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PENNSYLVANIA BULLETIN

Volume 40

Number 19

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Pages 2383—2504

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The Courts

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Affairs

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(Master Transmittal Sheets):**

No. 426, May 2010

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

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THE GOVERNOR

Proclamation

Special and Extraordinary Session; Transportation System Funding

Whereas, In November 2006, the Pennsylvania Transportation Funding and Reform Commission's report on the Commonwealth's transportation system funding needs established that \$1.7 billion in new revenue annually was necessary to ensure the safe and reliable operation of all components of the Pennsylvania transportation system including highways, bridges and public transit systems; and

Whereas, Pennsylvania already leads the nation in the number of structurally deficient bridges, with 5,646 and the number of Pennsylvania's state-owned structurally deficient bridges is greater than the number of structurally deficient bridges in the New England states, New York, New Jersey, Ohio, Virginia, and Maryland combined; and

Whereas, Pennsylvania's state maintained roads have more than 7,000 miles of pavement in very poor condition, and a total of 10,000 miles of roadway where the regular and necessary resurfacing is significantly behind schedule; and

Whereas, the state highway and bridge system now has a backlog of \$2.576 billion in unfunded needs; and

Whereas, Pennsylvania's 38 transit systems have \$484 million in capital improvements and repairs for 2010-11, which must be addressed to ensure buses, rail cars, and trolleys are kept in a state of good repair; and

Whereas, the curtailment of rail lines because of deteriorated bridges threatens service and has the potential to force more riders into their vehicles and worsen already severe congestion, which in the state's largest metro area already costs \$786 per year for each peak-hour traveler, forces the consumption of an extra 71 million gallons of fuel a year, and means commuters spend an extra 38 hours on congested roadways; and

Whereas, in July 2007, Act 44 was enacted with bi-partisan support in both the House of Representatives and the Senate, to provide for additional revenue of \$950,000,000 annually on average during the first ten years of fifty years to make improvements to Pennsylvania's transportation system; and

Whereas, Act 44 provided for this level of funding by enabling the Pennsylvania Turnpike Commission to impose toll increases on the Pennsylvania Turnpike system and by authorizing the Commission to submit an application to the United States Department of Transportation requesting permission to convert the Pennsylvania portion of Interstate 80 to a toll road; and

Whereas, Act 44 includes contingent language that relieves the Turnpike Commission of its obligation to make a portion of its payments to the Commonwealth if the United States Department of Transportation fails to approve this application; and

Whereas, Act 44 did not provide for a substitute revenue source to replace the proceeds from the anticipated tolling of Interstate 80 if federal approval was not obtained; and

Whereas, on April 6, 2010, the Federal Highway Administration made its final determination and rejected the Commission's application to toll Interstate 80; and

Whereas, as a result of this federal decision, \$60 billion over the life of Act 44 that would have been available for improvements to the state's transportation system will not be available to the Commonwealth; and

THE GOVERNOR

Whereas, as a result of this federal decision the Commonwealth immediately needs to replace \$472 million in transportation system improvement funds in Fiscal Year 2010/2011 or forego making significant bridge, road and transit capital improvements and reduce the incremental increases in transit operating subsidies provided for in that fiscal year; and

Whereas, if no additional funds are provided to replace these funds, over the next four years, a full 12 percent of all of our roads in need of repair will not be improved, affecting the on-road trips of thousands who travel 4.7 million miles on these roads and highways every day. At least 450 bridges will not be repaired, affecting the safe or convenient passage by thousands of travelers who amass more than 443,000 miles on these structures daily. At least \$927 million in transit capital projects will not commence, affecting the safe and convenient passage by tens of thousands of passengers who make more than 40 million trips on mass transit systems annually in the Commonwealth.

Therefore, By virtue of the authority vested in me by Article II, Section 4; Article IV, Section 12; and Article III, Section 12, of the Constitution, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, do hereby convene the General Assembly in special and extraordinary session, to meet in the Capitol at Harrisburg, on May 3, 2010, in order to address immediate and future transportation funding needs of the citizens of the Commonwealth.

Given, under my hand and the seal of the Governor, at the City of Harrisburg, on this twenty-eighth day of April in the year of our Lord two thousand and ten, and of the Commonwealth the two hundred and thirty-fourth.



Governor

[Pa.B. Doc. No. 10-812. Filed for public inspection May 7, 2010, 9:00 a.m.]

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 15]

Amending Rules of Appellate Procedure 1512 and 1516 and Proposing New Rule 1572

The Appellate Court Procedural Rules Committee proposes that a new rule, Rule of Appellate Procedure 1572, be enacted, and that Rules of Appellate Procedure 1512 and 1516 be amended. The proposed rule changes are being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed amendment should be sent no later than Wednesday, June 23, 2010 to:

Dean R. Phillips, Chief Counsel
D. Alicia Hickok, Deputy Counsel
Scot Withers, Deputy Counsel
Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
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Harrisburg, PA 17106-2635

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An Explanatory Comment follows the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will neither constitute part of the rule nor be officially adopted or promulgated.

By the Appellate Court Procedural Rules Committee

HONORABLE MAUREEN LALLY-GREEN,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1512. Time for Petitioning for Review.

* * * * *

(b) *Special appellate provisions.*—A petition for review of:

* * * * *

(5) A determination of a Court of Common Pleas under Rules of Criminal Procedure 850—862 shall be filed within 10 days of the date of entry of the order upon the docket.

* * * * *

Rule 1516. Other Pleadings Allowed.

(a) *Appellate jurisdiction petitions for review.* No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for

review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), **Rule 1572 (review of determinations of competency to be executed)**, Rule 1762 (regarding release in criminal matters), Rule 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Rule 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Rule 123(b).

REVIEW OF DETERMINATIONS OF THE BOARD OF FINANCE AND REVENUE

Rule 1572. Review of Determinations of Competency to be Executed.

Any party seeking review of a determination by a Court of Common Pleas under Rules of Criminal Procedure 850—862 shall file a Petition for Review in the Pennsylvania Supreme Court. Review of a determination under Rules of Criminal Procedure 850—862 shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule.

(a) The general provisions of Rule 1516(a) will not apply. The Answer to the Petition for Review shall be filed within 14 (fourteen) days.

(b) *Scope of review.* Rule 1551(a) (appellate jurisdiction petitions for review) shall be applicable to the review of a determination under Rules of Criminal Procedure 850—862, except that the Court may request supplementation of the procedures or review the quantity or quality of evidence received by the Trial Court.

(c) *Disposition of petition for review.* Rule 1561(a) (appellate jurisdiction petitions for review) shall be applicable to the review of a determination under Rules of Criminal Procedure 850—862. If the Supreme Court requires further proceedings as provided for in Rule 1561(a), it may specify a time frame for such proceedings and may issue such further orders while retaining jurisdiction.

(d) No exceptions or motion to reconsider may be filed.

(e) Upon final disposition of the petition for review, the Prothonotary of the Supreme Court shall:

(1) Remand the record to the court of common pleas from which it was certified at the expiration of seven (7) days from the later of (i) the date of the expiration of the time for filing a petition of writ of certiorari to the United States Supreme Court or extension thereof where neither has been filed, (ii) the denial of a petition for a writ of certiorari; or (iii) upon remand from the United States Supreme Court, if that Court grants the petition for a writ of certiorari.

(2) Transmit a copy of the final order to the Governor within thirty (30) days from the later of (i) the date of the expiration of the time for filing a petition of writ of certiorari to the United States Supreme Court or extension thereof where neither has been filed, (ii) the denial of a petition for a writ of certiorari; or (iii) upon remand from the United States Supreme Court, if that Court grants the petition for a writ of certiorari.

(3) Provide contemporaneous notice of the remand and transmittal to the Secretary of Corrections.

Explanatory Comment

The Appellate Court Procedural Rules Committee, in conjunction with the Criminal Procedural Rules Committee, proposes that the Supreme Court enact Pa.R.A.P. 1572 and amend Pa.Rs.A.P. 1512(b) and 1516 to provide for review of a trial court's determination as to whether a person under a warrant of execution is competent to be executed. These rules will provide the exclusive means of review of proposed new Rules of Criminal Procedure 850—862 and are necessary only if those rules are enacted.

In *Ford v. Wainwright*, 477 U.S. 399, 409-410 (1986), the United States Supreme Court held that "the Eighth Amendment of the U.S. Constitution prohibits a State from carrying out a sentence of death upon a prisoner who is insane." In *Panetti v. Quarterman*, 551 U.S. 930 (2007), the United States Supreme Court elaborated upon what the Eighth Amendment requires, namely that once a movant makes a preliminary and substantial showing that "his current mental state would bar his execution," a court must assess whether a person is incompetent to be executed by providing the movant a fair hearing that includes "among other things, an adequate means by which to submit expert psychiatric evidence in response to the evidence that had been solicited by the state court. *Id.* at 934, 948. That a movant was previously found competent—to stand trial, for example—does not resolve whether a person is incompetent when the execution is scheduled to take place. *Id.* at 934. The United States Supreme Court has left it to the state courts to develop the procedure by which that constitutional mandate is to be implemented.

In *Commonwealth v. Banks*, 596 Pa. 297, 943 A.2d 230 (2007), the Pennsylvania Supreme Court confronted the question of *Ford's* requirements. In n.7 of that opinion, and subsequently in direct correspondence from Chief Justice Castille, the Supreme Court requested that the Appellate Court Procedural Rules Committee and the Criminal Procedural Rules Committee work together "to consider a framework for: (1) the timely filing and disposition of motions for stay of execution premised upon a claim that the defendant is incompetent to be executed; and (2) the timely litigation of the issue of whether such a defendant is indeed incompetent to be executed." The Chief Justice noted that the current Post Conviction Relief Act, 42 Pa.C.S. §§ 9541—9546 and the Criminal Rules do not provide an adequate process for instituting and disposing of cases in which the defendant's competency to be executed must be determined, and suggested that the Committees look at other jurisdictions' case law, rules, and statutes.

To accomplish this directive, a Joint Subcommittee of the Appellate Court Procedural Rules Committee and Criminal Procedural Rules Committee was formed to assist the two Committees in addressing the issue of competency to be executed. In a Recommendation published concurrently, the Committees propose new Rules of Criminal Procedure 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, and 862 to establish the procedures for determining a defendant's competency to be executed. In keeping with the procedures utilized in *Banks*, the Committees also recommend enacting a new Rule of Appellate Procedure 1572 and amending Rules of Appellate Procedure 1512 and 1516. New Rule 1572 and amended Rules 1512 and 1516 provide for a Petition for

Review to be filed directly with the Pennsylvania Supreme Court if a motion to determine incompetency is (a) dismissed without a hearing; or (b) granted or denied after a hearing.

The Joint Subcommittee's recommendations have been fully reviewed and approved for publication by both Committees. This Recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court for adoption. Proposed new material is in bold and underlined, while bracketed material is deleted.

[Pa.B. Doc. No. 10-813. Filed for public inspection May 7, 2010, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 2]

Proposed Amendments to Pa.Rs.Crim.P. 209 (Return with Inventory) and 212 (Dissemination of Search Warrant Information)

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 209 and 212 to clarify the requirement to return search warrants to the issuing authority promptly and to provide that unexecuted warrants do not constitute public records. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. 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.

The text of the proposed amendments to the rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
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Criminal Procedural Rules Committee
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Harrisburg, PA 17106-2635

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no later than Tuesday, June 22, 2010.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART A. SEARCH WARRANT

Rule 209. Return With Inventory.

(A) The law enforcement officer executing the search warrant shall return the search warrant

promptly after the search is completed, along with any inventory required under paragraph (C), to the issuing authority.

(B) Unexecuted warrants shall be returned promptly to the issuing authority once the period of time authorized for execution of the warrant has expired.

(C) An inventory of items seized shall be made by the law enforcement officer serving a search warrant. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, when feasible, or otherwise in the presence of at least one witness. The officer shall sign a statement on the inventory that it is a true and correct listing of all items seized, and that the signer is subject to the penalties and provisions of 18 Pa.C.S. § 4904(b)—Unsworn Falsification To Authorities. The inventory shall be returned to and filed with the issuing authority.

[(B)] (D) The judicial officer to whom the return was made shall, upon request, cause a copy of the inventory to be delivered to the applicant for the warrant and to the person from whom, or from whose premises, the property was taken.

[(C)] (E) When the search warrant affidavit(s) is sealed pursuant to Rule 211, the return shall be made to the justice or judge who issued the warrant.

Comments

The inventory is required to ensure that all items seized are accounted for in the return to the issuing authority. It thus differs from the receipt required by Rule 208, which is for the personal records of those from whose possession or from whose premises property was taken. In some cases, however, the list in the receipt may be sufficiently detailed so as to also be sufficient for use in the inventory. The inventory need not be sworn to before the issuing authority; however, the officer is subject to statutory penalties for unsworn falsification.

The rule was amended in 2010 specifically to require that the executed warrant be returned to the issuing authority. This amendment reflects a procedure with a long-standing practice but one that had not been codified in the rules.

As provided in Rule 205(D), search warrants generally authorize execution within a period not to exceed two days. Paragraph (B) requires that an unexecuted warrant be returned to the issuing authority upon expiration of this period. See Rule 212 regarding the exclusion of unexecuted search warrants from public disclosure.

Official Note: Rule 2009 adopted October 17, 1973, effective 60 days hence; amended April 26, 1979, effective July 1, 1979; amended September 3, 1993, effective January 1, 1994; renumbered Rule 209 and amended March 1, 2000, effective April 1, 2001; amended , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681, **3684** (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, **1478** (March 18, 2000).

Report explaining the proposed amendments related to the return of the search warrant published at 40 Pa.B. 2394, 2395 (May 8, 2010).

Rule 212. Dissemination of Search Warrant Information.

(A) The issuing authority shall not make any search warrants and any affidavit(s) of probable cause available for public inspection or dissemination until the warrant has been executed [, but in no case shall the delay be longer than 48 hours after the warrant has been issued].

(B) Any unexecuted warrants and any associated affidavits(s) of probable cause are not public records and upon return to the issuing authority shall be destroyed by the issuing authority.

Comment

Execution of search warrants carries the potential risk of hazard and premature dissemination of the intention to execute a warrant may greatly increase that risk. For this reason, this rule was adopted in 2008 to delay the dissemination of search warrant information to the general public until after execution [or no longer than 48 hours after issuance, whichever is sooner]. This rule does not deny disclosure of any search warrant information [to the public] to which the public is entitled, but rather, temporarily delays the dissemination of that information in order to protect public safety.

Once the warrant is executed, the information may be disseminated unless sealed pursuant to Rule 211.

The rule was amended in 2010 to clarify that unexecuted search warrants are not public records. This change recognizes that often search warrants may be issued that are never executed. This non-execution may arise from many factors, including a discovery that the information that formed the basis of the original issuance of the search warrant was inaccurate. Given the potential harm to the privacy rights of the subject of a search warrant as well as potential disruption to public safety and investigations, information related to such expired warrants must remain confidential. See *PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992) ("The ex parte application for the issuance of a search warrant and the issuing authority's consideration of the application are not subject to public scrutiny. The need for secrecy will ordinarily expire once the search warrant has been executed.")

Official Note: Rule 212 adopted June 23, 2008, effective August 1, 2008; amended , 2010, effective , 2010.

Committee Explanatory Reports:

Final Report explaining new Rule 212 providing for the limitations in dissemination of search warrant information published with the Court's Order at 38 Pa.B. 3651, 3652 (July 5, 2008).

Report explaining the proposed amendment providing that expired unexecuted warrants are not public records published at 40 Pa.B. 2394, 2395 (May 8, 2010).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 209 and 212

RETURN OF SEARCH WARRANTS

Return of Executed Warrants

The Committee began examining the need to specify procedures for the return of executed search warrants

because of a problem reported by the then-solicitor for the Special Courts Judges Association. A municipal police force was refusing to return search warrants to the magisterial district judge (MDJ) after they had been executed, resulting in the MDJ being unable to forward the case to the Clerk of Courts because the MDJ did not have all of the case documents required by Rule 210.

Presently, while Rules 205(6) and 209 mention the concept of a return of the warrant, there are no rules that specifically direct the police officer to return the search warrant to the designated judicial officer after it is executed. The Committee concluded that an explicit mention in the rules of the requirement to return the warrants after execution would emphasize the need for the return.

The Committee examined procedures from other jurisdictions that provide provisions for the return of search warrants. Some, such as Alabama, contained general provisions while others, like Maryland, were more specific including time limits for the return. The Committee favored the more general model. The Committee rejected setting a time limit for the return, concluding that any time period selected would be arbitrary and there would be no practical sanctions that could be imposed on the police for failing to abide by the limit.

The Committee therefore proposes adding a new paragraph (A) to Rule 209 that states the requirement that the search warrant and inventory be returned promptly to the issuing authority after execution.

Return of Unexecuted Warrants

The Committee then turned to the more complex issue of whether to include a provision for the return of unexecuted warrants. While there was debate over the need for such a provision, given that an unexecuted warrant will ultimately expire, the Committee concluded that, since the warrant is a court document, the court has an interest in its ultimate resolution and, therefore, unexecuted warrants should be included in the requirement to be returned. The requirement to return the unexecuted search warrant upon expiration would be added as a new paragraph (B) to Rule 209 along with explanatory revisions to the Comment.

The requirement to return unexecuted warrants raised a concern that once these documents have been returned to the issuing authority, they would be considered public records. The Committee recognized that public disclosure of these documents could cause problems such as the destruction of evidence or the endangerment of officers serving subsequent warrants.

More importantly, there are occasions when the information supporting a search warrant is discovered to be inaccurate or even fraudulent prior to the execution of the warrant so the search warrant will remain unexecuted. However, public disclosure of the information contained in the affidavits supporting these warrants could prove embarrassing or dangerous to the subject of the warrant and therefore constitute a severe harm to that individual's privacy interests.

To resolve this problem, the Committee at first considered a provision that a returned unexecuted warrant should be considered sealed. However, it was clear that such a statement raised a great many more questions, such as the duration of such a sealing order, than could be addressed with a simple statement.

This led to a discussion regarding whether the unexecuted warrants are in fact public documents. Penn-

sylvania strongly favors public access to search warrant information, based on both an Eighth Amendment and common law rationale. The clearest pronouncement of this view is found in *PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992). However, while noting with approval the process of sealing executed search warrants by court order, the Court specifically distinguished the pre-execution situation, stating, "The *ex parte* application for issuance of a search warrant and the issuing authority's consideration of the application are not subject to public scrutiny. The need for secrecy will ordinarily expire once the search warrant has been executed." 532 Pa. at 6, 614 A.2d at 1108.

The most recent decision on the question of search warrant records as public records is found in *Commonwealth v. Upshur*, 592 Pa. 273, 924 A.2d 642 (2007), where the Court stated that:

Certainly, however, any item that is filed with the court as part of the permanent record of a case and relied on in the course of judicial decision-making will be a public judicial record or document. *See, e.g., Fenstermaker*, 515 Pa. at 510, 530 A.2d at 419 (arrest warrant affidavits filed with a magistrate); *PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 6, 614 A.2d 1106, 1108 (1992) (search warrants and supporting affidavits).

However, *Upshur* cites *PG Publishing* for the general proposition that the search warrant and affidavits are to be considered public records but does not note the specific exclusion of unexecuted warrants. Additionally, while the language used in citing *PG Publishing* talks of a document relied on in the course of "judicial decision-making," it is unlikely that the probable cause determination is of a type of judicial decision-making contemplated by the Court. Such determinations are *ex-parte* proceedings and there is no public right to be present during a probable cause determination. If the search warrant is not utilized in any further proceedings, the probable cause determination would not be reviewable in the public arena.

The Committee concluded that unexecuted search warrants and the associated affidavits of probable cause do not constitute public records until execution, and unexecuted search warrants and their supporting documentation should remain confidential even after return. A statement to that effect would be added as new paragraph (B) to Rule 212.

The question then became how best to handle the documents themselves. The returned unexecuted search warrant almost certainly will be expired and therefore will never be executed. In most cases, the returned warrant would not be a filing in a case and would therefore require separate treatment. Rather than burden the MDJ with the need to create separate storage arrangements for these documents, the Committee proposes adding a provision that, upon return, the unexecuted search warrant documentation would be destroyed. This procedure also would eliminate the possibility that information harmful to the privacy interests of an individual are not made public when they have not resulted in any criminal charges.

This concept was borrowed from Maryland Criminal Procedure Rule 4-601 that states that the "judge to whom an unexecuted search warrant is returned may destroy the search warrant and related papers or make any other disposition the judge deems proper."

The Committee recognizes that the provision for the destruction of the returned unexecuted search warrant

may appear in conflict with the Records Retention and Disposition Schedule established by the Supreme Court pursuant to Rule of Judicial Administration 507. That policy requires that all search warrant documentation be retained for three years. However, the policy does not distinguish between warrants that have been executed and those warrants that have expired unexecuted. In the latter situation, there is little compelling reason for their retention since as noted about they are not public records and would not be reviewed in any form of action. The Committee would also recommend that the Court modify its policy specifically to permit the destruction of this limited type of search warrant documentation.

[Pa.B. Doc. No. 10-814. Filed for public inspection May 7, 2010. 9:00 a.m.]

[234 PA. CODE CHS. 1 AND 8]

Proposed New Pa.Rs.Crim.P. 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861 and 862; and Amendments to Pa.Rs.Crim.P. 113, 119 and 800

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules of Criminal Procedure 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861 and 862, and amend Rules of Criminal Procedure 113, 119 and 800. The proposed new rules and amendments establish the procedures for determining a defendant's competency to be executed and make correlative changes. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Note that the Committee's Report 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.

The text of the proposed amendments to the Rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
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 Criminal Procedural Rules Committee
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no later than Wednesday, June 23, 2010.

By the Criminal Procedural Rules Committee
 RISA VETRI FERMAN,
Chair

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
 CHAPTER 1. SCOPE OF RULES, CONSTRUCTION
 AND DEFINITIONS, LOCAL RULES
 PART A. BUSINESS OF THE COURTS**

Rule 113. Criminal Case File and Docket Entries.

* * * * *

(C) The docket entries shall include at a minimum the following information:

- (1) the defendant's name;
- (2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance, **[and]** the date of any withdrawal of appearance, **and a notation when an attorney is appointed pursuant to Rule 852;**

* * * * *

Comment

* * * * *

The requirement in paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any litigant in the case. The requirement also ensures that attorneys are served as required in Rules 114 and 576. *See also* Rule 576(B)(4) concerning certificates of service. **When an attorney is appointed pursuant to Rule 852, the docket entry must include a notation that the appointment is for the limited purpose of raising the defendant's competency to be executed.**

* * * * *

Official Note: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004; **amended , 2010, effective , 2010.**

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 34 Pa.B. 1547, 1561 (March 20, 2004).

Report explaining the proposed amendments to paragraph (C)(1) concerning docket entries published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 119. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

* * * * *

(5) parole, probation, and intermediate punishment revocation hearings; **[and]**

(6) **proceedings pursuant to Chapter 8 Part B (Procedures For Determining Defendant's Competency To Be Executed); and**

(7) any proceeding in which the defendant has a constitutional or statutory right to be physically present.

* * * * *

Comment

This rule was adopted in 2003 to make it clear that unless the case comes within one of the exceptions in paragraph (A), the court or issuing authority may use two-way simultaneous audio-visual communication in any criminal proceeding. Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103.

[Nothing] Except in cases in which the defendant's competency to be executed is being challenged, nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. *See, e.g.,* Rule 602 Comment.

Pursuant to Rule 861, a defendant who is challenging his or her competency to be executed is required to appear in person for the hearing on the motion. The defendant may not waive presence and appear by means of two-way simultaneous audio-visual communication.

Negotiated guilty pleas when the defendant has agreed to the sentence, probation revocation hearings, and hearings held pursuant to Rule 908(C) and the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq.*, are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings, bench warrant hearings, extradition hearings, and *Gagnon I* hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

* * * * *

Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 and Comment revised June 30, 2005, effective August 1, 2006; amended January 27, 2006, effective August 1, 2006; Comment revised May 4, 2009, effective August 1, 2009; **amended , 2010, effective , 2010.**

Committee Explanatory Reports:

Final Report explaining new Rule 118 published with the Court's Order at 33 Pa.B. 4287 (August 30, 2003).

Final Report explaining the June 30, 2005 renumbering of Rule 118 as Rule 119 and the revision of the second paragraph of the Comment published at 35 Pa.B. 3901, 3911 (July 16, 2005).

Final Report explaining the January 27, 2006 amendments adding Rule 569 proceedings as a proceeding for which ACT may not be used published with the Court's Order at 36 Pa.B. 694, 700 (February 11, 2006).

Final Report explaining the May 4, 2009 revision to the Comment adding PCRA hearings as a proceeding to which the defendant may consent to be held using ACT published with the Court's Order at 39 Pa.B. 2434, 2435 (May 16, 2009).

Report explaining the proposed changes to the rule concerning proceedings to determine the defendant's competency to be executed published at 40 Pa.B. 2397, 2405 (May 8, 2010).

CHAPTER 8. SPECIAL RULES FOR CASES IN WHICH DEATH SENTENCE IS AUTHORIZED**PART A. GUILT AND PENALTY DETERMINATION PROCEDURES**

Rule 800. Applicability of [Subchapter] Part A.

The rules [of this chapter] in Part A shall apply to the guilt and penalty determination phases of all cases in which the imposition of a sentence of death is authorized by law.

Comment

The 1990 amendment to this rule [makes] made it clear that Part A of Chapter 8 applies to both the guilt determination and sentencing phases of cases in which the death penalty is authorized. The chapter was amended in 2010 by the addition of Part B providing special procedures for the determination of competency to be executed.

Except as provided in [this chapter] Part A, trial and retrial procedures in death penalty cases are governed by the Rules of Criminal Procedure generally.

For sentencing generally in death penalty cases, see the Sentencing Code, 42 Pa.C.S. § 9711.

The sentencing procedures in [this chapter] Part A and in the Sentencing Code also apply when the trial court orders a new sentencing proceeding, or when the Supreme Court vacates a sentence of death and remands a case for redetermination of sentence pursuant to 42 Pa.C.S. § 9711(h)(4).

When a jury is empaneled for the first time for sentencing, or for resentencing, the jury trial rules (Chapter [600] 6) apply. *See, for example,* Rule 631 (Examination and Challenges of Trial Jurors).

[This chapter] Part A does not provide procedures for those cases in which the Supreme Court vacates a sentence of death and remands the case to the trial court for the imposition of a life imprisonment sentence. *See* 42 Pa.C.S. § 9711(h)(4).

For post-verdict procedures in cases in which a sentence of death is authorized by law, see Rule [809] 811.

Official Note: Previous Rule 351 adopted September 22, 1976, effective November 1, 1976; rescinded April 2, 1978, effective immediately. Present Rule 351 adopted July 1, 1985, effective August 1, 1985; Comment revised February 1, 1989, effective July 1, 1989; amended October 29, 1990, effective January 1, 1991; renumbered Rule 800 and amended March 1, 2000, effective April 1, 2001; **amended , 2010, effective , 2010.**

Committee Explanatory Reports:

Report explaining the October 29, 1990 amendments published at 20 Pa.B. 5736 (November 17, 1990).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

Report explaining the proposed new rules establishing the procedures for determining the defendant's competency to be executed published at 40 Pa.B. 2397, 2405 (May 8, 2010).

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

PART B. PROCEDURES FOR CHALLENGING DEFENDANTS COMPETENCY TO BE EXECUTED

850.	Scope.
851.	Definitions.
852.	Appointment of Counsel.
853.	Motion Challenging Defendant's Competency to be Executed and Requesting Stay of Execution.
854.	Docketing and Assignment.
855.	Review of Motion; Stay of Execution.
856.	Evidentiary Material.
857.	Response to Motion.
858.	Disposition without a Hearing.
859.	Examination of Defendant.
860.	Status Reports; Pre-Hearing Conference.
861.	Hearing; Disposition.
862.	Monitoring of Defendant's Incompetency.

Rule 850. Scope.

The rules in Part B provide the exclusive procedure for challenging the defendant's competency to be executed.

Comment

These rules are intended to apply only to cases arising within the context of the United States Supreme Court decision in *Ford v. Wainwright*, 477 U.S. 399, 409-410 (1986), that held "the Eighth Amendment of the U.S. Constitution prohibits a State from carrying out a sentence of death upon a prisoner who is insane." See also *Panetti v. Quarterman*, 551 U.S. 930 (2007).

Official Note: New Rule 850 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 851. Definitions.

The following words and phrases, when used in Part B of Chapter 8 of the Rules of Criminal Procedure, shall have the following meanings:

(1) "Mental Health Expert" includes a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of substantial value in the determination of the issues raised by the defendant concerning the defendant's competency to be executed.

(2) "Judge" includes the judge who imposed sentence or the judge of the court of common pleas presiding over the PCRA proceedings if different from the sentencing judge.

Official Note: New Rule 851 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 852. Appointment of Counsel.

(A) In those death penalty cases in which direct review has not been completed prior to the effective date of this rule, upon remand of the record at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States, or at the expiration of time for seeking the review, the judge shall appoint counsel to represent defendant in proceedings under Part B of Chapter 8.

(B) In those death penalty cases in which direct review, including discretionary review in the Supreme Court of the United States, has been completed, or the time for seeking the review has expired prior to the effective date of this rule, the judge promptly, but in no case later than 7 days from the date the Governor signs the warrant of

execution, shall appoint counsel to represent defendant in proceedings under Part B of Chapter 8.

(C) Before an attorney may be appointed under this rule, the attorney must meet the educational and experiential criteria set forth in Rule 801 (Qualifications For Defense Counsel in Capital Cases).

(D) When counsel is appointed, the judge shall enter an order indicating the name, address, and phone number of the appointed counsel. The order shall be docketed and served on the defendant, the appointed counsel, the most recent attorney of record, if any, and the attorney for the Commonwealth, pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries).

(E) Withdrawal of Counsel

(1) A motion to withdraw shall be filed with the clerk of courts and a copy of the motion shall be served on the attorney for the Commonwealth.

(2) The judge shall not permit counsel to withdraw his or her appearance until the judge appoints new counsel or new counsel enters an appearance.

(3) The judge's order granting the attorney leave to withdraw and appointing new counsel, or new counsel's entry of appearance, shall be entered on the docket.

(F) When the defendant satisfies the judge that the defendant is unable to pay the costs of the competency proceedings, the judge shall order that the defendant be permitted to proceed in *forma pauperis*.

Comment

The defendant may not waive counsel under these rules. See *Indiana v. Edwards*, 554 U.S. 208 (2008).

To the extent the procedures in this rule are different from the procedures in Rules 120, 122 and 123, the procedures in this rule take precedence.

Nothing in this rule is intended to preclude the entry of appearance by retained counsel.

Counsel must file a motion to withdraw in all cases, and counsel's obligation to represent the defendant, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. See, e.g., *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. 2002).

The obligations of an attorney appointed pursuant to this rule are limited, where appropriate, to challenging the defendant's competency to be executed. The appointment of the attorney for purposes of determining the defendant's competency to be executed does not affect the appointment of the same attorney for other purposes under the rules or for the appointment of different attorneys for different purposes under the rules. See, e.g., Rule 904(H) for the procedures for appointment of counsel in death penalty cases for purposes of pursuing post-conviction collateral relief. However, the attorney's obligations under this rule are separate and distinct from all other obligations of counsel.

When making the docket entry of the appointment of counsel under this rule, the clerk of courts must include a notation that this appointment only is for purposes of determining defendant's competency to be executed.

Official Note: New Rule 852 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 853. Motion Challenging Defendant's Competency to be Executed and Requesting Stay of Execution.

(A) After a warrant of execution has been issued, any motion challenging the defendant's competency to be executed and requesting a stay of execution shall be filed only by appointed counsel. Appointed counsel's motion shall be filed with the clerk of courts of the judicial district in which the sentence was imposed.

(B) A copy of the motion shall be served on the attorney for the Commonwealth, and on all other attorneys of record.

(C) The motion shall be signed by the appointed attorney. The signature of the attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay.

(D) The motion shall bear the caption, number, and court term of the case or cases in which relief is requested, and shall request an order staying execution and an order declaring defendant incompetent to be executed. The motion also shall contain substantially the following information:

- (1) the name of the defendant;
- (2) the place where the defendant is confined;
- (3) the date on which the defendant was sentenced;
- (4) the name of the judge(s) who presided at trial or plea and imposed sentence;
- (5) the date on which the record was transmitted to the Governor, the date the warrant of execution was issued, and the scheduled date for execution;
- (6) a statement that clearly sets forth the alleged facts in support of the assertion that the defendant is incompetent;
- (7) any affidavits, records, and other evidence supporting the above statement or a statement why such is not available;
- (8) the names and addresses of any witnesses the defendant intends to call in support of the motion;
- (9) the name and address of one mental health expert who will examine the defendant for the purpose of determining the defendant's competency to be executed;
- (10) information concerning any previous proceedings in which the defendant challenged his or her competency; and
- (11) a certificate of service.

(E) If the defendant's attorney learns of an additional witness whose identity, if known, should have been included in the motion, the defendant shall promptly notify the attorney for the Commonwealth and the judge of the existence and identity of such additional witness.

(F) If the motion sets forth facts that do not already appear of record in the case, the motion shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

(G) If the motion is a second or subsequent motion, the motion also shall allege with specificity a change of circumstances subsequent to the previous determination

of competency that is sufficient to challenge the defendant's competency to be executed.

Comment

Although paragraph (D)(9) requires the defendant to name one expert to examine the defendant, nothing in this rule is intended to preclude the defendant from requesting the judge to order one or more additional experts to conduct an examination of the defendant.

See Rule 575(C) for the format requirements for motions.

Consistent with the intent of these rules that there be open and full disclosure of information, paragraph (E) imposes a continuous duty to disclose witness information. See, also, Rule 856 (relating to Evidentiary Material).

Pursuant to Rule 576, all filings by the parties must include a certificate of service setting forth the date and manner of service, and the names, addresses, and phone numbers of the persons served.

Official Note: New Rule 853 adopted , 2009, effective , 2009.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 854. Docketing and Assignment.

(A) Upon receipt of the motion challenging the defendant's competency to be executed, the clerk of courts promptly shall time stamp the motion with the date of receipt and make a docket entry at the same term and number as the underlying conviction and sentence reflecting the date of receipt, and promptly shall place the motion in the criminal case file.

(B) The clerk shall transmit the motion and the criminal case file to the judge who imposed sentence, if available, or to the president judge, or the president judge's designee, if the judge who imposed sentence is not available. When the judge who imposed sentence is unavailable, the president judge, or the president judge's designee, promptly shall assign and transmit the motion and the record to another judge.

Comment

See Rule 113 (Criminal Case File and Docket Entries) for the procedures concerning the retention of documents and making docket entries.

Official Note: New Rule 854 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 855. Review of Motion; Stay of Execution.

(A) Within five days of receipt of the motion, the judge shall review the motion.

(B) When the motion complies with the requirements of Rule 853, the judge shall issue an order staying the execution and proceed pursuant to these rules.

(C) When the motion does not comply with the requirements of Rule 853, the judge shall deny the motion.

(D) When the warrant of execution is stayed by any judge in a collateral proceeding, the stay also shall stay these proceedings.

Comment

See Pa.R.A.P. 1572 for the procedures to petition for review if the judge denies the motion pursuant to paragraph (C).

Pursuant to paragraph (D), after the motion challenging the defendant's competency to be executed has been filed, if any judge stays the warrant of execution for reasons unrelated to the defendant's motion, the stay will act as a stay of these proceedings. "Collateral proceedings" as used in paragraph (D) include proceedings under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541—9546, and Chapter 9 of the Rules of Criminal Procedure, and Federal *Habeas Corpus*.

Official Note: New Rule 855 adopted _____, 2010, effective _____, 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 856. Evidentiary Material.

(A) As used in Part B of Chapter 8, "evidentiary material" is all information relative to the issue of defendant's competency to be executed. The term includes:

- (1) any and all medical, correctional, educational, and military records;
- (2) raw data, tests, and test scores;
- (3) notes, behavioral observations, reports, evaluations, results of scientific tests or experiments; and
- (4) any other information of any kind

that form the basis for the defendant's motion, would form the basis for the attorney for the Commonwealth's response, and would be pertinent to the party's or the judge's expert for any examination under these rules.

(B) By filing the motion challenging the defendant's competency to be executed, defendant is deemed to have waived all claims of confidentiality and evidentiary privilege to, and is deemed to have consented to the release of, any and all evidentiary materials relative to the issue of defendant's competency to proceed to execution only.

(C) Upon receipt of the motion to determine the defendant's competency to be executed, the judge shall issue an order directing the parties, the Department of Corrections, and any public or private organization, entity, or agency having evidentiary materials relevant to the defendant's motion to provide the judge with copies of the evidentiary materials in their possession. The order shall state the time within which the evidentiary materials are to be provided to the judge.

(D) The judge shall establish procedures for the collection, indexing, maintenance, and distribution of the evidentiary materials received under this rule. The evidentiary materials shall be made available for inspection and copying to the defendant's attorney, the attorney for the Commonwealth, and the experts who will examine the defendant pursuant to these rules.

(E) All evidentiary materials provided to the judge, the defendant's attorney, the attorney for the Commonwealth, and the experts who will examine the defendant pursuant to these rules shall be confidential, and not of public record unless and until admitted by the judge at the hearing. The evidentiary materials shall not be disseminated further unless ordered by the judge.

(F) If the parties, Department of Corrections, and public or private organizations, entities, or agencies providing evidentiary materials pursuant to this rule, prior to or during the hearing, discover additional evidentiary materials relevant to the defendant's motion that were not previously available, such party, department, or agency promptly shall provide the evidentiary materials to the judge.

Comment

The purpose of this rule is to ensure the prompt collection in one location of all materials relevant to the issue of the defendant's competency to be executed, and to provide access to these materials to the judge, the attorneys, and the experts who will be examining the defendant under these rules at an early stage in the proceedings.

Pursuant to this rule, there is a continuing obligation to provide evidentiary materials to the judge when additional materials become available or are identified.

The evidentiary materials collected under this rule are not part of the record of the proceedings until the materials are introduced at the hearing on the defendant's competency to be executed and made part of the record.

Official Note: New Rule 856 adopted _____, 2010, effective _____, 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 857. Response to Motion.

(A) Within 120 days of the filing and docketing of the motion, the attorney for the Commonwealth shall file a response to the motion.

(B) The response shall include:

- (1) the name and address of one mental health expert who will examine the defendant for the purpose of determining the defendant's competency to be executed; and
- (2) the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of incompetency to be executed.

(C) If the attorney for the Commonwealth learns of an additional witness whose identity, if known, should have been included in the motion, the attorney for the Commonwealth shall promptly notify the defendant's attorney and the judge of the existence and identity of such additional witness.

(D) The attorney for the Commonwealth shall serve a copy of the response on all other attorneys of record.

Comment

The term "response" is used in this rule because the rule requires more information than ordinarily would appear in an "answer." In all other respects, "response" is the same as "answer" for purposes of determining the contents requirements, see Rule 575(B), for the format requirements, see Rule 575(C), and for the procedures for filing and service, see Rule 576.

Although paragraph (B)(1) requires the attorney for the Commonwealth to name one expert to examine the defendant, nothing in this rule is intended to preclude the attorney for the Commonwealth from requesting the

judge to order one or more additional experts to conduct an examination of the defendant.

Consistent with the intent of these rules that there be open and full disclosure of information, paragraph (C) imposes a continuing duty to disclose witness information. *See, also*, Rule 856 (Evidentiary Material).

Official Note: New Rule 857 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 858. Disposition without a Hearing.

(A) No more than 20 days after the attorney for the Commonwealth files a response, the judge shall review the motion, the attorney for the Commonwealth's response, and other matters of record relating to the defendant's competency to be executed, and shall determine whether an evidentiary hearing is required.

(B) If the judge is satisfied from the review that the motion is patently frivolous, or, when the motion is filed after the defendant previously has been found competent to be executed, that the successive motion does not meet the requirements of Rule 853(F):

(1) the judge promptly shall give notice to the parties of the intention to deny the motion and shall state in the notice the reasons for the denial.

(2) The defendant may respond to the proposed denial of the motion within 20 days of the date of the notice.

(3) No later than 30 days from the date of the notice, or from the date of the defendant's response, the judge either shall:

- (a) deny the motion and issue an order to that effect; or
- (b) order an examination pursuant to Rule 859.

(4) For purposes of this proceeding, the order denying the motion shall be a final order that may be reviewed. The order shall

(a) advise the defendant of the right to file a petition for review from the final order denying the motion, and of the time within which the petition for review must be filed; and

- (b) vacate any previous order staying execution.

(5) The clerk of courts immediately shall furnish a copy of the order denying the motion by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, the defendant's attorney, and any other attorneys of record.

(6) Upon receipt of the order denying the motion, the Prothonotary of the Supreme Court promptly shall forward a copy of the order to the Governor.

Comment

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

Pursuant to paragraph (B), the judge is permitted to deny a motion raising the defendant's competency to be executed without a hearing. To determine whether a denial of the motion without a hearing is appropriate, the judge should thoroughly review the motion, the response, and all other relevant information that is included in the record.

For the procedures for filing a petition for review with the Supreme Court in competency to be executed cases, see Rule of Appellate Procedure 1572.

Official Note: New Rule 858 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 859. Examination of Defendant.

(A) If the judge does not deny the motion under Rule 858, the judge promptly shall order the defendant to submit to an examination by the mental health expert specified in the defendant's motion and the mental health expert specified in the attorney for the Commonwealth's response.

(B) The judge may order the defendant to submit to an examination by one or more mental health experts designated by the judge, on the judge's own motion or motion of the defendant or the attorney for the Commonwealth, for the purpose of determining whether the defendant is competent to be executed.

(C) When the judge orders the examination of the defendant, the following procedures shall be followed.

(1) By filing a motion, the defendant is deemed to consent to submit to and fully cooperate in any competency examination by any expert, including but not limited to any experts retained on behalf of the defendant or by the Commonwealth, and any expert retained or appointed by the judge.

(2) The judge's order for an examination pursuant to this rule shall:

(a) inform the defendant of the purpose of the examination and of the potential consequences, including but not limited to, the denial of the motion, of the defendant's refusal to cooperate with any of the mental health expert(s);

(b) specify who may be present at the examination; and

(c) specify the time within which the examination must be conducted and the time within which the mental health expert(s) must submit the written report of the examination.

(3) All mental health experts who have examined the defendant pursuant to the judge's order shall write reports in which the experts shall consider and address the nature of the defendant's mental disorder, if any, and its relationship to the factors relevant to the defendant's competency to be executed.

(4) The mental health experts' reports shall be confidential, and not of public record.

(5) The reports of all the mental health experts who have examined the defendant pursuant to this rule shall be disclosed to the parties. The judge shall set a reasonable time after the last examination of the defendant before the hearing for the disclosure of the reports of the parties' and judge's mental health experts.

Comment

Although paragraph (A) limits the mandatory examination of the defendant to an examination by one expert designated by the defense and one expert designated by the attorney for the Commonwealth, nothing in this rule is intended to preclude either party from requesting the judge to order one or more additional experts to conduct an examination of the defendant. When considering the

indigent defendant's request for experts, the judge should consider the reasonable fees and costs to be incurred by the court for such experts.

It is intended that the examining mental health expert(s) have substantial discretion in how to conduct an examination. The conduct of the examination, however, must conform to generally recognized and accepted practices in that profession. Therefore, the examination of the defendant may consist of such interviewing, clinical evaluation, and psychological testing as the examining mental health expert(s) considers appropriate, within the limits of non-experimental, generally accepted medical, psychiatric, or psychological practices.

When the defendant has refused to cooperate in the examination, before imposing a sanction, the court should consider whether the defendant's failure to cooperate: (1) was intentional; and (2) was the result of the defendant's mental illness. The court also should consider whether ordering the defendant to resubmit to the examination would result in the defendant's cooperation.

Factors relevant to the defendant's competency to be executed include (a) the defendant's awareness of the fact of the defendant's impending execution, and (b) the defendant's understanding that the defendant is to be executed for the crime of murder. *See Panetti v. Quarterman*, 551 U.S. 930 (2007); *Ford v. Wainwright*, 477 U.S. 399, 409-410 (1986).

Official Note: New Rule 859 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 860. Status Reports; Pre-Hearing Conference.

(A) The defendant's attorney and the attorney for the Commonwealth shall file a status report with the judge 60 days after the judge's order for the examination of the defendant, and no later than every 30 days thereafter. The status report shall advise the judge of the status of the examinations of the defendant, the status of the experts' reports of the examinations, and of any other matters pertinent to the case.

(B) The judge shall schedule a pre-hearing conference to review the status of the case. The pre-hearing conference shall be held no later than 6 months from the date of the judge's order for the examination of the defendant. For good cause shown, the judge may extend the date of the pre-hearing conference for one 30-day period.

(C) At the pre-hearing conference, the judge, the defendant's attorney, and the attorney for the Commonwealth shall consider:

- (1) the time for the hearing;
- (2) the simplification or stipulation of factual issues, including admissibility of evidence;
- (3) the qualification of exhibits as evidence to avoid unnecessary delay;
- (4) the number of witnesses who are to give testimony of a cumulative nature;
- (5) such other matters as may aid in the determination of the defendant's competency to be executed.

(D) The defendant's attorney and the attorney for the Commonwealth shall have the right to record an objection to rulings of the judge during the conference.

(E) The judge shall place on the record the agreements or objections made by the defendant's attorney and the attorney for the Commonwealth and rulings made by the judge as to any of the matters considered in the pre-hearing conference. Such order shall control the subsequent proceedings unless modified at the hearing to prevent injustice.

Comment

The pre-hearing conference serves the same purpose as a pre-trial hearing in criminal cases. *See* Rule 570.

Nothing in this rule is intended to preclude the judge from conducting the pre-hearing conference before the end of the 6-month time period established by this rule if the examinations of the defendant have been concluded in less time. The judge also may conduct periodic status conferences before the pre-hearing conference.

Official Note: New Rule 860 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 861. Hearing; Disposition.

(A) The issue of defendant's competency to be executed shall be determined by the judge after an evidentiary hearing.

(B) The defendant shall appear in person with counsel at the hearing.

(C) The defendant shall have the burden of going forward with the evidence.

(D) The attorney for the Commonwealth and the defendant's attorney may introduce evidence and cross-examine any witness, including the examining mental health experts. The judge may call and interrogate witnesses as provided by law.

(E) Upon the conclusion of the hearing, if the judge finds that the defendant is not competent to be executed,

(1) the judge shall enter an order staying the defendant's execution or continuing the stay of execution until the defendant is mentally competent to be executed.

(2) The order shall be in writing and on the record and shall include specific findings of fact concerning each of the following factors:

- (a) the defendant's awareness of the fact of the defendant's impending execution;
- (b) the defendant's understanding that the defendant is to be executed for the crime of murder;
- (c) the nature of the defendant's mental disorder, if any, and its relationship to the factors relevant to the defendant's competency.

(3) The judge shall order that the defendant receive appropriate mental health treatment, and may issue any supplementary orders appropriate to the proper disposition of the case.

(4) The clerk of courts immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, the defendant's attorney, and all other attorneys of record.

(F) Upon the conclusion of the hearing, if the judge finds the defendant is competent to be executed, the judge shall enter an order denying the motion. Any previous

order staying execution entered under the rules in Chapter 8 Part B shall be vacated.

(1) The clerk of courts immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, the defendant's attorney, and all other attorneys of record.

(2) The order shall advise the defendant of the right to file a petition for review from the final order disposing of the motion, and of the time within which the petition for review must be filed.

(G) Upon receipt of the order granting or denying the motion, the Prothonotary of the Supreme Court promptly shall forward a copy of the order to the Governor.

