline in connection with its own requests, when circumstances compelling an extended deadline are established.

(2) Computerized/electronic records shall be provided in readable form.

**§ 55.3. Public inspection and copying.**

(a) The Department will make completed expense reports, which have been filed with the Department, available for public inspection and provide copies of these documents at a price not in excess of the actual cost of copying.

(b) The Department will make all reports available on a publicly accessible Internet web site. Documents maintained and reproducible in an electronic format shall be provided in that format upon request.

**§ 55.4. Reliance on documents**

(a) *Reliance on manual.* A registrant's establishment and maintenance of records, as well as the filing of quarterly expense reports based on those records, in accordance with any manual or interim guidelines

adopted by the Committee shall serve as evidence of the registrant's good faith effort to comply with the act during the time when the manual or guidelines are in effect.

(b) *Reliance on instructions for forms.* A registrant's completion of registration statements and quarterly expense reports in accordance with instructions published by the Department shall serve as evidence of the registrant's good faith effort to comply with the act during the time when the instructions are in effect.

#### CHAPTER 57. EXEMPTION FROM REGISTRATION AND REPORTING

Sec.

57.1. General rule.

57.2. Qualifications for exemption.

##### § 57.1. General rule.

(a) Unless specified in § 57.2 (relating to qualifications for exemption), a person, principal, lobbying firm or lobbyist that qualifies for any exemption under § 57.2 will not be required to register or report with respect to any activity covered by the exemption. However, if an individual does not qualify for an exemption in § 57.2(a), then the activity described in the exemption shall be included within the reports otherwise required by the act.

(b) Upon losing exempt status, a person, principal, lobbying firm or lobbyist is immediately subject to the registration and reporting requirements of the act.

(c) Upon losing exempt status, a principal is not required to retroactively file reports for previous quarterly reporting periods in which the exemption applied.

(d) Upon losing exempt status, a lobbying firm or lobbyist is not required to retroactively sign or file reports for previous quarterly reporting periods in which the exemption applied.

##### § 57.2. Qualifications for exemption.

(a) *Exemption from registration.* The following persons and activities shall be exempt from registration under section 13A04 of the act (relating to registration) and reporting under section 13A05 of the act (relating to reporting):

(1) The exemption in section 13A06(1) of the act (relating to exemption from registration and reporting) is limited to an individual or entity whose only lobbying activities consist of preparing testimony and testifying before a committee of the General Assembly or participating in an agency administrative proceeding. Participating in an administrative proceeding includes, but is not limited to, preparing and delivering comments on regulations or preparing and delivering comments at agency advisory committee meetings. To the extent an individual or entity, which is otherwise required to register and report under the act, engages in those activities, the individual or entity does not qualify for the exemption under this subsection.

(2) The exemption in section 13A06(2) of the act is limited to an individual or entity which is engaged in the business of publishing or broadcasting, regardless of the medium used, while engaged in the gathering and dissemination of news and comment on the news to the general public in the ordinary course of business. The term "individual" in this subsection includes employees and independent contractors.

(i) To qualify for this exemption, the individual or entity shall satisfy all of the following criteria:

(A) Regularly report or comment on government news or current events.

(B) Receive compensation or revenue for the publications or broadcasts.

(C) Make the publications or broadcasts available to the general public, whether for a fee or free of charge.

(D) Be independent of any principal, lobbying firm or lobbyist that is engaged in lobbying activities under the act.

(E) Be independent of any organization or entity that is not a news organization.

(ii) To the extent an individual or entity, which is otherwise required to register and report under the act, engages in activities other than the publishing or broadcasting of news or comment on the news, the other activities will not be afforded an exemption under this subsection.

(3) The exemption in section 13A06(3) of the act is limited to an individual who does not receive any economic consideration for lobbying.

(4) The exemption in section 13A06(4) of the act is limited to an individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

(5) The exemption in section 13A06(5) of the act is limited to an individual who engages in lobbying on behalf of the individual's employer if the lobbying activity represents less than 20 hours during any reporting period.