(H) TIME FOR COURT ACTION

(1) No more than 30 days after the conclusion of the hearing, the judge shall dispose of the motion. When the 30-day time period must be delayed, the judge, for good cause shown, may enter an order extending the period for not longer than 15 days.

(2) If the judge does not act within the 30 days mandated by paragraph (G)(1), or within the 15-day extension, the clerk of courts shall send a notice to the judge that the time period for disposing of the motion has expired. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, the defendant's attorney, and all other attorneys of record.

(3) If the judge does not dispose of the defendant's motion within 30 days of the clerk of courts' notice, the clerk immediately shall send a notice of the judge's non-compliance to the Supreme Court. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel.

Comment

Pursuant to paragraph (B), the defendant must be present in person at the hearing. Advanced communication technology may not be utilized. See Rule 119. However, this paragraph is not intended to prevent the judge from excluding a disruptive defendant from the hearing. See *Illinois v. Allen*, 397 U.S. 337 (1970), in which the United States Supreme Court held "that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." See also *Commonwealth v. Basemore*, 525 Pa. 512, 582 A.2d 861 (1990).

Any evidence to be considered by the judge in making the determination about the defendant's competency to be executed, including the reports of the examining mental health experts and the evidentiary materials gathered pursuant to Rule 856, must be introduced by the parties at the hearing, and made a part of the record.

Concerning the judge's authority to call and interrogate witnesses, see Pa.R.E. 614 (Calling and Interrogating of Witnesses by Court) and Pa.R.E. 706 (Court Appointed Experts).

The law concerning burden in proving a defendant's competency has evolved from discussions concerning burden when the issue is the defendant's competency to be tried, see *Cooper v. Oklahoma*, 517 U.S. 348 (1996), *Commonwealth v. DuPont*, 545 Pa. 564, 681 A.2d 1328

(1996), to burden when the issue is the defendant's competency to assist with collateral proceedings, see *Commonwealth v. Zook*, 585 Pa. 11, 887 A.2d 1218 (2007), and to burden when the issue is the defendant's competency to be executed, see *Commonwealth v. Jermyn*, 539 Pa. 371, 652 A.2d 821 (1995). The Court has uniformly held that the burden is on the defendant to prove his or her incompetency by a preponderance of the evidence.

The requirement in paragraph (E)(1) that the clerk of courts immediately notify the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and all defense counsel of record that the motion has been denied is intended to protect the defendant's right to review.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

Official Note: New Rule 861 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

Rule 862. Monitoring of Defendant's Incompetency.

(A) Following a determination that the defendant is incompetent to be executed, the Department of Corrections' treating psychiatrist and any other treating mental health expert shall monitor the defendant's competency to be executed.

(B) Every 6 months following the determination, without further orders from the judge, the treating mental health experts shall provide a written report on the defendant's current mental status and progress toward competency restoration to the judge, the attorney for the Commonwealth, and the defendant's attorney. A copy of the report also shall be provided to the Supreme Court if a petition for review filed pursuant to Pa.R.A.P. 1572 is pending.

(C) Unless a petition for review filed pursuant to Pa.R.A.P. 1572 is pending, following receipt of the treating mental health experts' reports, upon motion of the attorney for the Commonwealth or the defendant's attorney, or on his or her own motion, the judge shall conduct a hearing to determine the defendant's current mental status and progress toward competency restoration.

(D) At any time following a determination that the defendant is incompetent to be executed, the attorney for the Commonwealth may request a hearing to determine the defendant's competency to be executed by filing a motion with the judge alleging a material change in circumstances. A copy of the motion shall be served on the defendant and defendant's attorney.

(E) At the hearing conducted pursuant to paragraph (C) or (D),

(1) the attorney for the Commonwealth shall have the burden of going forward with the evidence.

(2) The attorney for the Commonwealth, and the defendant's attorney may introduce evidence and cross-examine any witness, including the examining mental health experts.

(3) The judge may call and interrogate witnesses as provided by law.

(F) Upon the conclusion of the hearing, if the judge determines the defendant remains incompetent to be executed,

(1) the judge shall enter an order continuing the stay of execution until the defendant is mentally competent to be executed.

(2) The order shall be in writing and on the record and shall include specific findings of fact concerning each of the following factors:

(a) the defendant's awareness of the fact of the defendant's impending execution;

(b) the defendant's understanding that the defendant is to be executed for the crime of murder;

(c) the nature of the defendant's mental disorder, if any, and its relationship to the factors relevant to the defendant's competency.

(3) The judge shall order that the defendant shall continue to receive appropriate mental health treatment, and may issue any supplementary orders appropriate to the proper disposition of the case.

(4) The clerk of courts immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, the defendant's attorney, and all other attorneys of record.

(G) If the judge determines the defendant is competent to be executed, the judge shall issue an order to that effect. Any previous order staying execution shall be vacated.

(1) The clerk of courts immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, the defendant's attorney, and all other attorneys of record.

(2) The order shall advise the defendant of the right to file a petition for review of the order, and of the time within which the petition for review must be filed.

(H) Upon receipt of the order granting or denying the motion, the Prothonotary of the Supreme Court promptly shall forward a copy of the order to the Governor.

(I) TIME FOR COURT ACTION

(1) No more than 30 days after the conclusion of the hearing, the judge shall dispose of the motion. When the 30-day time period must be delayed, the judge, for good cause shown, may enter an order extending the period for not longer than 15 days.

(2) If the judge does not act within the 30 days mandated by paragraph (G)(1), or within the 15-day extension, the clerk of courts shall send a notice to the judge that the time period for disposing of the motion has expired. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, the defendant's attorney, and all other attorneys of record.

(3) If the judge does not dispose of the defendant's motion within 30 days of the clerk of courts' notice, the clerk immediately shall send a notice of the judge's non-compliance to the Supreme Court. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel.

Comment

Nothing in this rule is intended to prevent the judge, on his or her own motion or upon motion of either party, from ordering examinations of the defendant by additional mental health experts for purposes of determining

the defendant's current mental status and progress toward competency restoration.

Any evidence to be considered by the judge in making the determination about the defendant's competency to be executed, including the reports of the examining mental health experts and the evidentiary materials gathered pursuant to Rule 856, must be introduced by the parties at the hearing, and made a part of the record.

Concerning the judge's authority to call and interrogate witnesses, see Pa.Rs.E. 614 (Calling and Interrogating of Witnesses by Court) and 706 (Court Appointed Experts).

The requirement in paragraph (G)(1) that the clerk of courts immediately notify the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and all defense counsel of record that the motion has been denied is intended to protect the defendant's right to review.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

If a Pa.R.A.P. 1572 Petition for Review is filed, the hearing provisions of this rule would not be conducted during the time the petition is pending with the Supreme Court.

Official Note: New Rule 862 adopted , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the proposed new rule published at 40 Pa.B. 2397, 2405 (May 8, 2010).

REPORT

Proposed New Pa.Rs.Crim.P. 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, and 862; and Amendments to Pa.Rs.Crim.P. 113, 119, and 800

DETERMINATION OF COMPETENCY TO BE EXECUTED

I. Introduction

The Committee, in conjunction with the Appellate Court Procedural Rules Committee,¹ is planning to propose to the Supreme Court new Rules of Criminal Procedure 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, and 862 that would establish the procedures for determining a defendant's competency to be executed. The Committee also is proposing correlative amendments to Rules of Criminal Procedure 113, 119, and 800. These changes are being recommended at the request of the Supreme Court. In correspondence from Chief Justice Castille, and in footnote 7 in *Commonwealth v. Banks*, 596 Pa. 297, 943 A.2d 230 (2007), the Appellate Court Procedural Rules Committee and the Criminal Procedural Rules Committee were instructed to work together "to consider a framework for: (1) the timely filing and disposition of motions for stay of execution premised upon a claim that the defendant is incompetent to be executed; and (2) the timely litigation of the issue of whether such a defendant is indeed incompetent to be executed." The Chief Justice noted that the current Post Conviction Relief Act, 42 Pa.C.S. §§ 9541—9546 and the Criminal Rules do not provide an adequate process for instituting and disposing of cases in which the defen-

¹ The Appellate Court Procedural Rules Committee proposal is for new Pa.R.A.P. 1572 and correlative amendments to Pa.Rs.A.P. 1512(b) and 1516 to provide for review by the Supreme Court of a trial court's determination as to whether a person under a warrant of execution is competent to be executed.

defendant's competency to be executed has to be determined, and suggested the Committees look at other jurisdictions' case law, rules, and statutes.

To accomplish this directive, a Joint Subcommittee of the Appellate Court Procedural Rules Committee and Criminal Rules Committee was formed to assist the two Committees in addressing the issue of competency to be executed. The Joint Subcommittee's recommendations have been fully reviewed and approved for publication by both Committees.

II. Background

The United States Supreme Court in *Ford v. Wainwright*, 477 U.S. 399, 409-410 (1986) held, *inter alia*, that "the Eighth Amendment of the U.S. Constitution prohibits a State from carrying out a sentence of death upon a prisoner who is insane." The *Ford* Court, however, did not provide a clear set of procedures to be followed in cases challenging a defendant's competency to be executed, leaving the task of developing the means to enforce the constitutional prohibition to the states.² Those jurisdictions that have addressed *Ford* in case law, statutes, and rules have developed procedures that run the gamut from merely acknowledging that a defendant may not be executed if he or she is incompetent and providing for a stay of execution if the defendant is determined to be incompetent, to very detailed procedures encompassing the filing of a motion, the examination of the defendant, the evidentiary hearing, the judge's conclusions and the order, subsequent re-examination and re-hearing to determine the defendant's current status, and appeals.³ In developing the new procedures for Pennsylvania, the Joint Subcommittee drew upon the procedures already in place in other jurisdictions. In addition, when relevant, procedures from Pennsylvania's current Criminal Rules have been incorporated into the new rules.

III. Placement of New Procedures

The first issue addressed by the Joint Subcommittee concerned the placement of the proposed new procedures. Recognizing that the issue of a defendant's competency to be executed is not ripe for consideration until after the Governor has issued a death warrant,⁴ the Joint Subcommittee concluded that these claims do not "fit" within the procedural framework of the Criminal Rules governing post-conviction collateral proceedings, Rules 900-910, or the Post Conviction Relief Act (PCRA).⁵ Because the new procedures would be invoked within the scope of a death penalty case, the Joint Subcommittee agreed Chapter 8 (Special Rules for Cases in Which Death Sentence is

Authorized) would be the most appropriate chapter in which to incorporate the new procedures governing challenges to the defendant's competency to be executed. Furthermore, because the current rules in Chapter 8 apply only to the guilt and penalty determination phases of cases in which the imposition of a sentence of death is authorized, the new procedures should be set forth in a separate part of Chapter 8. Finally, given the seriousness of the process and the need for clarity, the Joint Subcommittee reasoned that each step in the process should be set forth in a separate rule rather than setting out all the procedures in one rule as is done in several other jurisdictions.

In view of these considerations, the new rules for determining a defendant's competency to be executed would be set forth in new Part B of Chapter 8. To accomplish this proposal, the current rules in Chapter 8 would become new Part A, titled "Guilt and Penalty Determination Procedures," and new Part B would be titled "Procedures For Challenging Defendant's Competency To Be Executed."

IV. Discussion

A. Procedural Framework of Proposed New Criminal Rules

This section provides a brief overview of the procedural scheme of the proposed new rules. The specific procedures are explained more fully in the description of the individual rules.

After extensive discussions and review of the case law, rules, and statutes in other jurisdictions, as well as of Pennsylvania case law, the Joint Subcommittee agreed to follow in the proposed new rules, to the extent possible, the procedural framework of the current PCRA rules. The procedures for challenging a defendant's competency to be executed would be initiated by a motion (proposed new Rule 853). The defendant would be entitled to appointment of counsel (proposed new Rule 852). The motion would be docketed with the clerk of courts and assigned to a judge (proposed new Rule 854). The Commonwealth would be required to file a response to the motion (proposed new Rule 857). The judge is authorized to dispose of the motion without a hearing if, after review, the judge determines the motion is patently frivolous (proposed new Rule 858). If the motion is not disposed of without a hearing, there will be a hearing (proposed new Rule 861).

In addition, in view of the special nature of a challenge to the defendant's competency to be executed, the Joint Subcommittee, drawing upon other jurisdictions' rules and statutes and case law, included procedures specific to this proceeding. After the motion is filed, docketed, and assigned, the judge must review the motion and must determine whether to stay execution (proposed new Rule 855). If a stay of execution has been issued in a collateral proceedings, such as in a PCRA proceeding or in a federal *habeas* proceeding, then the proceedings challenging the defendant's competency to be executed are premature and the stay in the collateral proceedings acts as a stay in the competency to be executed proceedings (proposed new Rule 855(D)). The judge, upon receipt of the motion, is required to issue an order directing copies of all relevant evidentiary materials be provided to the judge (proposed new Rule 856). If the motion is not disposed of without a hearing, the judge must order the examination of the defendant by mental health experts (proposed new Rule 859). During the time after the order for the examination of the defendant is issued, the parties must file status

² The minimum procedures suggested by Justice Powell in his concurring opinion in *Ford*, *supra*, and reiterated in *Panetti v. Quarterman*, 551 U.S. 930 (2007), include the requirements that the defendant make a substantial threshold showing of insanity, that the court appoint mental health experts, and that the defendant have a fair hearing, an opportunity to be heard, and an opportunity to submit evidence and argument from the prisoner's counsel, including expert psychiatric evidence that may differ from the State's own psychiatric examination.

³ See, for example, *Van Tran v. Tennessee*, 6 S.W.3d 257 (1999); *Washington v. Harris*, III, 114 Wash.2d 419, 789 P.2d 60 (1990); Code of Alabama § 15-16-23; Arizona Statutes §§ 13-4021—13-4026; Arkansas Code § 16-90-506; Connecticut General Statutes § 54-101; Florida Rules of Criminal Procedure, Rule 3.811 and Rule 3.812; Code of Georgia §§ 17-10-60—17-10-71; Kansas Code of Criminal Procedure § 22-4006; Louisiana Revised Statutes, Title 15 § 567.1; Mississippi Code § 99-19-57; Nevada Revised Statutes Title 14 § 176.425, § 176.435, § 176.445, and § 176.455; New Mexico Statutes §§ 31-14-1—31-14-7; Consolidated Laws of New York, Chapter 23 § 656; and Utah Code §§ 77-19-201—77-19-206.

⁴ A death warrant is issued after the conclusion of all appeals or the expiration of the time for taking the appeals or upon the completion of post conviction collateral review. Under 61 P.S. § 3002(a), the Governor is required to issue a death warrant within 90 days of the Governor's receipt of the record from the Pennsylvania Supreme Court's Prothonotary "where a sentence of death has been upheld by the Supreme Court." See 42 Pa.C.S. § 9711(i). When a stay of execution has been lifted in a collateral proceeding, the Governor has 30 days from receiving notice that the stay has been lifted to reissue the warrant.

⁵ The Joint Subcommittee noted that in *Van Tran v. State*, 6 S.W.3d 257 (1999), the Court held that Tennessee's PCRA is not an appropriate means for raising the issue of competency to execute.

reports and the judge must schedule a pre-hearing conference to review the status of the case (proposed new Rule 860). If the defendant is found incompetent to be executed, the defendant's incompetency will be monitored (proposed new Rule 862).

B. Explanation of the Proposed New Rules

RULE 850. Scope.

Proposed new Rule 850 establishes that the rules in Part B provide the exclusive procedure for determining the defendant's competency to be executed.

The Comment to new Rule 850 includes citations to *Ford v. Wainwright*, 477 U.S. 399, 409-410 (1986) and *Panetti v. Quarterman*, 551 U.S. 930 (2007), the two federal cases directly addressing the issue that a defendant may not be executed if the defendant is found to be incompetent, clarifying that these new rules apply only in the context of *Ford* and *Panetti*, and are not addressing the issues raised in *Atkins v. Virginia*, 536 U.S. 304 (2002) ("executions of mentally retarded criminals are 'cruel and unusual punishments' prohibited by the Eighth Amendment").

RULE 851. Definitions.

Proposed new Rule 851 sets forth the definition of "mental health experts" and "judge" as used in the rules in Part B.

The Joint Subcommittee spent a great deal of time reaching an agreement about the definition of "mental health experts," debating at length how to ensure flexibility in the individuals who will examine the defendant and who will testify without compromising reliability in determining a defendant's competency to be executed. Ultimately, the Joint Subcommittee agreed to incorporate the same definition of "mental health expert" that is used in Rule 569 (relating to examination of defendant by mental health expert).

The definition of "judge" clarifies that the judge required to preside over the proceedings under these rules is the judge who imposed sentence or the judge presiding over the PCRA proceedings if different from the sentencing judge.

RULE 852. Appointment of Counsel.

Proposed new Rule 852 mandates the appointment of counsel, and is modeled on Criminal Rule 120 (Attorneys—Appearances and Withdrawals) and paragraph (H) (Appointment of Counsel in Death Penalty Cases) of Criminal Rule 904 (Entry of Appearance and Appointment of Counsel; *In Forma Pauperis*).

Before reaching the decision that counsel must be appointed in every case in which a defendant has received a sentence of death, the Joint Subcommittee spent a great deal of time researching and discussing who may initiate a challenge to the defendant's competency. This question is a major issue that arises both in Pennsylvania and in other jurisdictions in many of the cases in which there is a challenge to the defendant's competency to be executed.

This issue is addressed in many different ways in other jurisdictions. Several states, including California, Connecticut, Missouri, Nebraska, and Nevada, provide that the warden or sheriff having custody of the defendant may raise the defendant's competency to be executed.⁶ Other states, including Louisiana and Mississippi, in addition to defendant's counsel, permit a next friend to

file a petition challenging the defendant's competency to be executed.⁷ Arizona and New Mexico include the prosecutor among the individuals who may file the petition. Arizona authorizes the director of the state department of corrections, the prisoner's attorney, or an attorney for the state to file a petition raising the defendant's competency to be executed. New Mexico requires the district attorney in the county in which the defendant is incarcerated to file a petition raising the issue of the defendant's competency to be executed after the warden notifies him or her that there is reason to believe the defendant is incompetent.⁸

In Pennsylvania, this issue arises frequently in case law. For example, in *In re Gary M. Heidnik, Petition of Maxine Davidson White, Next Friend*, 554 Pa. 177, 182, 184-185, 720 A.2d 1016, 1019, 1020 (1998), the Court observed that

in many cases, however, because counsel, whether court-appointed or privately retained, is not engaged to provide open-ended service, a condemned prisoner will not be represented at the time an execution warrant is signed after completion of direct and collateral review. Moreover, as previously indicated, the Mental Health Procedures Act is inapplicable to such proceedings. Finally, there would appear to be no way in which the prisoner himself can initiate review of the issue. If he cannot comprehend the reasons for the penalty or its implications, he cannot conceive of the need to take any measures to postpone it. Conversely, if he can conceive of such a need, by definition he must comprehend the implications of the penalty, and the very filing of the application would refute its substance, *i.e.*, the allegation of incompetency. In such cases, then, where all other litigation has been completed, it would seem that the issue of the condemned prisoner's competency to be executed can *only* be raised by a person acting on the prisoner's behalf. . . . The latter situation [challenging competency to be executed], however, presents a conundrum. Since the ultimate proposition sought to be established is that the condemned prisoner is incompetent to be executed, it makes no sense to inquire preliminarily whether the prisoner is competent to forego raising that issue himself. As noted above at p. 1019, one who is able to raise the inquiry by definition cannot be incompetent, and one who is incompetent cannot raise the inquiry. And if one cannot raise the inquiry due to incompetence, one cannot knowingly forego raising it. As to this limited issue, then, next friend standing cannot be conditioned on a showing by the putative next friend that the real party in interest is unable to litigate his own cause due to mental incapacity. Accordingly, we must examine the applicability of the other conditions for next friend standing—whether the next friend is "truly dedicated to the best interests of the person on whose behalf he seeks to litigate," and whether there is a "significant relationship with the real party in interest."

See, also, Commonwealth v. Bronshtein, 556 Pa. 545, 729 A.2d 1102 (1999).

The Joint Subcommittee extensively evaluated the procedures in the different jurisdictions and reviewed Pennsylvania case law in trying to craft a fair and expeditious procedure addressing who would be authorized to initiate a challenge to the defendant's competency. Ultimately, the

⁶ See California Penal Code § 3700.5, Connecticut General Statutes § 54-101, Missouri Statutes, Title XXXVII § 552.060, Nebraska Revised Statutes of 1943 § 29-2537, and Nevada Revised Statutes, Title 14 § 176.425.

⁷ See Louisiana Revised Statutes § 567.1 and Mississippi Code § 99-19-57.

⁸ See Arizona Revised Statutes § 13-4022 and New Mexico Statutes § 31-14.4.

members agreed that the most reasonable process would be to limit the filing of the motion challenging a defendant's competency in the first instance to an attorney appointed by the judge for this purpose.

Pursuant to proposed new Rule 852, the appointment of counsel is the first step in the process. The Joint Subcommittee reasoned that, by having an attorney involved in the case from the point a defendant is sentenced to death, and the appeal process is completed or the time for appeal has expired, other individuals, who may have an interest in having a court determine the defendant's competency to be executed, including, for example, the individuals who are authorized to initiate these proceedings in other jurisdictions, would be able to communicate their thoughts and concerns to the appointed attorney at the beginning of the process.

The Joint Subcommittee also spent a great deal of time discussing the issue of whether the defendant should be permitted to proceed *pro se* in these cases. Some members posited that for the limited circumstance of a competency to be executed proceeding, the defendant never should be allowed to proceed *pro se*. Other members thought the decision should be left to the trial judge, noting that there may be cases in which the defendant is competent enough to knowingly and intelligently waive counsel and should be allowed to proceed without counsel, especially to challenge a motion that has been filed by someone else on the defendant's behalf. Taking note of *Indiana v. Edwards*, 128 S.Ct. 2379, 2388 (U.S. 2008), and the unique nature of these proceedings, the Joint Subcommittee agreed that the new rule should not permit the defendant to waive counsel in these cases.⁹ A citation to *Indiana v. Edwards*, *supra*, would be included in the Comment.

The attorney's appointment pursuant to proposed new Rule 852 is limited to representing the defendant in proceedings under Part B of Chapter 8. However, as explained in the Comment, nothing in the rule is intended to prohibit the appointed attorney from representing the defendant in other proceedings or for the appointment of other attorneys to represent the defendant in other proceedings. The Comment emphasizes that the appointed attorney's obligations under this rule are separate and distinct from all other obligations of counsel.

The Joint Subcommittee also recognized that there may be cases in which the defendant wants to retain counsel. The members felt strongly that in the first instance, the judge must appoint counsel so the process can begin as soon as possible. However, as explained in the Comment, subsequent to the appointment of counsel, retained counsel may enter an appearance.

Paragraphs (A) and (B) set forth the time within which the judge must appoint counsel. Paragraph (A) addresses the time for appointment in cases in which direct review has not been completed prior to the effective date of the new rule. Similar to the requirements in Rule 904(H), the judge is required to appoint counsel upon the remand of the record at the conclusion of direct review or the expiration of the time for seeking the review. Paragraph (B) addresses the time for appointment in cases in which the direct review has been completed or the time to take the appeal has expired prior to the effective date of the

new rule. In these cases, the judge is required to appoint counsel promptly, but in no case later than 7 days from the date the Governor signs the warrant of execution. The prompt appointment of counsel in these cases is beneficial for the defendant and the criminal justice system. The prompt appointment of counsel to file the motion challenging the defendant's competency to be executed ensures that the motion is properly and timely prepared and timely filed, ensures the defendant's interests are protected, and promotes judicial economy.

Paragraph (C) requires that the attorney appointed by the judge satisfy the educational and experiential requirements of Criminal Rule 801 (Qualifications for Defense Counsel in Capital Cases). There was discussion by the Joint Subcommittee and the full Committee about what experience the appointed attorney should have. Some members questioned whether requiring the appointed attorney to meet all the requirements of Rule 801 was the proper way to ensure that the most qualified attorneys for the proceeding would be appointed for these special types of cases. Rule 801 qualified attorneys may not have enough substantive knowledge concerning competency and mental health issues. Some members noted that, at the stage of the proceedings when a challenge to competency to be executed is raised, the experiential and educational requirements that qualify counsel under Rule 801 are no longer necessary to provide quality representation on this narrow issue. Rather, in these members' opinion, it is more protective of the defendant's rights if the appointed attorney has experience raising challenges to a defendant's competency or with other issues in the mental health field, whether criminal or civil. The Joint Subcommittee and the full Committee questioned whether the requirements for an attorney appointed under this rule should be modified to include experience in these areas of law.

The members concluded that this is an issue about which they need more information from individuals with experience in the field before making a final determination. Accordingly, the Committee invites the members of the bench and bar and other interested individuals to provide in writing to the Committee your ideas about the educational and experiential qualifications attorneys should satisfy to be appointed pursuant to proposed new Rule 852.

Paragraph (D) sets forth the contents of the appointment order and the docketing and service requirements.

Paragraph (E) addresses the withdrawal of counsel. These provisions are taken from Criminal Rule 120(B). However, under the proposed new procedures, the judge may not permit counsel to withdraw until the judge appoints new counsel or new counsel enters an appearance. In these cases, it is critical that an attorney is monitoring the defendant's competency without any gaps in representation through the time for execution.

Paragraph (F) incorporates the provision from Rule 904(G) concerning proceeding *in forma pauperis*.

The final issue relates to *Commonwealth v. Lucarelli*, 601 Pa. 185, 971 A.2d 1173 (2009). In *Lucarelli*, the Court held that a defendant may abrogate his or her right to counsel by dilatory conduct, stating:

where a defendant's course of conduct demonstrates his or her intention not to seek representation by private counsel, despite having the opportunity and financial wherewithal to do so, a determination that the defendant be required to proceed *pro se* is mandated because that defendant has forfeited the right to counsel.

⁹ In *Indiana v. Edwards*, the U.S. Supreme Court held that "the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the constitution permits states to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves."

Id. at 1179. Several members opined that this case should apply to the appointment of counsel in the context of determining competency to be executed and should be cited in the rules. The other members disagreed with this assessment, maintaining that, in the context of competency to execute, the defendant never should be permitted to waive counsel, even when being uncooperative, since the behavior could be a feature of the defendant's mental illness. Ultimately, the members agreed merely to reference *Lucarelli* in the Committee's explanatory Report.

RULE 853. Motion to Determine Defendant's Competency to be Executed.

Proposed new Rule 853 sets forth the procedures for the appointed attorney to file a motion challenging the defendant's competency to be executed, and enumerates the required contents of the motion. These motion procedures incorporate procedures from the general motions rules, Rules 575 and 576.

Paragraph (A) establishes the time for filing the motion. Consistent with the case law, the motion may not be filed until after a warrant of execution has been issued. Furthermore, the paragraph reiterates that the motion may only be filed by the appointed counsel. The motion must be filed with the clerk of courts in the judicial district in which the defendant was sentenced.

Paragraph (B), consistent with paragraph (B) (Service) of Rule 576 (Filing and Service of Motions), requires service of the motion on the attorney for the Commonwealth. In addition, the rule requires that a copy of the motion be served on "all other attorneys of record." The members noted that there may be other attorneys representing the defendant in, for example, a PCRA proceeding or in other matters, and reasoned that these attorneys need to be aware of this additional, collateral proceeding.

Paragraph (C) incorporates the provisions of paragraph (A)(2)(a) of Rule 575 (relating to motions and answers) requiring the attorney to sign the motion, and making it clear that the signature is a certification that the attorney has read the motion, that there are grounds to support the motion, and that the motion is not interposed for delay.

Paragraph (D) incorporates the contents of the motion provisions from Rule 575 modified to address the special nature of the challenge of a defendant's competency to be executed. The motion is required to request both an order staying execution and an order declaring that the defendant is incompetent to be executed. In addition, the defendant must include the name and address of one expert who will examine the defendant for the purpose of determining the defendant's competency to be executed, and information concerning any previous proceedings in which the defendant challenged his or her competency. The Comment explains that although the defendant is limited to naming one mental health expert to examine the defendant, nothing in the rules is intended to preclude the defendant from requesting that the judge order one or more additional experts to examine the defendant.

Paragraph (E) incorporates the requirement of a continuing duty to disclose from Rule 573 (relating to pretrial discovery and inspection). If the defendant's attorney learns of additional witnesses whose identity, if known, should have been in the motion, the defendant's attorney promptly must notify the attorney for the Commonwealth and the judge. This idea is explained further in the Comment.

Paragraph (F) incorporates the provisions from Rule 575(A)(2)(g) requiring a verification by sworn affidavit or unsworn written statement of any facts that do not appear of record.

Finally, paragraph (G) addresses the additional contents of the motion that are required when the motion is a second or subsequent motion challenging the defendant's competency to be executed. The motion must allege a change in circumstances subsequent to the previous determination of competency.

The Comment includes cross-references to Rule 575 for the format of motions requirements and to Rule 576 concerning certificates of service.

RULE 854. Docketing and Assignment.

This rule incorporates provisions from Rule 903 concerning the docketing and assignment of the matter. The members agreed following the procedures in Rule 903 makes sense because practitioners and court personnel are familiar with these procedures and understand the need for docketing and assigning these cases promptly.

Paragraph (B) requires the clerk of courts to transmit the motion and the criminal case file to the judge who imposed sentence, if available, or to the president judge, or the president judge's designee. We added the "president judge's designee" to accommodate systems in which, for example, the criminal court administrative judge would handle these types of assignment.

RULE 855. Review of Motion; Stay of Execution.

The Joint Subcommittee spent a great deal of time discussing what happens after the motion is filed. The members decided that, at this stage of the proceedings, before any further proceedings may occur, the judge must review the motion to determine if the motion fully complies with the requirements of Rule 853, that is, whether the motion is facially adequate.¹⁰

As set forth in paragraph (A), the judge is required to make this review within five days of receipt of the motion. If the judge finds that the motion does comply with the requirements of Rule 853 and is facially adequate, paragraph (B) requires the judge to issue a stay of execution and the case proceeds pursuant to the rules. The judge is not permitted to make a substantive determination at this point.

Paragraph (C) requires the judge to deny the motion if the judge finds that the motion does not comply with the requirements of Rule 853.

The members considered whether the rules should address the defendant's right to appeal the judge's denial of the motion at this stage. Agreeing that the defendant could petition for review of the denial of the motion, the Joint Subcommittee added a cross-reference to Rule of Appellate Procedure 1572 (Review of Determinations of Competency to be Executed) to the Comment.

Proposed new Rule 855 also addresses the situation in which the competency to be executed proceedings have been initiated and other collateral proceedings also are initiated. The members expressed concern about having these two proceedings moving forward at the same time if the judge in the collateral proceeding issues a stay of execution. They noted that a great deal of time and

¹⁰ The members agreed, if the motion is facially adequate, that is, if the defendant's attorney has included all the information required by proposed new Rule 853(D), the defendant will have made a substantial showing of incompetency. This threshold showing is consistent with the requirements in the case law. See, e.g. *Ford v. Wainwright*, 477 U.S., at 426, and *In re Gary M. Heidnik*, 554 Pa., at 187, 720 A.2d, at 1021.

resources may be wasted because the defendant's mental status could change markedly during the period of the collateral review and because a determination of incompetency to be executed must be made when execution is imminent. The members concluded that this issue should be addressed in proposed new Rule 855(D) with a requirement that, if a stay has been issued for reasons other than competency to be executed, that stay acts as a stay of competency proceedings under this Part. The Comment elaborates on this concept and provides examples of related "collateral proceedings" as used in paragraph (D).

RULE 856. Evidentiary Material.

In developing the proposed new procedures, the Joint Subcommittee considered the application of the discovery procedures in the Criminal Rules to a proceeding challenging the defendant's competency to be executed. Agreeing that in this special case there is a need for full reciprocal disclosure of all relevant information, the members created an entirely new concept for the Criminal Rules that provides a different mechanism in competency to be executed cases for gathering all necessary and relevant information in a pool maintained by the judge. This new procedure, as explained in the Comment, is intended to ensure the gathered information is available to the parties and the experts at the earliest possible time.

The first issue addressed was what to call this new rule. The Joint Subcommittee looked at other Pennsylvania rules and statutes, and the rules and statutes in other jurisdictions for ideas, but did not find much help from these sources. The members settled on "evidentiary material" as the title of the new rule, with a definition of what "evidentiary material" means in paragraph (A). The information covered by the definition is intentionally broad in scope with the limitation being the need for the information. To be subject to this new rule, the information being sought must relate to facts that form the basis of the defendant's motion, or would form the basis of the Commonwealth's response, or would be pertinent to the experts for purposes of examinations under the rules.

Paragraph (B) addresses the issue of obtaining information that otherwise may be confidential or privileged material. The members agreed that, because the defendant is challenging his or her competency to be executed, and because the information being gathered is vital to a fair and just resolution of the challenge, the rule should require that, by filing of the motion, the defendant is deemed to have waived confidentiality and privilege claims and to have consented to the release of the evidentiary materials, but only to the extent these materials are relevant to the issue of competency to be executed.

Paragraph (C) establishes the procedures for gathering the information. When the judge receives the motion, the judge is required to issue an order directing the individuals and organizations that most likely will have information relevant to the defendant's motion—the parties, the Department of Corrections, and any public or private organization, entity, or agency—to provide the judge with copies of the evidentiary materials in their possession, and to specify in the order the time within which the evidentiary materials must be provided. The judge is the best person to gather the information because the materials in this pool are to be available to the judge, both sides, and the experts. In addition, because there are not that many cases challenging the defendant's competency to be executed, the members do not believe this requirement will be an onerous burden on the judge.

Paragraph (D) places with the judge the responsibility for establishing procedures for collecting, indexing, maintaining, and distributing the materials. In addition, the paragraph requires the materials to be made available for inspection and copying to the parties and the experts who will examine the defendant.

During the discussions about this new procedure, the members recognized the potential problems concerning public access to evidentiary materials and the defendant's privacy rights. After reviewing the confidentiality provisions in paragraph (B)(1) of Rule 569 (Examination of Defendant by Mental Health Expert), the members agreed that paragraph (E) should make it clear that the evidentiary materials gathered pursuant to this rule are confidential and not of public record unless and until admitted by the judge at the hearing. This protection is emphasized in the Comment. Furthermore, dissemination of the evidentiary materials is controlled by the judge.

Paragraph (F) provides for the continuous duty to provide information when it becomes available. This requirement is further explained in the Comment.

RULE 857. Response to Motion.

Rule 857 is modeled on Rule 906(E)(1) and requires the attorney for the Commonwealth to file an answer to the motion. The members agreed the timing in this rule should be consistent with the timing for answers in death penalty cases provided in the PCRA rules; that is, within 120 days of the filing and service of the motion. *See* Rule 906(E). Although cognizant of the Court's interest in timely disposition of these cases, the members agreed the attorney for the Commonwealth needs sufficient time to review all the records in the case as well as all the relevant information being gathered pursuant to proposed new Rule 856 to prepare a response.

The members also thought this "answer" should be called a "response" because the attorney for the Commonwealth not only is answering the motion, but also is supplying the name of one mental health expert to examine the defendant and the names and addresses of other witnesses the attorney for the Commonwealth intends to call. To make it clear that the "response" is subject to the contents of answers provisions in Rule 575(b), the format requirements in Rule 575(c), and the filing and service provisions in Rule 576, the members agreed to include a clarification in the Comment.

Paragraph (B) requires the attorney for the Commonwealth to name the expert he or she wants to examine the defendant. The Comment explains that the attorney for the Commonwealth also may request the court to order additional examinations of the defendant.

Paragraph (B) also requires the attorney for the Commonwealth to disclose the names and addresses of any witnesses the Commonwealth intends to call to disprove or discredit the defendant's claim of incompetency to be executed. The Committee believes the requirement for disclosure of witnesses is important to be consistent with the intent of the proposed new rules to have full, open, and continuous disclosure. Correlative with this requirement, paragraph (C) requires the continuing disclosure of witness information. This requirement is emphasized in the Comment.

Finally, paragraph (D) requires service on "all other attorneys of record."

RULE 858. Disposition without a Hearing.

Proposed new Rule 858 is taken from Rule 907 (Disposition Without Hearing). Before settling on incorporating

the Rule 907 procedures, the Joint Subcommittee debated whether the judge should be able to dismiss the motion challenging the defendant's competency to be executed without a hearing at all or before the defendant has been examined by the mental health experts. The members noted the procedural flow of cases at this point varies among the jurisdictions, with some jurisdictions requiring the judge to make a preliminary finding whether the matter should proceed, with others proceeding to examination before determining whether to proceed, and with others conducting the hearing without the requirement of a preliminary finding.¹¹

Ultimately, the members concluded that if the standard for the dismissal is strict enough to limit the application of this rule, the judge should be permitted to dismiss without a hearing. Thus, the rule requires that before dismissing a case without a hearing, the judge must make a preliminary finding whether the motion is patently frivolous. The patently frivolous standard is a stricter standard than what is required in Rule 907.

Paragraph (A) imposes a 20-day time limit after the Commonwealth files a response within which the judge must review the motion, the Commonwealth's response, and other matters of record relating to the defendant's competency to be executed to determine whether a hearing is required. The 20-day time limit is consistent with the time limit on dismissals of PCRA petitions in death penalty cases set forth in Rule 909(B)(1). The members agreed to use the same timing because, at this point in the proceedings when there is a challenge to the defendant's competency to be executed, it is just as important to have the case keep moving as it is in the PCRA context.

Paragraph (B) sets forth the requirement that a motion must be patently frivolous to dismiss without a hearing. In addition, the paragraph provides as a separate standard for dismissal of a successive motion that does not comply with the requirements of Rule 853(F). In any case in which the judge determines the motion is patently frivolous or the successive motion does not comply with Rule 853(F), the case will proceed as provided in the remainder of paragraph (B). As in Rule 909(B)(2), the judge is required to give notice of the intention to deny the motion, paragraph (B)(1), and the defendant has a 20-day time period within which to respond, paragraph (B)(2).

Paragraph (B)(3) sets forth the judge's options after providing the notice of the intention to deny the motion. The proposed new rule requires that, within the 30-day period after the notice to the defendant, or in cases in which the defendant responds to the notice, 30-days from the date of the defendant's response, the judge is required to either deny the motion, or, if the judge decides not to deny the motion, the judge is required to order an examination of the defendant, the next step in the proceeding. See proposed new Rule 859.

¹¹ See, e.g., Florida Rules of Criminal Procedure, Rule 3.811(e) (if the judge, "upon review of motion and submissions has reasonable grounds to believe that the prisoner is insane to be executed, the judge shall grant the stay of execution and may order further proceedings which may include a hearing"); Consolidated Laws of New York, Chapter 43 § 656 ("promptly upon filing the petition, the court shall appoint a commission of three psychiatric examiners . . . to inquire into the inmate's competence"); and Ohio Revised Code, Title XXIX, § 2949.28 ("if the judge finds that probable cause exists to believe that the convict is insane, the judge shall hold a hearing to determine whether the convict is insane. If the judge does not find that probable cause of that nature exists, the judge may dismiss the matter without a hearing").

Paragraph (B)(4) addresses what occurs after the judge denies the motion. The paragraph makes it clear that this order is a final order that may be reviewed, and requires the judge in the order to advise the defendant of the right to file a petition for review. In addition, when the motion is denied, the judge must vacate any previous order staying execution.

Paragraph (B)(5) incorporates the provision from Rule 909(B)(7)(b) that the clerk of courts must send a copy of the order to the Supreme Court as well as to the defendant, defendant's attorney, and all other attorneys of record. When the Supreme Court receives the order, the Prothonotary is required to forward a copy of the order to the Governor.

RULE 859. Examination of Defendant.

The provisions in proposed new Rule 859 providing for the examination of the defendant by mental health experts are an amalgamation of the examination procedures Rule 569 and the procedures in some of the other jurisdictions.

Paragraph (A) requires the judge to order that the defendant submit to an examination by the one mental health expert named in the defendant's motion and by the one mental health expert named in the attorney for the Commonwealth's response. In reaching the conclusion that each side should be permitted as of right to have the defendant be examined by one mental health expert, the Committee considered that in most of these cases, the defendant is proceeding *in forma pauperis* so the cost for the defendant's mental health expert will be borne by the court. In balancing the defendant's rights, the fair disposition of the case, and the fiscal implications, the members opined that providing for one examination as of right is reasonable. Recognizing, however, that there may be legitimate reasons why a defendant or the Commonwealth would require additional examinations by different specialists, the Committee agreed to provide that both sides may request that the judge order additional examinations, but this decision is discretionary with the judge. This provision is set forth in paragraph (B). The Comment includes an explanation that the judge has an obligation when deciding whether to order additional examinations under paragraph (B) to take into consideration the reasonable fees and costs of the examinations that would be incurred by the court when the defendant is indigent. Paragraph (B) also permits the judge to order the defendant to submit to examinations by mental health experts designated by the judge.

Paragraph (C) sets forth the procedures following the judge's order for the examinations. Paragraph (C)(1) requires that, by filing the motion, the defendant is deemed to consent to and cooperate in any competency examinations.

Paragraph (C)(2) explains the contents of the judge's order, and requires the judge's order to: (1) inform the defendant of the purpose of the examination and the potential consequences; (2) specify who may be present; and (3) specify the time within which the examination must be conducted and the time within which the mental health expert's report must be submitted. These procedures are comparable to the procedures in Rule 569(A)(2)(b) and (c).

Paragraphs (C)(3) and (C)(4) address the mental health experts' reports. The experts who examine the defendant pursuant to the Court's order must prepare written reports. Similar to the provision in Rule 573 that expert's reports are confidential, Rule 859(C)(4) provides that the reports are confidential and not of public record. The experts in their reports must address the nature of the defendant's mental disorder and its relationship to the factors relevant to defendant's competency to be executed. These factors are derived from *Ford v. Wainwright*, 477 U.S. 399, 409-410 (1986) and *Panetti v. Quarterman*, 551 U.S. 930 (2007), and are set forth in the Comment.

One procedure used by other jurisdictions that was considered but rejected concerns requiring that the examinations be videotaped. The members discussed at length the issues related to videotaping including public access, custody of the videotape, access by parties and the judge, implications of the Wiretap Act, *etc.* Ultimately, in view of all these issues, they agreed videotaping should not be required in these cases, but noted that, in any given case, the judge has the discretion to permit the videotaping.

Another issue that was debated concerns the exchange of the mental health experts' reports. The members considered an approach modeled on the disclosure provisions in Rule 573 (Pretrial Discovery and Inspection) that would provide for a reciprocal exchange prior to the hearing on defendant's motion of the reports of the experts whom the parties intend to call at the hearing. However, after considering the unique nature of the proceedings in competency to be executed cases, and reaffirming the importance of the full and free exchange of information incorporated into the new procedures, the members concluded that all of the reports of all the mental health experts who examine the defendant pursuant to Rule 859 must be disclosed to the parties. The judge is required to set a reasonable time after the last examination before the hearing for the disclosure of the reports.

The final issue discussed with regard to the examination of a defendant challenging his or her competency to be executed concerns *Commonwealth v. Sam*, 597 Pa. 523, 952 A.2d 565 (2008). In *Sam*, the Court addressed whether "an inmate who is presently incompetent may be compelled to take psychiatric medication in order to render him competent to determine whether to pursue relief under the Post Conviction Relief Act (PCRA)," holding that the defendant could be forced to take the medications. The Court concluded by stating "the PCRA court erred in determining that Appellee may refuse the administration of antipsychotic medication *under the circumstances of this case*," *Id.*, 597 Pa. at 562, and 952 A.2d at 598. The members discussed whether *Sam* affects a *Ford/Banks* analysis and whether the case would play any role in determining a defendant's competency to be executed. The members ultimately agreed that *Sam* is limited to the facts of that case, and, therefore, the issue of compelled medication would not be addressed in these new rules.

The Comment fleshes out the conduct of the examinations, the considerations when a defendant refuses to cooperate, and the factors relevant to the defendant's competency to be executed.

RULE 860. Status Reports; Pre-Hearing Conference.

During the discussions in proposed new Rule 859 about the exchange of reports, the Joint Subcommittee noted

that, because there may be more than one expert examining the defendant by court order, and the examinations of the defendant could be conducted on multiple occasions, there should be a mechanism in the rules to keep the judge apprised of the status of the examinations. To accomplish this, the members thought periodic status reports from the parties to the judge followed by a pre-hearing conference similar to the pretrial conference in Rule 570 was a reasonable requirement.

Proposed new Rule 860 sets forth the procedures for the status reports and the pre-hearing conference. Paragraph (A) requires that the first status reports be filed 60 days after the judge orders the examinations. Subsequent status reports must be filed no later than every 30 days after the first reports. The status reports advise the judge of the status of the examinations, the status of the experts' reports, and any other matters pertinent to the case.

Paragraph (B) requires the judge to schedule a pre-hearing conference. The conference must be held no later than 6 months from the date of the judge's order for the examination of the defendant. The rule permits the judge to extend the date of the conference for one 30-day period for good cause.

Paragraphs (C), (D), and (E) are taken from Rule 570 and explain what occurs at the pre-hearing conference.

The Comment explains that the judge may conduct the pre-hearing conference before the end of the 6-month period if the examinations of the defendant are concluded in less time. The Comment also makes it clear that the judge may conduct periodic status conferences before the pre-hearing conference. The Joint Subcommittee thought it important to make it clear that the judge has the discretion to shorten the times as well as keep closer tabs on what is happening to ensure the case proceeds in a timely and efficient manner.

RULE 861. Hearing; Disposition.

Proposed new Rule 861 is modeled on Rules 908 and 909 and establishes the procedures for the hearing on the defendant's challenge of his or her competency to be executed and disposition of the motion following the hearing. Paragraph (B) requires that the defendant appear in person for the hearing, not by two-way simultaneous audio-visual communication. In the Comment, the parameters of the "in person" requirement are addressed. The U.S. Supreme Court noted in *Illinois v. Allen*, 397 U.S. 337 (1970), that:

Although mindful that courts must indulge every reasonable presumption against the loss of constitutional rights, *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938), we explicitly hold today that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.

Id. 343. The Pennsylvania courts in numerous cases have relied on the *Allen* holding in deciding that unruly, disruptive defendants may be excluded from proceedings. See, e.g., *Commonwealth v. Basemore*, 525 Pa. 512, 582 A.2d 861 (1990). These cases are cited in the Comment.

In discussing the procedures for the hearing, the issue arose whether to address in the proposed new rule the burden of going forward and the burden of proof. After a thorough review of the relevant case law and other jurisdictions' rules and statutes, the members settled upon providing in the rule that the defendant as the movant has the burden of going forward with the evidence at the hearing. Concerning the issue of the burden of proof, the members concluded the burden of proof is substantive and would not be appropriate to address in the text of the rule. However, the members agreed from their reading of the relevant cases that the burden of proving competency is on the defendant by a preponderance of the evidence, and that citation to some of the relevant case law in the Comment would be helpful to the bench and bar.

Paragraph (E) sets forth the procedures the judge is to follow if the judge finds the defendant is not competent to be executed. These procedures are taken from Rules 908 and 909 as well as from other jurisdictions and include the requirements that the judge order the defendant to receive appropriate mental health treatment and include on the record specific findings of fact concerning

- (a) the defendant's awareness of the fact of the defendant's impending execution;
- (b) the defendant's understanding that the defendant is to be executed for the crime of murder; and
- (c) the nature of the defendant's mental disorder, if any, and its relationship to the factors relevant to the defendant's competency.

These specific findings are taken from *Ford and Panetti*.

Paragraph (F) sets forth the procedures when the judge finds the defendant is competent to be executed. The judge must vacate any previous order staying execution that was entered under the rules in Chapter 8 Part B.

Paragraph (F)(1) incorporates the provision from Rule 909(B)(7)(b) that the clerk of courts must send a copy of the order to the Supreme Court as well as to the defendant, defendant's attorney, and all other attorneys of record. When the Supreme Court receives the order, the Prothonotary is required to forward a copy of the order to the Governor.

Paragraph (H) is modeled on the provisions of Rule 909(B)(3), (4), (5), and (6) but has shorter time periods. Under paragraph (H), the judge is required to dispose of the motion within 30 days of the conclusion of the hearing, with a 15-day extension for good cause. If the motion is not disposed within the time periods, the clerk of courts is required to send the judge a reminder, and if the judge does not act, then the clerk must send notice of the judge's non-compliance to the Supreme Court.

In addition to addressing the burden of proof, the Comment explains several other points that merit additional elaboration. The first point concerns the evidentiary material gathered pursuant to Rule 856 and the experts' reports. The members thought a paragraph should be added to the Comment to caution the parties that this information must be introduced at the hearing and made part of the record. In addition, a reference to Rules of Evidence 614 and 706 is included to explain the authority of the judge to call and interrogate witnesses.

RULE 862. Monitoring of Defendant's Incompetency.

Proposed new Rule 862 provides the procedures for the review of the defendant's status following a determination that the defendant is not competent to be executed. Recognizing that the defendant's status may change over time and with treatment, most of the other jurisdictions have established procedures for the periodic review of the defendant's status. Agreeing that this subsequent review makes sense, the members incorporated procedures from some of the other jurisdictions into proposed new Rule 862.

Paragraph (A) requires the Department of Correction's (DOC) treating psychiatrist and any other expert who is treating the defendant at this time to monitor the defendant's competency.

Paragraph (B) requires the treating mental health experts every six months to provide a written report on the defendant's current mental status and progress toward competency restoration to the judge, the attorney for the Commonwealth, and the defendant's attorney. The 6-month period runs from the date the defendant is found to be incompetent to be executed and will occur whether or not a petition for review has been filed. The treating mental health experts are required to provide these reports automatically without requiring the judge to issue an order. In addition, if there is a petition for review pending in the case, a copy of the report must be provided to the Supreme Court.¹²

Paragraph (C) sets forth the procedures for requesting a hearing. Because the defendant is being monitored by mental health experts after a determination that the defendant is not competent to be executed, the members reasoned it was not necessary to require that a hearing on the defendant's current status be conducted in every case following receipt of the treating mental health experts' reports. Rather, a hearing only should be held if the parties request a hearing on a motion, or the judge determines a hearing is necessary. No hearings will be conducted during the time a petition for review is pending.

Paragraph (D) permits the attorney for the Commonwealth at any time after the defendant has been found to be incompetent to be executed to request a hearing if the attorney for the Commonwealth alleges there is a material change in circumstances. This is an exception to the proscription on conducting a hearing while a petition for review is pending. A copy of the motion must be served on the defendant and the defendant's attorney.

Paragraph (E) sets forth the procedures for the review hearing. The members agreed that this review hearing would be conducted in the same manner as the initial hearing in Rule 861, the parties would be able to introduce evidence and cross-examine witnesses, and the judge may call and interrogate witnesses as provided by law. As with the discussion about the hearing procedures in Rule 861, the members spent a great deal of time determining who has the burden to go forward and the burden of proof in these review hearings. Because the attorney for the Commonwealth is the movant in these cases, he or she has the burden of going forward.

¹² Pursuant to the proposed changes to the Appellate Rules, the appeal in these cases will be by means of a petition for review filed directly with the Supreme Court.

Paragraphs (F), (G), (H), and (I) and the correlative provisions in the Comment for the most part are the same as the provisions in proposed new Rule 861(E), (F), (G), and (H) and Comment concerning the procedures: (1) when the judge finds that the defendant remains incompetent to be executed; (2) when the judge determines the defendant is competent to be executed; and (3) the time for court action. The Rule 862 Comment also makes it clear that the rule is not intended to preclude the judge, on his or her own motion or on motion of the parties, to order examinations of the defendant for the purposes of determining the defendant's current mental status and progress toward competency restoration.

V. Correlative Rule Changes

Correlative to the new procedures in these rules, Rules 113, 119, and 800 would be amended as explained as follows.

RULE 113. Criminal Case File and Docket Entries.

Rule 113 would be amended by adding to paragraph (C)(2) the requirement that the clerk of courts make a notation in the docket when the attorney is appointed pursuant to proposed new Rule 852. In addition, the Comment would be revised to include a cross-reference to proposed new Rule 852 further emphasizing that the notation in the docket when counsel is appointed under these rules should specify that the appointment is for the limited purpose of raising the defendant's competency to be executed. Rule 113 also is cross-referenced in the proposed new Rule 852 Comment.

RULE 119. Use of Two-Way Simultaneous Audio-Video Communication in Criminal Proceedings.

The changes to Rule 119 add the proceedings to determine the defendant's competency to be executed to the exceptions to using two-way simultaneous audio-visual communication in paragraph (A). A correlative provision would be added to the Rule 119 Comment. As discussed above in the summary of the proposed new Rule 861 procedures, the defendant must be present in person at the hearing on the defendant's motion challenging competency to be executed.

RULE 800. Applicability of Part A.

Rule 800 would be amended to conform with the addition of new Part B to accommodate the new competency to be executed procedures.

[Pa.B. Doc. No. 10-815. Filed for public inspection May 7, 2010, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

In Re: Amendment of Local Rule of Civil Procedure 205.2(b) Filing Legal Papers with the Prothonotary; No. 10-1100

Administrative Order No. 12-2010

And Now, this 27th day of April, 2010, it is hereby Ordered and Decreed that, effective upon publication on the UJS Web Portal, Carbon County Rule of Civil Procedure CARB.R.C.P. 205.2(b) governing the Filing of Legal Papers with the Prothonotary be and is hereby Amended as follows.

1. File two (2) certified copies and one (1) computer diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
2. File one (1) electronic copy with the Civil Procedural Rules Committee at civil.rules@pacourts.us.
3. Publish a copy of this Local Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Administrative Order and Local Rule in the Prothonotary's Office.

By the Court

ROGER N. NANOVIC,
President Judge

Rule 205.2(b). Filing Legal Papers with the Prothonotary.

Pursuant to this rule and in addition to the mandatory Supreme Court Civil Cover Sheet, a Civil Cover Sheet marked Form "A", shall be attached to any document commencing an action (whether the action is commenced by Complaint, Writ of Summons, Notice of Appeal, or by Petition) in the Prothonotary's office.

A Motion Cover Sheet, marked Form "B", shall be attached to any motion or petition being filed.

Court of Common Pleas of Carbon County		
Civil Cover Sheet		For Prothonotary Use only (Docket Number)
PLAINTIFF'S NAME: Enter names (last, first, middle initial) of plaintiff. If the plaintiff is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two plaintiffs, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties.		DEFENDANT'S NAME: Enter names (last, first, middle initial) of defendant. If the defendant is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two defendants, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties.
PLAINTIFF'S ADDRESS & TELEPHONE NUMBER: Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation.		DEFENDANT'S ADDRESS AND TELEPHONE NUMBER: Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation.
ADDITIONAL PLAINTIFF'S NAME:		ADDITIONAL DEFENDANT'S NAME:
ADDITIONAL PLAINTIFF'S ADDRESS/ TELEPHONE NO:		ADDITIONAL DEFENDANT'S ADDRESS/ TELEPHONE NO:
TOTAL NUMBER OF PLAINTIFFS: Indicate the total number of plaintiffs and the total number of defendants in the action.		TOTAL NUMBER OF DEFENDANTS: Indicate the total number of plaintiffs and the total number of defendants in the action.
STATUTORY BASIS FOR CAUSE OF ACTION: If the action is commenced pursuant to statutory authority ("Petition Action"), the specific statute must be cited.		
RELATED PENDING CASES: (All previously filed related cases must be identified by docket number. Indicated whether they have been consolidated by Court Order or Stipulation.)		
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant. Papers may be served at the address set forth below.		
NAME OF PLAINTIFF'S/APPELLANT'S ATTORNEY: Unrepresented filers must provide their name, address, telephone number and signature.		ADDRESS
PHONE NUMBER	SUPREME COURT IDENTIFICATION NUMBER	E-MAIL ADDRESS: FAX NO. (OPTIONAL - FOR SERVICE): Providing the fax number shall authorize the service of legal papers by facsimile transmission. See Pa.R.C.P. 440(d)
DATE: _____		SIGNATURE: _____

Form A
Effective July 26, 2004
Revision Effective July 1, 2010

CARBON COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION
MOTION COVER SHEET

NO. _____

vs.

FILING OF:

Movant () Respondent ()

TYPE OF FILING (check one):

- () 1. Pretrial Discovery Motion (432)
() 2. Motion for Discovery in Aid of Execution (480)
() 3. Preliminary Objections to (576)
() 4. Motion for Summary Judgment (306)
() 5. Motion for Judgment on Pleadings (294)
() 6. Motion for Leave to Join Additional Defendant (403)
() 7. Motion for TRO or Preliminary Injunction (438)
() 8. Petition to Open or Strike Judgment (498)
() 9. Motion for Alternative Service (409)
() 10. Motion for Leave to Amend (465)
() 11. Motion to Consolidate Actions (424)
() 12. Petition to Compromise Minor's Action (435)
() 13. Motion for Leave to Withdraw (510)
() 14. Motion for Reconsideration (441)
() 15. Motion for Advancement on Trial List (404)
() 16. Other Motion or Petition (specify):

OTHER PARTIES:

Attorney's Name (Typed) _____

Attorney for: () Movant () Respondent

N.B. The numbers after the Motion or Petition above are docket codes used in the Court Computer System. Please be precise when checking your Motion or Petition.

Form B
Effective July 26, 2004
Revision Effective July 1, 2010

[Pa.B. Doc. No. 10-816. Filed for public inspection May 7, 2010, 9:00 a.m.]

CARBON COUNTY

In Re: Amendment of Local Rule of Civil Procedure 1302 List of Arbitrators. Appointment to Board. Oath.; No. 10-1099

Administrative Order No. 11-2010

And Now, this 27th day of April, 2010, it is hereby Ordered and Decreed that, effective July 1, 2010, Carbon County Rule of Civil Procedure CARB.R.C.P. 1302 governing the List of Arbitrators and Appointment to the Board and Oath in arbitrated matters be and is hereby Amended as follows.

1. The Carbon County District Court Administrator is Ordered and Directed to File seven (7) certified copies of this Administrative Order and Local Rules with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) computer diskette with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

3. File one (1) certified copy with the Civil Procedural Rules Committee.

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

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

6. Keep continuously available for public inspection copies of the Administrative Order and Local Rule in the Prothonotary's Office.

By the Court

ROGER N. NANOVIC,
President Judge

Rule 1302. List of Arbitrators. Appointment to Board. Oath.

Any attorney who is actively engaged in the general practice of law primarily in Carbon County who is interested in serving on Arbitration cases shall complete

and return to the District Court Administrator a "Consent to Serve as Arbitrator" as attached hereto.

This information shall be entered into the Court database for maintenance and selection of available arbitrators.

CONSENT TO SERVE AS ARBITRATOR

The undersigned hereby consents to serve as an Arbitrator under the Pennsylvania Rules of Compulsory Arbitration, and asks that his/her name remain on the active roll of Arbitrators to continue to serve in such capacity when called upon until further notice.

SIGNATURE

DATE

PLEASE TYPE OR PRINT CLEARLY:

NAME: _____

Date Admitted to the Carbon County Bar _____ **Email:** _____

FIRM: _____

ADDRESS: _____

MAILING ADDRESS: (if different than above) _____

Telephone No. _____ **Fax No.** _____

Identification No. _____

(This number appears on the lower left corner of card issued by the State Court Administrator)

I am associated in the Practice of Law with: (Please indicate associates Identification No.)

_____ # _____
_____ # _____
_____ # _____
_____ # _____

I am related to the following members of the Bar who are not associated with me in the Practice of Law.

_____ # _____
_____ # _____

NOTE: Any change in your status of practicing with or being associated with any other lawyer or lawyers shall immediately be reported to the District Court Administrator.

Effective July 26, 2004
Revision Effective July 1, 2010

[Pa.B. Doc. No. 10-817. Filed for public inspection May 7, 2010, 9:00 a.m.]

CHESTER COUNTY

In Re: Arrest Warrant Procedures in Juvenile Delinquency Cases and Designation of Issuing Authorities**Administrative Regulation No. 10-2010**

And Now, this 7th day of April, 2010, pursuant to Pennsylvania Rules of Juvenile Court Procedure Nos. 121, 210.A and 1121, and consistent with prior Chester County Court of Common Pleas Administrative Regulation 1-2006, it is hereby *Ordered* and *Decreed* that the following shall become juvenile court local rule L-210.A:

All judges of the court of common pleas of Chester County and all magisterial district judges of Chester County (Fifteenth Judicial District) are hereby designated as issuing authorities for arrest warrants for juveniles in delinquency cases.

When the Chester County court of common pleas is closed or the common pleas judges are unavailable, applications for juvenile arrest warrants made pursuant to Pa.R.J.C.P. 210.A, and with approval of an attorney for the Commonwealth pursuant to Pa.R.J.C.P. 210.B and 231.B when required, shall be submitted to the "on-call" magisterial district judge.

Pursuant to Pa.R.J.C.P. Nos. 121.C and 1121.C, the number of this local rule is keyed to Pa.R.J.C.P. 210.A, pertaining to arrest warrant procedures in juvenile delinquency cases and designation of issuing authorities.

By the Court

JAMES P. MacELREE, II,
President Judge

[Pa.B. Doc. No. 10-818. Filed for public inspection May 7, 2010, 9:00 a.m.]

CHESTER COUNTY

In Re: Assignment of Counsel to Juveniles in Juvenile Court**Administrative Regulation No. 9-2010**

And Now, this 7th day of April, 2010, pursuant to Pennsylvania Rules of Juvenile Court Procedure 121, 151 and 1121, and consistent with prior Chester County Court of Common Pleas Administrative Regulation No. 3-2005, it is hereby *Ordered* and *Decreed* that the following shall become juvenile court local rule L-151:

The Chester County Public Defender's office or, in the event of a conflict, assigned conflict counsel shall represent all juveniles against whom a petition has been filed in juvenile court and who have not retained private counsel.

Pursuant to Pa.R.J.C.P. Nos. 121.C and 1121.C, the number of this local rule is keyed to Pa.R.J.C.P. 151, pertaining to court assignment of counsel to juveniles in juvenile court.

By the Court

JAMES P. MacELREE, II,
President Judge

[Pa.B. Doc. No. 10-819. Filed for public inspection May 7, 2010, 9:00 a.m.]

CHESTER COUNTY

In Re: Juvenile Support Bench Warrants**Administrative Regulation No. 11-2010**

And Now, this 7th day of April, 2010, pursuant to Pennsylvania Rules of Juvenile Court Procedure Nos. 121, 210.C, 220.A.(2)(b) and 1121, and consistent with prior Chester County Court of Common Pleas Administrative Order 7-2008, it is hereby *Ordered* and *Decreed* that the following shall become juvenile court local rule L-220.A.(2)(b):

Any juvenile (a person who is less than eighteen (18) years of age) taken into custody pursuant to a bench warrant issued for failure to pay support shall be transported to the Chester County Youth Center (Youth Center) for detention until the bench warrant is quashed or a court of common pleas judge holds a seventy-two (72) hour hearing for the juvenile. In the event that the judge determines that further detention is warranted, the juvenile shall remain in the Youth Center. Under no circumstances shall such a juvenile be incarcerated in the Chester County Prison. The Youth Center shall immediately notify the appropriate supervisor of the Chester County Domestic Relations Office (DRO) to apprise the DRO of the juvenile's detention. Upon such notice, the DRO shall promptly perform all functions that it normally performs for incarcerated support defendants, including the scheduling of a seventy-two (72) hour hearing for the juvenile before a judge.

Pursuant to Pa.R.J.C.P. Nos. 121.C and 1121.C, the number of this local rule is keyed to Pa.R.J.C.P. 220.A.(2)(b), pertaining to the delivery of arrested juveniles to a detention facility designated by the court.

By the Court

JAMES P. MacELREE, II,
President Judge

[Pa.B. Doc. No. 10-820. Filed for public inspection May 7, 2010, 9:00 a.m.]

CHESTER COUNTY

In Re: Seventy-Two (72) Hour Juvenile Bench Warrant Hearings**Administrative Regulation No. 8-2010**

And Now, this 7th day of April, 2010, pursuant to Pennsylvania Rules of Juvenile Court Procedure Nos. 121, 140.C.(2)(a) and 1121, and consistent with prior Chester County Court of Common Pleas Administrative Order 3-2008, it is hereby *Ordered* and *Decreed* that the following shall become juvenile court local rule L-140.C.(2)(a):

Any juvenile (as defined by Pa.R.J.C.P. 120) taken into custody pursuant to a bench warrant which orders detention of the juvenile, and is issued by a judge shall, within seventy-two (72) hours of detention/arrest within Chester County, be taken for a hearing before the Chester County juvenile court supervising judge or, in his/her absence, the juvenile court judge assigned juvenile court during the week when the hearing is scheduled or, in the absence of both of those judges, the miscellaneous signing judge.

Pursuant to Pa.R.J.C.P. Nos. 121.C and 1121.C, the number of this local rule is keyed to Pa.R.J.C.P.

140.C.(2)(a), pertaining to seventy-two (72) hour hearings for juveniles arrested on bench warrants.

By the Court

JAMES P. MacELREE, II,
President Judge

[Pa.B. Doc. No. 10-821. Filed for public inspection May 7, 2010, 9:00 a.m.]

CLARION COUNTY

In Re: Administrative Order Establishing a Booking Center Fund Fee of \$50; No. 471 CD 2010

Administrative Order

And Now, April 12, 2010 as per 42 Pa.C.S.A. § 1725.5 and following the adoption of a countywide booking center plan, which plan was effective November 15, 2009 any defendant who is:

- 1. placed on probation without verdict pursuant to section 17 of the act of April 14, 1972 (P. L. 223, No. 64) known as The Controlled Substance, Drug, Device and Cosmetic Act
2. Receives Accelerated Rehabilitative Disposition for, pleads guilty to or nolo contendere to or is convicted of a crime under the following:
(i) 18 Pa.C.S. § 106(a) (relating to classes of offenses).
(ii) 75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under the influence).
(iii) 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance).
(iv) A violation of the Controlled Substance, Drug, Device and Cosmetic Act.

is required by the court to pay a booking center fee fund in the amount of Fifty Dollars (\$50), which funds are to be deposited into a special Central Booking Center Fund, which fund shall be created by the Clarion County Clerk of Courts in conjunction with the Treasurer of Clarion County. Such funds shall be used solely for the implementation, start up, operation and maintenance of the Central Booking Center and requisitions for payment of such expenses shall be submitted for payment by the Clarion County District Attorney's Office through the usual requisition process utilized by the County of Clarion.

Any booking center fee fund charged on a case that is disposed of at the Magisterial District Court Office and is not waived or otherwise transferred into Common Pleas Court, shall be submitted to the Treasurer of Clarion County as a CA29 fee. Upon submission of funds to the County of Clarion, the Magisterial District Court shall clearly indicate those funds designated as CA29 fees, so they may be properly deposited into the Central Booking Center Fund.

This order shall become effective thirty days after its publication in the Pennsylvania Bulletin.

By the Court

JAMES G. ARNER,
President Judge

[Pa.B. Doc. No. 10-822. Filed for public inspection May 7, 2010, 9:00 a.m.]

WESTMORELAND COUNTY

In Re: Adopting New Rule W205.2(b); No. 3 of 2010

Amended Order

And Now, this 22nd day of April, 2010 It Is Hereby Ordered that, effective upon publication of this rule on the Pennsylvania Judiciary's Web Application Portal, Westmoreland County Rule of Civil Procedure W205.2(b) and the associated Cover Sheet is rescinded, and new Rule W205.2(b) and associated Cover Sheet is adopted.

This Order supersedes the Order of April 20, 2010 adopting Rule W205.2(b) effective May 26, 2010 rather than upon publication on the Pennsylvania Judiciary's Web Application Portal.

By the Court

JOHN E. BLAHOVEC,
President Judge

Rule W205.2(b). Cover Sheet.

All parties required to file a cover sheet pursuant to Pa.R.C.P. 205.5 shall also file A Westmoreland County Civil Cover Sheet. The Westmoreland County Civil Cover Sheet shall be in the form set forth in the Forms Section of the Westmoreland County Rules of Court.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA

CIVIL

WESTMORELAND COUNTY CIVIL COVER SHEET

Form fields for Judge, Case No., Counsel, Representing, Pa. I.D. No., Firm, Address, Plaintiff(s), Defendant(s), Phone No., Fax No., E-mail

PLEASE ANSWER THE FOLLOWING:

- 1. Is the Amount In Controversy Less Than \$30,000?
2. Does This Case Involve Discovery of Electronically Stored Information?
3. Does This Case Involve a Construction Project?

ENTRY OF APPEARANCE

TO THE PROTHONOTARY: Please enter my appearance on behalf of the Plaintiff/Petitioner/Appellant. Papers may be served at the address set forth above.

Signature: Date:

White—Prothonotary Yellow—Judge
Pink—Opposing Counsel Gold—Counsel

[Pa.B. Doc. No. 10-823. Filed for public inspection May 7, 2010, 9:00 a.m.]

WESTMORELAND COUNTY

In Re: Rule WJUV 1167; Miscellaneous of 2010

Order

And Now, this 21st day of April, 2010, *It Is Hereby Ordered* that Westmoreland County Rule of Juvenile Procedure WJUV 1167 is re-adopted effective immediately.

By the Court

JOHN E. BLAHOVEC,
President Judge

Rule WJUV 1167. Filings and Service of Court Orders and Notices.

The Court of Common Pleas of Westmoreland County shall serve all court notices and documents through either the Westmoreland County Children's Bureau or the Westmoreland County Juvenile Probation Office.

[Pa.B. Doc. No. 10-824. Filed for public inspection May 7, 2010, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated March 25, 2010, under Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 24, 2010, for Compliance Group 2 due August 31, 2009.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Abizaid, Julie Veronique
Washington, DC

Abraham, Eric I.
Princeton, NJ

Beck, Timothy P.
Warren, NJ

Bridges, Alfred Wesley, Jr.
Bordentown, NJ

Brown, Lance D.
Robbinsville, NJ

Browne, Donald F., Jr.
Mount Laurel, NJ

Burstein, Maurice I.
Rockville, MD

Cook, Mary Ann Schoch
Haddonfield, NJ

Cook, William Frederick
Haddonfield, NJ

Gardner, Donnetta Moss
Swedesboro, NJ

Gilson, William M.
Vineland, NJ

Gleason, Edward M., Jr.
Washington, DC

Grencik, Theresa Ann
North Bethesda, MD

Hay, Bruce Lawrence
Cambridge, MA

Johnson, James Michael
Wilmington, DE

Kernan, James Matthew
Oriskany, NY

Lam, Fei Fei
Livingston, NJ

Manning-Bowman, Fenix Adilah
Cherry Hill, NJ

McAndrews, James Patrick, III
Alexandria, VA

Mongon, Joanne M.
North Brunswick, NJ

O'Dell, Jody Jason
Hialech, FL

Oswald, Robert Leon
Washington, DC

Parker, Brad A.
Marlton, NJ

Pergola, Michael Paul
Milford, CT

Pierson, George John
New York, NY

Rhodes, Cassandra Elizabeth
Clementon, NJ

Riddle, William Foster
Elkton, MD

Ruggiero, Roy D.
Haddonfield, NJ

Slaton, Harrison Allen
Maplewood, NJ

Smiley, James Ian
Baltimore, MD

Smith, Diannajean
Audubon, NJ

Solomon, Marcell
Bowie, MD

Wingfield, Alita T.
Burlington, NJ

Zaic, Jerome Edward
Cherry Hill, NJ

SUZANNE E. PRICE,
Attorney Registrar
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 10-825. Filed for public inspection May 7, 2010, 9:00 a.m.]

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 145]

Industrial Housing

The Department of Community and Economic Development (Department), under section 5 of the Industrialized Housing Act (act) (35 P. S. § 1651.5), amends Chapter 145 (relating to industrialized housing and components). The purpose of this final-form rulemaking is to further clarify and strengthen the Department's and third-party's role in monitoring the production of industrialized housing; to eliminate redundant requirements; to update definitions to conformance with current terminology; to provide builders and code officials with documentation to clearly identify the manufacturer as approved to produce industrialized housing.

Introduction

The act established uniform State standards and procedures for the identification, inspection of manufacture and assembly, and certification of industrialized housing and those components forming integral parts of housing structures for use in any and all communities in this Commonwealth, and reciprocity in the recognition of certification of such industrialized housing and housing components, as standards for performance of industrialized housing and housing components are developed and adopted by the United States Department of Housing and Urban Development, other states, and the Commonwealth. The act authorized the Department to promulgate and amend rules and regulations to interpret and make specific the provisions of the act. The purpose of the proposed regulations is to update the regulations to bring them into conformance with current industry standards, codes and practices.

The Department received two comments. The first came from the Modular Building Systems Association, which indicated its support for the proposed regulation as drafted. The second came from the Independent Regulatory Review Commission (IRRC), which queried why public hearings were not held in contradiction of section 5(a) of the act which provides that the Department hold public hearings on rules and regulations proposed to be promulgated, amended or repealed, consistent with 2 Pa.C.S. Chapter 5, Subchapter A and Chapter 7 Subchapter A (relating to the Administrative Agency Law) and the act of July 31, 1968 (P. L. 769, No. 240) known as Commonwealth Documents Law. Although it has not been the practice of the Department to hold the hearings, due to the lack of interest by the public in the regulations, the Department did advertise and hold a public meeting on the proposed amendments on October 28, 2009, at 10 a.m. in Pennsylvania Public Utility Commission Hearing Room 5 of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120. No members of the public attended the meeting. No revisions were made as a result of the comments received.

Section 145.1 (relating to definitions) has been amended to: update the definitions of "industrialized housing" and "residential occupancy" to reflect the changes in the use and occupancy groups as defined by the International Building Code; remove the definitions of "BOCA" and "CABO" as both are obsolete terms; add a definition of the term "Notice of Approval" which has been included into these regulations in § 145.82 (relating to issuance of building permits); and add a definition for the term "Site Installation Inspection Report Form" that has been required under § 145.91(e) (relating to reports to the Department) but not defined.

Section 145.33 (relating to manufactured homes excluded) has been expanded to provide clarity in regards to excluding industrialized homes from the Federal program for manufactured housing in an effort to assure that both consumers and local zoning and code officials are clear as to the type of housing product with which they are dealing.

Section 145.34 (relating to housing components) has been amended to reflect the current industry terminology for a structural insulated panel which in the past was referred to as a sandwich panel.

Section 145.41(c) (relating to adoption of standards) has been amended to eliminate the need for duplicative paper work. By addressing floor insulation in the Site Installation Inspection Report Form (§ 145.91(e)), the Assignment of Responsibility Form is no longer needed and eliminates a redundant paperwork burden from the manufacturers.

Section 145.47 (relating to acquisition of adopted codes and amendments) has been amended to correct the address for the International Code Council; eliminate the reference to BOCA and CABO as these organizations no longer exist; and include information for the Pennsylvania Housing Research/Resource Center.

Section 145.54 (relating to building system approval report and summary) has been amended to require the manufacturer to revise its Building System Approval Report monthly if needed. Current regulation requires this report be updated every 2 years, which severely undermines the ability to effectively monitor the quality process at the manufacturing facility.

Sections 145.60 and 145.61 (relating to insignia of certification; and insignia of inspection agencies) have been revised to reflect the current industry practice of placing required insignias of certification and inspection agency insignias under the kitchen sink.

Section 145.62 (relating to data plates) has been amended to require the applicable code and edition be included on the data plate. This will correct an omission from the current regulation as this information is always provided by the industry as a practical matter in spite of the omission in the regulation.

Section 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification) has been revised to allow for electronic reporting to the Department and to achieve consistency with the reporting process established by other states.

Section 145.72(a) (relating to frequency of inspections) has been amended to provide clarity to the current factory certification process which is confusing and as a result misapplied. The revised process is consistent with

the process used by other states. Additionally, the requirement for periodic inspection for storage and transportation methods and facilities has been clarified to require a monthly inspection.

Section 145.78(e) (relating to contractual arrangements) has been added to require a factory to seek approval from the Department prior to changing from one third-party agency to another. This will allow third-party agencies who provide inspection and evaluation services to the factories, to operate free from fear of losing a client as a result of enforcing these regulations.

Section 145.82 has been amended to require the Notice of Approval (see § 145.1) be included with the other documentation needed to receive a building permit from the local enforcement agency. This Notice of Approval is similar to notices required by our neighboring states and serves to eliminate confusion regarding the type of housing being installed.

Section 145.91 has been amended to allow for electronic submission of the Site Installation Inspection Report Form and require the manufacturer receive this form as opposed to the inspection agency. The inspection agency has no relationship with the person installing the industrialized home and as a result compliance with this requirement was weak.

Section 145.94 (relating to fees) has been amended to recognize the industrialized housing components are more logically addressed as projects as opposed to individual pieces.

Fiscal Impact

There is no fiscal impact on the Commonwealth, political subdivisions and the public.

Paperwork

The final-form rulemaking does not impose new or different paperwork requirements. The Assignment of Responsibility Form that was required prior to shipment of every industrialized home is no longer required. Insignia reporting, which all agreed was cumbersome and confusing, has been streamlined consistent with the reporting required by other states. The existing requirement for the Site Installation Inspection Report Form to be submitted to the third-party agencies was unenforceable. The new requirement, that the form be returned to the manufacturer, is more logical and adds value to the process.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the agency submitted a copy of the proposed rulemaking, published at 39 Pa.B. 4423 (August 1, 2009), to IRRC, the House Urban Affairs Committee and the Senate Community, Economic and Recreational Development Committee (Committees). In compliance

with section 5(c), the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form rulemaking, the Department has considered all comments received from IRRC, the Committees and the public.

This final-form rulemaking was deemed approved by the Committees on February 24, 2010. IRRC met on February 25, 2010, and approved the final-form regulations in accordance with section 5(c) of the act.

Effective Date/Sunset Date

(a) The regulations will become effective July 7, 2010.

(b) The regulations are monitored on a regular basis and updated as needed.

Contact Person

For an explanation of these regulations, contact Mark Conte, Chief, Housing Standards Division, Department of Community and Economic Development, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120, (717) 720-7416.

Findings

The Department finds that:

(1) Public notice of intention to adopt the final-form regulations has been given under sections 201 and 202 of the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The regulations are necessary and appropriate for the Industrialized Housing Program.

Order

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

(a) The regulations of Department, 12 Pa. Code Chapter 145, are amended by amending §§ 145.1, 145.33, 145.34, 145.41c, 145.47, 145.54, 145.60—145.63, 145.72a, 145.78e, 145.82, 145.91 and 145.94 to read as set forth at 39 Pa.B. 4423 (August 1, 2009).

(b) The Department shall submit this order, and 39 Pa.B. 4423 to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.

(c) This order shall take effect July 7, 2010.

GEORGE E. CORNELIUS,

Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 1471 (March 13, 2010).)

Fiscal Note: Fiscal Note 4-91 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 10-826. Filed for public inspection May 7, 2010, 9:00 a.m.]

PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Veterinarians and Veterinary Technicians

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend Chapter 43b (relating to Commission of Professional and Occupational Affairs) by rescinding § 43b.21 (relating to schedule of civil penalties—veterinarians and veterinary technicians—statement of policy) and replacing it with § 43b.21a (relating to schedule of civil penalties—veterinarians and certified veterinary technicians), to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition, and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission relating to the conduct or operation of a business or facility licensed by the board or commission.

Background and Purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Boards and Commissions being accomplished through the Act 48 citation process.

The Commissioner had previously published a policy statement at 37 Pa.B. 2608 (June 9, 2007) establishing Act 48 civil penalties for veterinarians and certified veterinary technicians (CVTs) and now proposes to codify and amend the schedule of civil penalties in this proposed rulemaking. Proposed § 43b.21a sets forth the complete civil penalty schedule for the State Board of Veterinary Medicine (Board). The civil penalties proposed in § 43b.21a were drafted following discussions between the Board and a representative of the Commissioner at regularly scheduled public meetings.

Description of the Proposed Amendments

The proposal would codify and amend the schedule of civil penalties that the Commissioner previously published and add new violations to the Board's Act 48 schedule. The new violations include failure to complete mandatory continuing education, failure to make up a deficiency in continuing education within 6 months of receiving a citation, failure to properly label drugs dispensed to clients and failure to dispense drugs in containers as required by Board regulations.

The Commissioner proposes amendments to alter the time periods and penalties associated with practicing on an expired license. Practice on a lapsed license for up to 6 months would still result in a warning. The second time period, previously 6—24 months, was changed to 7—12 months; the civil penalty would remain the same. The proposal would alter the third time period, previously 24—48 months, to 13—24 months; and would provide for a \$500 civil penalty for CVTs and a \$750 civil penalty for veterinarians. The Commissioner would add another time period, 25—30 months; with a \$750 civil penalty for certified veterinary technicians and a \$1,000 civil penalty for veterinarians. The shortened time periods and increased civil penalties reflect the determination that an enhanced penalty schedule is required to ensure compliance and protect the public.

The Commissioner proposes to add two new offenses to the Act 48 offenses that may be disposed of by issuance of a citation and civil penalty. The two new offenses involve violating a regulation related to the conduct or operation of a veterinary business. Because many drugs prescribed by veterinarians are exclusively animal drugs that are not stocked in commercial human pharmacies, veterinarians operate in-house pharmacies as part of their businesses. Section 31.21 (relating to Rules of Professional Conduct for Veterinarians), Principle 8(c) and (d), of the Board's regulations require veterinarians to properly label prescription drugs dispensed to clients and to dispense drugs in child resistant or original manufacturer's packaging. The Commissioner proposes civil penalties of \$500 for the first offense and \$1,000 for the second offense for violating either of these regulatory provisions. These provisions were modeled after provisions in the Act 48 schedule in § 43b.7 (relating to schedule of civil penalties—pharmacists and pharmacies), which provides for civil penalties for violations under § 27.18 of the State Board of Pharmacy's regulations (relating to standards of practice). Section 43b.7 provides for Act 48 civil penalties for dispensing drugs in "unsuitable containers" and for "lack of required information on container labels."

The Commissioner also proposes a schedule of civil penalties for the failure to complete mandatory continuing education by veterinarians and CVTs during the biennial renewal period preceding license renewal. The proposal calls for a \$25 per credit hour civil penalty for CVTs for the first offense and a \$150 per credit hour civil penalty for veterinarians for the first offense; however, these civil penalties would only apply if the licensee made up the hours of continuing education that were deficient within 6 months of the end of the biennial renewal period. The biennial renewal period for veterinarians and certified veterinary technicians ends on November 30 of even-numbered years. The proposal would require veterinarians and CVTs to make up the number of deficient hours within 6 months or face formal prosecution. The

\$150 proposed civil penalty per credit hour for veterinarians represents a significant increase over the civil penalty of \$50 per credit hour that was adopted by the Board in 2005. Because veterinary medicine is constantly evolving, with new treatments, new surgical techniques, new drugs, and new research, participation in continuing education is vital to the continued competence of veterinarians. The amended civil penalty demonstrates the commitment of the Commissioner and the Board to ensuring that licensees are able to provide high quality care to animals and adequately meet public health needs for veterinary medicine in this Commonwealth.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have a positive fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Sunset Date

Professional licensure statutes require each bureau and commission to be self-supporting; therefore, bureaus and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2010, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Lazo, Counsel, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BASIL L. MERENDA,
Commissioner

Fiscal Note: 16A-51. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.21. [**Schedule of civil penalties—veterinarians and veterinary technicians—statement of policy**] (Reserved).

[STATE BOARD OF VETERINARY MEDICINE

<i>Violation under 63 P. S.</i>	<i>Violation under 49 Pa. Code Chapter 31</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 485.17	N/A	Failure to display current license.	Each offense—\$100
Section 485.21(1)	§ 31.21 Principle 5(c)	Improper advertising of emergency services.	First offense—\$250 Second offense—\$1,000 Subsequent offense—formal action
Sections 485.9(a) and 485.21(1)	§ 31.13	Practicing veterinary medicine on an expired license.	0—6 months—warning 6—24 months—\$500 24—48 months—\$1,000 More than 48 months—formal prosecution
Section 485.21(1)	§ 31.36	Practicing as a veterinary technician on an expired certificate.	0—6 months—warning 6—24 months—\$250 24—48 months—\$500 More than 48 months—formal action]

§ 43b.21a. Schedule of civil penalties—veterinarians and certified veterinary technicians.

STATE BOARD OF VETERINARY MEDICINE

<i>Violation under 63 P. S.</i>	<i>Violation under 49 Pa. Code Chapter 31</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Sections 485.17 and 485.21(3)	N/A	Failure to display current license.	Each offense—\$100

<i>Violation under 63 P. S.</i>	<i>Violation under 49 Pa. Code Chapter 31</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 485.21(1)	§ 31.21 Principle 5(c)	Improper advertising of emergency services.	First offense—\$250 Second offense—\$1,000 Subsequent offense—formal action
Sections 485.9(a) and 485.21(1)	§ 31.13	Practicing veterinary medicine on an expired license.	0—6 months—warning 7—12 months—\$500 13—24 months—\$750 25—30 months—\$1,000 More than 30 months—formal action
Section 485.21(1)	§ 31.36	Practicing veterinary technology on an expired certificate.	0—6 months—warning 7—12 months—\$250 13—24 months—\$500 25—30 months \$750 More than 30 months—formal action
Section 485.18	§ 31.15	Failure of veterinarian to complete required continuing education during the preceding biennial renewal period, which is corrected within 6 months.	First offense—\$150 per credit hour Second offense—formal action
Section 485.18	§ 31.36(a)	Failure of certified veterinary technician to complete required continuing education during the preceding biennial renewal period, which is corrected within 6 months.	First offense—\$25 per credit hour Second offense—formal action
Section 485.21(1)	§ 31.21 Principle 8(d)	Improper labeling of dispensed drugs.	First offense—\$500 Second offense—\$1,000 Subsequent offense—formal action
Section 485.21(1)	§ 31.21 Principle 8(c)	Improper packaging of dispensed drugs.	First offense—\$500 Second offense—\$1,000 Subsequent offense—formal action

[Pa.B. Doc. No. 10-827. Filed for public inspection May 7, 2010, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Unsuitable for Surface Mining; Muddy Run

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to surface and underground coal mining; general). The amendment designates the surface mineable reserves of the Lower Kittanning, Clarion, Brookville and Mercer coals within the headwaters of the Muddy Run Watershed, Reade Township, Cambria County as unsuitable for surface mining operations.

This proposal was adopted by the Board at its meeting of March 16, 2010.

A. Effective Date

This proposed amendment will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Geoffrey Lincoln, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site at <http://www.dep.state.pa.us>.

C. Statutory Authority

The proposed rulemaking is being made under the authority of section 4.5 of the Surface Mining Conservation and Reclamation Act (act) (52 P.S. § 1396.4e); section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a); and section 315 (h)—(o) of The Clean Streams Law (35 P.S. § 691.315 (h)—(o)).

D. Background and Purpose

Section 522 of the Federal Surface Mining Control and Reclamation Act (30 U.S.C.A. § 1272), requires each state seeking primary regulatory authority (primacy) over coal mining operations to establish a procedure for the designation of areas as unsuitable for mining. The State statutory authority for this procedure, referenced in section C, was created in the 1980 amendments to the authorizing acts as part of the Commonwealth's effort to obtain primacy. On November 19, 1980, the Board adopted Chapters 86—90. Chapter 86, Subchapter D (§§ 86.121—86.129), contains the Department's regulation for procedures and criteria for the designation of areas as unsuitable for surface mining. Chapter 86, Subchapter D (§ 86.130) also contains a description of each area designated as unsuitable for mining by the Board.

The Department is required to designate areas as unsuitable for surface mining when it determines that reclamation pursuant to the requirements of the act is not technologically or economically feasible. In addition, the Department may designate an area as unsuitable for all or certain types of surface coal mining operations if such operations will: 1) be incompatible with existing State or local land use plans or programs; 2) affect fragile or historic lands where such operations would result in significant damage to important historical, cultural, scientific, and aesthetic values and natural systems; 3) cause a substantial loss or reduction in long-range productivity of food or fiber products or water supply, including aquifers and aquifer recharge areas; or 4) substantially endanger life and property in natural hazard areas, including areas subject to frequent flooding and areas of unstable geology.

On March 21, 1996, under § 86.122 (relating to criteria for designating lands as unsuitable), the Reade Township Municipal Authority (RTMA) submitted a petition to the Department requesting that approximately 3,200 acres of the Muddy Run Watershed be designated as "unsuitable for mining." RTMA's stated purpose was the protection of their public water supply wells from potential, adverse mining-related impacts. RTMA's petition alleged that surface mining activities could destroy or seriously degrade the source aquifers tapped by the township's public water supply wells, and could adversely impact other local surface and groundwater resources. RTMA provided supporting evidence documenting mining-related impacts to a private water well within the Muddy Run Watershed, and provided an outline of deleterious mining-induced impacts to Muddy Run and to adjacent watersheds.

The Department determined the petition to be complete and acceptable for technical study in April of 1997. The petitioner was notified accordingly on May 1, 1997.

Technical study fieldwork, including water sampling and site reconnaissance, began in 1997. The technical study process was suspended in early 1999 and was reactivated in December of 2003. This suspension occurred while the Department awaited the courts' decision on a challenge to a previous UFM designation as an unconstitutional taking. The Pennsylvania Supreme Court decided, in *Machipongo Land and Coal Company, Inc. v. Dep't of Environmental Resources*, 569 Pa. 3 (2002), that a UFM designation was not an unconstitutional taking. The Muddy Run study was completed in October of 2004. Copies of the two-volume technical study, entitled "A Petition to Designate Areas Unsuitable for Mining: Muddy Run Watershed," as well as the Comment and Response Document prepared to address public input are

available from the Department. The key findings of the technical study are as follows:

- The recharge area for the RTMA wells appears to be primarily from the area east of the well field along the upper flank of the Allegheny Mountain, where the source aquifers are at, or near, the surface. Additional recharge to these aquifers is from downward infiltration from closely overlying coal-bearing units. The downward infiltration of water is enhanced by numerous fractures and two regional faults in the area.

- Based on available information, including regional geochemical tracer studies confirming acidic mine water traveling significant horizontal and vertical distances in the subsurface, there is a potential for mining-related pollution of the RTMA wells. Groundwater tests conducted to date are not sufficient to characterize conditions beyond the immediate vicinity of the RTMA wells or to assess the impact of highly transmissive fractures. The potential exists for hydrologic exchange between the RTMA water supply aquifer and the potentially acidic overlying coal-bearing units. The only way to conclusively determine the existence of a hydrologic connection to the well is to conduct extensive draw down pump testing. However those tests create an unacceptable risk because establishing the connection would destroy the public water supply wells.

- Overburden analysis results indicate the presence of high sulfur zones, with little or no alkaline strata, associated with the Lower Kittanning, Clarion, Brookville, and Mercer coals. There is a very significant potential for production of acid mine water from surface mining of these coals.

- Coal mining has significantly impacted the water quality and aquatic community of Muddy Run. As a result of coal mining activities, all stream sections of Muddy Run and its tributaries within the study area, except for the headwaters in the eastern portion of the study area (the unmined RTMA wells' recharge area), are acidic with low pH and have high concentrations of aluminum, iron, and manganese.

- Surface mining activities have significantly degraded groundwater resources within the technical study area, including numerous domestic and private water supplies.

The purpose of the proposed amendment is to protect the quality of surface water and groundwater in the Muddy Run Watershed, including source aquifers for the RTMA wells. A secondary purpose is to help coal mine operators plan future mining activities by alerting potential mine permit applicants to the adverse hydrologic impacts associated with mining certain coal seams adjacent to the designated area.

E. Summary of Regulatory Requirements

Section 86.122 requires that the Board's decisions to designate areas unsuitable for mining be published as regulations. Pursuant to § 86.122, § 86.130(b) lists areas that the Board has designated as unsuitable for mining. Section 86.130(b) is periodically amended as new areas are designated. The proposed amendment will amend § 86.130(b) to include a description of the portion of the Muddy Run Watershed that is covered by the unsuitable for surface mining designation. The description identifies impacted coal seams. This proposed amendment does not affect or modify §§ 86.121—86.129, which provide the underlying procedural provisions that define the unsuitable for mining process.

As outlined in section D, the Federal companion provisions to the Commonwealth's unsuitable for mining statu-

tory language are in section 522 of the Federal Surface Mining Control and Reclamation Act of 1977. The proposed regulation does not include any standards or requirements that exceed Federal requirements.

On March 21, 1996, under §§ 86.122 and 86.123 (relating to procedures: petitions), the Reade Township Municipal Authority, Cambria County, submitted a petition to the Department requesting that approximately 3,200 acres of the Muddy Run watershed be designated as "unsuitable for mining." The Department determined the petition to be complete and acceptable for technical study in April of 1997. The petitioner was notified accordingly on May 1, 1997.

Under § 86.124 (relating to procedures: initial processing, recordkeeping and notification requirements), notification of the receipt and acceptance of the petition was made to persons with known mineral ownership, surface ownership, and other interested parties on May 12, 1997. Notification to the general public was made on May 10 and 17, 1997, in the *Progress*, Clearfield, PA, on May 11 and 18, 1997, in *The Tribune Democrat*, Johnstown, PA, and in the *Pennsylvania Bulletin* on May 17, 1997 (27 Pa.B. 2476). Under § 86.125 (relating to procedures: hearing requirements), in early 1998 local landowners were notified by mail of an opportunity to provide comments on the petition at a public hearing. Notification of the hearing was made to the general public on December 31, 1997, and February 14 and 21, 1998, in the *Progress*, Clearfield, PA, and on January 29, and February 12 and 19, 1998, in *The Tribune Democrat*, Johnstown, PA. The hearing was held on February 26, 1998, at Glendale High School in Reade Township.

The Muddy Run UFM technical study process was suspended in early 1999 and was reactivated in December of 2003. This suspension occurred while the Department awaited the courts' decision on a challenge to a previous UFM designation as an unconstitutional taking. The Pennsylvania Supreme Court decided, in *Machipongo Land and Coal Company, Inc. v. Dep't of Environmental Resources*, 569 Pa. 3 (2002), that a UFM designation was not an unconstitutional taking. Subsequently, in May of 2004, a second round of notification letters was sent to mineral and surface property owners primarily to solicit input from new property owners within the technical study area. This was done to address surface and mineral tracts that may have been sold, transferred or subdivided since 1998. A Comment and Response Document was prepared to address the comments raised at the public hearing, as well as written comments received since the Department accepted the petition. There were 16 commentators.

F. *Benefits, Costs and Compliance*

Benefits

The proposed amendments would benefit the RTMA's customers by restricting mining on coal seams with high acid mine drainage potential in areas in close proximity to the RTMA water supply aquifers. Mining in close proximity could pollute the public water supply wells. The RTMA presently provides potable water to approximately 550 service accounts and provides water for local fire protection to Reade Township, including the towns of Blandburg, Hollentown, Fallentimber, Flinton and Van Ormer. The RTMA wells were drilled in 1993 and 1994, using part of a nearly \$5 million grant provided by the Rural Economic Development Agency. The location and construction of the Reade Township Municipal Authority water supply wells was the result of several years of

effort. Two previous attempts to develop water supply wells were not successful because of insufficient quantity or quality of local groundwater resources, in part due to aquifer degradation from previous surface coal mining. Based on available information, alternative well sites would be limited or nonexistent should the existing wells become contaminated.