(6) The exemption in section 13A06(6) of the act is limited to a principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

(7) The exemptions in section 13A06(7), (8), (9) and (10) of the act (as referenced in section 13A05(b)(8)) exclude Commonwealth governmental entities and political subdivisions as well as elected officials, appointed officials and employees of the entities or subdivisions from the registration and reporting requirements of the act to the extent that the lobbying activities are performed by the governmental entities or by their officials/employees in an official capacity. Specifically, these sections exempt lobbying by a governmental entity on its own behalf and lobbying by an official/employee of the entity acting in an official capacity so that neither the official/employee nor the governmental entity would be required to register or report as to those activities under the act. The governmental entity would be required to register and report as a principal if other lobbyists or lobbying firms would engage in lobbying on behalf of the governmental entity and the total expenditures for those lobbying activities would not bring the governmental entity within the exemption in section 13A06(6) of the act.

(8) The exemption in section 13A06(11) of the act is limited to an individual representing a bona fide church or bona fide religious body of which the individual is a member, or the bona fide church or bona fide religious body itself, when the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion. Lobbying on issues beyond the scope of the free exercise of religion does not qualify for this exemption no matter who engages in the lobbying.

(9) The exemption in section 13A06(12) of the act applies to an individual who is not otherwise required to register and who serves on an advisory board, working

group or task force at the request of an agency or the General Assembly. This exemption is limited to the scope of the individual's service on the advisory board, working group or task force.

(10) The exemption in section 13A06(13) of the act applies to the activity of participating as a party or as an attorney at law or representative of a party, case or controversy in any administrative adjudication pursuant to 2 Pa.C.S. (relating to administrative law and procedure). This activity is exempt whether performed by an individual or entity, but will not operate to exclude from reporting other activities performed by individuals or entities that are otherwise required to register and report under the act.

(11) The exemption in section 13A06(14) of the act applies to expenditures and other transactions subject to reporting under Article XVI of the Election Code (25 P. S. §§ 3241—3260b).

(b) *Vendor activities.* The exemption in section 13A06(15) of the act applies to vendor activities under 62 Pa.C.S. §§ 514 and 516 (relating to small procurements; and emergency procurement) and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals. This exemption also includes:

(1) The following vendor activities in response to public procurement actions initiated by the Commonwealth:

(i) Submission of supplier pricing requests and sealed quotes, bids and proposals in response to a Request for Quotes, Invitation For Bids, Request for Proposals or other competitive procurement process.

(ii) Submission of questions; participation in a site visit; prebid or preproposal conference; and communications concerning the procurement process between the vendor's and the covered agency's contracting officer designated by the competitive procurement document related to an active procurement.

(iii) Submission of a response to a Request for Expressions of Interest or Request For Information seeking formal expression of interest or identification of vendor capabilities for a potential future procurement.

(2) Activities and communications necessary or incidental to performing an existing contract or the demonstration of products or services authorized by an existing contract to covered agencies that may order from the contract.

(3) Participation in trade shows, conventions or product demonstrations open to the public or held for an open community when Commonwealth representatives are among the attendees.

(4) Participation in an open, public forum for vendors conducted by the Commonwealth.

**CHAPTER 59. OPINIONS AND ADVICES OF COUNSEL**

Sec.	
59.1.	Ethics Act regulations in Part I as to opinions and advices of counsel.
59.2.	Standing requirements.
59.3.	Prospective conduct to be reviewed.

**§ 59.1. Ethics Act regulations in Part I as to opinions and advices of counsel.**

(a) The Commission will provide advices of counsel and opinions in accordance with the procedures in section 1107 of the Ethics Act (relating to powers and duties of commission) and Chapter 13 (relating to opinions and advices of counsel).

(b) A person who acts in good faith based upon a written advice or opinion of the Commission issued as to that person will not be held liable for a related violation of the act if the material facts are as stated in the request.

(c) A respondent or defendant who reasonably relies upon advices or opinions of the Commission shall have an affirmative defense under section 13A09(g)(1) of the act (relating to penalties).

**§ 59.2. Standing requirements.**

(a) The following shall have standing to request an advisory under the act:

(1) A principal, lobbying firm, lobbyist, State official or employee, the Department, the Board or the authorized representative of any of the aforesaid.

(2) Individuals, entities or their authorized representatives regarding their status or duties under the act.

(b) A principal or lobbying firm shall have standing to request an advisory regarding the status, duties or activities of its employees.

(c) An unauthorized request for an advice or opinion as to the conduct of another shall be considered a "third-party request" and will not be entertained.

(d) The Department and the Board will have standing to request an advisory as to questions or issues regarding their respective duties and authority under the act.

**§ 59.3. Prospective conduct to be reviewed.**

An advice or opinion will only be issued as to prospective conduct, pertinent to the subject of the request.

**CHAPTER 61. COMPLIANCE AUDITS**

Sec.	
61.1.	Lotteries.
61.2.	Scope of compliance audits.
61.3.	Audit procedures.
61.4.	Audit report.
61.5.	Confidentiality.
61.6.	Duty of the Department to contract for an audit.

**§ 61.1. Lotteries.**

(a) Each year, the Department will randomly select, at a public drawing 60 days following the close of each fourth quarter reporting period, 3% of all principals, 3% of all lobbying firms and 3% of all lobbyists who have completed registration statements and expense reports filed with the Department under the act.

(b) A lobbyist, lobbying firm or principal will not be selected for a random audit in consecutive audit periods.

**§ 61.2. Scope of compliance audits.**

(a) The audits will be conducted in accordance with generally accepted auditing standards and will test as to whether each registration statement or expense report is materially correct.

(b) An audit will be limited in time to the previous calendar year. However, where the audit falls in the second year of a registration period, the audit shall include the registration statement filed in the previous year. Lobbying activities performed prior to January 1, 2007, will not be audited under the act.

**§ 61.3. Audit procedures.**

The following general procedures will be employed for audits conducted under section 13A08(f) of the act (relating to administration):

(1) The Department, at least 30 days prior to the initiation of the audit, will advise each audit subject by

letter that the audit subject was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

(2) The independent auditor will obtain the subject's reports on file with the Department applicable to the audit period. Lobbying activities performed prior to January 1, 2007, will not be audited under the act.

(3) The independent auditor will initiate the audit by way of conference (in person or by telephone) between the auditor and the audit subject or the designated representative thereof.

(4) The registrant who is the audit subject shall cooperate fully in the audit, which shall be conducted in accordance with generally accepted auditing standards.

(5) If the independent auditor believes that the audit subject is not cooperating, the independent auditor shall inform the Department in writing.

(6) The independent auditor will offer to conduct an audit exit conference with the audit subject, or the designated representative thereof, prior to the issuance of a final report.

#### § 61.4. Audit report.

(a) The certified public accountants or certified public accounting firms, selected under section 13A08(f)(1) (relating to administration) and § 61.6 (relating to duty of the Department to contract for an audit), that are responsible for performing compliance audits will, at the conclusion of each audit, prepare an audit report which must include findings.

(b) An audit report may include recommendations as to recordkeeping, reporting and other related practices arising from the audit.

(c) Upon completion, the independent auditor shall send a copy of the audit report and the findings of fact by certified mail to the audit subject. The independent auditor shall issue the audit report within 1 year of being notified of the selection of the audit subject.

(1) Issuance of the audit report will be deemed complete upon mailing to the audit subject.

(2) Within 30 days of issuance of the audit report, the audit subject may file with the Department a statement setting forth the subject's position as to the audit report.

(d) Audit reports and any related responses shall be submitted to the Department for review and may form the basis for further proceedings or referrals under the act or the Ethics Act.