The designation process also serves to aid coal operators in planning future mining activities. The unsuitable for mining areas are explicitly delineated by regulation. This allows operators to avoid the cost of evaluating properties within designated areas, and to avoid the subsequent costs of preparing permit applications for mine sites on similar coal seams adjacent to the designated area that are highly unlikely to be approved for surface mining activities.

The designation restricts mining by seam, and by type, within the boundaries of the technical study area. Therefore, the designation will benefit the surface water and groundwater quality of the Muddy Run Watershed by eliminating or limiting the mining-related disturbance of high-sulfur acid mine drainage producing rock formations that have minimal or no neutralizing potential.

Compliance Costs

The proposed imposes no costs on the regulated community. The regulation benefits the regulated community by helping coal operators plan future mining activities. The unsuitable for mining areas are explicitly delineated by regulation. This allows operators to avoid the cost of evaluating properties within designated areas, and to avoid the subsequent costs of preparing permit applications for mine sites on similar coal seams adjacent to the designated area that are highly unlikely to be approved for surface mining activities.

Compliance Assistance Plan

The Department will provide written notification of the changes to the coal mining industry.

Paperwork Requirements

The only paperwork requirements imposed by the proposed regulation are those necessary to make operators and Department personnel aware of the location of the designated area. Copies of the proposal containing a description of the area and a map of the location of the area will be held on file at the appropriate Department offices.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

The proposed designation of the headwaters of Muddy Run as unsuitable for mining prevents pollution by prohibiting further coal mining in the area. The intent of the designation is to protect the public water supply wells of RTMA.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 27, 2010, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendment within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 7, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one-page in length and must also be received by the Board by June 7, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 7, 2010. A subject heading of the proposal and a return name and address must be included in each transmission.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,
Chairperson

Fiscal Note: 7-456. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter D. AREAS UNSUITABLE FOR MINING CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.130. Areas designated as unsuitable for mining.

* * * * *

(b) The following is a list of descriptions of areas which are unsuitable for all or certain types of surface mining operations and where all or certain types of surface mining operations will not be permitted:

* * * * *

(18) The surface mineable coal reserves of the Lower Kittanning, Clarion, Brookville, and Mercer coals in the Muddy Run Watershed, Cambria County, located south of State Route 253, including Muddy Run and its eastern tributary, Curtis Run.

[Pa.B. Doc. No. 10-828. Filed for public inspection May 7, 2010, 9:00 a.m.]

STATE BOARD OF MESSAGE THERAPY

[49 PA. CODE CH. 20]

Massage Therapy

The State Board of Massage Therapy (Board) proposes to promulgate regulations to effectuate the Massage Therapy Law (act) (63 P.S. §§ 627.1—627.50).

Effective Date

The regulations will become effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. Section 50 of the act (63 P.S. § 627.50) directed the Board to promulgate regulations within 18 months of the effective date, or by April 9, 2010. The Board was appointed in April 2009, and members were confirmed on June 24, 2009. The Board held its first meeting on August 5, 2009, to begin drafting regulations. The draft rulemaking was provided to stakeholders for pre-draft comment in September 2009, and comments were reviewed in October 2009. The Federation of State Board of Massage Therapy and the National Certification Board for Massage Therapy and Bodywork sent representatives to speak with the Board about their massage therapy examinations at the Board's October 15, 2009, meeting. Stakeholder comments were also considered at public meetings of the Board throughout the drafting process. The Board voted to promulgate this rulemaking package at its meeting on December 2, 2009.

Statutory Authority

Sections 4(2) (63 P. S. §§ 627.4(2) and 50) of the act require the Board to promulgate regulations to effectuate the act.

Background and Purpose

The act provides for the creation of the Board. The Board is charged with determining qualifications for licensure, issuing temporary practice permits and licensing massage therapists, establishing standards of practice which protect the public, disciplining licensees and protecting the public from unlicensed persons attempting to practice massage therapy.

Description of Amendments

In § 20.1 (relating to definitions), the Board defines key terms used in the regulations. Section 20.2 (relating to applicability of general rules), provides notice that proceedings before the Board are subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

The Board proposed to set forth its fees in § 20.3 (relating to fees). In § 20.3(a), the Board proposes fees for services provided to licensees and persons seeking to conduct continuing education for licensees. These fees are based on estimates of the amount of time required, on average, to perform the services. In § 20.3(b), the Board proposes a biennial renewal fee. The biennial renewal fee creates the funds that sustain the general operations of the Board, primarily investigating and prosecuting violations of the act and regulations.

After providing for definitions and fees, the Board first addresses educational matters. Section 5(a)(3) of the act (63 P. S. § 627.5(a)(3)) authorizes the Board to approve massage therapy education programs. This section also requires an applicant for licensure to complete at least 600 hours of in-class, postsecondary education approved by the Board at a regionally accredited college or university, the Commonwealth's private licensed school or its equivalent as determined by the Board. In § 20.11 (relating to minimum hour requirements for massage therapy programs), the Board proposes standards for massage therapy programs, including permitting the 600-hour requirement to be met through both didactic and clinical courses. Hours a student may spend in an externship or practicing techniques assigned as homework may not be used to meet the 600-hour requirement. The Board proposes to exclude externship hours because there is no mechanism to assure that students in externships receive appropriate supervision and guidance. The Board proposes to exclude homework assignments because homework is not instructional.

In addition, the Board's proposal would provide for minimum hours in certain subject areas. The proposed hour requirements are consistent with recognized standards for massage therapy education, and include a minimum of 175 hours of instruction in anatomy and physiology, kinesiology and pathology, including training in the human immunodeficiency virus and related risks; a minimum of 250 hours in massage therapy and bodywork assessment, theory and practice including sanitation, safety and hygiene; a minimum of 25 hours in business, ethics and law; and a minimum of 150 hours in related courses appropriate to a massage therapy curriculum, including cardiopulmonary resuscitation.

The Board's proposal would also provide, in § 20.12 (relating to information that must be provided to prospective students), for the minimum information that a

massage therapy school must provide to its prospective students. This section requires massage therapy schools to inform prospective students, in writing, prior to enrollment, of the annual passing rate of the school's graduates on each of the approved examinations for licensure for the past 2 calendar years for which the data is available. Massage therapy schools charge significant sums for educating students and must be accountable to students. One foundation of this accountability is to provide prospective students with accurate information regarding the passing rate of the school's graduates on the examinations that are required for licensure. This section also provides that any licensee employed by a massage therapy school who knows or has reason to know that the school is not abiding by this provision will be subject to discipline under section 9(a)(7) of the act (63 P. S. § 627.3(a)(7)). In this way, the Board can hold licensees employed as administrators and instructors in massage therapy schools accountable. Finally, this section provides that the Board will report the failure of a massage therapy school to conform to this section to the school's approving or accrediting body.

In § 20.13(a) (relating to required knowledge base), the Board's proposal would set forth the minimum required knowledge base for graduates of massage therapy schools, which includes massage and bodywork assessment and application, contraindications and precautions for massage therapy, anatomy and physiology, kinesiology, pathology, legal requirements, business practices, professional ethics, basic CPR, communicable diseases and universal precautions, power differentials and other therapeutic boundary issues as they relate to client interaction, and fundamentals of human behavior and respect for clients in the practice of massage therapy.

In § 20.13(b), the Board would set forth the practical skills that must be taught to massage therapy students, including the skills to: administer fundamental therapeutic massage techniques for the treatment of soft tissue manifestations of the human body, safely utilize topical preparations, thermal and cryogenic modalities, hydrotherapy and movements that lengthen and shorten soft tissues within the client's normal range of motion, maintain safe and effective body mechanics in the application of therapeutic massage techniques, locate and palpate muscle attachments, muscle bellies and other anatomical landmarks necessary for the practice of massage therapy, and use draping/coverage practices that address both function and safety.

The Board also lists additional skills that a massage therapy education must cover, including: development, implementation and modification of a treatment plan that addresses client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of the act, obtaining informed consent regarding the risks and benefits of the treatment plan and application and modification of the treatment plan as needed, using effective interpersonal communication, utilizing an ethical decision making process, establishing and maintaining a practice environment that provides for the client's safety and comfort, and establishing and maintaining client records, professional records and business records in compliance with standards of practice and legal requirements.

To effectively learn massage therapy, hands on practice is required; therefore, it is vital to public protection that the Board set forth regulations for student practice. In § 20.14(a) (relating to student practice), the Board's

proposal provides that a student may practice massage therapy techniques by providing services under the immediate supervision of an instructor or clinical supervisor as part of a clinical training program operated by the school in which the student is obtaining credit. Homework assignments for massage therapy students typically require the student to practice specific assigned techniques on friends or family members. This practice is authorized in § 20.14(b).

A student may not receive payment from the school or client for services provided as part of a clinical training program operated by the school in which the student is obtaining credit. The Board has also proposed that a student may accept a nominal gratuity voluntarily given by a client in a clinical training program operated by the school in which the student is obtaining credit. The Board found that the structure of a school-run clinical training program provides adequate safeguards to permit students to handle money, and provides for a supervised learning experience for students in handling money. However, because there is no supervision outside the formal clinic setting, the Board would provide that a student may not receive any payment or gratuity for services provided as part of practicing techniques under indirect supervision or on the student's own initiative while enrolled in a massage therapy school.

The Board has also proposed that students providing services as part of a clinical training program operated by a school shall be clearly identified to the public as students, as not to mislead the public. Finally, the Board would require the massage therapy schools to maintain records of services provided by students in a clinical training program for at least 3 years.

The Board next addresses issues related to licensure. In § 20.21 (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), the Board lists the documents that all applicants must submit to the Board with their application. These documents include a legal form of identification, a Criminal History Record Information check current to within 6 months of the date of application, documentation of the applicant's CPR certification, and proof of high school graduation or the equivalent. Requiring identification will assist the Board in monitoring to whom licenses are issued and reducing the possibility of fraud. Requiring a criminal background check will assist the Board in licensing only individuals who do not pose a threat to the public. One commentator opined that it was overly cumbersome for applicant's to provide criminal background checks from the states in which the applicant had resided for the past 5 years. The Board believes this is necessary to protect the public. Applicants are required to disclose any criminal history from any time, but must only provide background checks for the past 5 years. CPR certification is required by statute to protect the public. Additionally, the act requires that applicant have graduated from high school or the equivalent.

Section 20.21(c) would require applicants to request that their massage therapy program send the applicants' transcript directly to the Board. One predraft commentator noted that she would prefer if students could send the transcript to the Board themselves. The Board determined that the transcript should come directly from the school. This provision will reduce the possibility that unscrupulous individuals can provide false transcripts.

Section 20.21(d) would notify applicants that they may be required to submit additional information if requested by the Board. Additional information may be required to

provide more detail about an applicant's criminal history or licensure status in another state. If an applicant indicates on the application that he may be unable to practice safely due to impairment or disability, additional information may be required so that the Board can determine whether licensure is appropriate.

Applicants will be required to supply any missing documentation within 6 months from the date of application. If the documentation is not submitted, the application will be denied and the applicant will be required to apply anew to obtain licensure. The information that the Board requires in the application process is easily obtainable by the applicant; therefore, the 6-month time period is appropriate. Moreover, the Board determined that a fairly short time period was appropriate to protect the public by ensuring that information submitted was up to date. Applicants are also required to notify the Board of any changes that might occur during the application process.

In § 20.22 (relating to procedure for licensure denial), the Board's proposal sets forth the procedure it will follow if it determines that an application for licensure should be denied or the applicant should submit to an evaluation.

Section 7 of the act (63 P.S. § 627.7) authorizes the Board to determine the examinations that an applicant must pass to qualify for licensure. There are currently two organizations that provide examinations for massage therapists appropriate for the licensure of massage therapists—the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and the Federation of State Massage Therapy Boards (FSMTB). The FSMTB offers the Massage and Bodywork Licensure Examination (MBLEx), an examination developed specifically for the purpose of state licensure. The NCBTMB is an organization that confers National certification on massage therapists through two examinations, one which tests massage therapy (the NCETM—National Certification Examination for Therapeutic Massage) and the second, (the NCETMB—National Certification Examination for Therapeutic Massage and Bodywork) which tests both massage therapy and bodywork. In addition, the NCBTMB offers examination candidates the option of taking the NCETM or NCETMB without being screened by NCBTMB for initial qualifications and without NCBTMB conferring National certification on the candidate. This option is called the National Examination for State Licensure, or NESL option. For consistency, the Board proposes to adopt the NCBTMB's limit on three unsuccessful examination attempts. After the third unsuccessful attempt, a candidate must obtain at least 100 hours of additional instruction. If the candidate fails an additional two times, the candidate must repeat massage therapy school before being allowed to retest.

The act provided for grandfathering of existing massage therapists. The Board clarifies the application requirements for existing practitioners in § 20.24 (relating to application requirements for existing practitioners). Section 20.24(a) requires existing practitioners to submit their application and supporting documentation within 1 year of the effective date of the section. Some supporting documentation required is cross-referenced to § 20.21, which applies to all applicants, and includes the criminal background checks.

To establish that the existing practitioner applicant has conducted a business and been an active participant in that business which was mainly the practice of massage therapy, as required under section 5(b)(1) of the act (63

P. S. 627.5(b)(1)), the applicant shall submit one of the following: a signed copy of the applicant's Federal tax return for the previous year that lists the applicant's occupation as massage therapist, a signed copy of schedule C of the applicant's Federal income tax return for the previous year demonstrating that the individual has reported income from the practice of massage therapy, proof of professional or practitioner membership level or above in a professional association approved by the Board, or a notarized statement from the applicant's employer (on a form provided by the Board) attesting that the individual is a practicing massage therapist together with a copy of the employer's business card or letterhead. These same documents, demonstrating that the applicant was in active, continuous practice for at least 5 years immediately preceding October 9, 2010, may be submitted if they show 5 years of practice, as required in section 5(b)(3)(i) of the act.

For existing practitioners applying for licensure under section 5(b)(3)(ii) of the act, the Board will require the applicant to request that the certification agency provide, directly to the Board, evidence that the practitioner passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies. For existing practitioners applying for licensure under section 5(b)(3)(iii) of the act, the Board will require the applicant to request that the applicant's educational program provide an official transcript directly to the Board to demonstrate that the practitioner completed at least 500 hours of instruction in massage and related subjects. For existing practitioners applying for licensure under section 5(b)(3)(iv) of the act, the Board will require the applicant to demonstrate, through certificates of completion, official transcript, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the NESL option of the NCBTMB. For existing practitioners applying for licensure under section 5(b)(3)(v) of the act, the Board will require the applicant to demonstrate, through certificates of completion, official transcript provided directly from educational institution, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the MBLEx.

The Board proposes additional application requirements for applicants for licensure by endorsement in § 20.25 (relating to additional application requirements for applicants for licensure by reciprocity). In addition to submitting the application form and supporting documentation, an applicant for licensure by endorsement would be required to demonstrate that the applicant's license in another jurisdiction is in good standing, document any disciplinary action taken in another jurisdiction, provide an official transcript and verification that the school is recognized by the other jurisdiction's licensing authority, accredited by a National accrediting organization, or authorized to operate by the jurisdiction's Department of Education, and provide proof of having passed one of the licensing examinations accepted in the Commonwealth. If an applicant for licensure by endorsement was originally licensed in another jurisdiction through grandfathering, the applicant will be required to demonstrate that the qualifications met in the other jurisdiction are equivalent to the requirements met by existing practitioners in this Commonwealth.

In § 20.26 (relating to application requirements for temporary practice permits), the Board proposes application requirements for applicants for temporary practice

permits. Individuals who have been issued a temporary practice permit may not hold themselves out as a licensed massage therapist, use the initials LMT or advertise their practice of massage therapy. Individuals who have been issued a temporary practice permit will be considered licensees for purposes of applying section 9 of the act (63 P. S. § 627.9) pertaining to the refusal, suspension and revocation of licenses. This provision allows the Board to discipline the holder of a temporary practice permit to protect the public. In accordance with section 5(c) of the act, a temporary practice permit will expire on the earlier of 6 months from the date of issuance or on the date the candidate fails the licensure examination.

Next, the Board provides regulations related to license renewal. In § 20.31 (relating to expiration, renewal and reactivation of license), the Board proposes general requirements related to license renewal, including the requirement that licensees inform the Board if they are licensed in another jurisdiction, disciplined in another jurisdiction or are convicted of any crime. This section also provides licensees with information about requesting inactive status. Reactivation within 5 years from the date of expiration is covered, as well as reactivation after 5 years, which requires the licensee to demonstrate current competence to practice. Finally, this section provides notice that licensees who practice on an inactive or lapsed license are subject to discipline.

Section 20.32 (relating to continuing education hours, maintenance of certificates of completion), is the first in a series of sections related to continuing education requirements. Section 20.32(a) would require licensees to complete 24 hours of continuing education during each biennial renewal period as required under section 4(6) of the act (63 P. S. § 627.4(6)). Section 20.32(b) would require licensees to complete at least 4 hours biennially in professional ethics. Section 20.32(c) would notify licensees that a maximum of 6 hours may be earned to meet the biennial requirement by taking any type of correspondence courses, such as online courses, courses on audio/visual media and print courses. One commentator opined that this was overly restrictive; however, because the majority of massage therapy instruction that occurs post-licensure is practice-oriented rather than didactic, the Board finds the restriction appropriate.

Section 20.32(d) would provide that courses for the renewal of the licensee's CPR certification could not be used to meet the biennial continuing education requirement. One commentator stated that the requirement of 24 hours of continuing education in addition to CPR was excessive and suggested that CPR should be included in the 24-hour requirement. Section 6(b) of the act (63 P. S. § 627.6(b)) provides that "to renew a license, a licensee must do all of the following" and then enumerates both current certification to administer CPR and 24 hours of continuing education. The Board interprets the statute as requiring 24 hours of continuing education in addition to whatever training is necessary to maintain current certification to administer CPR.

Also in § 20.32(e) is the requirement that licensees retain the certificates of completion from continuing education courses for a minimum of 5 years. If a licensee is audited for compliance with the continuing education requirement after license renewal, this provision ensures that the licensee will have the necessary documents to demonstrate compliance. Section 20.32(f) sets forth the process for requesting an extension or waiver of the continuing education requirement. Section 20.32(g) would provide for audits to ensure compliance with the continuing education requirements.

In § 20.33 (relating to continuing education content and providers), the Board proposes requirements for continuing education content and providers. Continuing education must be designed to advance the practitioner's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act (63 P. S. § 627.2). One predraft commentator suggested that course in shiatsu, acupressure, tui na or reflexology should be eligible for continuing education credit because they are important modalities. Another commentator suggested that each licensee should decide which class could help them, whether it is a new modality, a business class or a review of anatomy and physiology. Practitioners who utilize only acupressure, tui na or reflexology are not required to be licensed under section 13(6) of the act (63 P. S. § 327.13(6)). The act also restricts the granting of credit for taking courses to build one's business. The Board finds its subject matter restrictions appropriate.

In § 20.33(b), the Board provides a list of proposed preapproved providers of continuing education, which includes schools of massage therapy in this Commonwealth operating under section 5(a)(3) of the act, schools of massage therapy approved by the Board or accredited by a National accrediting agency recognized by the United States Department of Education, the American Massage Therapy Association and its state chapters, NCBTMB-approved providers, and Associated Bodywork and Massage Professionals. Continuing education providers would be required to provide attendees with a certificate of completion. The information that is proposed to be included on the certificate under § 20.33(c). Continuing education providers would be required to retain documentation of the participants in their continuing education programs for at least 5 years. This provision would allow a massage therapist who has lost a certificate of attendance to obtain a duplicate from the course provider. The Board would also provide a process by which LMTs or providers of continuing education who are not on the Board's preapproved list may obtain approval for a creditable continuing education course. Finally, the proposal notes that the Board would reserve the right to reject a continuing education course submitted by a massage therapist who is audited for compliance if the course is outside the scope of practice of massage therapy as defined by the act. A licensee who was notified of a rejection would be provided the opportunity to apply additional courses the licensee has taken or to take additional courses to meet the continuing education requirement.

Section 20.34 (relating to penalty for failure to complete continuing education) would instruct licensees regarding reporting continuing education on the biennial renewal application. A licensee would be required to report the number of continuing education hours completed on the biennial renewal application. If a licensee failed to complete the 24 hours mandated by statute, the licensee would be afforded an opportunity to make up the deficiency within 6 months of the expiration date of the massage therapist's license. If the licensee completed the 24 hours in this time frame, the license would be subject only to a civil penalty under the Board's Act 48 civil penalty schedule. If the licensee did not make up the deficient hours, the licensee would be subject to additional disciplinary action.

In the next section of the proposed regulations, the Board would address the scope and standards of practice for massage therapists. Section 20.41(a) (relating to scope of practice) would provide a list of some of the soft tissue manifestations of the human body which massage thera-

pists treat, including pain, edema, hypertonicity, hypotonicity, loss of muscular function, muscle atrophy, muscle cramps or spasms, diminished mobility, adhesions/scarring/scar tissue/fascial thickening, restricted lymph flow, restricted blood flow, fascial restrictions, postural deviations, paresthesia and hypersensitivity. In § 20.41(b), the Board would provide a list of some of the things that are outside the scope of practice of massage therapists, including the diagnosis or treatment of impairment, illness, disease or disability, medical procedures, chiropractic manipulation—adjustment, physical therapy mobilization—manual therapy, therapeutic exercise, the prescription of medicines for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry or other practice of the healing arts is required, the application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces and the use of equipment or devices that require a prescription, for example, ultrasound, diathermy, electrical neuromuscular stimulation.

The Board proposes standards of professional conduct in § 20.42 (relating to standards of professional conduct). Under § 20.42(a), a massage therapist shall maintain current knowledge of the appropriate application of massage therapy, including indications, contraindications and precautions; undertake a specific technique only if the massage therapist has the necessary knowledge, training or skill to competently execute the technique; base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice; provide treatment only where there is a reasonable expectation that it will be advantageous to the client; refer to an appropriate health care professional when indicated in the interest of the client; discuss with clients, as appropriate, which massage therapy modalities and techniques will be utilized and the benefits of these modalities and techniques, the treatment objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time; obtain written consent prior to performing breast massage; modify or terminate the massage therapy session at the client's request; keep client information private and confidential; use safe and functional coverage/draping practices during the practice of massage therapy when the client is disrobed; act to safeguard clients from incompetent, abusive or illegal practices of other massage therapists or caregivers; be clean, fully-clothed and professional in dress; display the massage therapist's current license in a location clearly visible to clients and carry the massage therapist's wallet card whenever practicing off-site; include the massage therapist's license number in all advertisements; conspicuously display the massage therapist's name and the title L.M.T. or the words "Licensed Massage Therapist" on an identification badge or directly on clothing worn in the public areas where massage therapy services are being provided; cooperate with the Board, the Department of State or the Bureau of Enforcement and Investigation in the investigation of complaints filed under the act; provide massage therapy records immediately upon demand of the Board or its authorized agents; maintain massage therapy records for at least 3 years from the last date that services were provided to the client; educate clients about maintaining the beneficial effects of massage therapy treatment when indicated by a treatment plan; obtain the written permission of a parent or guardian, or their representative, prior to providing massage therapy services to a minor; and require that a parent or guardian, or their representative, be physically present in the room during treatment of a minor.

Section 20.42(b) lists prohibitions for massage therapists, including: psychologically or physically abusing a client; violating a client's boundaries with respect to privacy, disclosure and exposure; utilizing techniques that are contraindicated based on the client's condition; falsifying or knowingly making incorrect entries into the client's record or other related documents; intentionally expose a client's genitals, gluteal cleft or the breasts of a female client except temporarily to perform therapeutic treatment of the area; engaging in conduct defined under § 20.1 as sexual harassment, sexual impropriety, sexual violation or sexual abuse; engaging in sexual intimacies during the professional relationship; performing or offering to perform any services for clients other than those connected with giving massage therapy treatments as defined in section 2 of the act, unless the massage therapist has additional training and licensure, if required, to perform those services; knowingly permitting another individual to use the massage therapist's license or temporary permit for any purpose; knowingly aiding, abetting or assisting another person to violate or circumvent a law or Board regulation; misappropriating equipment, materials, property or money from an employer or client; and refusing a client's request for a refund for the unearned portion of prepaid or packaged massage therapy services; however, this provision does not apply to gift certificate purchases.

Section 20.42(b)(5) would prohibit a massage therapist from engaging in sexual intimacies with a client during the professional relationship. "Professional relationship" is defined under § 20.1 to include a period 6 months after the last professional contact between a therapist and a client. The Board discussed these provisions extensively and received input from the public on the issue. One commentator, the Associated Bodywork and Massage Professionals (ABMP), objected to the prohibition because it viewed the prohibition as an attempt by the Board to regulate the personal lives of massage therapists. The Board is regulating the professional lives of massage therapists. The Board's statutory mission is to protect the public. In a profession where a licensee is clothed and a client is often unclothed, the Board finds it imperative to regulate sexual intimacies during the professional relationship.

Some commentators and Board members believed that a massage therapist should never engage in sexual intimacies with a client; others believed that a 6-month period of time after termination of the professional relationship was too long. The majority of the Board determined that the 6-month period would be effective in protecting the public from any unscrupulous licensee who might seek to exploit the therapist-client power differential without being so long as to be overly restrictive.

Specific information related to disciplinary procedures are set forth under § 20.43 (relating to disciplinary procedures). The Board's proposal would notify licensees that immediate temporary suspension in accordance with section 9(d) of the act is appropriate in cases of certain sexual misconduct. In addition, this section would provide that the consent of an individual to engage in conduct defined herein as sexual harassment, sexual impropriety, sexual violation or sexual abuse with a massage therapist is not a defense in any disciplinary action brought under this section and that with the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a client is admissible in a disciplinary action brought under this section.

The Board next proposes to address sanitation and facility and equipment requirements necessary for the safe practice of massage therapy. In § 20.51 (relating to massage therapy treatment areas), the Board would provide that all treatment spaces must provide for client privacy when clients disrobe; provide for sufficient heating, cooling and ventilation for client comfort; provide illumination for cleaning; be clean, sanitary and free from mold and contaminants; and be maintained in a manner to ensure client safety. In § 20.52 (relating to massage therapy equipment), the Board would set forth minimum standards for equipment, including a requirement that equipment be maintained in working order and cleaned between each use. Specifically related to cushions on massage tables and massage chairs, as well as bolsters and pillows, this section would require that this equipment be covered with impervious material that is cleaned regularly. Finally, face rests, whether covered or uncovered, would have to be cleaned between each use.

Topical preparations would be addressed in § 20.53 (relating to topical preparations). The Board would require massage therapists to store topical preparations in a manner that maintains the integrity of the product and prevents spoilage and contamination, dispense topical preparations in a manner that prevents contamination of the unused portion, and dispense topical preparations in a manner that prevents cross-contamination between clients. In addition, for topical preparations that come into contact with a client, such as ice cubes, plasters, herbs, seaweed, muds, scrubs, paraffin or any other similar products, the proposal would require that massage therapists use these topical preparations only once and then dispose of the topical preparations in a sanitary manner. Massage therapists would be required to place used topical preparations that are not washed away in a covered receptacle that is emptied at least daily.

The Board would address linens used in the practice of massage therapy in § 20.54 (relating to linens). This section requires that all single-service materials, including linens, must be stored in a manner that maintains their cleanliness; all single-service materials, linens and any other items, materials or tools that come into contact with a client's body must be furnished clean and fresh for the use of each individual client; all soiled linens must be placed in a covered receptacle after use; and all soiled linens must be washed after every use in hot water with detergent and bleach in a clothes washing machine. Several commentators thought the Board should permit the use of bleach alternative. Bleach alternative does not have the sanitizing effect of bleach. The Board determined that bleach should be used to ensure effective sanitation of linens that generally touch clients' naked bodies.

Fiscal Impact and Paperwork Requirements.

The regulations may have a fiscal impact on massage therapists because there is a cost to licensure and license renewal. Fees, except biennial renewal fees, are based on an estimate of the amount of time required to perform the service to an individual and the type of staff required to perform the service. Biennial renewal fees are developed by the Department's Bureau of Finance and Operations and are used to sustain the day-to-day operations of the Board. The regulations may have a fiscal impact on individual licensees if the massage therapists do not already abide by the minimum safety and cleanliness requirements set forth by the Board. Minor paperwork and recordkeeping requirements are placed on massage therapy schools and providers of continuing education for massage therapists.

The regulations will not otherwise have any fiscal impact nor impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

The Bureau continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days from the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations and objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Judy Harner, Board Administrator, State Board of Massage Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation # 16A-721, Massage Therapy, when submitting comments.

ROBERT JANTSCH,
Chairperson

Fiscal Note: 16A-721. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 20. STATE BOARD OF MASSAGE THERAPY

GENERAL PROVISIONS

- § 20.1. Definitions.
- § 20.2. Applicability of general rules.
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EDUCATION

- § 20.11. Minimum hour requirements for massage therapy programs.
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- § 20.13. Required knowledge base.
- § 20.14. Student practice.

LICENSURE

- § 20.21. Application for temporary practice permit, initial licensure and licensure by reciprocity.
- § 20.22. Procedure for licensure denial.
- § 20.23. Licensure examinations.
- § 20.24. Application requirements for existing practitioners.
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LICENSURE RENEWAL AND REACTIVATION

- § 20.31. Expiration, renewal and reactivation of license.
- § 20.32. Continuing education hours, maintenance of certificates of completion.
- § 20.33. Continuing education content and providers.
- § 20.34. Penalty for failure to complete continuing education.

SCOPE AND STANDARDS OF PRACTICE

- § 20.41. Scope of practice.
- § 20.42. Standards of professional conduct.
- § 20.43. Disciplinary procedures.

SANITATION, FACILITY AND EQUIPMENT REQUIREMENTS

- § 20.51. Massage therapy treatment areas.
- § 20.52. Massage therapy equipment.
- § 20.53. Topical preparations.
- § 20.54. Linens.

GENERAL PROVISIONS

§ 20.1. Definitions.

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

Act—The Massage Therapy Law (63 P. S. §§ 627.1—627.50).

Board—The State Board of Massage Therapy.

Client—Any individual, group of individuals, or organization to which an L.M.T. provides massage therapy services.

Contact hour—A 50 to 60 minute period of instruction related to the practice of massage therapy in the physical presence of an instructor or supervisor.

Draping—The use of linens to cover a massage therapy client to preserve client privacy and modesty, to maintain professional boundaries and for client warmth.

FSMTB—The Federation of State Massage Therapy Boards.

Immediate supervision—The supervisor or instructor is within visual or audible range of the individual being supervised.

In-class—In the physical presence of an instructor or under the immediate supervision of a clinical supervisor.

Indirect supervision—The supervision provided by a clinical supervisor or instructor who has given a student instructions on the performance of massage therapy activities, assigned for credit, that are to be practiced outside of class or clinic.

Informed consent—A process wherein the massage therapist and a competent client or the client's guardian come to a mutual understanding of the massage therapy treatment, including objectives, benefits and any risks.

L.M.T.—Licensed Massage Therapist.

MBLEx—Massage and Bodywork Licensure Examination of the Federation of State Boards of Massage Therapy.

NCBTMB—National Certification Board for Therapeutic Massage and Bodywork.

NCETM—National Certification Examination for Therapeutic Massage.

NCETMB—National Certification Examination for Therapeutic Massage and Bodywork.

NESL—National Examination for State Licensure, an option offered by the NCBTMB which allows individuals to take the NCETM or NCETMB without obtaining National certification.

Professional relationship—The relationship between a massage therapist and a client which shall be deemed to exist from the first professional contact or consultation and continue thereafter until 6 months after the last date of a professional service.

Sexual abuse—Conduct which constitutes a violation of any provision 18 Pa.C.S. (relating to crimes and offenses related to sexual offenses) (See 18 Pa.C.S. §§ 3121—3130 (relating to definition of offenses).)

Sexual harassment—Deliberate or repeated comments, gestures or physical contacts of a sexual nature.

Sexual impropriety—The term includes the following offenses during the professional relationship:

- (i) Making sexually demeaning or sexually suggestive comments about or to a client, including comments about a client’s body or clothing.
- (ii) Unnecessarily exposing a client’s body or watching a client dress or undress, unless the client specifically requests assistance due to disability.
- (iii) Discussing or commenting on a client’s potential sexual performance or requesting details of a client’s sexual history or preferences.
- (iv) Volunteering information to a client about one’s sexual problems, preferences or fantasies.
- (v) Behavior, gestures or expressions to a client that are seductive or of a sexual nature.
- (vi) Using draping practices that reflect a lack of respect for the client’s privacy.

Sexual intimacies—Romantic, sexually suggestive or erotic behavior or soliciting a date.

Sexual violation—Sexual conduct, during the professional relationship, between a massage therapist and a client, including any of the following:

- (i) Indecent exposure.
- (ii) Touching, with the massage therapist’s body or an object, the genitals or any sexualized body part of the client for any purpose other than appropriate examination or treatment or when the client has refused or withdrawn consent.
- (iii) Encouraging a client to masturbate in the presence of the massage therapist or masturbating while a client is present.
- (iv) Providing or offering to provide treatment in exchange for sexual favors.

Supervisor—A licensee or instructor who meets the qualifications under section 13(3) of the act (63 P. S. § 627.13(3)).

§ 20.2. Applicability of general rules.

The provisions of 1 Pa. Code § 31.1 (relating to scope of part), and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) are applicable to the activities of and proceedings before the Board.

§ 20.3. Fees.

(a) The following fees are charged for services provided by the Board:

Application for licensure	\$65
Verification of licensure	\$15
Certification of licensure history	\$25
Reactivation of license	\$65

Restoration after suspension or revocation.	\$65
Approval of continuing education program.	\$65

(b) The following fees are charged to sustain the operations of the Board:

Biennial renewal of license	\$75
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(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the MBLEx shall be responsible for any fees charged by the FSBMT for taking the examination.

(d) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the NESL, the NCETM or the NCETMB shall be responsible for any fees charged by the NCBTMB for taking the examinations.

EDUCATION

§ 20.11. Minimum hour requirements for massage therapy programs.

(a) Massage therapy programs must provide at least 600 hours of in-class, postsecondary education instruction, including:

- (1) At least 175 contact hours of instruction in anatomy and physiology, kinesiology and pathology, including training in the human immunodeficiency virus and related risks.
- (2) At least 250 contact hours in massage therapy and bodywork assessment, theory and practice including sanitation, safety and hygiene.
- (3) At least 25 contact hours in professional ethics, and business and law related to a massage therapy business.
- (4) At least 150 contact hours in related courses appropriate to a massage therapy curriculum as set forth in § 20.13 (related to required knowledge base), including cardiopulmonary resuscitation.

(b) Massage therapy programs may meet the 600-hour requirement through both didactic and clinical courses.

(c) Externship hours may not be included in the 600-hour minimum education instruction. For purposes of this section, an externship is an offsite practical technique learning experience where the student’s supervision is provided by a licensed massage therapist, supervisor or other appropriate licensed health professional.

(d) Hours for practicing assigned techniques under indirect supervision may not be included in the 600-hour minimum education instruction.

§ 20.12. Information that must be provided to prospective students.

Massage therapy schools shall inform prospective students, in writing, prior to enrollment, of the annual passing rate of the school’s graduates on each of the approved examinations for licensure for the past 2 years. Any licensee employed by a massage therapy school who knows or has reason to know that the school is not abiding by this provision will be subject to discipline under section 9(a)(7) of the act (63 P. S. § 627.9(a)(7)). In addition, the Board will report the failure of a massage therapy school to conform to this section to the school’s approving or accrediting body.

§ 20.13. Required knowledge base.

(a) Massage therapy education must provide students with knowledge of the following:

- (1) Massage and bodywork assessment and application.

(2) Contraindications and precautions for massage therapy.

(3) Anatomy and physiology.

(4) Kinesiology.

(5) Pathology.

(6) Legal requirements.

(7) Business practices.

(8) Professional ethics.

(9) Basic CPR.

(10) Communicable diseases and universal precautions.

(11) Power differentials and other therapeutic boundary issues as they relate to client interaction.

(12) Fundamentals of human behavior and respect for clients in the practice of massage therapy.

(b) Massage therapy education must provide students with the practical skills to:

(1) Administer fundamental therapeutic massage techniques for the treatment of soft tissue manifestations of the human body.

(2) Safely utilize topical preparations, thermal and cryogenic modalities, hydrotherapy and movements that lengthen and shorten soft tissues within the client's normal range of motion.

(3) Maintain safe and effective body mechanics in the application of therapeutic massage techniques.

(4) Locate and palpate muscle attachments, muscle bellies and other anatomical landmarks necessary for the practice of massage therapy.

(5) Use draping/coverage practices that address both function and safety.

(c) Massage therapy education must provide students with additional skills in the following areas:

(1) Development, implementation and modification of a treatment plan that addresses client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of this act.

(2) Obtaining informed consent regarding the risks and benefits of the treatment plan and application and modification of the treatment plan as needed.

(3) Using effective interpersonal communication in the professional relationship.

(4) Utilizing an ethical decision making process. Decision making that conforms to the ethical standards of the profession, as set forth in this chapter and in the codes of ethics of massage therapy professional associations.

(5) Establishing and maintaining a practice environment that provides for the client's safety and comfort.

(6) Establishing and maintaining client records, professional records and business records in compliance with § 20.42(a)(20) (relating to standards of professional conduct).

§ 20.14. Student practice.

(a) A student enrolled in an approved massage therapy program may practice massage therapy by providing services under immediate supervision as part of a clinical training program operated by the school in which the student is obtaining credit.

(b) A student, while enrolled in an approved massage therapy program, may perform techniques learned in class under indirect supervision.

(c) A student may not receive payment from the school or client for services provided as part of a clinical training program operated by the school in which the student is obtaining credit.

(d) A student may accept a nominal gratuity voluntarily given by a client in a clinical training program operated by the school in which the student is obtaining credit.

(e) A student may not receive payment or a gratuity for services provided as part of performing techniques learned in class under indirect supervision, whether the performance is assigned by an instructor as homework or undertaken on the student's own initiative.

(f) Massage therapy schools shall maintain records of services provided by students in a clinical training program for at least 3 years.

(g) Students providing services as part of a clinical training program operated by a school shall be clearly identified to the public as students.

LICENSURE

§ 20.21. Application for temporary practice permit, initial licensure and licensure by reciprocity.

(a) Application forms may be obtained from the Board and are posted on the Board's web site.

(b) An applicant for licensure shall submit to the Board a completed and signed application form, the application fee as set forth in § 20.3 (relating to fees) and the following documents:

(1) A copy of a legal form of identification, such as a valid driver's license, a current passport, or a valid State identification card.

(2) An official Criminal History Record Information check sent to the Board directly from the State Police or other state agency for every state in which the candidate has resided during the past 5 years. The reports must be dated within 6 months of the date of application.

(3) CPR certification, that is valid for at least 6 months following the date of application. A list of CPR certifying bodies will be posted on the Board's web site.

(4) Proof of graduation from high school or the equivalent.

(c) An applicant shall request that the applicant's massage therapy school send directly to the Board the applicant's official transcript showing successful completion of study in the required subject matter and hours required by the act and this chapter. If a school is no longer in operation, the Board may accept a copy of the official transcript from the school's record depository.

(d) An applicant shall provide a written explanation and copies of all relevant documents as requested by the Board if:

(1) The applicant is under investigation or has ever been denied professional licensure or disciplined by any professional licensing authority of the Commonwealth or any other jurisdiction of the United States or a foreign country.

(2) The applicant has surrendered a massage therapy license or other professional license in this Commonwealth or any other jurisdiction of the United States or a foreign country.

(3) The applicant has been arrested, charged or convicted of a misdemeanor or felony in this Commonwealth or any other jurisdiction of the United States or a foreign country.

(4) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of use of alcohol, drugs, narcotics, chemicals or any other type of material.

(5) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of illness or as a result of any mental or physical condition.

(e) An applicant shall verify that the applicant has read, understood and will comply with the act and this chapter.

(f) An applicant is responsible for ensuring that the Board receives all required documentation. If the application is incomplete, the Board will notify the applicant by means of first class mail, within 8 weeks of the receipt of the application, that the application is incomplete.

(g) Applicants shall supply the missing documentation within 6 months from the date the application is executed by the applicant. After that time, if the documentation has not been submitted, the application will be denied and the application fee forfeited. An applicant who wishes to reapply shall submit a new application and application fee.

(h) An applicant whose name changes during the application process or whose name has changed since the applicant completed massage therapy school shall notify the Board in writing and submit, with the notification of name change, the appropriate supporting documentation (such as, marriage certificate, divorce decree, court documents showing a legal name change).

(i) An applicant whose address changes shall notify the Board in writing and submit both the old and new address to the Board.

(j) If any other information requested on the application changes after the date the applicant submits the application to the Board for licensure, the applicant shall immediately notify the Board, in writing, of the change. Failure to update an application may subject an applicant to refusal of the license or a licensee to discipline under section 9(a)(4) of the act (63 P. S. § 627.9(a)(4)).

§ 20.22. Procedure for licensure denial.

(a) The Board will inform the applicant, in writing, of the basis upon which the Board has refused the license. The Board will provide the applicant with an opportunity to demonstrate, at a hearing, that the license should be issued.

(b) If information submitted with the application indicates that an applicant may be unable to safely practice massage therapy, the Board will require the applicant to participate in an evaluation to determine if the applicant can safely practice. An applicant may contest the results of the evaluation at a hearing. The Board will provide an applicant who refuses to participate in an evaluation with an opportunity to demonstrate, at a hearing, that the license should be granted.

(c) In a case when the Board refuses to issue a license, the Board will issue a written final decision setting forth the grounds for the refusal.

§ 20.23. Licensure examinations.

(a) The Board adopts the NCETM and NCETMB, including the NESL option, and MBLE_x as approved examinations for initial licensure under section 7 of the act (63 P. S. § 627.7).

(b) An individual who plans to take the MBLE_x offered by the FSBMT shall contact the FSBMT directly to apply for examination. The FSBMT will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the FSBMT issued the candidate's Authorization to Test will be required to reapply as a new candidate subject to all application and fee requirements in place at that time.

(c) An individual who plans to take the NCETM or NCETMB examinations, including the NESL option offered by the NCBTMB, shall contact the NCBTMB directly to apply for examination. The NCBTMB will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the NCBTMB issued the candidate's Authorization to Test will be required to reapply as a new candidate subject to all application and fee requirements in place at that time.

(d) Fees paid to the FSBMT or NCBTMB are nonrefundable.

(e) The following standards apply for failure to pass the licensure examinations:

(1) An applicant who is unsuccessful on any three attempts to pass a licensure examination or combination of licensure examinations shall obtain at least 100 additional hours of instruction in massage therapy at an approved school before the applicant may reexamine.

(2) An applicant who is unsuccessful an additional two times will not be allowed to retest without completing a massage therapy program of at least 600 hours.

§ 20.24. Application requirements for existing practitioners.

(a) Existing practitioners shall submit, by _____ (*Editor's Note:* The blank refers to a date 1 year after the effective date of adoption of this proposed rulemaking.), an application, application fee and the information required under § 20.21(b), (c) and (d) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity) if applicable, and shall be subject to the provisions of § 20.21(e)—(i).

(b) Existing practitioners shall establish that they have conducted a business and been an active participant in that business which was mainly the practice of massage therapy by submitting one of the following:

(1) A signed copy of the applicant's Federal tax return for the previous year, that lists the applicant's occupation as massage therapist.

(2) A signed copy of Schedule C of the applicant's Federal income tax return for the previous year demonstrating that the individual has reported income from the practice of massage therapy.

(3) Proof of professional or practitioner membership level or above in a professional association approved by the Board.

(4) For applicants who have been employed as massage therapists, a notarized statement from the applicant's employer (on a form provided by the Board) attesting that the individual is a practicing massage therapist, a copy of the employer's business card or letterhead, and a copy of the applicant's Federal W-2 or 1099 form.

(c) Existing practitioners applying for licensure under section 5(b)(3)(i) of the act (63 P. S. § 627.5(b)(3)(i)) shall demonstrate that they have been in active, continuous practice for at least 5 years immediately preceding October 9, 2010, by submitting one of the following:

(1) Signed copies of the applicant's tax returns for the past 5 years, each listing the applicant's occupation as massage therapist.

(2) Copies of Schedule C of the Federal income tax return for the past 5 years demonstrating that the applicant has reported income from the practice of massage therapy.

(3) Proof of at least 5 years membership at the professional or practitioner level or above in a professional association approved by the Board.

(4) For applicants who have been employed as massage therapists, a notarized letter from the applicant's employer (on a form provided by the Board) attesting that the individual has practiced massage therapy for at least the last 5 years, a copy of the employer's business card or letterhead, and copies of the applicant's Federal W-2 or 1099 forms for the last 5 years.

(d) Existing practitioners applying for licensure under section 5(b)(3)(ii) of the act shall have the certification agency provide, directly to the Board, evidence that the practitioner passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies.

(e) Existing practitioners applying for licensure under section 5(b)(3)(iii) of the act shall request that their educational program provide an official transcript directly to the Board to demonstrate that the practitioner completed at least 500 hours of instruction in massage and related subjects. Transcripts generated in a language other than English shall be translated into English at the applicant's expense by a professional translation service and verified to be complete and accurate.

(f) Existing practitioners applying for licensure under section 5(b)(3)(iv) of the act shall demonstrate, through certificates of completion, official transcript, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the NESL option of the NCBTMB.

(g) Existing practitioners applying for licensure under section 5(b)(3)(v) of the act shall demonstrate, through certificates of completion, official transcript provided directly from educational institution, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the MBLEx.

§ 20.25. Additional application requirements for applicants for licensure by reciprocity.

(a) An applicant for licensure by reciprocity shall submit an application form provided by the Board and information required under § 20.21(b)(1)—(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), and shall be subject to the provisions of § 20.21(d) and (e).

(b) An applicant for licensure by reciprocity shall have the official licensing authority of every jurisdiction in which the applicant holds a license to practice massage therapy provide the Board with verification that the applicant is a licensee in good standing and documentation of any disciplinary action taken by the jurisdiction's licensing authority.

(c) An applicant for licensure by reciprocity shall request that the applicant's massage therapy school provide the Board with the applicant's official transcript and verification that the school is recognized by the jurisdiction's licensing authority, accredited by a National accrediting organization, or authorized to operate by the jurisdiction's Department of Education.

(d) An applicant for licensure by reciprocity shall provide evidence that the applicant passed the MBLEx, the NCETM, NCETMB or successfully completed the NESL option, or evidence that the applicant obtained original licensure through qualifications equivalent to those for existing practitioners under section 5(b) of the act (63 P. S. § 627.5(b)).

§ 20.26. Application requirements for temporary practice permits.

(a) An applicant for a temporary practice permit shall submit an application form provided by the Board.

(b) In addition to the completed application form, an applicant for a temporary practice permit shall comply with the application procedures under § 20.21(b)(1)—(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by endorsement), and shall be subject to the provisions of § 20.21(d) and (e).

(c) A temporary practice permit will expire on the earlier of 6 months from the date of issuance or on the date the candidate fails the licensure examination.

(d) Individuals who have been issued a temporary practice permit will be considered licensees for purposes of applying section 9 of the act, pertaining to refusal, suspension and revocation of licenses.

(e) Individuals who have been issued a temporary practice permit may not hold themselves out as a licensed massage therapist, use the initials LMT or advertise their practice of massage therapy.

LICENSURE RENEWAL AND REACTIVATION

§ 20.31. Expiration, renewal and reactivation of license.