#### § 61.5. Confidentiality.

The audit report and findings will be confidential except that the Department will make an audit report and findings available to the Commission if the Commission is investigating an alleged violation of this chapter involving the audited registration or expense report within the requirements of the act and Chapters 53 and 55 (relating to registration and termination; and reporting). The Commission will include the relevant portion of an audit as part of its findings of fact in a Commission order that results from an investigation arising out of an audit.

#### § 61.6. Duty of the Department to contract for an audit.

Every 2 years, the Department will contract for the services of one or more certified public accountants or

certified public accounting firms. The contract will be awarded in a manner consistent with 62 Pa.C.S. Part I (relating to Commonwealth Procurement Code), and no certified public accountant or certified public accounting firm will be eligible to obtain a contract for 2 successive contract periods.

### CHAPTER 63. COMMISSION REFERRALS, INVESTIGATIVE PROCEEDINGS AND NONINVESTIGATIVE PROCEEDINGS

Sec.	
63.1.	Commission referrals.
63.2.	Commission proceedings regarding prohibited activities under section 13A07 of the act.
63.3.	Commission proceedings regarding late or deficient filings. 13A04 or 13A05 of the act.
63.4.	Noninvestigative process for late or deficient filings.
63.5.	Investigative process for late or deficient filings.
63.6.	Administrative penalties for late or deficient filings.
63.7.	Commission decisions as to late or deficient filings.

#### § 63.1. Commission referrals.

(a) If the Commission has reason to believe that an intentional violation of the act has been committed, it will refer all relevant documents and other information to the Office of Attorney General and, if the lobbyist or principal is an attorney at law, to the Board.

(b) The Commission may refer any alleged violation of section 13A07(f) of the act (relating to prohibited activities) to the Office of Attorney General for both investigation and prosecution.

(c) The Commission will refer any alleged violation of section 13A07(d) or (f) of the act to the Board if the subject of the alleged violation is an attorney at law.

(d) Under section 13A09(b) of the act (relating to penalties) and § 63.4(16) (relating to noninvestigative process for late or deficient filings), if the Commission finds that a failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution and, if the person is an attorney at law, to the Board.

(e) Nothing contained in the act or this part will prohibit the Office of Attorney General from independently initiating an investigation or prosecution under the act pursuant to its authority by law, and the Office of Attorney General need not await a referral from the Commission before initiating such an investigation or prosecution.

(f) Nothing contained in the act or this part will restrict the Board's authority to discipline an attorney-at-law who is acting as a lobbyist or principal.

(g) Except for a matter under section 13A07(d)(8) of the act, a referral by the Commission or the Office of Attorney General to the Board will not preclude the referring agency from also conducting its own enforcement proceeding under the act.

#### § 63.2. Commission proceedings regarding prohibited activities under section 13A07 of the act.

(a) Upon receipt of a complaint as defined in § 51.1 (relating to definitions), the Commission, through its Executive Director, will conduct a preliminary inquiry into an alleged negligent or unintentional violation of section 13A07 of the act (relating to prohibited activities). A preliminary inquiry will not be conducted for matters under the act that are required to be referred to the Board for the Board's exclusive review pursuant to section 13A07(d)(8) or for matters involving section 13A07(f) that the Commission, in its discretion, chooses to refer to the Office of Attorney General for investigation.

(b) Except for matters required to be referred to the Board for its exclusive review pursuant to section 13A07(d)(8) of the act, the Commission, upon the motion of the Executive Director, may conduct a preliminary inquiry into an alleged negligent or unintentional violation of section 13A07 of the act.

(c) Preliminary inquiries will be conducted in accordance with the procedures for preliminary inquiries set forth in section 1108 of the Ethics Act (relating to investigations by commission) and § 21.3 (relating to preliminary inquiries), to the extent applicable.

(d) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent or unintentional violations of section 13A07 of the act by a lobbyist, lobbying firm or principal, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions in §§ 21.1—21.3, 21.5 and 21.21—21.27.

(1) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(2) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(e) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent or unintentional violations of section 13A07 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order).