(a) *Expiration of license.* Licenses expire on (date) of each (even/odd)-numbered year, regardless of the date of issuance. Licenses are renewable for a 2-year period beginning each (day and month) of each (even/odd)-numbered year. (*Editor's Note:* The blanks for the date and day and month will be added upon publication of final adoption of this proposed rulemaking.)

(b) *Practice prohibited.* A licensee may not practice massage therapy in this Commonwealth after the last day of (month) of the renewal year unless the license has been renewed. (*Editor's Note:* The blank for the data and day and month will be added upon publication of final adoption of this proposed rulemaking.)

(c) *Renewal application.* A licensee shall:

(1) Apply for licensure renewal online or on the form provided by the Board.

(2) Pay the biennial renewal fee as set forth in § 20.3 (relating to fees).

(3) Submit proof of current certification in CPR.

(4) Submit verification of completion of at least 24 hours of Board-approved continuing education.

(5) Submit verification that the licensee has read, understood and will comply with the act and this chapter.

(d) *Disclosure of licensure or discipline.* A licensee who becomes licensed to practice massage therapy in another jurisdiction shall report this information on the biennial renewal form or within 30 days of licensure, whichever occurs sooner. Disciplinary action taken in another jurisdiction or the filing of or disposition of any criminal charges shall be reported to the Board on the biennial renewal form or within 30 days, whichever is sooner.

(e) *Licensure documentation.* Upon renewing a license, a licensee will receive a wall certificate and wallet-size card that will show the next expiration date of the license. A licensee who renews online may print a temporary license that may be used until the biennial license is received.

(f) *Inactive status.* A license may be placed on inactive status by the licensee notifying the Board during the online renewal process or in a signed, notarized statement that the licensee wishes to have the license marked inactive. The licensee shall immediately return all licensure documents to the Board and may not practice massage therapy in this Commonwealth until the licensee's license is reactivated and renewed.

(g) *Reactivation.* The holder of an inactive or expired license to practice massage therapy may reactivate and renew the license within 5 years from the date of its expiration by submitting:

- (1) An application to the Board.
 - (2) Payment of the current biennial renewal fee as set forth in § 23.3.
 - (3) Certificates of attendance at continuing education courses required by § 20.32 (relating to continuing education hours, maintenance of certificates of completion) for the previous biennial renewal period.
 - (4) Current CPR certification.
 - (5) An affidavit of nonpractice within this Commonwealth.
- (h) *Late fees.* A licensee who practiced massage therapy on an inactive or expired license will be subject to late fees as prescribed by the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. §§ 1401-101—1401-501) upon renewal.
- (i) *Disciplinary action authorized.* A licensee who practiced massage therapy on an inactive or expired license may be subject to discipline by the Board under section 9(a)(7) of the act.

(j) *Demonstration of competence after 5 years.* The holder of an inactive or expired license to practice massage therapy will not be reactivated and renewed if more than 5 years have passed from the date of the license expiration unless the licensee has demonstrated current competence to practice. To demonstrate current competence to practice, a licensee must either prove continuous active practice in another jurisdiction during the past 5 years or achieve a passing score on a licensure examination approved for entry into practice in this Commonwealth.

§ 20.32. Continuing education hours, maintenance of certificates of completion.

(a) Licensees shall complete a minimum of 24 hours of continuing education in the field of massage therapy as set forth in section 4(6) of the act (63 P. S. § 627.4(6)) and § 20.33 (relating to continuing education content and providers) in the 2-year period immediately preceding the application for license renewal. To be creditable, continu-

ing education must meet the requirements for Board approval set forth in this section and § 20.33.

(b) Licensees shall complete a minimum of 4 contact hours of continuing education in professional ethics in each biennial renewal period.

(c) A maximum of 6 hours may be earned to meet the biennial requirement by taking any type of correspondence courses, such as online courses, courses on audio/visual media and print courses.

(d) Courses for the renewal of the licensee's CPR certification may not be used to meet the biennial continuing education requirement.

(e) Licensees shall retain the certificates of completion from continuing education courses for a minimum of 5 years.

(f) A licensee who is unable to complete the required continuing education shall request a waiver or extension from the Board at least 60 days prior to the expiration of the license. The request must include details about the licensee's illness, emergency or hardship, including documentation such as a letter from the licensee's physician or a copy of the licensee's military orders. The Board will respond in writing either granting or denying a request for waiver or extension.

(g) Licensees may be audited to ensure their compliance with the continuing education requirements.

§ 20.33. Continuing education content and providers.

(a) Continuing education must be designed to advance the licensee's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act (63 P. S. § 627.2).

(b) The following continuing education providers are approved to offer creditable continuing education provided they comply with subsections (a), (c) and (d):

- (1) Schools of massage therapy in this Commonwealth operating under section 5(a)(3) of the act (63 P. S. § 627.5(a)(3)).
- (2) Schools of massage therapy approved by the Board or accredited by a National accrediting agency recognized by the United States Department of Education.
- (3) The American Massage Therapy Association and its state chapters.
- (4) NCBTMB-approved providers.
- (5) Associated Bodywork and Massage Professionals.

(c) Continuing education providers shall provide certificates of completion to massage therapists that include the name of the massage therapist, name of the course provider, title of the course, date of the course, and number of hours.

(d) Continuing education providers shall retain documentation of the participants in their continuing education programs for at least 5 years.

(e) Providers of continuing education who are not listed in subsection (b) may apply to the Board for approval of a continuing education course by submitting an application and paying the application fee under § 20.3 (relating to fees). The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty. Approved faculty include massage therapists licensed in the state in which they practice if licensure is required in that state,

physical therapists, physicians, professional nurses and chiropractors. Other instructors with demonstrated expertise may be approved on a case-by-case basis.

(f) An LMT may submit a course offered by a continuing education provider not listed in subsection (b) by filing an application with the Board for approval of a continuing education course and paying the application fee set forth in § 20.3. The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty, as set forth in subsection (e).

(g) The Board reserves the right to reject a continuing education course submitted by a massage therapist who is audited for compliance if the course is outside the scope of practice of massage therapy as defined in the act. A licensee will be notified of the rejection of a course and will be provided the opportunity to apply additional courses the licensee has taken or to take additional courses to meet the continuing education requirement.

§ 20.34. Penalty for failure to complete continuing education.

(a) Failure to complete a minimum of 24 hours of continuing education in a biennial period may subject a licensee to discipline under section 9(7) of the act (63 P. S. § 627.9(7)) in accordance with the schedule of civil penalties at § 43b.23 (relating to schedule of civil penalties—massage therapists).

(b) A licensee who has not completed a minimum of 24 hours of continuing education shall report the number of continuing education hours completed on the biennial renewal application and shall make up the deficiency within 6 months of the expiration date of the massage therapist's license. Failure to accurately report the number of continuing education hours completed may subject the licensee to discipline under section 9(5) of the act (63 P. S. § 627.9(5)).

(c) A licensee who, under subsection (b), has made up a deficiency in continuing education hours, shall provide copies of the certificates of completion for 24 hours of continuing education upon completion of the deficient hours. The documentation shall be submitted to the Board no later than 1 month following the make up period (a period 7 months after the end of the biennial renewal period).

(d) Notwithstanding any civil penalty assessed under subsection (a), failure to provide the Board with certificates of completion under subsection (c) may subject the licensee to additional discipline under section 9(7) of the act.

SCOPE AND STANDARDS OF PRACTICE

§ 20.41. Scope of practice.

(a) Massage therapists treat the soft tissue manifestations of the human body, which may include the following:

- (1) Pain.
- (2) Edema.
- (3) Hypertonicity.
- (4) Hypotonicity.
- (5) Loss of muscular function.
- (6) Muscle atrophy.
- (7) Muscle cramps or spasms.
- (8) Diminished mobility.

- (9) Adhesions/scarring/scar tissue/fascial thickening.
- (10) Restricted lymph flow.
- (11) Restricted blood flow.
- (12) Fascial restrictions.
- (13) Postural deviations.
- (14) Paresthesia.
- (15) Hypersensitivity.

(b) Massage therapy practice does not include:

- (1) The diagnosis or treatment of impairment, illness, disease or disability.
- (2) Medical procedures.
- (3) Chiropractic manipulation—adjustment.
- (4) Physical therapy mobilization—manual therapy.
- (5) Therapeutic exercise.

(6) Ordering or prescribing drugs or treatments for which a license to practice medicine, osteopathic medicine, nursing, podiatry, optometry, chiropractic, physical therapy, occupational therapy, or other healing art is required.

(7) The application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces.

(8) The use of equipment or devices that require a prescription (for example, ultrasound, diathermy or electrical neuromuscular stimulation).

§ 20.42. Standards of professional conduct.

(a) A massage therapist shall:

(1) Maintain current knowledge of the application of massage therapy, including indications, contraindications and precautions.

(2) Undertake a specific technique or use a product or equipment only if the massage therapist has the necessary knowledge, training or skill to competently execute the technique.

(3) Base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice.

(4) Provide treatment only where there is an expectation that it will be advantageous to the client.

(5) Refer to an appropriate health care professional when indicated in the interest of the client.

(6) Discuss with clients which massage therapy modalities and techniques will be utilized and the benefits of these modalities and techniques, the treatment objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time.

(7) Obtain written consent prior to performing breast massage.

(8) Modify or terminate the massage therapy session at any time upon request of the client.

(9) Keep client information private and confidential. This standard does not prohibit or affect reporting mandated under State or Federal law to protect children, older adults, or others.

(10) Use safe and functional coverage/draping practices during the practice of massage therapy when the client is disrobed. Safe and functional coverage/draping means that the client's genitals and gluteal cleft and the breast area of female clients are not exposed and that massage

or movement of the body does not expose genitals, gluteal cleft or breast area. With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved to perform therapeutic treatment of the area.

(11) Act to safeguard clients from incompetent, abusive or illegal practices of other massage therapists or caregivers.

(12) Continuously maintain current CPR certification.

(13) Be clean, fully-clothed and professional in dress and appearance.

(14) Display the massage therapist's current license in a location clearly visible to clients and carry the massage therapist's wallet card whenever practicing offsite.

(15) Include the massage therapist's license number in all advertisements.

(16) Conspicuously display the massage therapist's name and the title L.M.T. or the words "Licensed Massage Therapist" on an identification badge or directly on clothing worn in the public areas where massage therapy services are being provided.

(17) Cooperate with the Board, the Department of State or the Bureau of Enforcement and Investigation in the investigation of complaints filed under the act.

(18) Provide massage therapy records immediately upon demand of the Board or its authorized agents.

(19) Maintain massage therapy records for at least 3 years from the last date that services were provided to the client.

(20) Educate clients about maintaining the beneficial effects of massage therapy treatment when indicated by a treatment plan.

(21) Obtain the written permission of a parent or guardian, or their representative, prior to providing massage therapy services to a minor.

(22) Require that a parent or guardian, or their representative, be physically present in the room during treatment of a minor.

(b) A massage therapist may not:

(1) Psychologically or physically abuse a client.

(2) Violate a client's boundaries with regard to exposure, privacy or disclosure.

(3) Utilize techniques that are contraindicated based on the client's condition.

(4) Falsify or knowingly make incorrect entries into the client's record or other related documents.

(5) Intentionally expose a client's genitals, gluteal cleft or the breasts of a female client except temporarily to perform therapeutic treatment of the area.

(6) Engage in sexual harassment, sexual impropriety, sexual violation or sexual abuse.

(7) Engage in sexual intimacies during the professional relationship.

(8) Perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in section 2 of the act (63 P.S. § 627.2), unless the massage therapist has additional training and licensure, if required, to perform those services.

(9) Knowingly permit another individual to use the massage therapist's license or temporary permit for any purpose.

(10) Knowingly aid, abet or assist another person to violate or circumvent a law or this chapter.

(11) Misappropriate equipment, materials, property or money from an employer or client.

(12) Refuse a client's request for a refund for the unearned portion of prepaid or packaged massage therapy services. This provision does not apply to gift certificate purchases.

§ 20.43. Disciplinary procedures.

(a) A massage therapist whose conduct constitutes a sexual violation or sexual abuse is subject to immediate temporary suspension in accordance with section 9(d) of the act (63 P.S. § 627.9(d)).

(b) The consent of an individual to engage in conduct defined herein as sexual harassment, sexual impropriety, sexual violation or sexual abuse with a massage therapist is not a defense in any disciplinary action brought under this section.

(c) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a client is admissible in a disciplinary action brought under this section.

SANITATION, FACILITY AND EQUIPMENT REQUIREMENTS

§ 20.51. Massage therapy treatment areas.

Massage therapists shall maintain their treatment spaces to:

(1) Provide for client privacy when clients disrobe.

(2) Provide for heating, cooling and ventilation to enhance client comfort.

(3) Provide illumination for cleaning.

(4) Be clean, sanitary and free from mold and contaminants.

(5) Ensure client safety.

§ 20.52. Massage therapy equipment.

(a) Massage therapists shall maintain equipment used in the practice of massage therapy in working order.

(b) Massage therapists shall clean equipment that comes into direct contact with a client's skin between each use.

(c) Massage therapists shall cover with impervious material and regularly clean cushions on massage tables and massage chairs, as well as bolsters and pillows.

(d) Massage therapists shall clean face rests, whether covered or uncovered, between each use.

§ 20.53. Topical preparations.

(a) Massage therapists shall store topical preparations in a manner that maintains the integrity of the product and prevents spoilage and contamination.

(b) Massage therapists shall dispense topical preparations in a manner that prevents contamination of the unused portion and that prevents cross-contamination between clients.

(c) Massage therapists shall use topical preparations that come into contact with a client, such as ice cubes, plasters, herbs, seaweed, muds, scrubs, paraffin or any

other similar products only once and shall then dispose of the topical preparations in a sanitary manner. Preparations that are not washed away must be placed in a covered receptacle that is emptied at least daily.

§ 20.54. Linens.

(a) Massage therapists shall store single-service materials, including clean linens, in a manner that maintains their cleanliness.

(b) Massage therapists shall furnish clean and fresh for the use of each individual client single-service materials,

linens and any other items, materials or tools that come into contact with a client's body.

(c) Massage therapists shall place soiled linens in a covered receptacle or washing machine after use.

(d) Massage therapists shall wash soiled linens in a clothes washing machine in hot water with detergent and bleach after every use.

[Pa.B. Doc. No. 10-829. Filed for public inspection May 7, 2010, 9:00 a.m.]

STATEMENTS OF POLICY

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Customer Assistance Program Policy; Statement Suspension and Revision

Public Meeting held
March 25, 2010

Commissioners Present: James H. Cawley, Chairperson;
Tyrone J. Christy; Vice Chairperson, Dissenting State-
ment; Wayne E. Gardner; Robert F. Powelson

*Customer Assistance Program Policy; Statement
Suspension and Revision; Doc. No. M-00920345*

Order

By the Commission:

With this order, the Commission suspends § 69.265(9)(ii) and (iii) of its Policy Statement, 52 Pa. Code § 69.265(9)(ii) and (iii), relating to the application of Low Income Home Energy Assistance Program (LIHEAP) grants in electric and natural gas distribution companies' Customer Assistance Programs (CAPs). The Pennsylvania Department of Public Welfare (DPW) administers LIHEAP and has proposed changes to the manner in which LIHEAP grants may be applied to a customer's account in a distribution company's CAP. The suspension of these provisions of our Policy Statement will ensure that distribution companies will be able to comply with DPW's proposed changes in the design of their CAP plans, in order to prevent distribution companies from losing LIHEAP vendor status.

Background

LIHEAP is a Federal program administered by the United States Department of Health and Human Services (HHS). In Pennsylvania, HHS allots LIHEAP block grant monies to DPW. As a recipient of the Federal block grant, DPW is responsible for interpreting and applying the directives of HHS, and developing and applying rules for the distribution of LIHEAP funds.¹

In the summer of 2009, DPW proposed changes in the way it will allow LIHEAP grants to be applied to the accounts of customers enrolled in distribution companies' customer assistance programs. *LIHEAP 2010 Final State Plan*, p. viii.² Among the proposed changes is the requirement that distribution companies operating CAPs apply the LIHEAP cash grant to the customer's monthly "Asked to Pay" amount. This proposed change is inconsistent with the Commission's Policy Statement on CAP design elements, 52 Pa. Code § 69.265, for the reasons discussed as follows.

Discussion

Electric and natural gas distribution companies file CAPs to satisfy universal service requirements set forth in the Electric Generation Customer Choice and Competi-

tion Act³ and the Natural Gas Competition Act.⁴ The Commission's CAP Policy Statement⁵ sets forth the following design guidelines for these programs:

- CAP applicants should complete LIHEAP applications during the intake process;
- LIHEAP grants should be designated to the utility by the CAP customer;
- The utility should apply the LIHEAP grant money to CAP credits;⁶ and
- The utility should not allow LIHEAP grants to be substituted for the customer's monthly payment.

52 Pa. Code § 69.265(6)(v) and (9).

The last two CAP Policy Statement provisions mentioned above are inconsistent with DPW's proposed changes in rules and policies as set forth in the 2010 Final State Plan:

Proposed Change 1

Public utilities that operate customer assistance programs (CAPs) will apply the LIHEAP cash component benefits only to the customer's monthly 'Asked to Pay' amount. Any remaining funds will be kept in the customer's account as a credit to pay for future 'Asked to Pay' amounts. No LIHEAP funds may be applied to the CAP customer's pre-program arrearages or actual usage amounts.

LIHEAP 2010 Final State Plan, p. viii.

Additionally, the application of LIHEAP funds to pre-program arrearages,⁷ a practice adopted by many distribution companies, is also inconsistent with this proposed change. Therefore, if a distribution company submits to this Commission, and the Commission approves, a plan that implements a program consistent with its Policy Statement, then the plan will violate DPW's proposed rules and policies and, consequently, the distribution company will risk losing its vendor status with DPW.⁸

The Commission's position is that it is in the public interest for utilities to safeguard their status as LIHEAP vendors in order to facilitate the efficient disbursement of grant funds to customers in need. For this reason, we are suspending our Policy Statement's guidance that:

- (ii) A LIHEAP or other energy assistance grant may not be substituted for a participant's monthly payment.
- (iii) The LIHEAP grant should be applied to reduce the amount of CAP credits.

52 Pa. Code § 69.265(9)(ii) and (iii).

The Commission is in the process of revising its CAP Policy Statement in conjunction with a proposed rule-

³ 66 Pa.C.S. § 2802(10)(17) (relating to declaration of policy).

⁴ 66 Pa.C.S. § 2203(8) (relating to standards for restructuring of natural gas utility industry).

⁵ A policy statement is not a regulation and does not have the force of law. *Pa. Human Relations Comm'n v. Norristown Sch. Dist.*, 374 A.2d 671, 677-679 (Pa. 1977). While a policy statement does not establish a binding norm, it does represent an agency's tentative future intentions, and provides the agency with the flexibility to follow the announced policy or modify it if the circumstances are appropriate. *The Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1201 (Pa. Cmwlth. 2000).

⁶ A CAP credit is the difference between the amount billed at the standard residential rate and the amount billed at the CAP rate.

⁷ A pre-program arrearage is an arrearage accumulated by the customer before entering a Customer Assistance Program. This amount is forgiven over a period of time upon receipt of timely payments by the customer.

⁸ When a distribution company has vendor status, LIHEAP grants are made by DPW on the customer's behalf directly to the distribution company rather than the grant being sent to the customer.

¹ Pursuant to 42 U.S.C. § 8624, the state agency receiving the funds must certify that it will use the funds in accordance with the Low Income Home Energy Assistance statute, 42 U.S.C. §§ 8621 *et seq.*, and that its administration of the program be set forth in a state plan that is released annually.

² The LIHEAP 2010 Final State Plan may be accessed on DPW's web site at the following address: <http://www.dpw.state.pa.us/ServicesPrograms/LIHEAP/003676506.htm>.

making on universal service programs and energy conservation reporting requirements.⁹ The Commission will revisit this suspension of its policy when it finalizes these rulemakings.

Given the change in DPW's administration of LIHEAP funds, we strongly encourage our jurisdictional distribution companies to submit revised CAP plans at their next due date that are compliant with DPW's rules so that LIHEAP vendor status is assured.¹⁰

Conclusion

For the reasons explained herein, the Commission will suspend, until further notice, § 69.265(9)(ii) and (iii) of its Policy Statement on Customer Assistance Programs, 52 Pa. Code § 69.265(9)(ii) and (iii), as these sections are inconsistent with DPW's proposed changes to the manner in which LIHEAP grants may be applied to a distribution company's CAP. *Therefore,*

It Is Ordered That:

1. Section 69.265(9)(ii) and (iii) of the Policy Statement on Customer Assistance Programs, 52 Pa. Code § 69.265(9)(ii) and (iii), is hereby suspended until further notice to read as set forth in Annex A, with ellipses referring to the existing text of the section.

2. A copy of this Opinion and Order be filed at Docket No. M-00920345 and served upon all jurisdictional natural gas distribution companies, electric distribution companies, the Office of Consumer Advocate, the Office of Trial Staff, the Pennsylvania Utility Law Project, Community Legal Services, Inc., the Energy Association of Pennsylvania and the Department of Public Welfare.

⁹ See Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71–54.78 (electric); §§ 62.1–62.8 (natural gas) and Customer Assistance Programs, §§ 76.1–76.6 (Proposed CAP Rulemaking), Order entered September 4, 2007 at Docket No. L-00070186.

¹⁰ Two distribution companies have submitted CAP plans that are currently before the Commission. These plans do not appear to be in compliance with DPW's proposed rule changes. Therefore, the Commission believes that it is prudent for these companies to review and consider withdrawing and revising their respective CAP plans so that the companies can re-file plans that comply with the LIHEAP 2010 Final State Plan.

3. A copy of this Opinion and Order be published in the *Pennsylvania Bulletin* and posted on the Commission's web site.

By the Commission

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: Fiscal Note 57-259 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES
POLICY STATEMENT ON CUSTOMER ASSISTANCE PROGRAMS

§ 69.265. CAP design elements.

* * * * *

(9) *Coordination of energy assistance benefits.* In a CAP, the utility should include the following to coordinate a participant's energy assistance benefits between it and other utilities:

(i) A LIHEAP grant should be designated by the participant to the utility sponsoring the CAP.

(ii) A utility may impose a penalty on a CAP participant who is eligible for LIHEAP benefits but who fails to apply for those benefits. A utility should use this option carefully and the penalty should not exceed the amount of an average LIHEAP cash benefit. If a customer applies for a LIHEAP benefit but directs it to another utility or energy provider, the CAP provider should not assess a penalty.

* * * * *

[Pa.B. Doc. No. 10-830. Filed for public inspection May 7, 2010, 9:00 a.m.]

NOTICES

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 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending April 20, 2010.

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

Section 112 Acquisitions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
4-9-2010	First Niagara Financial Group, Inc. Buffalo, NY	Effective
	Acquisition of up to 19.9% of the common stock of Berkshire Bancorp, Inc., Wyomissing, and indirect acquisition of up to 19.9% of the common stock of Berkshire Bank, Wyomissing.	

Holding Company Acquisitions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
4-9-2010	First Niagara Financial Group, Inc. Buffalo, NY	Effective
	Acquisition of 100% of Harleysville National Corporation, Harleysville, and indirect acquisition of 100% of The Harleysville National Bank and Trust Company, Harleysville.	

Branch Applications

De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
12-17-2009	Fleetwood Bank Fleetwood Berks County	455 Main Street Shoemakersville Berks County	Opened
4-14-2010	Republic First Bank Philadelphia Philadelphia County	30 Kings Highway East Haddonfield Camden County, NJ	Filed

Branch Discontinuances

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
4-10-2010	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	9910 Frankford Avenue Philadelphia Philadelphia County	Closed
4-10-2010	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	2 Scott Street and Pavilion Avenue Riverside Burlington County, NJ	Closed

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

Change of Principal Place of Business

<i>Date</i>	<i>Name and Location of Institution</i>	<i>Address</i>	<i>Action</i>
4-19-2010	PPL GOLD Credit Union Allentown Lehigh County	<i>To:</i> 4703 Hamilton Boulevard Allentown, PA 18103 Lehigh County <i>From:</i> 932 West Hamilton Street Allentown, PA 18101 Lehigh County	Effective

The Department's web site at www.banking.state.pa.us includes public notices for more recently filed applications.

STEVEN KAPLAN,
Secretary

[Pa.B. Doc. No. 10-831. Filed for public inspection May 7, 2010, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Fiscal Year 2010-2011 Grant Programs for Destination Marketing Organizations

The Department of Community and Economic Development announces the availability of guidelines for the Fiscal Year (FY) 2010-2011 Grant Programs for Destination Marketing Organizations. This program administered by the Pennsylvania Tourism Office provides grants to support tourism promotion and marketing for eligible Tourism Promotion Agencies and other Tourism Destination Marketing Organizations. These supported activities will encourage the prosperous development of Pennsylvania business, industry and commerce, to expand markets and promote and develop new markets for Pennsylvania tourism, encouraging the location and development of new business, industry and commerce within the Commonwealth, to aid in restoring employment in communities affected by unemployment, and to assist persons, firms, associations, political subdivisions, corporations, cooperative associations and other organizations to assist various public safety, recreation, senior citizens or other community service organizations.

Assistance from the Pennsylvania Tourism Office is in the form of grants from the Commonwealth to eligible applicants for projects which conform to the eligibility criteria detailed in the program guidelines.

All applications and requests for guidelines should be directed to Department of Community and Economic Development, Tourism Office, Commonwealth Keystone Building, 400 North Street, Fourth Floor, Harrisburg, PA 17120-0225, (800) 237-4363, jacollier@state.pa.us.

GEORGE CORNELIUS,
Secretary

[Pa.B. Doc. No. 10-832. Filed for public inspection May 7, 2010, 9:00 a.m.]

Weatherization Assistance Program's Proposed State Plan

The Department of Community and Economic Development (Department) publishes notice of a public hearing to be held Monday, May 24, 2010, at 1 p.m. in PUC Hearing Room 2, Plaza Level, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA. The purpose of this hearing is to receive comments on the proposed changes in this Commonwealth's 2010-2011 annually-appropriated United States Department of Energy Weatherization Assistance Program Plan (regular plan) and the 2010-2011 American Recovery and Reinvestment Act State Weatherization Plan (ARRA).

The regular and ARRA plans are to be amended to transfer the contract rights and obligations of the City of New Castle as a sub-grantee of the Commonwealth under both plans to Lawrence County Social Services, Inc.

The 2010-2011 ARRA plan provisions for "first priority households" will be modified to meet current conditions and maximize the effective use of ARRA weatherization funds.

The 2010-2011 regular plan will authorize modification of the current formula-based distribution of funds. The Department, in cooperation with DOE will transition the implementation of the modified formula during the 2010 plan year. The changes may result in the redistribution of funds among sub-grantees based upon specific performance metrics including but not limited to production, quality of the work product, prompt, accurate and complete reporting, and energy reduction achieved. The State-issued certification process currently employed in the ARRA Weatherization Program will also be implemented for the "regular" plan.

Copies of the "regular" and ARRA Weatherization Program Plans may be obtained beginning on May 12, 2010, by contacting the Department of Community and Economic Development, Office of Energy Conservation and Weatherization, 4th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, (717) 720-1354 or it can be downloaded from the Department's web site at www.newpa.com.

Written comments may be submitted to E. Craig Heim, Executive Director, Office of Energy Conservation and

Weatherization, 4th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120 until 5 p.m. on May 21, 2010.

Persons with a disability who wish to attend this hearing and require auxiliary aid, services or other accommodations to participate in the proceedings, contact Jacquelyn Allen at (717) 720-1354 to discuss how the Department may accommodate their needs.

GEORGE E. CORNELIUS,
Secretary

[Pa.B. Doc. No. 10-833. Filed for public inspection May 7, 2010, 9:00 a.m.]

DEPARTMENT OF EDUCATION

Application of Thomas R. Smith, Jr. for Reinstatement of Teaching Certificates; Doc. No. RE-09-07

Notice of Opportunity for Hearing and Invitation to Protest

Under the Professional Educator Discipline Act (act) (24 P. S. §§ 2070.1—2070.18a), the Professional Standards and Practices Commission (Commission) will consider the application of Thomas R. Smith for reinstatement of his teaching certificates.

Thomas R. Smith filed an application for reinstatement of his teaching certificates under section 16 of the act (24 P. S. § 2070.16), 1 Pa. Code §§ 35.1 and 35.2 (relating to applications) and 22 Pa. Code § 233.14 (relating to reinstatement). Under section 16 of the act, the Department of Education on April 14, 2010, filed its opposition to the reinstatement.

In accordance with the act, 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), the Commission will act upon the application without hearing, unless within 30 days after the publication of this notice a written request for public hearing is filed with the Commission, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protests and requests for hearing shall be filed with Carolyn Angelo, Executive Director, Professional Standards and Practices Commission, 333 Market Street, Harrisburg, PA 17126-0333, on or before 4 p.m. on the due date prescribed by this notice.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate, should contact Suzanne Markowicz at (717) 787-6576 to discuss how the Commission may best accommodate their needs.

GERALD L. ZAHORCHAK, D. Ed.,
Secretary

[Pa.B. Doc. No. 10-834. Filed for public inspection May 7, 2010, 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

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0035637 (Sewage)	Department of Transportation Safety Rest Area Site No. 55 Interstate 81 Northbound Greenfield Township, PA 18411	Lackawanna County Greenfield Township	Unnamed Tributary to South Branch Tunkhannock Creek 4-F	Y
PA0032590 (Sewage)	Frieden Manor MHC 102 Frieden Manor Schuylkill Haven, PA 17972	Schuylkill County Wayne Township	Long Run 3-A	Y
PAS222203	Stanley Vidmar Storage Technologies, Inc. 11 Grammes Road Allentown, PA 18105-1151	Allentown City Lehigh County	Little Lehigh Creek	Y
PAS602203 (Storm Water)	Einfalt Tire Recycling, Inc. 1212 Industrial Boulevard P. O. Box 100 Stockertown, PA 18083-0100	Northampton County Stockertown Borough	Unnamed Tributary to Bushkill Creek 1-F High Quality-Cold Water Fishes	Y
PAS602202 (Storm Water)	Denco Tire Recycling P. O. Box 100 1212 Industrial Boulevard Stockertown, PA 18083	Northampton County Stockertown Borough	Unnamed Tributary to Bushkill Creek 1-F High Quality-Cold Water Fishes	Y
PA0060691 (Sewage)	Moon Lake Park Plymouth Township, PA 18621	Luzerne County Plymouth Township	Unnamed Tributary of Hunlock Creek 5-B CWF	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. Phone: 717-705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0088188 (Sew)	Gratz Borough Municipal Authority 125 North Center Street Gratz, PA 17030	Dauphin County Gratz Borough	Unt Wiconisco Creek 6C	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0209449 (IW)	GKN Sinter Metals, Inc. Plant 3/6 P. O. Box 493 Emporium, PA 15834-0493	Emporium Borough Cameron County	Driftwood Branch Sinnemahoning Creek and West Creek 8-A	Y
PA0228923 (Sewage)	Pine Cradle Lake Campground P. O. Box 113 Rome, PA 18837	Bradford County Rome Township	Unnamed Tributary to Parks Creek 4-D	Y
PA0228834 (Sewage)	Non-Public River Hill Power Company, LLC 94 Spruce Street Indiana, PA 15701	Clearfield County Karthaus Township	West Branch Susquehanna SWP 8D	Y
PA0228206 (Industrial Waste)	Clearfield Municipal Authority Montgomery Run Water Treatment Plant 107 East Market Street Clearfield, PA 16830	Clearfield County Pike Township	Montgomery Creek 8B	Y
PA0209384	Lawrence Township Municipal Authority Wastewater Treatment Plant 173 School Road Tioga, PA 16946	Lawrence Township Tioga County	Tioga River 4-A	Y
PA0209058 (Sewage)	Montour Township Sanitary Sewer STP Rupert Village 195 Rupert Drive Bloomsburg, PA 17815-9627	Columbia County Montour Township	Fishing Creek 5-C	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0220736	Flying W Ranch 685 Flying W Ranch Road Tionesta, PA 16353	Forest County Kingsley Township	Unnamed tributary to Church Run 16-F	Y
PA0093157	Moraine Camplands 281 Staff Road Slippery Rock, PA 16057-5327	Butler County Brady Township	Unnamed tributary to Big Run 20-C	Y

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

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

Application No. PA0051861, Sewage, **Penn Sylvania Realty Corporation**, 4028 Camp Road, Mohnton, PA 19540-7723. This facility is located in Brecknock Township, **Berks County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, UNT to Rock Run, is in Watershed 7-J, and classified for high quality-trout stocking fishery, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Lancaster City Water Authority is located on the Conestoga Creek, approximately 31 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.004 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25		50
Total Suspended Solids	30		60
NH ₃ -N	33		66
Total Residual Chlorine	0.9		1.8
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform		11,000/100 ml as a Geometric Average	

The proposed effluent limits for Outfall 001 for a design flow of 0.004 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25		50
Total Suspended Solids	30		60
NH ₃ -N	33		66
Total Residual Chlorine	0.5		1.6
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform		2,000/100 ml as a Geometric Average	

The proposed effluent limits for Outfall 101 for a design flow of 0.004 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25		
Total Suspended Solids	30		
Total Dissolved Solids	Report		
NH ₃ -N	Report		1.6
NO ₃ -N	Report		
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform		200/100 ml as a Geometric Average	

You 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. PA0248274, Concentrated Animal Feeding Operation (CAFO), Woglemuth Fairview Farm, 2914 Orchard Road, Mount Joy, PA 17552.

Doug Woglemuth has submitted an NPDES permit application for Woglemuth Fairview Farm, a poultry layer and swine finishing operation located in Mount Joy Borough and West Donegal Township, **Lancaster County**. The CAFO is situated near Donegal and Little Chickies Creeks (Watershed 7-G), the streams are classified as cold water fisheries. The CAFO has a target animal population of approximately 1,262 animal equivalent units consisting of 104,000 laying hens and 3,600 finishing swine. A release or discharge to waters of the Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department of Environmental Protection (Department) has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to issue the NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit. The permit application and draft permit are on file at the Southcentral Regional Office of the Department.

You may make an appointment to review the Department's files by calling the File Review Coordinator at 717-705-4732.

The Environmental Protection Agency permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

Application No. PA0260495, Concentrated Animal Feeding Operation (CAFO), Steve Hershey Farm, 2040 Donegal Springs Road, Mount Joy, PA 17552.

Steve Hershey has submitted an NPDES permit application for Steve Hershey Farm, a poultry layer and beef finishing operation located in East Donegal Township, **Lancaster County**. The CAFO is situated near Donegal Springs (Watershed 7-G), the stream is classified as a high-quality, cold water fishery. The CAFO has a target animal population of approximately 430 animal equivalent units consisting of 110,000 laying hens and 270 finishing steers. A release or discharge to waters of the Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department of Environmental Protection (Department) has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to issue the NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit. The permit application and draft permit are on file at the Southcentral Regional Office of the Department.

You may make an appointment to review the Department's files by calling the File Review Coordinator at 717-705-4732.

The Environmental Protection Agency permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

Application No. PA0246603, Concentrated Animal Feeding Operation (CAFO), Chris Hoffman, R. R. 1, Box 295, McAlisterville, PA 17049.

Chris Hoffman has submitted an application to renew the existing Individual NPDES permit for an existing CAFO known as the Lazy Hog Farm, located in Fayette Township, **Juniata County**.

The CAFO is situated near Lost Creek, which is classified as a high-quality, cold water fishery. The CAFO includes four animal housing units designed to maintain an animal population of approximately 754 animal equivalent units consisting of 1,264 gestating sows, 165 sows with litters, 11 boars, 440 replacement gilts, 3,300 nursery pigs, five goats and two steers. Manure is stored in concrete manure storage structures and applied onsite or exported to local farmers in accordance with an approved Nutrient Management Plan. A release or discharge to waters of the Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department of Environmental Protection (Department) has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to reissue the NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit. The permit application and draft permit are on file at the Southcentral Regional Office of the Department.

You may make an appointment to review the Department's files by calling the File Review Coordinator at 717-705-4732.

Persons wishing to comment on the proposed permit are invited to submit written comments to the previous address within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in formulating the Department's final determination regarding the application. Following the 30-day comment period, the Watershed Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time the determination may be appealed to the Environmental Hearing Board.

The Environmental Protection Agency permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

PA0044911, Industrial Waste, SIC Code 2023, **Land O'Lakes, Inc.**, 405 Park Drive, Carlisle, PA 17015-9270. Facility Name: Land O'Lakes—Carlisle Facility. This existing facility is located in South Middleton Township, **Cumberland County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Mountain Creek, is located in State Water Plan watershed 7-E and is classified for Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.81 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
Flow (MGD)	Report	Report				
pH (S.U.)			6.0			9.0
Dissolved Oxygen			5.0			
Temperature (° F)						
Jul 1 - 31 (Interim)				Report	82	
Aug 1 - Jun 30 (Interim)				Report	Report	
Jul 1 - 31 (Final)				Report	93	
Aug 1 - Jun 30 (Final)				Report	110	
CBOD ₅						
Raw Sewage Influent	Report	Report		Report	Report	
CBOD ₅ (Interim)	90	180		Report	Report	33
CBOD ₅ (Final)	48	96		10	20	25
Total Suspended Solids						
Raw Sewage Influent	Report	Report		Report	Report	
Total Suspended Solids (Interim)	115	226		Report	Report	42
Total Suspended Solids (Final)	48	96		10	20	25
Ammonia-Nitrogen						
May 1 - Oct 31	10	20		1.5	3.0	3.7
Nov 1 - Apr 30 (Interim)	30	60		4.5	9.0	11
Nov 1 - Apr 30 (Final)	18.7	32		4.5	9.0	11
Total Phosphorus (Interim)	13.5	27		2.0	4.0	5.0
Total Phosphorus (Final)	6.7	13.5		1.0	2.0	2.5

The proposed effluent limits for Internal Monitoring Point 101 are:

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Flow (MGD)						
Internal Monitoring Point pH (S.U.)	Report	Report				
Internal Monitoring Point Dissolved Oxygen			Report			Report
Internal Monitoring Point Temperature (° F)			Report			
Internal Monitoring Point CBOD ₅				Report	Report	
Internal Monitoring Point Total Suspended Solids	Report	Report		Report	Report	
Internal Monitoring Point Ammonia-Nitrogen	Report	Report		Report	Report	
Internal Monitoring Point Total Phosphorus	Report	Report		Report	Report	
Internal Monitoring Point	Report	Report		Report	Report	

The proposed effluent limits for Internal Monitoring Point 102 are:

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Flow (MGD)						
Internal Monitoring Point pH (S.U.)	Report	Report				
Internal Monitoring Point Dissolved Oxygen			Report			Report
Internal Monitoring Point Temperature (° F)			Report			
Internal Monitoring Point CBOD ₅				Report	Report	
Internal Monitoring Point Total Suspended Solids	Report	Report		Report	Report	
Internal Monitoring Point Ammonia-Nitrogen	Report	Report		Report	Report	
Internal Monitoring Point Total Phosphorus	Report	Report		Report	Report	
Internal Monitoring Point	Report	Report		Report	Report	

You 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 0070351, Sewage, **Amity Township**, 2004 Weavertown Road, P. O. Box 215, Douglassville, PA 19518. This facility is located in Amity Township, **Berks County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Schuylkill River, is in Watershed 3-D, and classified for warm water fishery, water supply, recreation and fish consumption. The nearest downstream public water supply intake for the Borough of Pottstown Water and Sewer Authority is located on the Schuylkill River, approximately 15 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 2.20 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N			
(5-1 to 10-31)	4		8
(11-1 to 4-30)	12		24
Total Residual Chlorine	0.5		1.6
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)		200/100 ml as a Geometric Average 2,000/100 ml as a Geometric Average	
Schuylkill River TMDL Requirements			
	<i>Concentration (mg/L)</i>	<i>Mass (lbs)</i>	
	<i>Monthly Average</i>	<i>Monthly</i>	<i>Annual</i>
Total PCBs			Report

You 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 not in effect.

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

PA0229121, CAFO, SIC 0259, **Cotner Farms, Inc.**, 127 Rushtown Road, Danville, PA 17821. This proposed facility is located in Rush Township, **Northumberland County**.

Description of Proposed Activity: Poultry operation with layer chickens The receiving streams, Logan and Wilson Runs, are in the State Water Plan Catawissa—Roaring Creek Watershed 5E and is classified for: Cold Water Fishery.

The proposed effluent limits for the operation/activity include: Except for the chronic or catastrophic rainfall events defined as over the 25-year/24-hour rain storms, the CAFO individual permit is a nondischarge NPDES permit. Where applicable, compliance with 40 CFR Federal effluent limitation guidelines is required.

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

1. Compliance with the farm's Nutrient Management Plan.
2. Compliance with the farm's Preparedness, Prevention and Contingency Plan.
3. Compliance with the Farm's Erosion and Sedimentation Control Plan for plowing and tilling.
4. Erosion and Sedimentation Control Plan requirements for stormwater during construction activities.
5. Animal mortality handling and disposing requirements.
6. Requirements for storage of feed and other raw materials.
7. Best Management Practices requirements.
8. Egg Wash Water Disposal System self inspection and reporting requirements.

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

PA0254223, Sewage, **Lincoln Township Municipal Authority**, P. O. Box 162, Sipesville, PA 15561-0162. This application is for issuance of an NPDES permit to discharge treated sewage from Southside Waste Water Treatment Plant in Lincoln Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Unnamed Tributary to Quemahoning Creek, which are classified as a cold water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Somerset County Water System.

Outfall 001: new discharge, design flow of 0.01 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
May 1 to Oct 31	5.0			10.0
Nov 1 to Apr 30	15.0			30.0
Dissolved Iron	0.3			0.6
Total Iron	1.5			3.0
Manganese	1.0			2.0
Aluminum	0.75			1.5
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a Geometric Mean			
Oct 1 to Apr 30	2,000/100 ml as a Geometric Mean			

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
Total Residual Chlorine	0.3			0.6
Dissolved Oxygen	not less than 4.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, Telephone: 814-332-6942.

PA0002674, Industrial Waste, SIC Code 2911, **American Refining Group, Inc.**, 77 North Kendall Avenue, Bradford, PA 16701-1726. Facility Name: American Refining Group Bradford. This existing facility is located in Bradford City and Foster Township, **McKean County**.

Description of Existing Activity: The application is for a new NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Foster Brook and Tunungwant Creek, is located in State Water Plan watershed 16-C and is classified for Cold Water Fishes and Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 002 are based on a design flow of 0.45 MGD (plant design flow) and 0.1978 MGD (long term average flow).

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
Flow (MGD)	Report	Report				
pH (S.U.)			6.0			9.0
BOD ₅	189	355		Report	Report	286
Chemical Oxygen Demand	947	1,832		Report	Report	1,435
Total Suspended Solids	160	249		Report	Report	243
Oil and Grease	57	111		15		30
Ammonia-Nitrogen	20	44		Report	Report	30
Total Arsenic	Report	Report		Report	Report	
Hexavalent Chromium	0.11	0.24		Report	Report	0.16
Total Chromium	1.3	3.7		Report	Report	1.9
Total Sulfide	1.07	2.36		Report	Report	1.6
Total Phenolics	0.34	0.68		Report	Report	0.52

200/100 ml as a Geometric Average

The proposed effluent limits for Outfall 004 are based on a flow of 0.012 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
Flow (MGD)	Report	Report				
pH (S.U.)			6.0			9.0
Total Suspended Solids	Report	Report		40	80	100
Oil and Grease	1.5			15		30
Total Organic Carbon		0.50			5.0	6.2

The proposed effluent limits for Outfall 005 are based on a design flow of n/a MGD.

The proposed effluent limits for Outfall 007 are based on a design flow of n/a MGD.

The proposed effluent limits for Outfall 008 are based on a design flow of n/a MGD.

The proposed effluent limits for Outfall 009 are based on a design flow of n/a MGD.

The proposed effluent limits for Outfall 010 are based on a design flow of n/a MGD.

The proposed effluent limits for Outfall 012 are based on a design flow of n/a MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
Flow (MGD)	Report					
pH			6.0			9.0
Total Suspended Solids				Report		Report

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
Oil and Grease				15		30
Total Organic Carbon					110	138

In addition, the permit contains the following major special conditions:

- Stormwater Treatment Waiver and Sampling Required.
- Stormwater Allowance Factors.
- Chemical Additives.
- Requirements Applicable to Stormwater Outfalls.
- Effluent Limitations for Discharge of Hydrostatic Testing Water.

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA waiver is not in effect.

PA0025356, Sewage, SIC Code 4952, **Mercer Borough**, 145 North Pitt Street, Mercer, PA 16137-0069. Facility Name: Mercer Borough WWTP. This existing facility is located in Mercer Borough, **Mercer County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Neshannock Creek, is located in State Water Plan watershed 20-A and is classified for Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 1.04 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly Report	Weekly Average Report	Minimum	Average Monthly	Weekly Average	Instantaneous Maximum
Flow (MGD)						
pH (S.U.)			6.0			9.0
Total Residual Chlorine				0.42		1.4
CBOD ₅						
May 1 - Oct 31	155	230		15	22.5	30
Nov 1 - Apr 30	215	345		25	40	50
Total Suspended Solids	260	390		30	45	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30				200		
				Geometric Mean		
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30				2,000		
				Geometric Mean		
Ammonia-Nitrogen (INTERIM)						
May 1 - Oct 31	41			5		10
Nov 1 - Apr 30	124			15		30
Ammonia-Nitrogen (FINAL)						
May 1 - Oct 31	37			4		8
Nov 1 - Apr 30	110			12		24

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA waiver is not in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

WQM Permit No. 0510402, Sewerage, **Broad Top Township**, P. O. Box 57, Defiance, PA 16633. This proposed facility is located in Broad Top Township, **Bedford County**.

Description of Proposed Action/Activity: Seeking approval for the construction/operation of a small flow sewage treatment system to serve the College Residence located on Dudley Road, Coaldale, PA 18218.

WQM Permit No. 0510401, Sewerage, **Broad Top Township**, P. O. Box 57, Defiance, PA 16633. This proposed facility is located in Broad Top Township, **Bedford County**.

Description of Proposed Action/Activity: Seeking approval for the construction/operation of a small flow sewage treatment system to serve the Morrow residence located on Dudley Road, Coaldale, PA 16633.

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

WQM Permit No. 0810401, Sewerage, SIC 4952, **Wyalusing Municipal Authority**, P. O. Box 61, Wyalusing, PA 18853. This proposed facility is located in Wyalusing Township, **Bradford County**.

Description of Proposed Action/Activity: A proposed elementary school and an existing Jr./Sr. high school have access to the public sewers and capacity has been granted by the Authority. The project proposes to install gravity sewer from the proposed elementary school and existing high school to a central pump station on the elementary school site. The pump station will feed into a new force main that will ultimately discharge into an existing force main stub along the southern side of SR 0006.

WQM Permit No. 4910402, Sewerage, SIC 4952, **Milton Regional Sewer Authority**, P. O. Box 433, 5585 SR 405, Milton, PA 17847-0433. This proposed facility is located in Milton Borough, **Northumberland County**.

Description of Proposed Action/Activity: The proposed project will consist of the abandonment and demolition of the existing Brown Avenue Pump Station and the associated replacement and re-alignment of approximately 3,900 ft. of existing downstream sanitary sewers. Approximately 1,200 ft. of existing upstream sanitary sewers will also be rehabilitated utilizing cured-in-place pipe (CIPP).

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

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

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1506010A-1	Immaculata University 1145 King Road Immaculata, PA 19345	Chester	East Whiteland Township	Valley Creek EV-MF

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023910005	Cumberland Gardens Housing Partnership Attn: Mark Dambly 1301 North 13th Street Philadelphia, PA 19121	Lehigh	City of Allentown	Little Lehigh Creek HQ-CWF, MF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030610001	Department of Transportation Engineering District 5-0 1002 Hamilton Street Allentown, PA 18101	Berks	Ontelaunee Township	Willow Creek HQ-CWF

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

Columbia County Conservation District: 702 Sawmill Road, Suite 204, Bloomsburg, PA 17815, (570) 784-1310, Ext. 102.

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI041910001	PPL Electric Utilities Corp. c/o William Miller 4810 Lycoming Mall Drive Montoursville, PA 17754-8301	Columbia	Greenwood and Madison Townships Millville Borough	Chillisquaque Creek Basin WWF-MF Little Fishing Creek Basin CWF-MF Hemlock Creek Basin CWF-MF

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

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 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

Agricultural Operation Name and Address	County	Total Acres	Animal Equivalent Units	Animal Type	Special Protection Waters (HQ or EV or NA)	Renewal/New
Hillandale Gettysburg, LP 370 Spicer Road Gettysburg, PA 17325	Adams	1,001	17,810.72	Chicken-layers and pullets	NA	Renewal
Noah W. Kreider & Sons, LLP Middletown Facility 1461 Lancaster Road Manheim, PA 17545	Dauphin	400	9,416.88	Layers	NA	Renewal
Keith Heimbach Farm R. R. 1 Box 178B Canton, PA 17724	Bradford	323.7	751.5	Swine, Beef, Bison	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

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

Permit No. 0610507, Public Water Supply.

Applicant	Western Berks Water Authority
Municipality	Cumru Township
County	Berks
Responsible Official	Leonard E. Bilger II Manager 91 Water Road Sinking Spring, PA 19608
Type of Facility	Public Water Supply
Consulting Engineer	Andrew C. Hood, P. E. Keystone Engineering Group, Inc. 590 East Lancaster Avenue Frazer, PA 19355

Application Received:	4/12/2010
Description of Action	Installation of booster chlorination facilities into the transmission mains that supply Welsh Woods and Shillington distribution systems.

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

Permit No. 0210510, Public Water Supply.

Applicant	Pennsylvania American Water Company 800 West Hersheypark Drive P. O. Box 888 Hershey, PA 17033
Township or Borough	Donegal Township
Responsible Official	David R. Kaufman, P. E. Pennsylvania American Water Company 800 West Hersheypark Drive P. O. Box 888 Hershey, PA 17033
Type of Facility	Water treatment plant
Consulting Engineer	
Application Received Date	April 14, 2010
Description of Action	Construction of the DeGarmo Lane package water booster pumping station within the Washington District distribution system.

Permit No. 5610502, Public Water Supply.

Applicant	Somerset Township Municipal Authority P. O. Box 247 Somerset, PA 15501
Township or Borough	Quemahoning Township
Responsible Official	Carmel D'Arrigo Chairperson Somerset Township Municipal Authority P. O. Box 247 Somerset, PA 15501
Type of Facility	Water treatment plant
Consulting Engineer	Somerset Planning & Engineering Services, LLC 222 West Main Street Suite 100 Somerset, PA 15501
Application Received Date	March 15, 2010
Description of Action	Installation of a booster pump station and transmission line to transfer water from the existing Reading Mines Reservoir to the existing Stoystown Borough water storage tank.

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

Application No. 1010501, Public Water Supply.

Applicant **Mitchell Lake Mobile Home Park**
 Township or Borough Cambridge Township
Crawford County
 Responsible Official Scott A. Mitchell, Owner
 Consulting Engineer Mark J. Corey, P. E.
 Mark J. Corey & Associates
 P. O. Box 268
 Harborcreek PA 16421
 Application Received Date 04/26/2010
 Description of Action Addition of adsorptive media for the treatment of potable water to remove arsenic.

Application No. 1010503, Public Water Supply.

Applicant **Pennsylvania American Water Company**
 Township or Borough Butler City
Butler County
 Responsible Official William Lage
 Project Manager
 Consulting Engineer Jerry Hankey, P. E.
 Design Engineer
 Pennsylvania American Water Company
 1909 Oakland Avenue
 Indiana, PA 15701
 Application Received Date 04/23/2010
 Description of Action Construction of new booster station in the City of Butler to supply water to portions of the Butler and the Saxonburg distribution systems.

MINOR AMENDMENT

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

Application No. 5210501MA, Minor Amendment.

Applicant **Pennsylvania American Water Company**
 Pine Ridge Water System Well 4
 800 West Hersheypark Drive
 Hershey, PA 17033
 Township or Borough Lehman Township
Pike County
 Responsible Official Daniel Rickard, P. E.
 Type of Facility Public Water System
 Consulting Engineer Daniel Rickard, P. E.
 Pennsylvania American Water Co
 Application Received Date 4/16/10
 Description of Action The replacement of a tank with a chlorine contact pipeline. The demonstration of log 4 disinfection.

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

Application No. 5210502MA, Minor Amendment.

Applicant **Pennsylvania American Water Company**
 Pine Ridge Water System Well 2
 800 West Hershey Park Drive
 Hershey, PA 17033
 Township or Borough Lehman Township
Pike County
 Responsible Official Daniel Rickard, P. E.
 Type of Facility Public Water System
 Consulting Engineer Daniel Rickard, P. E.
 Pennsylvania American Water Co.
 Application Received Date 4/16/10
 Description of Action The replacement of a tank with a chlorine contact pipeline. The demonstration of log 4 disinfection.

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

Application No. 4810501MA.

Applicant **Bethlehem Authority**
 Township or Borough Bethlehem City
Northampton County
 Responsible Official Steve Repasch
 Executive Director
 Bethlehem Authority
 10 East Church Street
 RM B311
 Bethlehem, PA 18018
 610-865-7090
 Type of Facility Community Water System
 Consulting Engineer Kirt L. Ervin
 US Engineering, LLC
 13742 Mary Lane
 Aviston, IL 62216
 Application Received Date March 8, 2010

Description of Action Application for repainting, repair and modification of the 500,000 gallon South Mountain finished water storage tank.

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

Application No. 2610504MA, Minor Amendment.

Applicant **Masontown Municipal Authority**
 2 Court Avenue
 Masontown, PA 15461
 Township or Borough Masontown Borough
 Responsible Official Harry S. Lee
 President of Council
 Masontown Municipal Authority
 2 Court Avenue
 Masontown, PA 15461
 Type of Facility Water storage tank

Consulting Engineer	Fayette Engineering Company, Inc. 2200 University Drive P. O. Box 1030 Uniontown, PA 15401-1030
Application Received Date	April 11, 2010
Description of Action	Construction of the new 500,000 Martin Farm (Ronco Road) T2 water storage tank.
Application No. 0310503GWR, Minor Amendment.	
Applicant	Rural Valley Borough P. O. Box 345 Rural Valley, PA 16249
Township or Borough	Rural Valley Borough
Responsible Official	Kevin Nelson Operator Rural Valley Borough P. O. Box 345 Rural Valley, PA 16249
Type of Facility	Water treatment plant
Consulting Engineer	
Application Received Date	April 19, 2010
Description of Action	Approval for the groundwater rule.

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:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Buemi Residence, Bethel Township, **Delaware County**. Brenda MacPhail Kellogg, REPSG, Inc., 6901 Kingessing Avenue, 2nd Floor, Philadelphia, PA 19142, Thomas Maloney, Eric Insurance, 1400 North Providence Road, Media, PA 19063 on behalf of Joseph and Colleen Buemi, 3062 Booth Drive, Bethel, PA 19060 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of No. 2 fuel oil. The future use of the site will remain the same.

Smallgirl Construction Christian Street Partnership, City of Philadelphia, **Philadelphia County**. Victoria Ryan, Brickhouse Environmental, 515 South Franklin Street, West Chester, PA 19382, Kurt Spiess, EMG Remediation Services, 5066R West Chester Pike, P. O. Box 129, Edgemont, PA 19028 on behalf of Dawn Malin, Smallgirl Construction Christian Street partnership, 2332 Carpenter Street, Philadelphia, PA 19146 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of No. 2 fuel oil. The future use of the site will remain the same.

Danko Property, Middletown Township, **Bucks County**. Jeremy Boly, Environmental Maintenance Company, Inc., 1420 East Mermaid Lane, Glenside, PA 19038 on behalf of Mark Danko, 18 Quakerhill Road, Levittown, PA 19057 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of No. 2 fuel oil. The future use of the site will remain the same. A Summary of the Notice to Remediate has been reported to have been published in *The Intelligencer* on March 31, 2010.

Alessi Manufacturing, Collingdale Borough, **Delaware County**. Victoria Ryan, Brickhouse Environmental, 515 South Franklin Street, West Chester, PA 19382, Douglas Schott, P. G., Brickhouse Environmental, 515 South Franklin Street, West Chester, PA 19382, Kurt Spiess, EMT Remediation Services, 5066R West Chester

Pike, Edgemont, PA 19028 on behalf of Richard Alessi, Alessi Manufacturing Corporation, 19 Jackson Avenue, Collingdale, PA 19023 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted with the release of chlorinated solvents.

PECO Parking Lot City of Chester Greenspace and Riverwalk, City of Philadelphia, **Philadelphia County**. Steve Johnson, Weston Solution, Inc., 1400 Weston Way, West Chester, PA 19380 on behalf of Michael Hare, The Buccin/Polli Group, 322 A Street, Suite 300, Wilmington, DE 19801, Angela George, The Buccin/Polli Group, 322 A Street, Suite 300, Wilmington, DE 19801 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of PAH's and chlorinated solvents. The intended use of the property will be a parking lot for the Chester Soccer Stadium as well as a greenspace for the City of Chester an engineered tidal pool and riverwalk.

Naval Support Activity Building 22 and 10, City of Philadelphia, **Philadelphia County**. Joseph Tomalavage, Tera Tech NUS, Inc., 234 Mall Boulevard, King of Prussia, PA 19406, on behalf of Terence Earley, United States Navy Support Activity, 700 Robbins Avenue, Philadelphia, PA 19111 has submitted a Notice of Intent to Remediate. Groundwater and soil at the site has been impacted with the release of leaded gasoline. The future use of the site will remain the same.

7 Eleven Store #16665, Cheltenham Township, **Montgomery County**. Richard Firely, AECOM, Inc., Four Neshaminy Interplex, Suite 300, Trevose, PA 19053 on behalf of Ken Hilliard, 7-Eleven, Inc., P. O. Box 711, Dallas, TX 76211 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted with the release of lead and unleaded gasoline.

Former Industrial Property, City of Philadelphia, **Philadelphia County**. Jeffrey T. Bauer, Whitestone Associates, Inc., 1600 Manor Drive, Suite 220, Chalfont, PA 19814 on behalf of Brad Adams, Wal-Mart Stores, Inc., 2001 SE 10th Street, Bentonville, AR 72716 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted with the release of PAH and inorganic. Current and proposed site use as retail development. A Notice of Intent to Remediate was reported to have been published in *Philadelphia Daily News* on March 1, 2010.

Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.

Ayres Property, 763 Jackson Avenue, Susquehanna Depot Borough, **Susquehanna County**. Richard Doran and Timothy McClintock, Dorson Environmental Management, Inc., 45 Knollwood Road, Elmsford, NY 10523 have submitted a Notice of Intent to Remediate (on behalf of their client, Virginia Ayers, 763 Jackson Avenue, Susquehanna, PA 18847), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of an overflow from a delivery of home heating oil to the interior 275-gallon aboveground storage tank. The applicant proposes to remediate the site to meet the Statewide Health Standard. The intended future use of the property is to remain a residential dwelling. A summary of the Notice of Intent to Remediate was published in *The Susquehanna County Transcript* on February 3, 2010.

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

Steven Fenton Residence/Harmony Estates MHP, North Middleton Township, **Cumberland County**. Marshall Miller & Associates, Inc., 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011, on behalf of Keystone Oil Products Corporation, 1600 Hummel Avenue, Camp Hill, PA 17011-5527; P.C. Sekhar Chadaga, 110 Inverness Drive, Blue Bell, PA 19422-3202; and Steven Fenton, 30 Coral Drive, Carlisle, PA 17013-7439, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with No. 2 fuel oil. The site, which will remain residential, will be remediated to a Residential Statewide Health Standard.

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

Dana E. Erway Farm Truck Accident, Eulalia Township, **Potter County**. Minuteman Spill Response, Inc., P. O. Box 10, Mifflinville, PA 18631 on behalf of Dana Erway, 1027 Route 6 West, Coudersport, PA 16915 has submitted a Notice of Intent to Remediate soil contaminated with diesel fuel. The applicant proposes to remediate the site to meet the Statewide Health Standard. The future use of the area will remain rural farmland.

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

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. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

67-05004Q: P. H. Glatfelter Co. (25 South Main Street, Spring Grove, PA 17362) for replacement of pumps in the pine bleach plant and a cross conveyor in the hardwood bleach plant at their facility in Spring Grove Borough, **York County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

PA-63-00951A: Rice Drilling B, LLC (171 Hillpointe Drive, Suite 301, Canonsburgh, PA 15317) to allow construction and operation of the Sims natural gas compression and processing facility off Lone Pine Road in Amwell Township, **Washington County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.45, the Department of Environmental Protection (Department) intends to issue a Plan Approval to allow the construction and operation of the Sims natural gas compression and processing facility located off Lone Pine Road in Amwell Township, Washington County.

Sources at this facility will include: three (3) natural gas compressor engines, one rated 1,005 bhp and two (2) rated 630 bhp, one (1) single burner ethylene glycol re-boiler rated at 2.0 mmBtu/hr, one (1) propane/butane condensing refrigeration unit, one (1) de-ehatnizer, and one (1) 30,000 gallon vertical holding tank. Annual emissions from the facility are limited to 44 tons of NO_x, 36 tons of CO, 7.5 tons of VOC and 5.75 tons of formaldehyde.

BAT for this operation consists of low emission model engines equipped with air/fuel ration controllers, continuous engine monitoring equipment with automatic poor combustion engine shutdown, a compressor loop bypass, a vent-free automatic emergency plant inlet shutoff, and best operating practices.

The proposed facility is subject to the applicable requirements of 25 Pa. Code Chapters 121–145, 40 CFR 60 Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, 40 CFR 60 Subpart KKK—Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, and Subpart ZZZZ—National Emissions

Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The Department believes that the facility will meet these requirements by complying with Plan Approval conditions relating to restrictions, monitoring, recordkeeping, reporting and work practice standards:

Those who wish to provide the Department with additional written information that they believe should be considered prior to the issuance of the Plan Approval may submit the information to Jacob Chemsak, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222. 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.

All comments must be received prior to the close of business 30 days after the date of this publication.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104. Contact: Edward Braun, Chief—Telephone: 215-685-9476.

AMS 10058: Allied Tube & Conduit (11350 Norcom Road, Philadelphia, PA 19154) to install an Acid Scrubber (Air Control Device) in the City of Philadelphia, **Philadelphia County**. The scrubber is used to control Hydrochloric Acid emissions from their 3P Mill. The scrubber has an emission limit of removal efficiency rated at 50%. The scrubber uses a Sodium Hydroxide scrubbing liquid. The total HCL emission limit after the scrubber are 0.11 ton per year. The plan approval will contain operating, monitoring, recordkeeping and reporting requirements to ensure operation within all applicable requirements.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter G.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6940.

43-00196: General Electric Transportation Systems (1503 West Main Street Extension, Grove City, PA 16127-2513) to re-issue a Title V Operating Permit to operate a facility that manufactures and rebuilds diesel engines for locomotives and other applications in Pine Township, **Mercer County**. The primary emission sources include two (2) natural gas fired boilers, three (3) paint booths, diesel engine test cells, a diesel fire pump, cleaning operations and miscellaneous natural gas combustion.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

09-00075: Dunmore Corp. (145 Wharton Road, Bristol, PA 19007) for operation of a plastic film and coating facility in Bristol Township, **Bucks County**. The permit is for a non-Title V (State-only) facility. The major sources of air emissions are three printing presses, with air emissions controlled by total enclosures and a catalytic oxidizer and numerous miscellaneous VOC emitting sources. The permit will include 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. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

39-00003: Apollo Metals, Ltd. (1001 Fourteenth Avenue, Bethlehem, PA 18018) for an electroplating and polishing facility in City of Bethlehem, **Lehigh County**. This is an initial State-only Synthetic Minor operating permit for this facility. The State-only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

48-00029: GAF Premium Products—Wind Gap (440 Katherine Road, Wind Gap, PA 18091) for manufacture of fiber cement siding in Wind Gap Borough, **Northampton County**. This is a renewal of a State-only Synthetic Minor operating permit for this facility. The State-only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

39-00093: Blend Pro, Inc. (601 South Tenth Street, Suite 300, Allentown, PA 18103) for operation of a dry mix concrete manufacturing facility in the City of Allentown, **Lehigh County**. This is a new State-only Operating Permit.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

06-05068: Scranton-Altoona Terminals Corp. (P. O. Box 2621, Harrisburg, PA 17105-2621) for operation of their existing petroleum bulk station and terminal in Sinking Spring Borough, **Berks County**. This is a permit renewal of their existing State-only Operating Permit. The State-only operating permit will include monitoring, recordkeeping, reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174.

65-00851: Ceratizit Usa, Inc. (P. O. Box 272, 5369 Route 982, North Latrobe, PA 15650-0272) for operation of their Machine Tool (Metal Cutting Types) Manufacturing in Derry Township, **Westmoreland County**. This is a State-only Operating Permit Renewal.

65-00878: R. E. Uptegraff Manufacturing Co. (Uptegraff Drive, P. O. Box 182, Scottdale, PA 15683) for operation of their power, distribution and specialty trans-

former for their Scottdale Plant in Scottdale Borough, **Westmoreland County**. This is a State-only Operating Permit Renewal.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, New Source Review Chief—Telephone: 814-332-6940.

37-00008: Ellwood City Forge (800 Commercial Avenue, Ellwood City, PA 16117) for a Synthetic Minor Permit to operate a steel forging operation in Ellwood City Borough, **Lawrence County**. This plant has established restrictions on Nitrogen Oxide emissions to qualify for a Synthetic Minor Operating Permit.

37-00271: Quality Aggregates Limestone Plant (4955 Steubenville Pike, Suite 245, Pittsburgh, PA 15205) to issue a renewal State-only Operating Permit for the facility in Slippery Rock Township, **Lawrence County**. The facility is a Natural Minor. The facility processes limestone at the facility. The primary sources at the facility include a dry crushing and screening process and a wet crushing and screening process. The facility is subject to 40 CFR 60 Subpart 000—Standards of Performance for Nonmetallic Mineral Processing Plants and the applicable requirements have been included in the renewal permit. The renewal permit also contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104. Contact: Edward Brawn, Chief—Telephone: 215-685-9476.

N10-002: Hillock Anodizing, Inc. (5101 Comly Street, Philadelphia, PA 19135) for operation of an anodizing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a No. 2 oil 1.358 mmBtu/hr boiler, 8 chromic acid tanks and 5 nickel tanks used for the anodizing process.

The operating permit will be reissued under the Pennsylvania Code Title 25, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the previously listed operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

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 permit-

ting 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.

When 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:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
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 ¹		greater than 6.0; less than 9.0	
Alkalinity greater than acidity ¹			

¹The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 mg/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.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

32040104 and NPDES No. PA0249629. KMP Associates, Inc., 1094 Lantz Road, Avonmore, PA 15618, permit renewal for reclamation only of a bituminous surface mine in Young Township, **Indiana County**, affecting 40.5 acres. Receiving stream(s): unnamed tributaries to/and Whisky Run to Blacklegs Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: April 16, 2010.

32990108 and NPDES No. PA0235130. KMP Associates, Inc., 1094 Lantz Road, Avonmore, PA 15618, permit renewal for reclamation only of a bituminous surface mine in Young Township, **Indiana County**, affecting 54.0 acres. Receiving stream(s): unnamed tributaries to Whisky Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: April 16, 2010.

32000101 and NPDES No. PA023253. Amerikohl Mining, Inc., 202 Sunset Drive, Butler, PA 16001, permit renewal for reclamation only of a bituminous surface and auger mine in Rayne Township, **Indiana County**, affecting 159.5 acres. Receiving stream(s): unnamed tributary to/and Crooked Creek to Allegheny River classified for the following use(s): cold water fishery and WWFN. There are no potable water supply intakes within 10 miles downstream. Application received: April 19, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

03860111 and NPDES Permit No. PA0589144. Rosebud Mining Company (301 Market Street, Kittanning, PA 16201). Application received for transfer of permit currently issued to State Industries, Inc., for continued operation and reclamation of a bituminous surface/auger mining site located in East Franklin Township, **Armstrong County**, affecting 667.4 acres. Receiving streams: unnamed tributaries to the Allegheny River to the Ohio River, classified for the following use: warm water fishes. The first downstream potable water supply intake from the point of discharge is West Penn Water Company/Kittanning. Transfer application received: March 31, 2010.

03080102 and NPDES Permit No. PA0251399. Rosebud Mining Company (301 Market Street, Kittanning, PA 16201). Application received for transfer of permit currently issued to State Industries, Inc., for continued operation and reclamation of a bituminous surface/auger mining site located in East Franklin Township, **Armstrong County**, affecting 112.3 acres. Receiving streams: unnamed tributaries to the Allegheny River to the Ohio River, classified for the following use: warm water fishes. The first downstream potable water supply intake from the point of discharge is PA American Water Company/Cadogan. Transfer application received: March 31, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17930124 and NPDES No. PA0219649. RES Coal, LLC (224 Grange Hall Road, P. O. Box 228, Armagh, PA 15920). Renewal of an existing bituminous surface mine located in Woodward and Decatur Townships, **Clearfield County** affecting 346.0 acres. Receiving streams: unnamed tributaries to Little Beaver Run (Cold Water Fishery) and to the North Branch of Morgan Run (Cold Water Fishery). There are no potable water supply intakes within 10 miles downstream. Application received: April 9, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

49100101. Fox Coal Company, Inc., (212 West Cherry Street, Mt. Carmel, PA 17851), commencement, operation and restoration of an anthracite surface mine operation in Zerbe Township, **Northumberland County** affecting 1,298.0 acres, receiving stream: Zerbe Run, classified for the following use: cold water fishes. Application received: April 13, 2010.

40041601T. Coal Contractors (1991), Inc., (P. O. Box 39, Hazleton, PA 18201), transfer of an existing anthracite coal preparation plant and refuse disposal operation from Stockton Anthracite, LP in Hazle Township, **Luzerne County** affecting 183.0 acres, receiving stream: none. Application received: April 14, 2010.

54-305-003GP12. Park Mine Coal Company, (294 Pine Creek Drive, Orwigsburg, PA 17961), renewal application to operate a coal preparation plant whose pollution control equipment is required to meet all applicable limitations, terms and conditions of General Permit, BAQ-GPA/GP-12 on Surface Mining Permit No. 54050101 in Mahanoy Township, **Schuylkill County**. Application received: April 19, 2010.

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>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.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

67100301 and NPDES Permit No. PA0224821. Glen-Gery Corporation, (P. O. Box 7001, Wyomissing, PA 19610), commencement, operation and restoration of a quarry and NPDES Permit for discharge of treated mine drainage from a quarry operation in Dover Township, **York County** affecting 342.3 acres, receiving streams: unnamed tributaries to Davidsburg Run, classified for the following use: warm water fishes. Application received: April 13, 2009.

7775SM5C and NPDES Permit No. PA0594954. Lehigh Cement Company, (537 Evansville Road, Fleetwood, PA 19522), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Oley Township, **Berks County**, receiving stream: Limekiln Creek, classified for the following use: cold water fishery. Application received: April 19, 2010.

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.

E51-238. Philadelphia City/Fairmount Park Commission, 1515 Arch Street, 10th Floor, One Parkway Building, Philadelphia, PA 19102, City of Philadelphia, **Philadelphia County**, ACOE Philadelphia District.

Fairmount Water Works Amenities and Island Enhancements Project

To perform the following water obstruction and encroachment activities associated with the Fairmount Waterworks Amenities and Island Enhancement project within the floodplain of the Schuylkill River (WWF, MF):

- 1) To construct and maintain an approximately 550-foot long, 12-foot wide segment of a bituminous pathway.
- 2) To construct and maintain an approximately 600-foot long, 6-foot wide boardwalk impacting approximately 0.11 acre of wetlands (PFO/SS).
- 3) To dredge approximately 1,300 cubic yards within the stream associated with the installation of the proposed aquatic bench for habitats.
- 4) To construct and maintain a 25-foot span, 8 feet wide, and 6-foot underclearance steel bridge connecting Philadelphia mainland to the island situated within the Schuylkill River.
- 5) To construct and maintain a stormwater management facility/basin.

The proposal will temporarily impact .30 acre and the applicant proposed to mitigate approximately 0.11 acre of wetland impacts. The project connects the island in the middle of the Schuylkill River to the Aquarium Drive (formerly Waterworks Drive) on the mainland in the City of Philadelphia, Philadelphia County (Philadelphia, PA USGS Quadrangle N: 16.99 inches; W: 8.22 inches).

E46-1053. Turnpike Commission, P. O. Box 67676, Harrisburg, PA 17106, Lower Salford and Towamencin Townships, **Montgomery County**, ACOE Philadelphia District.

To perform the following water obstruction and encroachment activities in and along the 100-year floodplain of Skippack Creek, its tributaries and adjacent wetlands:

1. To replace the existing 3-span bridge (NB 152) and to construct and maintain, in its place, a single span bridge over Skippack Creek (TSF, MF).
2. To extend and maintain the existing arch culvert (NB151) across the unnamed tributary to Skippack Creek.
3. To extend and maintain the existing 6-foot wide by 4-foot rise culvert (NB 149) across unnamed tributary to Skippack Creek located approximately at station 581+20.

4. To extend and maintain the existing 6-foot wide by 4-foot rise culvert (NB 153) across unnamed tributary to Skippack Creek located approximately at station 616+88.

5. To extend and maintain the existing 5-foot wide by 4-foot rise culvert (NB 154) across unnamed tributary to Skippack Creek located approximately at station 632+90.

The site is located along the Northeast Extension of the Turnpike (I-476) between MP 30.56 (adjacent to Lansdale interchange) and MP 31.73 (adjacent to Fretz Road overpass) (Telford, PA USGS Quadrangle Begins at N: 0.75 inch; W: 14 inches and terminates at N: 4.00 inches; W: 15 inches).

E15-802. Jeffrey McClintock, Caln Township, 253 Municipal Drive, Thorndale, PA 19372, Caln Township, Chester County, ACOE Philadelphia District.

To construct and maintain a proposed sidewalk along the 100 year Floodplain of Valley Run (CWF, MF) between Lincoln Highway and G.O. Carlson Boulevard. This work includes the modification of Barley Sheaf Road bridge over valley Run to accommodate the new sidewalk.

The site is located along Barley Sheaf Road, between Lincoln Highway and G.O. Carlson Boulevard (Coatesville, PA USGS Quadrangle N: 21.5 inches; W: 3.27 inches).

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511.

E40-708. Mr. John Norbeck, BFDC, P. O. Box 8451, RCSOB 8th Floor, Harrisburg, PA 17105-8451, in Dennison Township, Luzerne County, U.S. Army Corps of Engineers, Philadelphia District.

To remove a portion of Reilly's Pond Dam and to construct and maintain a road crossing of a tributary to Nescopeck Creek (HQ-CWF) consisting of a 33-foot long open-bottom precast concrete arch culvert having a 12-foot span and a 5-foot underclearance. The project is located in Nescopeck State Park along the north side of Charles Drive, approximately 300 hundred feet east of the intersection of Lake Francis Road and Co. Road 41 (Honey Hole Road) (Freeland, PA Quadrangle Latitude: 41° 05' 29"; Longitude: -75° 52' 50") in Dennison Township, Luzerne County.

Southcentral Region: Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, Telephone: 717-705-4707.

E06-659: Traditions Development Corporation, Michael McCormick, 7159 Redtop Road, Hummelstown, PA 17036-9544, Sinking Spring Borough, Berks County, ACOE Philadelphia District.

To: (1) construct and maintain a 112.0-foot long, 1.0-foot depressed with fish baffles, 12.0-foot by 5.0-foot concrete box culvert extension to an existing structure, and to remove three existing outfall structures and construct and maintain an 18.0-inch diameter HDPE and a 24.0-inch by 38.0-inch HERCP outfall structure, all in an unnamed tributary to Cacoosing Creek (CWF) (Sinking Spring, PA Quadrangle N: 13.87 inches; W: 2.59 inches, Latitude: 40° 19' 35"; Longitude: 76° 01' 6.9"); (2) construct and maintain a 15.0-inch diameter PVC sanitary sewer line in and across an unnamed tributary to Cacoosing Creek (CWF) (Sinking Spring, PA Quadrangle N: 13.97 inches; W: 2.59 inches, Latitude: 40° 19' 37"; Longitude: 76° 01' 7"); (3) construct and maintain a 30.0-inch diameter HDPE outfall structure with a riprap apron along an unnamed tributary to Cacoosing Creek

(CWF) (Sinking Spring, PA Quadrangle N: 14.38 inches; W: 2.67 inches, Latitude: 40° 19' 45"; Longitude: 76° 01' 9"); (4) construct and maintain an 8.0-inch diameter PVC outfall structure and endwall along an unnamed tributary to Cacoosing Creek (CWF) (Sinking Spring, PA Quadrangle N: 14.73 inches; W: 2.75 inches, Latitude: 40° 19' 52"; Longitude: 76° 0' 11"); and (5) construct and maintain a 15.0-inch diameter PVC sanitary sewer line crossing in and across an unnamed tributary to Cacoosing Creek (CWF) (Sinking Spring, PA Quadrangle N: 14.73 inches; W: 2.75 inches, Latitude: 40° 19' 52"; Longitude: 76° 01' 11"), all for the purpose of constructing a residential subdivision and associated access. The project is located on Broad Street, approximately 500 feet from the intersection of SR 422, in the Borough of Sinking Spring, Berks County. The project does not propose any impact to wetlands.

E06-655: Upper Bern Township, Diane Ross, 25 North 5th Street, P. O. Box 185, Shartlesville, PA 19554, Upper Bern Township, Berks County, ACOE Philadelphia District.

To: (1) relocate 323.0 feet of Leshar Run (WWF) permanently impacting 0.05 acre of PEM wetlands and temporarily impacting 0.15 acre of PEM wetlands; and (2) construct and maintain a 52.0-foot long, 1.0-foot depressed with fish baffles, 14.0-foot wide by 6.0-foot high concrete box culvert carrying Skyline Drive across Leshar Run (WWF), for the purpose of relocating and replacing a previous stream crossing and improving safety conditions along Skyline Drive. The project is located approximately 0.6-mile from the intersection of Skyline Drive and Naftzingetown Road (Auburn, PA Quadrangle N: 1.3 inches; 8.8 inches, Latitude: 40° 30' 26" N; Longitude: 76° 3' 47") in Upper Bern Township, Berks County.

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E19-281. Department of Transportation, Engineering District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. SR 4012, Section 001, Bridge Replacement Project, Hemlock Township, Columbia County, ACOE Baltimore District (Millville, PA Quadrangle N: 41° 02' 38"; W: 76° 31' 28").

Department of Transportation, Engineering District 3-0 proposes to replace a single span concrete slab bridge with a single span concrete box culvert. The existing structure has a normal span of 18.25 ft., skew of 50°, an underclearance of 6 ft., and a low chord elevation of 714.6 ft. The proposed structure has a normal span of 20 ft., skew of 50°, an underclearance of 6 ft., and a low chord elevation of 714.87 ft. The proposed box culvert will impact approximately 93 ft. of stream channel. The proposed structure will be located on the same horizontal alignment and a slightly higher vertical alignment. The project will impact 0.04 acre of jurisdictional wetland. This project will not require mitigation. The project is located over Hemlock Creek (CWF). The project is located in Hemlock Township, Columbia County.

E47-093. Department of Transportation, Engineering District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. SR 2006, Section 010, Bridge Replacement Project, Cooper Township, Montour County, ACOE Baltimore District (Danville, PA Quadrangle N: 40° 57' 08"; W: 76° 31' 00").

Department of Transportation, Engineering District 3-0 proposes to replace a single span concrete slab bridge with a single span concrete box culvert. The existing structure has a normal span of 14 ft., skew of 90°, an underclearance of 5.75 ft., and a low chord elevation of 503.81 ft. The proposed structure has a normal span of 14 ft., skew of 90°, an underclearance of 6.3 ft., and a low chord elevation of 503.81 ft. The proposed box culvert will impact approximately 38 ft. of stream channel. The proposed structure will be located on the same horizontal and vertical alignment. The project will not impact any jurisdictional wetland. This project will not require mitigation. The project is located over an Unnamed Tributary to the Susquehanna River (CWF). The project is located in Cooper Township, Montour County.

E49-307. Sunbury Airport Incorporated, 800 Park Drive, Sunbury, PA 17801. Sunbury Airport Bank Stabilization, in Upper Augusta Township, **Northumberland County**, ACOE Baltimore District (Northumberland, PA Quadrangle Latitude: 40° 53' 34"; Longitude: 76° 46' 41").

The Sunbury Airport Campground has applied for a Water Obstruction and Encroachment, Small Projects Permit, to stabilize 1.5 miles of the Susquehanna River Bank. The stabilization effort is intended to stabilize the upper portion of Packers Island located in Sunbury, PA. The riprap is intended to be placed along the western and eastern embankments, extending upstream to the point of the Island. The riprap is intended to be placed above the normal pool elevation and will create a bench along the existing slope that equipment shall work from to place the material. The intention is to preserve as much existing bank vegetation as possible, thus only extending a maximum of 3.33 feet vertically up the bank. This project is not proposing to impact any wetlands. The project is located along the tip of Packers Island in Sunbury, PA and is along the Susquehanna River, which carries a water quality designation as Warm Water Fishery.

E49-309. Department of Transportation, Engineering District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. SR 4022, Section 004, Bridge Replacement Project, Rockefeller Township, **Northumberland County**, ACOE Baltimore District (Trevorton, PA Quadrangle N: 40° 47' 25"; W: 76° 44' 03").

Department of Transportation, Engineering District 3-0 proposes to replace a single span steel girder bridge with a single span pre-stressed concrete spread box beam bridge. The existing structure has a normal span of 30 ft., skew of 90°, an underclearance of 6.97 ft., and a low chord elevation of 646.08 ft. The proposed structure has a normal span of 34.9 ft., skew of 48°, an underclearance of 8.61 ft., and a low chord elevation of 647.58 ft. The proposed structure will be located on new horizontal alignment that is located slightly downstream. The proposed structure will also be located on a new vertical alignment, which is higher than the existing structure. The project will impact 0.02 acre of jurisdictional wetland. This project will not require mitigation. The project is located over Little Shamokin Creek (CWF). The project is located in Rockefeller Township, Northumberland County.

E55-225. Jackson Township Supervisors, 57 Municipal Road, Winfield, PA 17889. Benfer Drive (T-507) Bridge Replacement, in Jackson Township, **Snyder County**, ACOE Baltimore District (Lewisburg, PA Quadrangle Latitude: 40° 52' 31"; Longitude: 76° 57' 17").

Jackson Township is proposing to remove the existing deteriorated bridge structure and to construct, operate and maintain a 20.0 foot clear span, single cell, reinforced concrete box culvert with a minimum underclear of 6.0 feet and a skew of 50°. The new structure will be located 50 feet west of the existing structures location. The proposed work will carry Benfer Road (T-507) over an unnamed tributary to Penns Creek, which carries a water quality designation of Cold Water Fishery. The total estimated stream disturbance for the project is 250 feet and will not impact any wetlands. A 1,282 square foot wetland will be constructed using the old abandoned oxbow stream channel. The project is located 0.6 mile from the intersection of SR 204 and T-507.

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

E10-460, Cranberry Township, 2525 Rochester Road, Suite 400, Cranberry Township, PA 16066. Parallel Sewer Interceptor Project, in Cranberry Township, **Butler County**, ACOE Pittsburgh District (Mars, PA Quadrangle N: 40° 40' 48.96"; W: 80° 6' 50.97").

The applicant proposes to construct and maintain an approximately 25,000-foot long and 1.75-foot to 4.5-foot diameter interceptor sanitary sewer line parallel to an existing interceptor sewer from U.S. Interstate 76 (Turnpike) near the Marshall Township, Allegheny County/Cranberry Township, Butler County border to the existing wastewater treatment plant located along Powell Road near Glen Eden Road in Cranberry Township, Butler County involving to construction and maintain: 1) 20 watercourse crossings of UNTs Brush Creek; 2) 10 watercourse crossings of Brush Creek; 3) 15 wetland crossings of PEM and PEM/PSS wetlands; 4) associated lines and structures; 5) sewer line parallel and within 25 feet of Brush Creek at various locations; 6) stream bank stabilization with riprap at locations where the proposed line is parallel and within 25 feet of a watercourse. Brush Creek and UNT Brush Creek are watercourses classified as a warm water fisheries. The project proposes to temporarily impact approximately 0.25 acre of stream and 0.60 acre of wetland.

E25-725, TSK Partners, Inc., d/b/a McInnes Rolled Rings, 1533 East 12th Street, Erie, PA 16511. McInnes Rolled Rings Manufacturing Site Expansion, in the City of Erie, **Erie County**, ACOE Pittsburgh District (Erie North, PA Quadrangle N: 42° 8' 80"; W: 80° 2' 51").

The applicant is proposing to fill 0.76 acre of PEM wetlands for the expansion of the McInnes Rolled Rings industrial facilities at 1533 East 12th Street in the City of Erie, Erie County. The proposed mitigation is a payment to the PA Wetland Replacement Fund and contribution to the Walnut Creek—Zimmerly Road stream restoration project in the Walnut Creek Watershed, Millcreek Township, Erie County.

Department of Environmental Protection, Bureau of Waterways Engineering, Water Management Program Manager, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8554, Harrisburg, PA 17105-8554.

E2614-001, Department of General Services, Bureau of Engineering and Architecture, 18th and Herr Streets, Harrisburg, PA 17125. Dunbar Creek Channel Improvement Project, **Fayette County**, ACOE Pittsburgh District.

The proposed project is intended to benefit the Borough of Dunbar by improving flow conditions and reducing flooding within the Borough. The project consists of:

1. The construction of approximately 211 feet of reinforced concrete retaining wall along the right bank (facing downstream) of Dunbar Creek (TSF), between the railroad bridge owned by the Fay-Penn Industrial Development Corporation (FPIDC) near Connellsville Street and the abandoned railroad bridge abutment near Bridge Street. The wall will be lined with grouted 18" rip rap to reduce scour. Sections of a collapsed wall and an abandoned railroad pier will be removed to increase flow capacity.

2. The installation of 55 linear feet of a 73" by 45" reinforced concrete arch pipe beneath the FPIDC railroad embankment at the northern terminus of East Railroad Street. This will include the removal of the existing 24-inch diameter culvert, removal of existing inlet and outlet structures, installation of new inlet and outlet structures, and the construction of an earthen trapezoidal swale.

The Project commences near the intersection of Connellsville and Woodvale Streets (South Connellsville, PA Quadrangle Latitude: 39° 58' 27"; Longitude: 79° 36' 58")

and terminates near the Sheepskin Trail foot bridge over Dunbar Creek (South Connellsville, PA Quadrangle Latitude: 39° 58' 43"; Longitude: 79° 37' 05").

ENVIRONMENTAL ASSESSMENTS

Cambria District: Environmental Program Manager, 286 Industrial Pike Road, Ebensburg, PA 15931-4119.

EA1009-015. Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, Division of Mine Hazards, P. O. Box 8476, Harrisburg, PA 17105. Abandoned Mine Land Reclamation Project, in Parker Township, Butler County, Pittsburgh ACOE District.

The applicant proposes to backfill an abandoned surface mine, which includes 2,000 linear feet of dangerous highwall. The project will include backfilling 0.83 acre of hazardous open water, POW and 0.12 acre of PEM wetland, of which 0.09 acre is AMD-impacted, which have developed within the surface mine pits. The project will directly impact 0.03 acre of non-AMD impacted wetland, which is considered diminimus, and therefore does not require mitigation. Impacts to the wetland and water body are unavoidable to address the public safety hazards at this site (Parker, PA Quadrangle N: 5.75 inches; W: 15.5 inches).

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 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 & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0063312 (Sewage)	Girardville Area Municipal Authority Fourth and B Streets Girardville, PA 17935	Schuylkill County Butler Township	Mahanoy Creek 6B	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. Phone: 717-705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0021806 (Sew)	Annville Township P. O. Box 320 Annville, PA 17003-0320	Lebanon County Annville Township	Quittapahilla Creek 7-D	Y
PA0081213 (Sew)	Clay Township Supervisors Village of Hopeland 870 Durlach Road Stevens, PA 17578	Lancaster County Clay Township	UNT to Middle Creek 7-J	Y
PA0083364 (IW)	Chambersburg Borough P. O. Box 1009 Chambersburg, PA 17201	Franklin County Greene Township	Conococheague Creek 13-C	Y
PA0087653 (Sew)	Glenn Specht 15 Pinewaters Road Oley, PA 19547	Berks County Pike Township	Dry swale on Specht property 3-D	Y
PA0021245 (Sew)	Duncannon Borough Municipal Authority 428 North High Street Duncannon, PA 17020	Perry County Duncannon Borough	Susquehanna River 7-A	Y
PA0044113 (Sew)	South Middleton Township Municipal Authority 345 Criswell Drive Boiling Springs, PA 17007-0008	Cumberland County Middleton Township	Yellow Breeches Creek 7-E	Y
PA0070319 (IW)	County of Berks Fire Training Center 895 Morgantown Road Reading, PA 19607	Berks County Reading City	Angelica Creek 3-C	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAS804804 (Sewerage)	Superior Plus Energy Services, LLC Rebersburg Bulk Plant 103 Broad Street Rebersburg, PA 16872	Miles Township Centre County	UNT to Elk Creek 6A	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0221279	Station Road Property Owners' Association, Inc. 6992 Station Road Erie, PA 16510	Erie County Harborcreek Township	Unnamed tributary to Six Mile Creek 15	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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. Phone: 717-705-4707.

WQM Permit No. 2172401 09-1, Sewage, **East Pennsboro Township**, 98 South Enola Drive, Enola, PA 17025-2796. This proposed facility is located in East Pennsboro Township, **Cumberland County**.

Description of Proposed Action/Activity: Approval for the construction/modification/operation of sewerage facilities consisting of the expansion and upgrade of wastewater treatment plant to BNR with new headworks, additional primary clarifier, additional aeration/bioreactors, additional final clarifier and additional chlorine contact tanks.

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

WQM Permit No. WQG018742, Sewerage, **Suanne Coates and Jeffrey C. Nesbitt**, 6401 U.S. Route 6N, Edinboro, PA 16412. This proposed facility is located in Washington Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a single Residence Sewage Treatment Plant to replace a malfunctioning on-lot septic system.

WQM Permit No. WQG018746, Sewerage, **Michael J. and Candace J. Corradi**, 38 West Frederick Street, Corry, PA 16407. This proposed facility is located in Columbus Township, **Warren County**.

Description of Proposed Action/Activity: Issuance of a single Residence Sewage Treatment Plant.

WQM Permit No. 3310401, Sewerage, **Brockway Area Sewer Authority**, 501 Main Street, Brockway, PA 15824. This proposed facility is located in Brockway Borough, **Jefferson County**.

Description of Proposed Action/Activity: Issuance of a permit for a replacement of a pump station with a new grinder pump station due to the age of the existing facility.