(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

**§ 63.3. Commission proceedings regarding late or deficient filings.**

(a) Commission proceedings under sections 13A04 or 13A05 of the act (relating to registration; and reporting) may be initiated based upon one or more of the following:

- (1) Receipt of a complaint.
- (2) Information submitted by the Department, at its discretion, including, but not limited to, referrals or other information pertaining to late or incomplete filings, the failure to file required registration statements and the failure to file quarterly expense reports.

(3) A referral by the Department of any information arising from an audit, which, in the view of the Department, is appropriate for the Commission to consider.

(4) Reviews of filings conducted by Commission staff.

(5) On the motion of the Commission's Executive Director, which is based upon a reasonable belief that a violation of section 13A04 or 13A05 of the act may have occurred.

(b) The Commission, through its Executive Director, will initiate proceedings involving sections 13A04 or 13A05 of the act under either the noninvestigative procedures in § 63.4 (relating to noninvestigative process for late or deficient filings) or under the investigative procedures in § 63.5 (relating to investigative process for late or deficient filings).

(1) In each case, the Executive Director of the Commission will elect the process to be followed based upon factors which include, but are not limited to:

- (i) The complexity of the matter.
- (ii) Whether an investigation is needed to fully review the matter.
- (iii) Whether the filer has had prior notice of the requirements of the act.
- (iv) Whether the filer has in the past complied with the act.

(2) The election of the process to be followed will not be controlled by the manner in which the alleged negligent violation or noncompliance comes to the attention of the Commission.

(3) If a formal complaint is received alleging a failure to register or report as required by the act, or the filing of a registration or report containing a false statement, the Commission through its Executive Director may elect to proceed in the matter under the noninvestigative procedures of § 63.4 rather than through the investigative procedures of § 63.5.

(4) A complainant will be notified of the Executive Director's election of the process to be followed.

(5) Information received under subsection (a) may form the basis for proceedings under either the noninvestigative procedures of § 63.4, or, on the motion of the Commission's Executive Director, the investigative procedures of § 63.5.

(c) If the Department makes a referral to the Commission based on an audit, the Commission will handle the referral through the investigative process.

**§ 63.4. Noninvestigative process for late or deficient filings.**

The noninvestigative process for matters under section 13A04 or 13A05 of the act (relating to registration; and reporting) will include the following procedures:

(1) Prior to the issuance of a notice of alleged noncompliance pursuant to section 13A09 of the act (relating to penalties), the Executive Director of the Commission will issue a warning notice to the lobbyist, lobbying firm or principal that has allegedly failed to register or report as required by the act. The warning notice may encompass multiple alleged failures to comply with the act. The warning notice will state the nature of the alleged noncompliance and the administrative and criminal penalties for failing to register, failing to file a report, or filing a report that contains a false statement or that is incomplete.

(2) The recipient of the warning notice shall have 30 days from the mailing date of the warning notice in which to cure the alleged noncompliance. The Investigative Division, may extend the 30-day time period for curing the alleged noncompliance. If the alleged noncompliance is not cured within the 30-day period or any extension thereof, the Investigative Division of the Commission may file with the Commission a notice of alleged noncompliance. The notice will be served upon the respondent by the Investigative Division. A notice of alleged noncompliance may encompass multiple alleged failures to comply with the act.

(3) The notice of alleged noncompliance will set forth the pertinent factual averments in numbered paragraph form and will state the nature of the alleged noncompliance and the administrative and criminal penalties for



failing to register, failing to file a report, or filing a report that contains a false statement or that is incomplete. A notice of alleged noncompliance will also advise of the right to appeal from the notice, to file a written answer to the notice and to request a hearing before the Commission. A notice of alleged noncompliance will set forth the time and manner in which to file an appeal, file a written answer and request a hearing.

(4) An answer to the notice of alleged noncompliance must be filed (received at the Commission) within 30 days of service of the notice upon the respondent, and the notice of alleged noncompliance will include a statement to this effect. Filing of an answer is deemed to be both an appeal and a request for a hearing.