WQM Permit No. WQG018747, Sewerage, **Alberta Williams**, 11003 Peach Street, Waterford, PA 16441. This proposed facility is located in Waterford Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a single Residence Sewage Treatment Plant to replace a malfunctioning on-lot septic system.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

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 & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1509021	Department of General Services 18th and Herr Streets Harrisburg, PA 17125	Chester	Lower Oxford Township	McDonald Run— West Branch Big Elk Creek HQ-TSF-MF
PAI01 1509042	201 Cossart Road, LLC 322 A Street Wilmington, DE 19801	Chester	Pennsbury Township	Brandywine Creek WWF-MF
PAI01 151003	Deluca Enterprises, Inc. 975 Easton Road Warrington, PA 18976	Chester	East Fallowfield Township	Unnamed Tributary West Branch Brandywine Creek EV
PAI01 511001	PECO Energy Company 2301 Market Street Philadelphia, PA 19103	Philadelphia	City of Philadelphia	Schuylkill River WWF-MF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062509002	Erie Regional Airport Authority 4411 West 12th Street Erie, PA 16505-0393	Erie	Millcreek and Girard Townships	Lake Erie, Crooked Creek HQ-CWF; MF and Municipal Separate Storm Sewer

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 & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Doylestown Borough Bucks County	PAG200 0909104	Bucks County Water and Sewer Authority 1275 Almshouse Road Warrington, PA 18976	Cooks Run WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Chalfont Borough Bucks County	PAG0200 091007	Chalfont Borough 40 North Main Street Chalfont, PA 18914	North and West Branch Neshaminy Creeks TSF-WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Quakertown Borough Richland Township Bucks County	PAG200 0909004-1	309 Venture Partners, LP 120 West Germantown Pike Suite 120 Plymouth Meeting, PA 19428	Licking Run Tohickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lansdale Borough Montgomery County	PAG200 4609093	Peak Center, Inc. 315 West Main Street Lansdale, PA 19446	Towamencin Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Whitemarsh Township Montgomery County	PAG200 4609022	Germantown Academy 340 Morris Road Fort Washington, PA 19034	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Hatfield Township Montgomery County	PAG200 4607146	Monarvi Corporation 155 Brochant Drive Blue Bell, PA 19422	Unnamed Tributary West Branch Neshaminy Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

NOTICES

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<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Limerick Township Montgomery County	PAG0200 4610023	Sukonik Oak Cree, LP 1250 Germantown Pike Suite 100 Plymouth Meeting, PA 19462	Hartenstine Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Limerick Township Montgomery County	PAG200 4608001	Moscarella Dev. Co., Inc. 24 Donny Brook Way Collegeville, PA 19468	Sanatoga Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG0201 5109046	Philly RORO Partners, LLC 204 Harding Avenue Bellmawr, NJ 08031	Lower Delaware River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG0201 511007	New Courtland Elder Services 6970 Germantown Avenue Philadelphia, PA 19119	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG0201 511012	SugarHouse USP Gaming, LP 1080 North Delaware Avenue 8th Floor Philadelphia, PA 19125	Delaware River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Orwigsburg Borough Schuylkill County	PAG2005406028	Rhodes Organization Attn: Michael D. Rhodes 813 South Reading Avenue Boyertown, PA 19512	Pine Creek CWF, MF	Schuylkill County Conservation District 570-622-3742
Foster Township Schuylkill County	PAG2005410001	A-1 Liquidations, LLC Attn: Richard Burmeister 52 High Road Ashland, PA 17921	Tributary to West Branch of Schuylkill River CWF, MF	Schuylkill County Conservation District 570-622-3742
Franklin Township Carbon County	PAG2001310001	Victor Frye 1500 Rock Street Lehigh, PA 18235	Pohopoco Creek CWF, MF	Carbon County Conservation District 610-377-4894
Silver Spring Township Cumberland County	PAG2002110008	Mark X. DiSanto Triple Crown Corporation 5351 Jaycee Avenue Harrisburg, PA 17112	Trindle Spring Run CWF	Cumberland County Conservation District 310 Allen Road Carlisle, PA 17013 717-240-7812
Hamburg Borough Berks County	PAG2000607086-3	Mark Fretz Hamburg Area School District 701 Windsor Street Hamburg, PA 19526	Kaercher Creek WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610-372-4657, Ext. 201
Maidencreek Township Berks County	PAG2000610019	John Smith Forino Co., LP 555 Mountain Home Road Sinking Spring, PA 19608	Willow Creek CWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610-372-4657, Ext. 201

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Athens Township Bradford County	PAG2000810007	Dan Sparks Chesapeake Energy Corp 6100 North Western Avenue Oklahoma City, OK 73118	Chemung River WWF	Bradford County Conservation District Stoll Natural Resource Center R. R. 5 Box 5030C Towanda, PA 18848 (570) 265-5539, Ext. 6
Valley Township Montour County	PAG2004710001	US Army Corps of Engineers Louisville District 600 Dr. Martin Luther King Place Louisville, KY 40202-2239	Mausies Creek CWF	Montour County Conservation District 112 Woodbine Lane Suite 2 Danville, PA 17821 (570) 271-1140
Cambria County Richland Township	PAG02001110002	David O. McCain Electromet Corporation 879 Commonwealth Avenue Hagerstown, MD 21740	Sandy Run CWF	Cambria County Conservation District 401 Candlelight Drive Suite 221 Ebensburg, PA 15931 814-472-2120
Fayette County Redstone Township	PAG2002610007	Brandon D. Moss Department of Transportation Republic PA, LLC 664 Water Street Conneaut Lake, PA 16316	Dunlap Creek WWF	Fayette County Conservation District 10 Nickman Plaza Lemont Furnace, PA 15456 724-438-4497
Greene County Monongahela Township Masontown Borough Fayette County	PAG02003010001	Department of Transportation 825 North Gallatin Avenue Ext. Uniontown, PA 15401	Upper Mon River WWF	Greene County Conservation District 19 South Washington Street Waynesburg, PA 15370 724-852-5278
Greene County Cumberland Township	PAG02003010004	CJF Property Holding, LLC 116 Moonlite Drive Smithfield, PA 15478	Muddy Creek WWF	Greene County Conservation District 19 South Washington street Waynesburg, PA 15370 724-852-5278
Washington County Carroll Township	PAG2006310009	Ringgold School District 400 Main Street New Eagle, PA 15067	UNT to Monongahela River WWF	Washington County Conservation District 602 Courthouse Square Washington, PA 15301 724-882-6774

General Permit Type—PAG-4

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Bedford County West Providence Township	PAG043676	Zane Weicht 1138 North Milk and Water Road Everett, PA 15537	UNT to Clear Creek TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707

*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Wayne Township Crawford County	PAG049565	Betty J. Bartok 7458 Sugar Lake Road Cochranton, PA 16314	Sugar Lake 16-D	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Eldred Township McKean County	PAG048928	CNB Bank P. O. Box 42 Clearfield, PA 16830	Unnamed tributary to the Allegheny River 16-C	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Washington Township Erie County	PAG049572	Susanne Coates and Jeffrey C. Nesbitt 6401 U.S. Route 6N Edinboro, PA 16412	Unnamed tributary to Cussewago Creek 16-D	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Columbus Township Warren County	PAG049577	Michael J. and Candace J. Corradi 38 West Frederick Street Corry, PA 16407	Unnamed tributary to Brokenstraw Creek 16-B	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Waterford Township Erie County	PAG049578	Alberta Williams 11003 Peach Street Waterford, PA 16441	Unnamed tributary to LeBoeuf Creek 15	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

*General Permit Type—PAG-7**Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Peach Bottom Township York County	PAG070003 PAG070005 PAG073508	Synagro 1605 Dooley Road P. O. Box B Whiteford, MD 21160	Vince Hushon Farm Peach Bottom Township York County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707

*General Permit Type—PAG-8**Facility Location:
Municipality
County*

<i>Facility Location: Municipality County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Catherine Township Blair County	PAG083545	Williamsburg Municipal Authority 305 East 2nd Street Williamsburg, PA 16693-1041	Williamsburg Municipal Authority 305 East 2nd Street Williamsburg, PA 16693-1041	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707
Brown Township Mifflin County	PAG083553	Brown Township Municipal Authority 7748 SR 655 Reedsville, PA 17084	Brown Township Wastewater Treatment Plant 68 West Tony Street Reedsville, PA 17084	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707

*General Permit Type—PAG-8 (SSN)**Facility Location:
Municipality &
County*Peach Bottom
Township
York County

Permit No.
 PAG080002
 PAG080003
 PAG080004
 PAG080005
 PAG080006
 PAG080008
 PAG080018
 PAG082203
 PAG082211
 PAG083501
 PAG083502
 PAG083506
 PAG083510
 PAG083515
 PAG083517
 PAG083518
 PAG083522
 PAG083535
 PAG083540
 PAG083542
 PAG083547
 PAG083551
 PAG083556
 PAG083565
 PAG083567
 PAG083573
 PAG083596
 PAG083597
 PAG083600
 PAG083825
 PAG089903
 PAG089904
 PAG089905
 PABIG9903

*Applicant Name &
Address*
 Synagro
 1605 Dooley Road
 P. O. Box B
 Whiteford, MD 21160

*Site Name &
Location*
 Vince Hushon Farm
 Peach Bottom Township
 York County

*Contact Office &
Phone No.*
 DEP—SCRO
 909 Elmerton Avenue
 Harrisburg, PA
 17110-8200
 717-705-4707

*Facility Location:
Municipality &
County*Cranberry
Township
Venango County

Permit No.
 PAG108311

*Applicant Name &
Address*
 Tennessee Gas
 Pipeline Company
 1001 Louisiana Street
 Houston, TX 77002

*Receiving
Water/Use*
 Unnamed tributary
 to Halls Run

*Contact Office &
Phone No.*
 Tennessee Gas
 Pipeline Company
 1001 Louisiana Street
 Houston, TX 77002
 713-420-3428

*General Permit Type—PAG-12**Facility Location:
Municipality &
County*Spring Township
Snyder County

Permit No.
 PAG124803

*Applicant Name &
Address*
 LaMar E. Troup
 282 Troup Road
 Beaver Springs,
 PA 17812-9249

*Receiving
Water/Use*
 UNT to Middle Creek
 #6A
 CWF

*Contact Office &
Phone No.*
 Northcentral Regional
 Office Water
 Management Program
 208 West Third Street
 Suite 101
 Williamsport, PA 17701
 (570) 327-3664

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 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.

Permit No. 4609504, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**
762 Bryn Mawr Avenue
Bryn Mawr, PA 19010

Township Lower Providence

County **Montgomery**

Type of Facility PWS

Consulting Engineer C.E.T. Engineering
1240 North Mountain Road
Harrisburg, PA 17112

Permit to Construct February 13, 2009
Issued

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

Operations Permit issued to **United Water Pennsylvania**, 7670061, Newberry Township, **York County** on 4/22/2010 for the operation of facilities approved under Construction Permit No. 6709504 MA.

Operations Permit issued to **Pennsylvania American Water**, 7010035, Mt. Joy Township, **Adams County** on 3/3/2010 for the operation of facilities approved under Construction Permit No. 0109505 MA.

Operations Permit issued to **Nell's, Inc.**, 7010965, Hamilton Township, **Adams County** on 4/23/2010 for the operation of facilities approved under Construction Permit No. 0109507.

Operations Permit issued to **Black Rock Retreat Association**, 7360965, Colerain Township, **Lancaster County** on 3/3/2010 for the operation of facilities approved under Construction Permit No. 3609515.

Operations Permit issued to **Hillandale Gettysburg, LP**, 7011004, Tyrone Township, **Adams County** on 4/22/2010 for the operation of facilities approved under Construction Permit No. 0110501.

Operations Permit issued to **McAlisterville Area Joint Authority**, 4340002, Fayette Township, **Juniata County** on 4/16/2010 for the operation of facilities approved under Construction Permit No. 3410502 MA.

Operations Permit issued to **Millersburg Area Authority**, 7220034, Millersburg Borough, **Dauphin County** on 3/30/2010 for the operation of facilities approved under Construction Permit No. 2209512 MA.

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

Permit No. 1709501, Construction—Public Water Supply.

Applicant **Cooper Township Municipal Authority**

Township or Borough Cooper and Rush Townships
County **Clearfield and Centre**

Responsible Official Sharon Josefik, Chairperson
Cooper Township Municipal Authority
P. O. Box 466
4596 Winburne Munson Road
Winburne, PA 16879

Type of Facility Public Water Supply—
Construction

Consulting Engineer K. Alan Uhler, Jr., P. E., PLS
Kerry A. Uhler & Associates
140 High Street
Bellefonte, PA 16823

Permit Issued Date February 26, 2009

Description of Action Construction of a 363,000 gal.
water storage tank (Black Bear).
Removed existing and
constructed two new (363,000
gal.) water storage tanks at both
the Drifting site and the
Kylertown site.

Permit No. 0888501-T3—Transfer, Public Water Supply.

Applicant **Village at Whispering Pines, LLC**

Township or Borough Wells Township
County **Bradford**

Responsible Official James M. Bender, CEO
Village at Whispering
Pines, LLC
916 Centennial Road
Mifflinburg, PA 17844

Type of Facility Public Water Supply—Transfer

Consulting Engineer N/A

Permit Issued Date April 26, 2010

Description of Action Operation of Well No. 2
including the facilities of
sequestration, disinfection,
transmission lines and finished
water storage.

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

Permit No. 0210504, Public Water Supply.

Applicant **Pittsburgh Water & Sewer Authority**
1200 Penn Avenue
2nd Floor
Pittsburgh, PA 15222-4204

Borough or Township City of Pittsburgh

County **Allegheny**

Type of Facility Brashear water storage tank
No. 2.

Consulting Engineer

Permit to Construct March 16, 2010
Issued

Operations Permit issued to **Highridge Water Authority**, 17 Maple Avenue, Blairsville, PA 15717, (PWSID No. 5650069) Buffington, Brush Valley and Center Townships, **Indiana County** on April 6, 2010, for the operation of facilities approved under Construction Permit No. 6593510A1.

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

Permit No. 1008502, Public Water Supply.

Applicant **Lancon Water Company, Inc.**

Township or Borough Connoquenessing and Lancaster Townships

County **Butler County**

Type of Facility Public Water Supply

Consulting Engineer Don Gilmore, P. E.

Permit to Construct 04/21/2010
Issued

Permit No. 368W001-T2-MA3, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**

Township or Borough Sadsbury Township

County **Crawford County**

Type of Facility Public Water Supply

Consulting Engineer Peter Kusky, P. E.

Permit to Construct 04/22/2010
Issued

Permit No. 363W3-T1-MA4, Public Water Supply.

Applicant **Erie City Water Authority**

Township or Borough City of Erie and Harborcreek Township

County **Erie County**

Type of Facility Public Water Supply

Consulting Engineer Matthew J. Elyes, KLH Engineers

Permit to Construct 04/26/2010
Issued

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Richmond Township	P. O. Box 474 Fleetwood, PA 19522	Berks

Plan Description: The approved plan provides for a proposed expansion of an existing apartment complex by 33 apartment units to generate a total of 4,950 gallons of sewage per day each to be served by a community onlot system. The proposed development is located on Hill Road, Richmond Township, Berks County. The plan revision DEP number is A3-06953-089-2. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Maidencreek Township	1 Quarry Road P. O. Box 319 Blandon, PA 19510	Lebanon

Plan Description: The approved plan provides for an onlot disposal system (OLDS) management ordinance to address all OLDS in the municipality. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
North Middleton Township	2051 Spring Road Carlisle, PA 17013	Cumberland

Plan Description: The approved plan revision provides for one new residential building lot proposing a three bedroom dwelling to be served by a small flow treatment facility. It will have a treated discharge of 400 gpd to the Conodoguinet Creek. The residual lot has an existing dwelling served by an existing onlot sewage disposal system, an area for a fill site for a potential replacement area and a potential small flow treatment facility to be used as a malfunction repair with a potential discharge to the Conodoguinet Creek. The proposed development is located at 1389 Waggoners Gap Road, Carlisle. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

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:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

CRC Industrial, Inc., Warminster Township, **Bucks County**. Peter Beyer, P. G., Environmental Resources Management, Inc., 350 Eagleview Boulevard, Suite 200, Exton, PA 19341, Michelle Rudnick, CRC Industrial, Inc., 885 Louis Drive, Warminster, PA 18974 on behalf of Adam Selisker, CRC Industrial, Inc., 885 Louis Drive, Warminster, PA 18974 has submitted a Risk Assessment Report concerning remediation of site groundwater contaminated with chlorinated solvents. The Report is intended to document remediation of the site to meet the Site-Specific Standard.

Pennridge South Middle School, Sellersville Borough, **Bucks County**. Daniel Lewis, Spotts, Stevens and McCoy, Inc., 1947 North Park Road, Reading, PA 19610, on behalf of Robert Reinhart, Pennridge School District,

1200 North Fifth Street, Perkasio, PA 18944, Jeff Loeffler, Pennridge School District, 1200 North Fifth Street, Perkasio, PA 18944 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with No. 2 fuel oil. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Industrial Property Boulevard, City of Philadelphia, **Philadelphia County**. Jeffery T. Bauer, Whitestone Associates, Inc., 1600 Manor Drive, Suite 220, Chalfont, PA 18914, Keith T. D'Ambrosio, P. E., 1600 Manor Drive, Suite 220, Chalfont, PA 18914 on behalf of Brad Adams, Wal-Mart Stores, Inc., 2001 South East 10th Street, Bentonville, AR 72716 has submitted a Remedial Investigation Report concerning remediation of site groundwater contaminated with PAH's and inorganic. The Report is intended to document remediation of the site to meet the Site-Specific Standard.

Clifford Residence, East Coventry Township, **Chester County**. Charles Burger, Mountain Research, LLC, 825 25th Street, Altoona, PA 16601, Clare Erskine, Allstate Insurance, 1200 Artwater Drive, Suite 110, Malvern, PA 19355 on behalf of Karen Clifford, 367 Bethel Church Road, Spring City, PA 19475 has submitted a Final Report concerning remediation of site soil contaminated with No. 2 fuel oil. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Danko Property, Middletown Township, **Bucks County**. Jeremy Bolyn, Environmental Maintenance Company, Inc., 1420 East Mermaid Lane, Glenside, PA 19038 on behalf of Mark Danko, 18 Quakerhill Road, Levittown, PA 19057 has submitted a Final Report concerning remediation of site soil contaminated with No. 2 fuel oil. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

BMW of the Main Line, Lower Merion Township, **Montgomery County**. Richard S. Werner, P. G., Environmental Consulting, Inc., 500 East Washington Street, Suite 375, Norristown, PA 19401, Steve Holstad, Bala Properties North, LLC, Bala Properties South, LLC, Mini of the Main Line, 103 Montgomery Avenue, Bala Cynwyd, PA 19004 on behalf of Elizabeth Kirsch, Kirsch Enterprises, Inc., and Estate of C. H. Kirsch, c/o Richard E. Javage, Jr. Esq., 3550 Township Line Road, Drexel Hill, PA 19025 has submitted a Final Report concerning remediation of site groundwater contaminated with PAH's and chlorate solvents. The Report is intended to document remediation of the site to meet the Background Standard and Statewide Health Standard.

Anderson/Rais Residence, Buckingham Township, **Bucks County**. Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073, Ty Gawlik, State Farm, P. O. Box 13, Concordville, PA 19331, Stephen Gonzalski, Atlantic Richfield Company, 1 West Pennsylvania Avenue, Townsend, MD 21204, Mark Schaeffer, SECOR, International, Inc., 102 Pickering Way, Suite 200, Exton, PA 19341, Michael Malone, SECOR, International, Inc., 102 Pickering Way, Suite 200, Exton, PA 19341 on behalf of Dawn Raia, 3921 York Road, Furlong, PA 18925, Dino Andreadis, 110 Baltimore Pike, Springfield, PA 19064 has submitted a Final Report concerning remediation of site soil contaminated with unleaded gasoline. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Ayres Property, 763 Jackson Avenue, Susquehanna Depot Borough, **Susquehanna County**. Richard Doran and Timothy McClintock, Dorson Environmental Management, Inc., 45 Knollwood Road, Elmsford, NY 10523 have submitted a Final Report (on behalf of their client, Virginia Ayers, 763 Jackson Avenue, Susquehanna, PA 18847), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of an overflow from a delivery of home heating oil to the interior 275-gallon aboveground storage tank. The Report was submitted to document attainment of the Statewide Health Standard. A public notice regarding the submission of the Final Report was published in *The Susquehanna County Transcript* on February 3, 2010.

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

William and Kitty Witmer Property, Brecknock Township, **Lancaster County**. Environmental Maintenance Company, Inc., 1420 East Mermaid Lane, Glenside, PA 19038, on behalf of Mr. and Mrs. William Witmer, c/o J.G. Forney, P. O. Box 275, Brownstown, PA 17508 and Sauder Fuel, Inc., P. O. Box 518, Adamstown, PA 19501 submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil. The Report was submitted within 90 days of the release. The site will be remediated to a Residential Statewide Health Standard and will remain residential.

Mann Edge Terrace, Lewistown Borough, **Mifflin County**. Molesevich Environmental, LLC, P. O. Box 654, Lewisburg, PA 17837, on behalf of Mifflin County Industrial Development Corporation, 6395 SR 103 North, Lewistown, PA 17044, submitted a combined Remedial Investigation and Final Report for site soils contaminated with metals and VOCs. The Report is intended to document remediation of the site to meet the Site-Specific Standard.

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

Makdad Ind. Supply Co. (former Keystone Refrigeration), Sandy Township, **Clearfield County**. ATC Associates, Inc., 101 Allegheny Street, Suite 2B, Hollidaysburg, PA 16648 on behalf of Roger McCoy, 245 Mountain Road, Port Matilda, PA 16870 has submitted a Final Report concerning remediation of site soil contaminated with lead and groundwater contaminated with benzene, Ethylbenzene, naphthalene, 1,2,4-TMB and 1,3,5-TMB. The Report is intended to document remediation of the site to meet the Site-Specific Standard.

Dana E. Erway Farm Truck Accident, Eulalia Township, **Potter County**. Minuteman Spill Response, Inc., P.O. Box 10, Mifflinville, PA 18631 on behalf of Dana Erway, 1027 Route 6 West, Coudersport, PA 16915 has submitted within 90 days of the release a Final Report concerning remediation of site soil contaminated with diesel fuel. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Ionics, Inc. Bridgeville PA Site, Bridgeville Borough, **Allegheny County**. Kenneth Battyani, AECOM, Inc., Four Gateway Center, 444 Liberty Avenue, Suite 7000,

Pittsburgh, PA 15222 on behalf of David Chambliss, General Electric Water and Process Technologies, 960 B Six Flags Road, Austell, GA 30168 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with metals and chlorinated solvents. The Final Report is intended to meet a Site-Specific Standard for groundwater and a Statewide Health Standard for soils.

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 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. 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:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Oak Tree Industrial Associates, LP, Hatfield Township, **Montgomery County**. Michael Christie, Penn Environmental and Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440 on behalf of Roger Altemose, Oak Tree Industrial Associates, LP, 2880 Bergey Road, Suite D, Hatfield, PA 19440 has submitted a Final Report concerning the remediation of site soil contaminated with lead. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 16, 2010.

919 Wallace Street, City of Philadelphia **Philadelphia County**. Michael Christie, Penn E&R, Inc., 2755 Bergey Road, Hatfield, PA 19440, Dorothy and Michael Staples, 443 Copper Beech Circle, Elkins Park, PA 19027, Darryl Borrelli, Manko, Gold, Katcher & Fox, LLP, 401 City Avenue, Suite 500, Bala Cynwyd, PA 19004 on behalf of Jack Levin, Roselawn Abstract, LP, 1411 Walnut Street, Third Floor, Philadelphia, PA 19102 has submitted a Remedial Investigation/Clean-up Plan concerning the remediation of site soil contaminated with inorganic. The Remedial Investigation/Clean-up Plan was approved by the Department of Environmental Protection on April 15, 2010.

Germantown Friends School Post Office Lot, City of Philadelphia, **Philadelphia County**. Toby Kessler, Gilmore & Associates, Inc., 65 East Butler Avenue, Suite 100, New Britain, PA 18901, Robert King, Anthony Biddle Contactors, P. O. Box 462, Ambler, PA 19002 on behalf of Nicholas Dobrowolski, Germantown Friends School, 31 West Coulter Street, Philadelphia, PA 19144 has submitted a Final Report concerning the remediation of site soil contaminated with pah and pesticide. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 5, 2010.

7 Eleven Store #20177, Lansdowne Borough or **Delaware County**. Richard Fireley, Jr., ENSR International, 2005 Cabot Boulevard, Suite 100, Langhorne, PA 19047 on behalf of Ken Hilliard, 7 Eleven, Inc., Store #20114, 27111 North Haskell Avenue, Dallas, TX 75304 has submitted a Remedial Investigation/Final Report concerning the remediation of site groundwater and soil contaminated with No. 2 fuel oil. The Remedial Investigation/Final Report was disapproved by the Department of Environmental Protection on March 31, 2010.

Anderson/Raia Residence, Buckingham Township **Bucks County**. Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073, Ty Gawlik, State Farm, P. O. Box 13, Concordville, PA 19331, Stephen Gonzalski, Atlantic Richfield Company, 1 West Pennsylvania Avenue, Townsend, MD 21204, Mark Schaeffer, SECOR, International, Inc., 102 Pickering Way, Suite 200, Exton, PA 19341, Michael Malone, SECOR, International, Inc., 102 Pickering Way, Suite 200, Exton, PA 19341 on behalf of Dawn Raia, 3921 York Road, Furlong, PA 18925, Dino Andreadis, 110 Baltimore Pike, Springfield, PA 19064 has submitted a Final Report concerning the remediation of soil contaminated with unleaded gasoline. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 8, 2010.

213 Welsh Pool Road, Uwchlan Township, **Chester County**. George Petroka, IES Engineers, 1720 Walton

Road, Blue Bell, PA 19422 on behalf of Phil Sass, Morphotek, Inc., 210 Welsh Pool Road, Exton, PA 19341, Tom Apple, Morphotek, Inc., 210 Welsh Pool Road, Exton, PA 19341 has submitted a Final Report concerning the remediation of site groundwater and soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 7, 2010.

Fibre Metal Products, Concord Township, **Delaware County**. Jennifer Gresh, Duffield Associates, Inc., 5400 Limestone Road, Wilmington, DE 19808 on behalf of Charles Gandi, Bowers Property Management Company, LLC, 140 Jaffery Road, Malvern, PA 19355 has submitted a Remedial Investigation/Final Report concerning the remediation of site soil and groundwater contaminated with chlorinate solvents. The Remedial Investigation/Final Report was approved by the Department of Environmental Protection on April 5, 2010.

Nueva Esperanza, City of Philadelphia, **Philadelphia County**. Susanne Shourds, React Environmental Professional Service Group, 6901 Kingessing Avenue, Suite 201, Philadelphia, PA 19331, Jason Pluniski, React Environmental Professional Service Group, 6901 Kingessing Avenue, Suite 201, Philadelphia, PA 19331 on behalf of Arthur Haywood, 4261 Corporation, 4261 North 5th Street, Philadelphia, PA 19140 has submitted a Baseline Environmental Report concerning the remediation of site groundwater and soil contaminated with chlorinates solvents. The Baseline Environmental Report was approved by the Department of Environmental Protection on April 5, 2010.

Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Ozark Motor Lines, Inc. Diesel Fuel Spill, I-78 Eastbound—Mile Marker 46.7, Weisenberg Township, **Lehigh County**. Dennis Fisher, Taylor GeoServices, Inc., 38 Bishop Hollow Road, Newtown Square, PA 19073 submitted a Final Report (on behalf of his clients, Department of Transportation, Engineering District 5-0, 1002 West Hamilton Street, Allentown, PA 18101 and Frank A. and Anna H. Tercha, 1919 Heffner Road, Fogelsville, PA 18051), concerning the remediation of soil found to have been impacted by diesel fuel as a result of a vehicular accident involving two tractor trailers, which caused the rupturing of two tractor saddle tanks. The Report documented attainment of the Statewide Health Standard and was approved on April 20, 2010.

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

Thorpe Ellis Residence, Tuscarora Township, **Perry County**. Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073, on behalf of Mr. and Mrs. Thorpe Ellis, 7091 Raccoon Valley Road; Mr. and Mrs. Samuel K. Esh, 7780 Raccoon Valley Road; Mr. and Mrs. Frank W. Ross and Ms. Alison F. Ross, 6940 Raccoon Valley Road; Mr. and Mrs. Samuel Leon and Ms. Annie L. Glick, 6784 Raccoon Valley Road, all of Millerstown, PA 17062 and State Farm Insurance Company, P. O. Box 172, Concordville, PA 19331, submitted a Final Report concerning remediation of site soils, surface water and groundwater contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Residential Statewide Health Standard, and was approved by the Department of Environmental Protection on April 20, 2010.

Former Giffuni Property/Turkey Hill Experience, Columbia Borough, **Lancaster County**. Herbert,

Rowland & Grubic, Inc., 1820 Linglestown Road, Harrisburg, PA 17110, on behalf of Columbia Borough, 308 Locust Street, Columbia, PA 17512, submitted a Risk Assessment Report concerning remediation of site soils and groundwater contaminated with inorganics, PAHs and VOCs from historical industrial processes. The Risk Assessment Report was approved by the Department of Environmental Protection on April 20, 2010. The site will be remediated to the Site-Specific Standard.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Warehousing Services, City of Jeannette, Westmoreland County. D'Appolonia Engineering, 275 Center Road, Monroeville, PA 15146 on behalf of T. S. Quarto, Inc., 215 North Fourth Street, Jeannette, PA 15644 had submitted a Final Report concerning the remediation of site soils contaminated with lead. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department of Environmental Protection on April 12, 2010.

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Determination of Applicability for General Permit Approved 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.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Application No. WMGR017D010. Philadelphia Water Department, ARAMARK Tower, 2nd Floor, 1101 Market Street, Philadelphia, PA 19107-2994.

The general permit WMGR017D010 is for the beneficial use of drinking water treatment plant sludge as a soil additive on agricultural lands. The drinking water treatment plant sludge is generated at the Belmont Water Treatment Plant, located in City of Philadelphia. Central Office approved the determination of applicability on March 31, 2010.

Persons interested in reviewing the general permit may contact C. D. Vu, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department of Environmental Protection through the Pennsylvania AT&T Relay Service, (800) 654-5984.

General Permit Application No. WMGR068D004. Kimberly-Clark of PA, LLC, 1 Avenue of the States, Chester, PA 19013-4471.

The general permit WMGR068 is for the beneficial use of (i) carbonaceous wastes: petroleum coke, uncontaminated, untreated wood chips and other paper and wood industry wastes comprised primarily of wood fibers, and tire-derived fuel (TDF), and (ii) the ash generated from the burning of that waste as (a) an alternative fuel, (b) a soil additive to promote revegetation on mine sites; and (c) as prescribed in 25 Pa. Code §§ 287.661—287.666.

Coal ash generated at the Kimberly-Clark of Pennsylvania, LLC, Cogeneration (KCCF) Manufacturing facility, located in the City of Chester, **Delaware County** is approved for beneficial use under this general permit for mine reclamation purposes. Central Office approved the determination of applicability on April 21, 2010.

Persons interested in reviewing the general permit may contact C. D. Vu, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department of Environmental Protection through the Pennsylvania AT&T Relay Service, (800) 654-5984.

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. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

GP9-09-0022: Haines & Kibblehouse—Hilltown Walmart Jobsite (1515 Bethlehem Pike, Hatfield, PA 19440) on April 27, 2010, to operate the relocation diesel/No. 2 fuel-fired internal combustion units in Hilltown Township, **Bucks County**.

GP3-09-0092: Haines & Kibblehouse—Hilltown Walmart Jobsite (1515 Bethlehem Pike, Hatfield, PA 19440) on April 27, 2010, to operate the relocation of a portable nonmetallic mineral processing plant in Hilltown Township, **Bucks County**.

GP3-09-0093: Haines & Kibblehouse—Naceville Materials—Plumstead (5031 Point Pleasant Pike, Doylestown, PA 18901) on April 27, 2010, to operate a portable nonmetallic mineral processing plant in Plumstead Township, **Bucks County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

48-323-012GP4: S&L Plastics, Inc. (2860 Bath Pike, Nazareth, PA 18064) on April 20, 2010, install and operate a burn off oven at their site in Upper Nazareth Township, **Northampton County**.

35-310-050GP3: Northledge, LLC (930 East Market Street, Bethlehem, PA 18017) on April 19, 2010, to construct and operate a Portable Crushing Operation with watersprays at their site located in Taylor Borough, **Lackawanna County**.

35-329-005GP9: Northledge, LLC (930 East Market Street, Bethlehem, PA 18017) on April 19, 2010, to install and operate a Diesel I/C engine at their site in Taylor Borough, **Lackawanna County**.

58-310-027GP3: H.L. Robinson Sand & Gravel, Inc. (535 Ithaca Road, Candor, NY 13743) on April 19, 2010, to construct and operate a Portable Crushing Operation with watersprays at their site in Dimock Township, **Susquehanna County**.

58-329-018GP9: H.L. Robinson Sand & Gravel, Inc. (535 Ithaca Road, Candor, NY 13743) on April 19, 2010,

to install and operate a Diesel I/C engine at their site in Dimock Township, **Susquehanna County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

GP1-36-03109: Thaddeus Stevens College of Technology (750 East King Street, Lancaster, PA 17602-3198) on April 20, 2010, for their facility in the City of Lancaster, **Lancaster County**.

GP3-38-03014: Pennsy Supply, Inc. (1001 Paxton Street, P. O. Box 3331, Harrisburg, PA 17105-3331) on April 19, 2010, for their portable mineral processing plant in North Londonderry Township, **Lebanon County**.

GP9-38-03014: Pennsy Supply, Inc. (1001 Paxton Street, P. O. Box 3331, Harrisburg, PA 17105-3331) on April 19, 2010, for their portable mineral processing plant in North Londonderry Township, **Lebanon County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

GP3-62-163A: IA Construction Corp.—Garland Mine (4754 Route 27, Garland, PA 16416) on April 20, 2010, to operate a portable non-metallic mineral processing plant (BAQ-GPA/GP-3) in Pittsfield Township, **Warren 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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

09-0174C: Liberty Coating Co., LLC (21 South Steel Road, Morrisville, PA 19067) on April 21, 2010, for modification to the line surface coating operation, at their facility at 21 South Steel Road, Morrisville, PA 19067 in Falls Township, **Bucks County**. This facility is a Synthetic Minor facility. There will be increase in VOC emissions due to this modification but company has proposed operational restriction to be less than 25 tons of VOC per year. The Plan Approval will contain monitoring and recordkeeping requirements to keep the source operating within the allowable emissions and all applicable air quality requirements.

09-0010C: TEVA Pharmaceuticals USA, Inc. (650 Cathill Road, Sellersville, PA 18960) on April 27, 2010, for replacement of existing dust collection systems associated with the S-8 Fluid Bed Processor and the LCO Manufacturing Area with cartridge filters and HEPA filters in West Rockhill Township, **Bucks County**. The potential particulate matter emissions from this project were estimated to be 0.03 ton per year on a 12-month rolling sum basis. This is a non-Title V, synthetic minor facility.

15-0110A: Pepperidge Farm, Inc. (421 Boot Road, Downingtown, PA 19335) on April 27, 2010, for replacement of a layer cake oven at their facility in Downingtown Borough, **Chester County**. The proposed layer cake oven has a heat input of 8.84 mmBtu/hour and burns natural gas or propane and replaces an existing layer cake oven with a heat input of 7.92 mmBtu/hour. The proposed project does contain an increase of emis-

sions. The project has the following potential emissions: 5.50 tons nitrogen oxides per year, 3.19 tons carbon monoxide per year, 0.647 ton sulfur dioxides per year, 0.288 ton particulate matter per year, and 0.423 ton volatile organic compounds per year. Limits for natural gas and propane usage for the entire facility were placed into this plan approval to maintain compliance with the facility-wide limits for nitrogen oxide and volatile organic compound emissions in the State-only Operating Permit.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

07-03058A: NPC, Inc. (13710 Dunning Highway, Claysburg, PA 16625) on April 6, 2010, to construct two web offset lithographic printing presses at their facility in Greenfield Township, **Blair County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Mark Gorog and Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

63-00110H: World Kitchen, Inc. (100 Eighth Street, Charleroi, PA 15022) on April 19, 2010, to allow increased electric boost and rebricking to Tank 11, the generation of 42 tons of NOx Emission Reduction Credits due to the shutdown of tank 6, and establishment of reduced emission limits at the Charleroi glass Plant in Charleroi, **Washington County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

10-284E: Seneca Landfill, Inc. (421 Hartmann Road, Evans City, PA 16033) on April 22, 2010, to modify plan approval 10-284D conditions with regard to start-up, shutdown, and ceramic media curing procedures associated with the thermal oxidizer in Jackson Township, **Butler County**. This is a Title V facility.

24-150A: Horizon Wood Products, Inc. (624 Shelvey Summit, Kersey, PA 15846) on April 20, 2010, to install a 3.1 MMBtu/hr wood-fired boiler and associated multi-cyclone control device at their facility in Fox Township, **Elk County**.

25-1024A: PHB, Inc. (8150 West Ridge Road, Fairview, PA 16415) on April 19, 2010, to install three (3) paint booths at their facility in Fairview Township, **Erie County**.

62-163A: IA Construction Corp.—Garland Mine (158 Lindsay Road, Zelenople, PA 16063) on April 16, 2010, for a plan approval to construct a sand and gravel wet processing plant, associated with an existing non-coal surface mining operation (Permit #62010302) in Pittsfield Township, **Warren 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. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

15-0078D: Centocor, Inc. (200 Great Valley Parkway, Malvern, PA 19355) on April 19, 2010, to operate an electric generator in East Whiteland Township, **Chester County**.

23-0108B: Barry Callebaut USA, LLC (903 Industrial Highway, Eddystone, PA 19022) on April 19, 2010, to operate a regenerative thermal oxidizer in Eddystone Borough, **Delaware County**.

46-313-146: Penn Color, Inc. (2755 Bergey Road, Hatfield, PA 19440) on April 19, 2010, to operate a base pigment dispersion facility in Hatfield Township, **Montgomery County**.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

22-05005: NRG Energy Center Paxton, LLC (100 North 10th Street, Harrisburg, PA 17101-2440) on April 20, 2010, for renewal of their operating permit for their facility in Harrisburg City, **Dauphin County**.

36-05015: Dart Container Corp. of PA (60 East Main Street, P. O. Box 546, Leola, PA 17603) on April 15, 2010, for renewal of their operating permit for their facility in Upper Leacock Township, **Lancaster County**.

36-05117: Dart Container Corp. of PA (60 East Main Street, Leola, PA 17603) on April 20, 2010, for renewal of their operating permit for their facility in East Lampeter Township, **Lancaster County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6940.

10-00285: Waste Management Disposal Services of Pennsylvania, Inc.—Northwest Sanitary Landfill (1436 West Sunbury Road, West Sunbury, PA 16061-2934) on April 21, 2010, to reissue a Title V operating permit to operate a municipal waste landfill in Clay Township, **Butler County**. The primary emission sources include a municipal waste landfill, a parts washer and an emergency diesel generator.

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.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6940.

10-00310: Air Products & Chemicals, Inc. (357 Marian Avenue, Tamaqua, PA 18252) on April 20, 2010, issued a renewal State-only Operating Permit for their facility in Butler Township, **Butler County**. The facility is a Natural Minor. The primary sources at the facility include a hydrogen reformer, hydrogen purification, process water deaeration, and a parts washer. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

16-00043: JM Smucker of PA, Inc.—New Bethlehem Facility (300 Keck Avenue, New Bethlehem, PA 16242-1151) on April 22, 2010, to issue a Natural Minor Operating Permit to operate a facility manufacturing a

variety of peanut butter products operation in New Bethlehem Borough, **Clarion County**. The facility's primary emission sources include peanut processing, peanut roasting, nut skin transfer and miscellaneous natural gas combustion.

20-00263: Tapco Tube Co. (10748 South Water Street Extension, Meadville, PA 16335-9098) on April 22, 2010, to issue a Synthetic Minor Operating Permit to operate a manufacturing facility that produces round and rectangular steel tubing in West Mead Township, **Crawford County**. The facility's primary emission sources include dip coating, powder coating, parts washers and miscellaneous natural gas combustion.

33-00141: National Fuel Gas Supply Corporation—Knox Compressor Station (P. O. Box 2081, Erie, PA 16512) on April 23, 2010, to re-issue a Natural Minor Permit to operate a Natural Gas Compressor Station, at 157 Pump Station Road, in Knox Township, **Jefferson County**. The primary sources of emissions are the four (4) compressor engines used to move natural gas.

42-00192: IA Construction Corp.—McKean Plant (7024 Route 59, Lewis Run, PA 16738), on April 21, 2010, for a Synthetic Minor Permit to operate a hot mix asphalt plant in Lafayette Township, **McKean County**. The significant sources are hot mix batch plant; fugitives from transfer points and propane storage tank 30,000 gallons. The facility has taken a restriction on production not exceeding 495,000 tons per year to qualify as a Synthetic Minor facility.

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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-00003: Orograin Bakeries Manufacturing, Inc. (1810 East Ridge Pike, Norristown, PA 19404) on April 26, 2010, for an Administrative Amendment to State-only (Synthetic Minor) Operating Permit No. 46-00003 for their facility in Plymouth Township, **Montgomery County**. The Administrative Amendment allows for the change of ownership of the facility from Stroehmann Bakeries, LC, to be reflected in the permit.

The Administrative Amendment is issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450.

46-00025: Lonza, Inc. (900 River Road, Conshohocken, PA 19428) on April 27, 2010, to incorporate plan approval requirements in accordance with 25 Pa. Code § 127.450. The amended Title V Operating Permit contains all of the section regulatory requirements including monitoring, recordkeeping, applicable reporting and emission limits in Upper Merion Township, **Montgomery County**.

De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, New Source Review Chief—Telephone: 814-332-6940.

24-00022: St. Mary's Carbon Co. (259 Eberl Street, St. Marys, PA 15857). Per 25 Pa. Code § 127.449(i), this

Notice is for the following *de minimis* emission increase at the St. Marys Carbon Company located in St. Marys, **Elk County**:

Less than 0.2 tpy VOC, less than 0.05 tpy HAP, and less than 0.66 tpy NOx resulting from the installation and operation of one 2.3 mmBtu/hr natural gas-fired Harper Electric Furnace Corporation kiln for baking metal/graphite parts and a 1.3 natural gas-fired mmBtu/hr in-stack incinerator of the same manufacture.

This is the only *de minimis* increase at the facility in the last 5 years.

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.

30841313 and NPDES Permit No. PA0022594, Consolidation Coal Company, (CNX Center, 1000 CONSOL Energy Drive, Canonsburg, PA 15317), to revise the permit for the Dilworth Mine in Cumberland Township, **Greene County** and related NPDES permit to add a treatment pond and relocated and change flow for the NPDES discharge point. Receiving stream: Monongahela River, classified for the following use(s): WWF. Application received: September 6, 2007. Permit issued: April 22, 2010.

30841316 and NPDES Permit No. PA0213535, Consol PA Coal Company, LLC, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit for the Bailey Mine and Prep Plant in Aleppo and Richhill Townships, **Greene County** for an overhead power line right-of-way to install power to the Bailey 15 I Airshaft. Surface Acres Proposed 35.1. No additional discharges. Application received: October 13, 2009. Permit issued: April 22, 2010.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

56890115 and NPDES No. PA0598666. PBS Coals, Inc., P. O. Box 260, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface and auger mine in Brothersvalley Township, **Somerset County**, affecting 299.2 acres. Receiving stream(s): unnamed tributaries to/and Blue Lick Creek classified for the following use(s): cold water fishery. There are no potable water

supply intakes within 10 miles downstream. Application received: February 5, 2010. Permit issued: April 20, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

61050101 and NPDES Permit No. PA0257940. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127) Renewal of an existing bituminous strip operation in Irwin Township, **Venango County** affecting 13.1 acres. This renewal is issued for reclamation only. Receiving Streams: Unnamed tributary to Gilmore Run. Application received: March 3, 2010. Permit Issued: April 22, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

14080101 and NPDES No. PA0256773. Warren C. Hartman Contracting (5315 Bigler Road, Clearfield, PA 16830). Commencement, operation and restoration of a bituminous surface mine located in Burnside and Snow Shoe Townships, **Centre County** affecting 325.0 acres. Receiving streams: tributaries to Little Sandy and Contrary Runs classified for Cold Water Fisheries. There are no potable water supply intakes within 10 miles downstream. Application received: April 18, 2008. Permit issued: April 16, 2010.

17020107 and NPDES No. PA0243281. AMFIRE Mining Co., LLC (One Energy Place, Latrobe, PA 15656). Renewal of an existing bituminous surface mine located in Lawrence Township, **Clearfield County** affecting 112.0 acres. Receiving streams: unnamed tributaries to the West Branch of the Susquehanna River classified for Cold Water Fisheries. There are no potable water supply intakes within 10 miles downstream. Application received: January 19, 2010. Permit issued: April 16, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

54830207R5. Blaschak Coal Corp., (P. O. Box 12, Mahanoy City, PA 17948), renewal of an existing anthracite coal refuse reprocessing, refuse disposal and preparation operation in Mahanoy Township, **Schuylkill County** affecting 280.0 acres, receiving stream: none. Application received: January 29, 2009. Renewal issued: April 20, 2010.

54-305-001GP12R. Blaschak Coal Corp., (P. O. Box 12, Mahanoy City, PA 17948), renewal of general operating permit to operate a coal preparation plant on Surface Mining Permit No. 54830207 in Mahanoy Township, **Schuylkill County**. Application received: January 8, 2009. Renewal issued: April 20, 2010.

54991302R2 and NPDES Permit No. PA0223972. S & S Coal Company, LLC, (66 Snyder Lane, Hegins, PA 17938), renewal of an existing anthracite underground mine operation in Barry, Foster and Hegins Townships, **Schuylkill County** affecting 8.0 acres, receiving stream: tributary to Hans Yost Creek. Application received: October 6, 2009. Renewal issued: April 23, 2010.

40050201C2. HUD, Inc., t/a Emerald Anthracite II, (P. O. Box 27, Nanticoke, PA 18634), correction to update the post-mining land use to commercial use to an existing anthracite coal refuse reprocessing operation in the City of Nanticoke and Newport Township, **Luzerne County** affecting 83.0 acres, receiving stream: none. Application received: February 8, 2010. Permit issued: April 23, 2010.

Noncoal Applications Returned

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

SMP #08092801. Leonard Cory (P. O. Box 127, Columbia Cross Roads, PA 16914). Commencement, operation and restoration of small noncoal (shale) permit located in Springfield, Township, **Bradford County**, affecting 1.0 total acre. Receiving stream(s): Mill and Sugar Creeks. Application received: February 20, 2009. Application returned: April 22, 2010.

Noncoal Permits Actions

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

28990803. Paul Clapsaddle, 11401 Creek Road, Fannettsburg, PA 17221, bond release on a small noncoal (industrial minerals) operation in Metal Township, **Franklin County**, affecting 0.75 acres. Receiving stream(s): no discharge. Application received: September 1, 2009. Bond Release approved: April 13, 2010.

32040301 and NPDES Permit No. PA0249611, Penn Run Quarry, 456 Weston Road, Penn Run, PA 15765, renewal of NPDES Permit, Cherryhill and Pine Townships, **Indiana County**. Receiving streams: unnamed tributaries to Yellow Creek to Two Lick Creek to Blacklick Creek classified for the following uses: cold water fishery and trout stocked fishery. The first downstream potable water supply intake from the point of discharge is Central Indiana County Water Authority Intake on Yellow Creek. NPDES renewal application received: November 30, 2009. Permit issued: April 20, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

43080302 and NPDES Permit No. PA0258580. White Rock Silica Sand Company, Inc. (331 Methodist Street, Greenville, PA 16125) Commencement, operation and restoration of a large sandstone operation in Hempfield Township, **Mercer County** affecting 76.0 acres. Receiving streams: Unnamed tributaries to the Shenango River and unnamed tributaries to Mathay Run. Application received: April 28, 2008. Permit Issued: April 22, 2010.

25102801. Groundwork Resources, LLC (8870 Baron Road, McKean, PA 16426) Commencement, operation and restoration of a small sand and gravel operation in McKean Township, **Erie County** affecting 5.0 acres. Receiving streams: Unnamed tributary to Walnut Creek. Application received: March 9, 2010. Permit Issued: April 21, 2010.

24092801. S. E. Dyne Stone Sales, LLC (P. O. Box 733, Kane, PA 16735) Commencement, operation and restoration of a small sandstone and shale operation in Highland Township, **Elk County** affecting 5.0 acres. Receiving streams: Wolf Run. Application received: March 24, 2009. Permit Issued: April 21, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

6473SM3T2 and NPDES Permit No. PA0224758. Wilkes-Barre Materials, LLC, (500 Chase Road, Shavertown, PA 18708), transfer of an existing quarry operation in Plains Township and Laflin Borough, **Luzerne County** affecting 138.0 acres, receiving stream: Gardner Creek. Application received: February 17, 2009. Transfer issued: April 22, 2010.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

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.

Blasting Permits Actions

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

42104007. Geokinetics, Inc. (R. R. 6, Box 6176, Towanda, PA 18848) Blasting Activity Permit for seismic exploration in Liberty, Norwich and Shippen Townships, **McKean and Cameron Counties**. This blasting activity permit expires July 31, 2010. Permit Issued: April 19, 2010.

42104010. Precision Geophysical, Inc. (2695 SR 83 South, Millersburg, OH 44654) Blasting Activity Permit for seismic exploration in Norwich and Shippen Townships, **McKean and Cameron Counties**. This blasting activity permit expires on May 14, 2010. Permit Issued: April 26, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

14105001. Orica USA (Clearfield, PA 16830) blasting activity permit by rule for construction blasting located in Spring Township, **Centre County**. Permit issued: April 16, 2010. Permit expires: May 19, 2010.

17104004. Dynamic Drilling, LLC (10373 Taylor Hawks Road, Herron, MI 46744). Blasting for seismic exploration located in Lawrence Township, **Clearfield County**. Permit issued: April 16, 2010. Permit expires: December 30, 2010.

41104003. Doug Wathen, LLC (16282 State Highway 13, Suite J, Branson West, MO 65616). Blasting for a gas well located in Shrewsbury Township, **Lycoming County**. Permit issued: April 16, 2010. Permit expires: March 7, 2011.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

58104014. M & S Blasting, LLC (943 Gontarski Road, Hallstead, PA 18822), construction blasting for the Jean Blaisure 1H and 6H Tank and Well Pad Site in Dimock Township, **Susquehanna County** with an expiration date of April 7, 2011. Permit issued: April 20, 2010.

58104015. M & S Blasting, LLC (943 Gontarski Road, Hallstead, PA 18822), construction blasting for the Joseph Blaisure 1 and 2 Well Pad Site in Jessup Township, **Susquehanna County** with an expiration date of April 7, 2011. Permit issued: April 20, 2010.

58104108. Meshoppen Blasting, Inc. (P. O. Box 127, Meshoppen, PA 18630), construction blasting for Koromlan Well Site in Auburn Township, **Susquehanna County** with an expiration date of May 15, 2010. Permit issued: April 20, 2010.

67104108. TJ Angelozzi, Inc. (7845 Kabik Court, Woodbine, MD 21797), construction blasting for Briarcliff in Fairview Township, **York County** with an expiration date of May 15, 2010. Permit issued: April 20, 2010.

36104117. Keystone Blasting Service (15 Hopeland Road, Lititz, PA 17543), construction blasting for Green

Park Development in Rapho Township, **Lancaster County** with an expiration date of December 30, 2010. Permit issued: April 22, 2010.