(5) An answer to the notice of alleged noncompliance must specifically admit or deny each of the factual averments made in the petition, set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied will be deemed admitted. The notice of alleged noncompliance will include a statement to this effect.

(6) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the notice of alleged noncompliance. The notice of alleged noncompliance will include a statement to this effect.

(7) To the extent that a respondent does not file an answer, a request by the respondent for a hearing must be in writing and be received at the Commission within 30 days of service of the notice of alleged noncompliance upon the respondent. Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(8) If the recipient of a notice of alleged noncompliance fails to file a written answer or otherwise fails to file an appeal or a request for a hearing, the notice of alleged noncompliance is deemed admitted and the Commission may find the respondent to be in noncompliance and impose a penalty or penalties pursuant to the act. Furthermore, filing a notice of appeal will automatically constitute a request for a hearing.

(9) If the respondent does not file an answer or otherwise submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(10) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(11) If a hearing is requested by the respondent or Investigative Division or is scheduled by the Commission, the respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(12) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged, or information not within paragraph (11).

(13) A hearing under section 13A09(b) of the act as to a negligent failure to register or report will be public and will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of commission; and investigations by Commission), and to the extent applicable, the related

provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(14) The hearing officer or the parties may request that briefs be presented. The filing of briefs must be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs) to the extent applicable.

(15) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission will determine, based upon the record before it, whether the respondent was required to register or report under the act; whether the failure to register or report was negligent; and if the failure was negligent, the amount of the administrative penalty to be imposed. At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

(16) If the Commission finds that the failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution, and if the person is an attorney at law, the Commission will also refer the matter to the Board.

(17) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(18) At any time prior to a final adjudication by the Commission, the Investigative Division will have authority to negotiate settlements and to enter into settlement agreements to resolve matters under this section. Settlement agreements will be subject to review and approval by the Commission. Settlement agreements may include arrangements for deferral or termination of proceedings prior to any adjudicative disposition, or terms for an adjudicative disposition, including penalties provided by the act.

(19) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures in § 21.29(b) and (d)—(f) (relating to finality; reconsideration) to the extent applicable.

(20) The Commission will notify the Board of any administrative/civil penalty imposed by the Commission against an attorney at law for failure to register or report.

(21) A complainant will be notified of the final resolution of the matter.

(22) The official record of the case before the Commission will be publicly available.

(23) The files of the Investigative Division will not be publicly available.

### **§ 63.5. Investigative process for late or deficient filings.**

The investigative process for matters under section 13A04 or 13A05 of the act (relating to registration; and reporting) will include the following procedures:

(1) The Commission, through its Executive Director, may conduct a preliminary inquiry into any alleged negligent violation of section 13A04 or 13A05 of the act. Preliminary inquiries will be conducted under the procedures for preliminary inquiries in section 1108 of the Ethics Act (relating to investigations by commission) and, to the extent applicable, § 21.3 (relating to preliminary inquiries).

(2) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concern-

ing alleged negligent violations of section 13A04 or 13A05 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions in §§ 21.1—21.3, 21.5 and 21.21—21.27.

(i) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(ii) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(iii) A person has a duty to comply with a lawfully issued subpoena, even if that person is located out-of-State pursuant to 42 Pa.C.S. § 5322 (relating to the bases of personal jurisdiction over persons outside this Commonwealth).

(3) At any time prior to a final adjudication by the Commission, the Investigative Division will have authority to negotiate settlements and to enter into settlement agreements to resolve matters under this section. Settlement agreements will be subject to review and approval by the Commission. Settlement agreements may include arrangements for deferral or termination of proceedings prior to any adjudicative disposition, or terms for an adjudicative disposition, including penalties provided by the act.

(4) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 13A04 or 13A05 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order). At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

**§ 63.6. Administrative penalties for late or deficient filings.**

Following a noninvestigative process under § 63.4 (relating to noninvestigative process for late or deficient filings), or an investigative process under § 63.5 (relating to investigative process for late or deficient filings), if the Commission finds negligent failure to register or report as required by the act, the Commission may, upon the vote of at least four of its members present, levy one or more administrative penalties as provided for in this section.

(1) Each negligent failure to register or report as required by the act is punishable by an administrative penalty of up to \$50-per-day for each day the registration statement or report is delinquent or deficient.

(2) An administrative penalty will be calculated from the first day the registration statement or report is delinquent or deficient, through the date a complete and accurate registration statement or report is filed or the Commission decides the matter, whichever occurs first.

(3) In determining whether to impose an administrative penalty that is less than \$50-per-day, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the delinquency, deficiency or false statement.

(ii) Whether the respondent has raised any justifiable excuse such as, for example, the following:

(A) The unavailability of records due to loss, theft or destruction through no fault of the respondent.

(B) Incapacitating physical or mental illness, hospitalization, accident involvement, or death of a person required to register or report, a person whose participation is essential to the filing, or a member of the immediate family of the person.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the registration/reporting requirements of the act.

(iv) Whether Commission records indicate that the Commission has previously notified the respondent, in writing, of other delinquent, deficient, or false registration statements or reports.

(v) Whether proceedings have previously been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(vi) Whether there are any other factors that should be considered as aggravating or mitigating factors in the case.

(4) The imposition of an administrative penalty by the Commission will not preclude a criminal prosecution for intentional violation of the act.

**§ 63.7. Commission decisions as to late or deficient filings.**

The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

**CHAPTER 65. PROHIBITION AGAINST LOBBYING FOR ECONOMIC CONSIDERATION AS A SANCTION**

Sec.	
65.1.	Basis for prohibition against lobbying for economic consideration.
65.2.	Procedures for imposing prohibition against lobbying for economic consideration.

**§ 65.1. Basis for prohibition against lobbying for economic consideration.**

(a) Under sections 13A07 and 13A09 of the act (relating to prohibited activities; and penalties), the Commission may prohibit a lobbyist from lobbying for economic consideration for up to 5 years when the lobbyist has done one or more of the following:

- (1) Violated section 13A07(d) of the act.
- (2) Violated section 13A07(f) of the act.

(b) Under section 13A09(e)(4) of the act, the Commission may prohibit a person from lobbying for economic consideration for up to 5 years when the person has done one or more of the following:

- (1) Intentionally failed to register or report as required by the act, as provided in section 13A09(e)(1) of the act.
- (2) As a registrant, filed a report under the act with knowledge that the report contained a false statement or was incomplete, as provided in section 13A09(e)(2) of the act.

(3) Otherwise intentionally violated the act, as provided in section 13A09(e)(3).

(4) Failed to comply with section 13A04, 13A05 or 13A07 of the act (relating to registration; reporting; and prohibited activities) after notice of noncompliance and after a hearing, if requested, as provided in section 13A09(d).

(c) For the limited purpose of the imposition of a prohibition against lobbying for economic consideration, the respondent shall be deemed to have been notified of noncompliance when served with both of the following:

(1) A findings report, notice of alleged noncompliance or other form of process which meets the requirements of section 13A09(a) of the act.

(2) A Commission order or court order finding the respondent in noncompliance with, or in violation of, the act.

(d) For the limited purpose of the imposition of a prohibition against lobbying for economic consideration, the respondent shall be deemed to have failed to comply after notice of alleged noncompliance if the respondent has not satisfied the requirements of the act within 30 days of the issuance of a Commission order or court order finding the respondent in noncompliance/violation, or within another time for compliance as specified by the order.

(e) The prohibition against lobbying for economic consideration will not be imposed unless the defendant/respondent has been afforded the opportunity for a hearing as to whether the prohibition should be imposed.

(f) At any time prior to a final determination by the Commission as to the imposition of a prohibition against lobbying for economic consideration, the Investigative Division of the Commission will have authority to negotiate settlements and to enter into settlement agreements to resolve matters under this chapter. Settlement agreements will be subject to review and approval by the Commission. Settlement agreements may include arrangements for deferral or termination of proceedings prior to any disposition, or terms for a disposition, including the duration of any prohibition against lobbying for economic consideration to be imposed under the act.

(g) The record of the underlying proceeding on violation/noncompliance, as well as relevant evidence of mitigating or aggravating factors, shall be admissible in a Commission proceeding involving the imposition of a prohibition against lobbying for economic consideration. At the hearing, the Commission will determine initially whether the defendant or respondent violated the act. If the Commission makes an initial determination that the defendant or respondent violated the act, the defendant/respondent may thereafter present argument regarding an appropriate penalty.

**§ 65.2. Procedures for imposing prohibition against lobbying for economic consideration.**

(a) Giving consideration to the factors in subsection (b)(14), the Commission, through its Executive Director, may institute proceedings to seek the imposition of a prohibition against lobbying for economic consideration.

(b) The procedures for the imposition of a prohibition against lobbying for economic consideration will be as follows:

(1) The proceedings will be initiated with the Commission through the filing of a petition by the Investigative Division. The petition will be served upon the respondent by the Investigative Division.

(2) The petition will set forth the pertinent factual averments in numbered paragraph form, and will notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the failure to comply with a Commission order, the petition will be docketed to the same number

as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition will be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

(3) An answer to the petition shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(4) An answer to the Investigative Division's petition must specifically admit or deny each of the averments made in the petition, and set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied will be deemed admitted.

(5) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition seeking the prohibition.

(6) A request by the respondent for a hearing must be in writing and be received at the Commission within 30 days of service of the petition upon the respondent. The Commission will schedule a hearing at least 30 days after the filing of an answer.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(7) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(8) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(9) The Investigative Division of the Commission will give the respondent access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(10) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged or information not within paragraph (9).

(11) A hearing under this chapter will be public and be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of commission; and investigations by commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(12) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs), to the extent applicable.

(13) After the opportunity for a hearing has been provided, and following the submission of briefs, the Commission will determine, based upon the record before it, whether and for how long a prohibition against lobbying for economic consideration is to be imposed against the respondent.

(i) If a lobbyist or person has been found to be in noncompliance or in violation of the act in a proceeding before the Commission, for which noncompliance or viola-

tion the penalty of prohibition against lobbying for economic consideration may be imposed, the finding of noncompliance or violation will be res judicata, and the Commission's further determination will be limited to the amount of time, if any, that the lobbyist or person shall be prohibited from lobbying for economic consideration.

(ii) To the extent any factual matters remain to be proven, the matters will be proven by clear and convincing evidence.

(iii) A prohibition against lobbying for economic consideration may only be imposed by a vote of at least four members of the Commission present at a meeting.

(14) In determining whether and for how long a prohibition against lobbying for economic consideration is to be imposed against a respondent, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the violation or failure to comply.

(ii) Whether the respondent has raised a justifiable excuse.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the requirements of the act.

(iv) Whether other proceedings have been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(v) Whether there are other factors that should be considered as aggravating or mitigating factors in the case.

(15) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures in § 21.29(b) and (d)—(f) (relating to finality; reconsideration), to the extent applicable.

(17) The official record of the case, including a consent agreement, before the Commission will be publicly available.

(18) The files of the Investigative Division will not be publicly available.

(c) If a lobbyist or person is convicted in a criminal proceeding for a violation of the act for which the penalty of prohibition against lobbying for economic consideration may be imposed, the conviction will be res judicata, and the Commission's determination will be limited to the amount of time, if any, that the lobbyist or person shall be prohibited from lobbying.

**CHAPTER 67. PROHIBITED ACTIVITIES**

**§ 67.1. Prohibited activities.**

A list of prohibited activities and penalties can be found in section 13A07 of the act (relating to prohibited activities).

**CHAPTER 69. SEVERABILITY**

**§ 69.1. Severability.**

If any provision or clause of this part or the application thereof to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

[Pa.B. Doc. No. 09-691. Filed for public inspection April 10, 2009, 9:00 a.m.]