36104118. J Roy's, Inc. (P. O. Box 125, Bowmansville, PA 17507), construction blasting for Oregon Dairy Digester in Manheim Township, **Lancaster County** with an expiration date of April 21, 2011. Permit issued: April 22, 2010.

67104109. M & J Explosives, Inc. (P. O. Box 608, Carlisle, PA 17013), construction blasting for Stuart Welding in Hellam Township, **York County** with an expiration date of April 30, 2011. Permit issued: April 22, 2010.

58104109. Holbert Explosives, Inc. (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for Linde Corp. Pipeline in Jessup, Rush, Springville, Dimock and Brooklyn Townships, **Susquehanna County** with an expiration date of April 15, 2011. Permit issued: April 23, 2010.

58104110. Holbert Explosives, Inc. (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for Linde Corp. Pipeline in Jessup, Rush, Springville, Dimock and Brooklyn Townships, **Susquehanna County** with an expiration date of April 15, 2011. Permit issued: April 23, 2010.

58104111. Meshoppen Blasting, Inc. (P. O. Box 127, Meshoppen, PA 18630), construction blasting for Koromlan Borrow Site in Auburn Township, **Susquehanna County** with an expiration date of May 31, 2010. Permit issued: April 23, 2010.

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 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 Floodplain 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.

E09-939. SEPTA, 1234 Market Street, Philadelphia, PA 19107, New Britain Township, **Bucks County**, ACOE Philadelphia District. To extend and maintain the existing 14-foot wide by 14-foot high railroad bridge, across an unnamed tributary to West Branch of Neshaminy Creek (WWF/MP) by 16 feet on the upstream side, impacting 0.48 acre of wetland (PSS) to accommodate the proposed new link siding associated with the R5 Doylestown Line. This work also includes the construction and maintenance of stormwater outfalls.

The site is located approximately 800 feet east of the intersection of County Line Road and Walnut Street (Doylestown and Telford, PA USGS Map N: 4.75 inches; W: 16.5 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

E46-1042. Aqua PA, 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489, Lower Providence Township, **Montgomery County**, ACOE Philadelphia District.

To perform the following Water Obstruction and Encroachment activities in the 100-year floodplain of the Perkiomen Creek (WWF) associated with the proposed improvements to the existing Perkiomen pumping station:

1. To replace the existing building with a new facility to house the pumps, and to remove the existing intake structure from the creek.
2. To construct and maintain two 24-inch diameter water intake structures and associated intake screens.
3. To construct and maintain an outfall structure and a by-pass channel downstream of the isolated gate.
4. To stabilize and maintain approximately 45 linear feet of stream bank between the former location of the pump station and the new one.

The site is located in the proximity of Wetherills Dam and near the intersection of Pawlings and Old Mill Roads, Valley Forge, PA US Quadrangle map (N: 22.25 inches; W: 10.00 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 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.

EA-35-004NE. City of Scranton, 340 North Washington Avenue, Scranton, PA 18503, City of Scranton, **Lackawanna County**, Army Corps of Engineers Baltimore District.

To restore and maintain approximately 250 linear feet of Lindy Creek (CWF, MF) through stream channel and stream bank grading, sediment removal and stream bank stabilization. The project is located just upstream of Crisp Avenue (Scranton, PA Quadrangle Latitude: 41° 25' 22"; Longitude: -75° 42' 21").

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

E28-355: Shively Motors, Inc., Will Hoffman, Vice President, 801 Lincoln Way East, Chambersburg, PA 17201, Culvert Extension, Hamilton Township, **Franklin County**, ACOE Baltimore District.

To construct and maintain a 50.0-foot long, 1-foot depressed, 4-foot high by 7-foot wide concrete box culvert extension and pre-cast concrete endwall in an unnamed tributary to Conococheague Creek (WWF). The project is located at 801 Lincoln Way East (Chambersburg, PA Quadrangle N: 11.3 inches; W: 7.3 inches, Latitude: 39° 56' 15"; Longitude: 77° 40' 36") in Hamilton Township, Franklin County. The project purpose is to increase the lot area of the automobile dealership.

E67-876: York College of Pennsylvania, 439 Country Club Road, York, PA 17403-3651, Smurfit-Stone Paper Plant, City of York, **York County**, ACOE Baltimore District.

Monroe Township	40° 53' 12.85"	76° 55' 32.14"	Trib to Penns Creek	CWF
Monroe Township	40° 53' 14.84"	76° 53' 12.09"	Trib to Penns Creek	CWF
Monroe Township	40° 51' 27.73"	76° 48' 44.03"	Trib to Susquehanna River	WWF
Shamokin Dam Bor	40° 51' 07.54"	76° 48' 45.53"	Susquehanna River	WWF

To construct, operate and maintain a conduit fiber optic system across Pennsylvania along roadway right-of-ways. The project originates in Cleveland, OH and terminates in New Jersey running approximately 450 miles. A total of 8.2 miles of Snyder County will be traversed by the project, beginning at the Union County/Snyder County boarder on SR 2002 County Line Road and ending at the Snyder County/Northumberland County border on SR 0061 Susquehanna River Bridge Crossing. The project will cross a total of 4 streams in Snyder County via boring. There are no wetland crossings authorized with this permit. The proposed crossings are listed previously: This permit also includes Section 401 Water Quality Certification.

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

E02-1628. Lawrence E. and Martha T. Madson, Jr., 61 Lambeth Drive, Pittsburgh, PA 15291. To construct and maintain addition to existing building in Bridgeville Borough, **Allegheny County**, Pittsburgh ACOE District (Bridgeville, PA Quadrangle N: 19.0 inches; W: 14.5

To construct and maintain a single span pedestrian bridge having a normal span of 50.0 feet, an underclearance of 10.3 feet and a width of 8.0 feet, across Tyler Run (WWF) for the purpose of providing pedestrian access to a planned expansion of the college campus. The project is located on a tract of land immediately south of Kings Mill Road, west of the intersection of Kings Mill Road and South Penn Street on the former Smurfit-Stone Paper Plant (York, PA Quadrangle N: 13.9 inches; W: 15.3 inches, Latitude: 39° 57' 05"; Longitude: 76° 44' 01") in the City of York, York County.

E28-360: CHR Corporation, Attn: Tim Rutter, 2295 Susquehanna Trail, Suite C, York, PA 17404, Rutter's Farm Store No. 5, Greene Township, **Franklin County**, ACOE Baltimore District.

To fill and maintain 0.05 acre of PEM wetland in the Conococheague Creek (CWF, MF) watershed. The project is located on the northwest quadrant at the intersection of Lincoln Way East (U.S. Route 0030) and Bronson Road (Scotland, PA Quadrangle N: 5.7 inches; W: 3.0 inches, Latitude: 39° 54' 00"; Longitude: 77° 31' 00") in Greene Township, Franklin County. The purpose of the project is for the commercial construction of Rutter's Farm Store No. 5.

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E55-224. Northeast ITS, 6779 Engle Road, Middleburg Heights, OH, 44130. Wilderness Fiber Optic Project, in various Municipalities, **Snyder County**, ACOE Baltimore District (Sunbury, Northumberland, Lewisburg and Middleburg, PA Quadrangles, with below referenced coordinates) Jackson and Monroe Townships, Shamokin Dam Borough and Snyder County.

inches, Latitude: 40° 21' 17"; Longitude: 80° 06' 15"). To construct and maintain a 56.67 ft. by 34.0 ft. addition to the existing garage on the left bank of McLaughlin Run (WWF) for the purpose of expanding the existing garage. The project is located on the north side of McLaughlin Run Road, approximately 550.0 feet northwest from the intersection of McLaughlin Run Road and Coolidge Street.

Northcentral Regional Oil and Gas Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

95-16-65420-004. Southwestern Energy Company, 2350 North Sam Houston Parkway East, Suite 125, Houston, TX 77032. Project proposes to operate and maintain the Greenzweig 1 Impoundment Dam as a centralized impoundment to collect and store flow-back water, for the use and re-use of hydraulic fracturing water, from the Greenzweig Well Pad 1, Greenzweig Well Pad D3, Greenzweig Well Pad G1, and future wells in the area (LeRaysville, PA Quadrangle Latitude: N 41° 47' 09.73"; Longitude: W 76° 14' 06.17"), Herrick Township, **Bradford County**.

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 may 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, individuals may qualify for pro bono representation. Call the Secretary to the Board (717) 787-3483 for more information.

Northcentral Region: Oil and Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

ESCGP-1 # ESX10-015-0012
Applicant Name Appalachia Midstream Services, LLC
Contact Person Patrick Myers
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Tuscarora and Wyalusing Townships
Receiving Stream(s) and Classification(s) Susquehanna River Watershed

ESCGP-1 # ESX10-117-0083
Applicant Name East Resources, Inc.
Contact Person Jefferson Long
Address 301 Brush Creek Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Deerfield Township
Receiving Stream(s) and Classification(s) Cowanesque River
Secondary—Tioga River (in NY)

ESCGP-1 # ESX10-117-0082
Applicant Name East Resources, Inc.
Contact Person Jefferson Long
Address 301 Brush Creek Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Delmar Township
Receiving Stream(s) and Classification(s) Kelsey Creek, trib to Marsh Creek
Secondary—UNT to Stoney Fork, tributary to Babb Creek

ESCGP-1 # ESX10-015-0097
Applicant Name Talisman Energy (USA), Inc.
Contact Person Eric Potter
Address 337 Daniel Zenker Drive
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Wells Township
Receiving Stream(s) and Classification(s) UNT to South Creek

ESCGP-1 # ESX10-015-0103
Applicant Name Talisman Energy (USA), Inc.
Contact Person Eric Potter
Address 337 Daniel Zenker Drive
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Columbia
Receiving Stream(s) and Classification(s) Wolfe Creek

ESCGP-1 # ESX10-015-0100
Applicant Name Talisman Energy (USA), Inc.
Contact Person Eric Potter
Address 337 Daniel Zenker Drive
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Columbia Township
Receiving Stream(s) and Classification(s) UNT to North Branch Sugar Creek

ESCGP-1 # ESX10-015-0098
Applicant Name Talisman Energy (USA), Inc.
Contact Person Eric Potter
Address 337 Daniel Zenker Drive
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Columbia Township
Receiving Stream(s) and Classification(s) Wolfe Creek and North Branch Sugar Creek

ESCGP-1 # ESX10-015-0099
Applicant Name Talisman Energy (USA), Inc.
Contact Person Eric Potter
Address 337 Daniel Zenker Drive
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Stevens Township
Receiving Stream(s) and Classification(s) UNTs to Cold Creek/Wyalusing Creek Watershed

ESCGP-1 # ESX10-131-0007
Applicant Name Citrus Energy Corporation
Contact Person Jeffrey Searfoss
Address 36 Hazelton Street
City, State, Zip Ashley, PA 18706
County Wyoming
Township(s) Washington Township
Receiving Stream(s) and Classification(s) UNT to Meshoppen Creek

ESCGP-1 # 14-08-801(02) Major Revision
Applicant Name RW Gathering, LLC & William Production Appalachia
Contact Person
Address 1000 Town Center, Suite 130
City, State, Zip Canonsburg, PA 15317
County Clearfield and Centre Counties
Township(s) Cooper Township (Clearfield); Snow Shoe Rush Township (Centre)
Receiving Stream(s) and Classification(s) Moshannon Creek, Ames Run, Basin Run
Secondary—West Branch Susquehanna River

STORAGE TANKS

SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101 and 6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

<i>SSIP Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
10-09-009	Pignuts, Inc., d/b/a SealMaster 6853 Ruppsville Road Allentown, PA 18106 Attn: Mr. Darrel Stein	Bucks	New Britain Borough	3 ASTs storing pavement sealer	28,000 gallons total

SPECIAL NOTICES

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

Larry Baumgardner Coal Company, Inc., GFCC No. 17-08-17, Ayers Operation, Decatur Township, Clearfield County (Little Laurel Run to Laurel Run to Moshannon Creek-Upper West Branch Watershed): A no-cost construction contract has been awarded to Larry Baumgardner Coal Company, Inc. that will result in the reclamation of approximately 3.7 acres of abandoned mine land, the reclamation of 1,200-feet of abandoned highwall, the reclamation of 7.0 acres of abandoned underground deep mines and the recovery of approximately 42,000 tons of remaining coal reserves. The site will be reclaimed and regraded to approximate original contour. Alkaline addition in the form of waste lime will be added to the mining area. A total of at least 7,000 tons of alkaline waste lime will be placed on the site. The estimated value of the reclamation work is \$140,920 which will be done at no cost to the Commonwealth. The site is located approximately 1.0 mile northwest of Pleasant Hill off of Old SR 322 on lands formerly mined and subsequently abandoned by Elliot Coal Mining Company in the late 1950's. Blasting has been approved as part of the reclamation activities. Refuse reprocessing is prohibited at the site.

[Pa.B. Doc. No. 10-835. Filed for public inspection May 7, 2010, 9:00 a.m.]

Bid Opportunity

OSM 37(4489)101.1, Abandoned Mine Land Reclamation Project, Martin Road, Slippery Rock Township, Lawrence County. The principal items of work and approximate quantities include mobilization and demobilization; dewatering impoundments; 640,000 cubic yards of grading; 1,100 square yards of limestone rock lining; 700 linear feet subsurface drain; wetland mitigation; 78 acres of seeding; and Erosion and Sediment Pollution Control Plan. This project issues on May 7, 2010, and bids will be opened on June 3, 2010, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. This project is financed by the Federal government under the authority given it by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328), 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,
Secretary

[Pa.B. Doc. No. 10-836. Filed for public inspection May 7, 2010, 9:00 a.m.]

proposals were submitted under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), and the Final Trading of Nutrient and Sediment Reduction Credits—Policy and Guidelines (Policy) (DEP ID# 392-0900-001) (see 36 Pa.B. 7999 (December 30, 2006)). The Policy calls for a transparent system of credit reviews and approvals.

Trading is a market-based program that provides incentives for entities to create nutrient reduction credits by going beyond statutory, regulatory or voluntary obligations and goals by removing nutrients from a watershed. The credits can be traded to help others more cost-effectively meet their obligations or goals. The primary purpose of the Trading Program is to provide for more efficient ways for National Pollutant Discharge Elimination System (NPDES) permittees to meet their effluent limits for nutrients and sediment. Currently, the focus of the program is on the Chesapeake Bay Watershed.

The proposals described in this notice relates to the submitted proposals through April 23, 2010.

Background

Before a credit can be used by an NPDES permittee, a three-step process is followed: (1) the credit or offset proposal must be approved; (2) it must be verified; and (3) it must be registered.

Approval is also known as certification, which is a written approval by the Department for the use of proposed or implemented activities to generate credits (in some cases the person generating the credits is not permitted to transfer them to another person, in which case they are called "offsets"). Certifications are based on at least: (1) a credit or offset proposal describing the qualifying activities that will reduce the nutrient loadings

Nutrient and Sediment Reduction Credit Trading Program; Notice of Proposals

The Department of Environmental Protection (Department) provides notice of the following proposals that have been submitted under the Nutrient and Sediment Reduction Credit Trading Program (Trading Program). These

delivered to the applicable watershed; (2) the calculation to quantify the pounds of reductions expected; and (3) a verification plan that, when implemented, ensures that the qualifying nutrient reduction activities have taken place. The proposals described in this Notice apply to the Chesapeake Bay Watershed.

Once the credits or offsets are certified, they must be verified. Verification means implementation of the verification plan contained in a certification, as required by the Department. Verification plans require annual submittal of documentation to the Department that demonstrates that the qualifying nutrient reduction activities have taken place for the applicable compliance year.

The credits or offsets also need to be registered by the Department before they can be used to meet effluent limits in an NPDES permit. Registration occurs only after credits or offsets have been certified and verified and a trading contract for credits has been submitted to the Department. For the Chesapeake Bay Watershed, the Department will register credits on an annual basis for use during the compliance year in which the qualifying nutrient reduction activities have taken place and will provide such credits with an annual registry number for reporting and tracking purposes.

The Department has received 88 proposals that have been submitted for review to generate nutrient reduction credits in the Chesapeake Bay Watershed. Of those, 58 have been approved, one has been withdrawn and the remaining need additional clarification prior to qualifying for certification.

New Proposals Under Review

The following new proposals are being reviewed by the Department. The Department will accept written comments on these proposed projects for 30 days.

<i>Proposal Applicant</i>	<i>Proposal Description</i>
TeamAG on behalf of Brubaker Farms	Nitrogen credits to be generated by the implementation of no-till and cover crops in Lancaster County.

For further information about this proposal or the Trading Program, or to submit comments, contact Ann Roda, Water Planning Office, Department of Environmental Protection, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4726, annsmith@state.pa.us or visit the Department's web site at www.depweb.state.pa.us (DEP Keywords: "Nutrient Trading").

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-837. Filed for public inspection May 7, 2010, 9:00 a.m.]

Pennsylvania's 2011 Ambient Air Monitoring Network Plan Available for Public Inspection

On October 17, 2006, the United States Environmental Protection Agency (EPA) promulgated final amendments to the National ambient air monitoring requirements for criteria pollutants at 40 CFR Parts 53 and 58 (relating to ambient air monitoring reference and equivalent methods; and ambient air quality surveillance). See 71 FR 61236 (October 17, 2006). The EPA's final rule requires state and local agencies to enhance air monitoring to

"improve public health protection and better inform the public about air quality in their communities." Under 40 CFR 58.10 (relating to annual monitoring network plan and periodic network assessment), air quality state and local monitoring agencies must adopt an annual air-monitoring network plan and make the plan available for public inspection for at least 30 days prior to final submission to the EPA Regional Administrator. The plan, which is due July 1, 2010, must include a statement of purpose for each monitor and evidence that siting and operation of each monitor meets Federal requirements. The EPA may also provide an opportunity for review and comment prior to approving or disapproving a State's Monitoring Network Plan.

On May 8, 2009, the 2010 Annual Air Monitoring Network Plan was made available for public comment on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us/dep/deputate/airwaste/aq/default.htm. The plan has been updated to address changes that have been made in this Commonwealth's ambient air monitoring network and to identify changes that are anticipated to occur in 2011.

The Bethlehem Hydrogen Sulfide monitoring site in Bethlehem (Northampton County) will be discontinued. This source-specific monitoring site is no longer needed since the source was permanently shut-down in 2006. The Department is also continuing its strategy to replace more manual PM2.5 samplers with continuous automated samplers that meet EPA's requirement of a Federal Equivalent Method (FEM). Use of the FEM samplers will improve the ability of the Department to provide real-time data on air quality as it relates to PM2.5 particulate matter, provide operational cost savings, and will still be used in determination of compliance with the National Ambient Air Quality Standards. In 2011, the Department will also determine whether the Biglerville ozone monitor installed to support Penn State University's research on the biological effects of ground-level ozone on agricultural crops, particularly grapes, will be discontinued.

The public is invited to submit comments on this network plan. Comments must be received by the Department on or before June 8, 2010. Written comments should be sent to the attention of Nicholas Lazor, Acting Chief, Division of Air Quality Monitoring, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468 or nlazor@state.pa.us. Use "Annual Monitoring Network Plan" as the subject line.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-838. Filed for public inspection May 7, 2010, 9:00 a.m.]

Small Water Systems Technical Assistance Center Advisory (TAC) Board; Legislation/Regulation Committee Meeting

The Legislation/Regulation Committee will hold a special meeting on June 2, 2010, from 10 a.m. in the 14th Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101.

The purpose of the meeting is to develop recommendations on revisions to the proposed fee language in 25 Pa. Code Chapter 109 (relating to safe drinking water) based on comments made at the March 9, 2010, meeting of the Small Water Systems Technical Assistance Center Advisory (TAC) Board.

Questions concerning this meeting should be directed to Janet Fisher at (717) 787-0122 or janfisher@state.pa.us. The agenda and meeting materials for this meeting will be available through the Public Participation Center on the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Department at (717) 787-0122 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-839. Filed for public inspection May 7, 2010, 9:00 a.m.]

Small Water Systems Technical Assistance Center Advisory (TAC) Board; Rescheduling of the Meeting Date

The May 21, 2010, meeting of the Small Water Systems Technical Assistance Center Advisory Board has been rescheduled to June 18, 2010. The meeting will begin at 10 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101.

The agenda and meeting materials for this meeting will be available through the Public Participation Center on the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us.

Questions concerning this meeting should be directed to Janet Fisher at (717) 787-0122 or janfisher@state.pa.us.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Department at (717) 783-6118 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-840. Filed for public inspection May 7, 2010, 9:00 a.m.]

Technical Advisory Committee on Diesel-Powered Equipment; Rescheduling of the Meeting Date

The July 14, 2010, meeting of the Technical Advisory Committee on Diesel-Powered Equipment has been rescheduled to July 7, 2010. The meeting will begin at 10 a.m. in the Bureau of Mine Safety Conference Room in the Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA.

Questions concerning this meeting should be directed to Allison D. Gaida at (724) 439-7289 or agaida@state.pa.us. The agenda and meeting materials for this meeting will be available through the Public Participation Center on the Department of Environmental Protection's (Department) web site at <http://www.depweb.state.pa.us>.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Department at (724) 439-7289 or through the

Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-841. Filed for public inspection May 7, 2010, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Bureau of Highway Safety and Traffic Engineering; Access Route Approval

Under the provisions of 75 Pa.C.S. § 4908 (relating to operation of certain combinations on interstate and certain other highways), the Department of Transportation approved on April 13, 2010, the following access routes for use by the types of truck combinations as indicated:

1. () 96" wide twin trailers (28-1/2' maximum length of each trailer).
2. (x) 102" wide 53' long trailer.
3. () 102" wide 48' long trailer.
4. () 102" wide twin trailers (28-1/2' maximum length—each)
5. () 102" wide maxi-cube.

<i>Route Identification</i>	<i>Route Description</i>	<i>Length Miles</i>
PA 507	From I-84 to SR 3001 (Hemlock Grove Road)	1.4
SR 3001 (Hemlock Grove Road)	From PA 507 to SR 3002 (Roemerville Road)	1.2
SR 3002 (Roemerville Road)	From SR 3001 (Hemlock Grove Road) to Mozzette Road (T-390)	3.2

Questions should be directed to Michael Dzurko at (717) 783-6080.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 10-842. Filed for public inspection May 7, 2010, 9:00 a.m.]

Bureau of Highway Safety and Traffic Engineering; Access Route Approval

Under the provisions of 75 Pa.C.S. § 4908 (relating to operation of certain combinations on interstate and certain other highways), the Department of Transportation approved on April 13, 2010, the following access routes for use by the types of truck combinations as indicated:

1. () 96" wide twin trailers (28-1/2' maximum length of each trailer).
2. (x) 102" wide 53' long trailer.
3. () 102" wide 48' long trailer.

4. () 102" wide twin trailers (28-1/2' maximum length—each)

5. () 102" wide maxi-cube.

The following municipality approved the access route within their jurisdiction:

Municipality

Greene Township

<i>Route Identification</i>	<i>Route Description</i>	<i>Length Miles</i>
Mozzette Road (T-390)	From SR 3002 (Roemerville Road) to 115 Mozzette Road	0.2

Questions should be directed to Michael Dzurko at (717) 783-6080.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 10-843. Filed for public inspection May 7, 2010, 9:00 a.m.]

FISH AND BOAT COMMISSION

2010 Classification of Wild Trout Streams; Additions and Adjustments to List

The Fish and Boat Commission (Commission) has approved additions and adjustments to its list of wild trout streams as published at 40 Pa.B. 1468 (March 13, 2010) with the exception of McIntire Run, Fayette County.

Under 58 Pa. Code § 57.11 (relating to listing of wild trout streams), it is the policy of the Commission to accurately identify and classify stream sections supporting naturally reproducing populations of trout as wild trout streams. The listing of a stream section as a wild trout stream is a biological designation that does not determine how it is managed. The Commission relies upon many factors in determining the appropriate management of streams. The Commission's Fisheries Management Division maintains the complete list of wild trout streams, and it is available on the Commission's web site at http://www.fish.state.pa.us/trout_repro.htm.

JOHN A. ARWAY,
Executive Director

[Pa.B. Doc. No. 10-844. Filed for public inspection May 7, 2010, 9:00 a.m.]

Additions to List of Class A Wild Trout Waters

The Fish and Boat Commission (Commission) has approved the additions to its list of Class A Wild Trout Streams as set forth at 40 Pa.B. 1466 (March 13, 2010). It is noted that the correct spelling for Burchards Creek in Pike County is "Burchards," not "Buchards" as stated in the notice.

Under 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource and to conserve that resource and the angling that it provides. Class A wild trout popula-

tions represent the best of this Commonwealth's naturally reproducing trout fisheries. The Commission manages these stream sections for wild trout with no stocking.

JOHN A. ARWAY,
Executive Director

[Pa.B. Doc. No. 10-845. Filed for public inspection May 7, 2010, 9:00 a.m.]

Special Regulation Re-Designation; Bowmans Creek, Wyoming County

The Fish and Boat Commission (Commission) has redefined the limits of the catch and release fly-fishing only area on Bowmans Creek that is regulated under 58 Pa. Code § 65.14 (relating to catch and release fly-fishing only areas). The redefined limits are as follows: "From the SR 292 bridge downstream to the confluence with Marsh Creek." This re-designation is effective upon publication of this notice in the *Pennsylvania Bulletin*.

JOHN A. ARWAY,
Executive Director

[Pa.B. Doc. No. 10-846. Filed for public inspection May 7, 2010, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Action Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10 a.m., Thursday, April 22, 2010, and announced the following:

Action Taken—Regulations Approved:

State Board of Psychology #16A-6315: Qualifications (amends 49 Pa. Code Chapter 41)

Department of Public Welfare #14:513: Family Violence and TANF and GA; and Support From Relatives Not Living With the Client (adds Chapter 108 to 55 Pa. Code and amends Chapter 187)

Department of Health #1-0-181: School Immunizations; Communicable and Noncommunicable Diseases (amends 28 Pa. Code Chapter 23, Subchapter C and Section 27.77)

Action Taken—Regulation Disapproved:

State Board of Veterinary Medicine #16A-5723: Biennial Renewal Fees (amends 49 Pa. Code § 31.41)

Approval Order

Public Meeting held
April 22, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fine-man, Esq.; Silvan B. Lutkewitte, III; John F. Mizner, Esq.

*State Board of Psychology—
Qualifications; Regulation No. 16A-6315 (#2763)*

On April 22, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regula-

tion from the State Board of Psychology (Board). This rulemaking amends 49 Pa. Code Chapter 41. The proposed regulation was published in the May 2, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 11, 2010.

This regulation amends and reformats the education, experience and examination requirements in the existing rules for applicants for licensure as psychologists. It will increase the number of hours of supervised experience required for applicants in one year from 1,500 to 1,750 hours.

We have determined this regulation is consistent with the statutory authority of the Board (63 P. S. §§ 1203.2(1), 1206(a)(2), 1208(a)(6)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
April 22, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fineman, Esq.; Silvan B. Lutkewitte, III; John F. Mizner, Esq.

*Department of Public Welfare—
Family Violence and TANF and GA; and Support
From Relatives Not Living With the Client;
Regulation No. 14-513 (#2713)*

On August 5, 2008, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Public Welfare (Department). This rulemaking adds Chapter 108 to 55 Pa. Code and amends Chapter 187. The proposed regulation was published in the August 16, 2008 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 11, 2010.

This regulation officially codifies the Family Violence Option (FVO), which the Department adopted from the federal program in its 1997 state plan. FVO allows additional funding to be provided to families or individuals that can demonstrate they are dealing with domestic violence. FVO also would allow the Department to waive various TANF and General Assistance requirements if the individual or family can show that complying with any of these requirements would put the recipient at further risk of domestic violence.

We have determined this regulation is consistent with the statutory authority of the Department (62 P. S. §§ 201(2) and 403(b)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
April 22, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fineman, Esq.; Silvan B. Lutkewitte, III; John F. Mizner, Esq.

*Department of Health—
School Immunizations; Communicable
and Noncommunicable Diseases;
Regulation No. 10-181 (#2672)*

On January 24, 2008, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Health (Department). This rulemaking amends 28 Pa. Code Chapter 23, Subchapter C and Section 27.77. The proposed regulation was published in the February 9, 2008 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 22, 2010.

This regulation updates immunization requirements for school attendance and child care group settings.

We have determined this regulation is consistent with the statutory authority of the Department (35 P. S. § 521.16(a) and 24 P. S. § 13-1303a) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Disapproval Order

Public Meeting held
April 22, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fineman, Esq.; Silvan B. Lutkewitte, III; John F. Mizner, Esq.

*State Board of Veterinary Medicine—
Biennial Renewal Fees; Regulation No. 16A-5723 (#2788)*

On September 2, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Veterinary Medicine (Board). This rulemaking amends 49 Pa. Code § 31.41. The proposed regulation was published in the September 19, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 11, 2010.

This rulemaking would provide for incremental biennial license renewal fee increases for veterinarians and veterinary technicians for the next six biennial renewal cycles. The current renewal fee for veterinarians is \$300 and the current renewal fee for veterinary technicians is \$75. The renewal fees at the end of the 2020-2022 biennial period will be \$590 for veterinarians and \$140 veterinary technicians.

Subsections 13(a), (b) and (c) of the Veterinary Medicine Practice Act (Act) (63 P.S. § 485.13(a), (b) and (c)) establish the Board's authority for setting and raising fees. Those sections state the following:

(a) The board shall, by regulation, fix the fees required for examination, licensure, certification, registration, renewal of licenses and registrations, renewal of certificates and temporary permits.

(b) If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures **over a two-year period**, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures. (Emphasis added.)

(c) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board pursuant to subsections (a) and (b) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board, shall increase the fees by regulation so that adequate revenues are raised to meet the required enforcement effort.

In our comments on the proposed rulemaking, we asked the Board to explain how the increases conform to the intent of the General Assembly and Section 13 of the Act. We also questioned the Board's statutory authority for automatic fee increases that may or may not be needed to meet expenditures ten years in the future. The Board responded, "Section 13 (b) does not limit the Board to looking only 2 years into the future when projecting a budget surplus." In addition, we asked the Board if its financial condition improves, will the fees be decreased accordingly? The Board responded, "The Board will carefully monitor its expenditures and will stabilize or decrease the fees by regulation if they are needed."

Based on this response and the Board's explanation at our public meeting, we have concluded that this regulation is not consistent with the intention of the General Assembly. We do not believe the Board's proposal for incremental biennial renewal fees over six renewal cycles is consistent with the intent of the Act. By imposing a two-year time period in statute, we believe the General Assembly's intent was to require the Board to evaluate its revenues and expenditures, and adjust those revenues and expenditures, more frequently than once every ten years. In addition, we believe that the two-year statutory time period reflects the General Assembly's intent that Board fee adjustments be reviewed by this Commission and by the General Assembly more frequently than once every ten years. Accordingly, we believe that a regulatory scheme of incremental fee increases over any period beyond two years is a decision that should be made by the General Assembly.

In addition, we find promulgation of this regulation is not in the public interest because of the potential fiscal impact it could have on the regulated community. Based on numerous factors, the projections that formed the basis for this proposed rulemaking could be understated or overstated. If they are overstated, the fees collected could lead to a large surplus and the Board has no statutory obligation to readjust the fees in favor of the regulated community. While we commend the Board for committing to monitoring its expenditures and adjusting the fees accordingly, we believe any potential surplus should be in the hands of the veterinarians and veterinary technicians instead of the Board.

By Order of the Commission:

This regulation #16A-5723 (IRRC #2788) from the State Board of Veterinary Medicine; Biennial Renewal Fees is disapproved on April 22, 2010.

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 10-847. Filed for public inspection May 7, 2010, 9:00 a.m.]

INSURANCE DEPARTMENT

Andrew and Annelisa Davis; Hearing

**Appeal of Andrew and Annelisa Davis
under 40 P. S. §§ 991.2101—991.2193);
Aetna Health Inc.; Doc. No. HC10-04-015**

Under 40 P. S. §§ 991.2101—991.2193, notice is given that the appellants in this action have requested a hearing, in connection with the appellants' managed health care plan. The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant procedure provisions of law.

A prehearing telephone conference initiated by the Administrative Hearings Office shall be conducted on June 2, 2010, at 10 a.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 28, 2010. A date for a hearing shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before May 18, 2010, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any shall be filed on or before June 1, 2010.

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) 705-4194.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-848. Filed for public inspection May 7, 2010, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has 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 insured automobile policies. The hearings will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to 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 hearing 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 hearing will be held in the Bureau of Consumer Services, Philadelphia Regional Office, Fairmount Hearing Room, 801 Market Street, Philadelphia, PA 19107.

Appeal of Eugene and Michael Goldenberg; file no. 10-216-85637; Travelers Insurance Company; Doc. No. PH10-04-012; June 11, 2010, 11 a.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) 705-4194.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-849. Filed for public inspection May 7, 2010, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insured has 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 insured's policies. The administrative hearing will be held in the Insurance Department's regional offices 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 Bureau of Consumer Services, Philadelphia Regional Office, Fairmount Hearing Room, 801 Market Street, Philadelphia, PA 19107.

Appeal of Patricia Fountain; file no. 10-216-84965; State Farm Fire & Casualty Insurance Company; Doc. No. PH10-04-016; June 11, 2010, 1 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) 705-4194.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-850. Filed for public inspection May 7, 2010, 9:00 a.m.]

JOINT COMMITTEE ON DOCUMENTS

Request for Information

Background

The Joint Committee on Documents oversees publication of the *Pennsylvania Bulletin*, the weekly register of the Commonwealth, which contains official documents of the three branches of State Government, the most significant being administrative regulations, and the *Pennsylvania Code*, the codification of State administrative regulations.

The current contract, with Fry Communications, is a printing contract for both the *Pennsylvania Bulletin* and the *Pennsylvania Code*, with a requirement for electronic access in each case.

Goal

The Joint Committee is considering a major transformation under which the publication of the *Pennsylvania Bulletin* will remain a printing contract with a requirement for electronic access but the publication of the *Pennsylvania Code* will become an electronic access contract with a requirement for limited printing.

Solicitation

The Joint Committee is seeking plans and approaches for meeting the stated goal from responsible legal publishers.

Contact: Mary Jane Phelps, Director, PA Code & Bulletin, Room 647, Main Capitol Building, Harrisburg, PA 17120, (717) 783-1530.

MARY JANE PHELPS,
Secretary

[Pa.B. Doc. No. 10-851. Filed for public inspection May 7, 2010, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The Liquor Control Board Lease will expire:

Philadelphia County, Wine & Spirits Store #5110 (Relocation), 60th and Spruce Streets, Philadelphia, PA

Lease expiration date: July 31, 2008

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space in a 1/2 mile radius of 60th and Spruce Streets, Philadelphia, PA.

Proposals due: May 28, 2010, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, 7116 Ridge Avenue, Philadelphia, PA 19128-3250
Contact: Henry Blocker, Jr., (215) 482-9670
PATRICK J. STAPLETON, III,
Chairperson

[Pa.B. Doc. No. 10-852. Filed for public inspection May 7, 2010, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 May 24, 2010. 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.

Applications of the following for approval to *begin* operating as *common carriers* for transportation of *persons* as described under each application.

A-2010-2171719. Aabsolute Car and Limousine Service, LLC, t/a Aabsolute Car & Limousine Service (111 Argyll Court, Downingtown, Delaware County, PA 19335)—a limited liability company of the Commonwealth, to begin to transport, as a common carrier, by motor vehicle, persons, in limousine service, between points in the Counties of Delaware, Montgomery, Chester and Bucks; excluding service that is under the jurisdiction of the Philadelphia Parking Authority.

A-2010-2172410. Koot Limo Car, LLC (1610 Norwood House Road, Downingtown, Chester County, PA 19335), a limited liability company of the Commonwealth—for the right to transport, as a common carrier, by motor vehicle, persons in limousine service, from points in the Counties of Chester, Delaware and Montgomery to points in Pennsylvania, and return; excluding service that is under the jurisdiction of the Philadelphia Parking Authority.

Applications 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 each application.

A-2010-172229. Suson Elizabeth Akakpo-Martin (1 Horseshoe Drive, Middletown, Dauphin County, PA 17057)—to discontinue service as a common carrier, by motor vehicle, at A-6410462, authorizing the transportation, as a common carrier, by motor vehicle, persons, in paratransit service, from points in the Counties of Dauphin and Cumberland, to points in Pennsylvania, and return.

A-2010-2171578. E.D.S. Transportation Systems, Inc., t/a Bella Notte Limousine (118 Sandy Drive, Unit No. 6, Newark, DE 19713)—for the discontinuance of service and cancellation of its certificate, as a common carrier, by motor vehicle, authorizing the transportation of persons in limousine service, between points in Pennsylvania.

A-2010-2172421. John Henry Briggs, III (24291 Highway 89 and 77, Spartansburg, Crawford County, PA 16434)—discontinuance of service—persons, in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, between points in the Counties of Crawford and Erie, and from points in said counties to points in Pennsylvania, and return.

A-2010-2172493. Leroy Gevin (32 West Pearl Street, Apt. 303, Albion, Crawford County, PA 16401-1040)—discontinuance of service—persons, in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the County of Crawford to points in Pennsylvania, and return.

Application of the following for approval to *begin* operating as a *broker* for transportation of *persons* as described under the application.

A-2010-2172497. Medical Transportation Management, Inc., t/a Medical Transportation Management of Pennsylvania (16 Hawke Ridge Drive, Lake St. Louis, St. Charles County, MO 63367)—for a brokerage license evidencing the Commission's approval of the right and privilege to operate as a broker, to arrange for the transportation of persons between points in Pennsylvania. *Attorney:* Steven K. Haas, 100 North 10th Street, Harrisburg, PA 17101.

Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Golden Limousine Service, Inc.; Doc. No. C-2010-2162084

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 Golden Limousine Service, Inc., Respondent, maintains its principal place of business at 1315 Church Road, Oreland, PA 19075.
2. That Respondent was issued a Certificate of Public Convenience by this Commission on March 9, 2000, at Application Docket No. A-00116325.
3. That on December 20, 2007, Respondent received an initial assessment of \$179.00. On August 1, 2008, the Commission waived \$59.67 of Respondent's initial assessment. On August 29, 2008, Respondent received an initial assessment of \$184.00, and on September 9, 2009, Respondent received an initial assessment of \$147.00. Respondent failed to pay these assessments, as well as the remainder of its 2007 assessment; therefore, a balance was due in the amount of \$450.33.
4. That Respondent has an outstanding assessment of \$450.33.
5. That Respondent failed to file objections to the assessment, pursuant to 66 Pa.C.S. § 510(c).
6. That Respondent, by failing to pay the assessment, violated the Public Utility Code at 66 Pa.C.S. § 510(c).

Wherefore, unless Respondent pays the overdue assessment in full within twenty days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue an Order which cancels the Certificate of Public Convenience issued to Respondent, notifies the Pennsylvania Department of Revenue that Respondent's Certificate of Public Convenience has been revoked, notifies Respondent's insurance carrier that Respondent's Certificate of Public Convenience has been revoked, and imposes an additional fine on the Respondent.

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 to be able to prove the 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
Division
Bureau of Transportation and Safety

NOTICE

A. You must file an Answer within twenty 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). 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 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 days, 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.

C. You may elect not to contest this Complaint by paying your outstanding assessment within twenty (20) days. Your certified check or money order for the assessment should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Bureau of Administrative Services
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request the Commission to issue an Order imposing a penalty (see Paragraph B). 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 penalty set forth in Paragraph B.

F. If you have questions regarding this Complaint, or if you would like an alternative format of this Complaint for persons with disabilities, please contact the Compliance Office at 717-787-1227.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-853. Filed for public inspection May 7, 2010, 9:00 a.m.]

Wastewater Service

A-2010-2172595. Allied Utility Services, Inc. Application of Allied Utility Services, Inc. for approval of the right to offer, render, furnish or supply wastewater service to the public in the Meadow Creek Residential Subdivision within the Township of North Whitehall, Lehigh County, PA.

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 May 24, 2010. 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: Allied Utility Services, Inc.

Through and By Counsel: John A. Alzamora, Esquire, Charles E. Thomas, III, Esquire, Thomas, Long, Niesen and Kennard, 212 Locust Street, P. O. Box 9500, Harrisburg, PA 17108-9500

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-854. Filed for public inspection May 7, 2010, 9:00 a.m.]

PENNSYLVANIA STIMULUS OVERSIGHT COMMISSION

Public Meeting

The next public meeting of the Pennsylvania Stimulus Oversight Commission is scheduled for Thursday, May 13, 2010, at 11:30 a.m. in Hearing Room 1, Keystone Building, 400 North Street, Harrisburg, PA 17120.

RONALD NAPLES,
Chairperson

[Pa.B. Doc. No. 10-855. Filed for public inspection May 7, 2010, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project No. 10-037.B, On-Call Services, Concrete Investigation and Repairs, PRPA Piers until 2 p.m. on Thursday, June 3, 2010. The bid documents can be obtained from the PRPA web site www.philaport.com and available May 11, 2010. PRPA is an Equal Opportunity Employer. The contractor must comply with all applicable EOE laws. A mandatory prebid job site meeting will be held May 20, 2010, 10 a.m. at PRPA's main office, 3460 North Delaware Avenue, Philadelphia, PA 19134. Bidders must provide to the procurement department in writing (24 hours prior to the meeting), the names of individuals that will be attending, fax to (215) 426-6800, Attn: Procurement Department.

JAMES T. McDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 10-856. Filed for public inspection May 7, 2010, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

The Susquehanna River Basin Commission (Commission) has approved the following list of projects during the period of February 1, 2010, through March 31, 2010.

For further information, contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, (717) 238-0423, Ext. 304, fax (717) 238-2436, srichardson@srbc.net, or mail inquiries to Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

Supplementary Information

This notice lists the projects, described as follows, receiving approval for the consumptive use of water under the Commission's approval by rule process set forth in 18 CFR 806.22(e) and (f) for the time period specified previously:

Approvals By Rule Issued Under 18 CFR 806.22(e):

1. Allegheny Energy Supply Company, LLC, Hunlock Creek Unit 4, ABR-20100316, Hunlock Township, Luzerne County, PA; Approval Date: March 9, 2010.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Southwestern Energy Company, Pad ID: Ferguson; ABR-20100201, Herrick Township, Bradford County, PA; Approval Date: February 1, 2010.

2. Chief Oil & Gas, LLC, Pad ID: Bacon Drilling Pad No. 1; ABR-20100202, Burlington Township, Bradford County, PA; Approval Date: February 2, 2010.

3. XTO Energy Incorporated, Pad ID: TLT, ABR-20100203, Jordan Township, Lycoming County, PA; Approval Date: February 2, 2010.

4. Alta Operating Company, LLC, Pad ID: Blye Pad Site, ABR-20100204, Middletown Township, Susquehanna County, PA; Approval Date: February 8, 2010.

5. Chief Oil & Gas, LLC, Pad ID: Kensinger 3H Drilling Pad No. 1, ABR-20100205, Penn Township, Lycoming County, PA; Approval Date: February 9, 2010.

6. Chesapeake Appalachia, LLC, Pad ID: Yengo, ABR-20100206, Cherry Township, Sullivan County, PA; Approval Date: February 9, 2010.

7. Anadarko E&P Company, LP, Pad ID: Texas Blockhouse F&G Pad B, ABR-20100207, Pine Township, Lycoming County, PA; Approval Date: February 9, 2010.

8. Seneca Resources Corporation; Pad ID: Wilcox Pad F, ABR-20090505.1, Covington Township, Tioga County, PA; Approval Date: February 9, 2010.

9. Seneca Resources Corporation, Pad ID: DCNR 595 Pad D, ABR-20090827.1, Bloss Township, Tioga County, PA; Approval Date: February 9, 2010, including a partial waiver of 18 CFR 806.15.

10. East Resources, Inc., Pad ID: Ackley 806, ABR-20100208, Clymer Township, Tioga County, PA; Approval Date: February 11, 2010.

11. XTO Energy, Incorporated, Pad ID: Kepner 8503H, ABR-20100209, Shrewsbury Township, Lycoming County, PA; Approval Date: February 11, 2010.

12. Chesapeake Appalachia, LLC, Pad ID: Dan Ellis, ABR-20100210, Monroe Township, Bradford Township, PA; Approval Date: February 11, 2010.
13. XTO Energy, Incorporated, Pad ID: Hazlak 8504, ABR-20100211, Shrewsbury Township, Lycoming County, PA; Approval Date: February 12, 2010.
14. Fortuna Energy, Inc., Pad ID: Putnam 01 077, ABR-20100212, Armenia Township, Bradford County, PA; Approval Date: February 12, 2010.
15. Fortuna Energy, Inc., Pad ID: Lutz 01 015, ABR-20100213, Troy Township, Bradford County, PA; Approval Date: February 12, 2010.
16. Chief Oil & Gas, LLC, Pad ID: Dale Bower Drilling Pad No. 1, ABR-20100214, Penn Township, Lycoming County, PA; Approval Date: February 15, 2010.
17. Cabot Oil & Gas Corporation, Pad ID: BerryD P1, ABR-20100215, Dimock Township, Susquehanna County, PA; Approval Date: February 17, 2010.
18. Chesapeake Appalachia, LLC, Pad ID: Masso, ABR-20100216, Auburn Township, Susquehanna Township, PA; Approval Date: February 18, 2010.
19. Chesapeake Appalachia, LLC, Pad ID: Welles 5, ABR-20100217, Terry Township, Bradford Township, PA; Approval Date: February 19, 2010.
20. WhitMar Exploration Company, Pad ID: Farrell 1H, ABR-20100218, Lake Township, Luzerne County, PA; Approval Date: February 19, 2010.
21. Fortuna Energy, Inc., Pad ID: DCNR 587 02 018, ABR-20100219, Ward Township, Tioga County, PA; Approval Date: February 19, 2010.
22. Seneca Resources Corporation, Pad ID: J. Pino Pad G, ABR-20090717.1, Covington Township, Tioga County, PA; Approval Date: February 19, 2010.
23. Seneca Resources Corporation, Pad ID: D. M. Pino Pad H, ABR-20090933.1, Covington Township, Tioga County, PA; Approval Date: February 19, 2010.
24. Fortuna Energy, Inc., Pad ID: DCNR 587 02 008, ABR-20100220, Ward Township, Tioga County, PA; Approval Date: February 22, 2010.
25. East Resources, Inc., Pad ID: Burt 518, ABR-20100221, Richmond Township, Tioga County, PA; Approval Date: February 22, 2010.
26. East Resources, Inc., Pad ID: Cascarino 443, ABR-20100222, Shippen Township, Tioga County, PA; Approval Date: February 22, 2010.
27. Fortuna Energy, Inc., Pad ID: Longenecker 03 008, ABR-20100223, Columbia Township, Bradford County, PA; Approval Date: February 22, 2010.
28. Chief Oil & Gas, LLC, Pad ID: Kupscznk Drilling Pad No. 1H, ABR-20100224, Springville Township, Susquehanna County, PA; Approval Date: February 22, 2010.
29. Fortuna Energy, Inc., Pad ID: Harvest Holdings 01 036, ABR-20100225, Canton Township, Bradford County, PA; Approval Date: February 22, 2010.
30. East Resources, Inc., Pad ID: Salese 802, ABR-20100226, Clymer Township, Tioga County, PA; Approval Date: February 23, 2010.
31. WhitMar Exploration Company, Pad ID: Lansberry Perry 1V, ABR-20100227, Lehman Township, Luzerne County, PA; Approval Date: February 23, 2010.
32. Chief Oil & Gas, LLC, Pad ID: Stone Drilling Pad No. 1, ABR-20100228, Springville Township, Susquehanna County, PA; Approval Date: February 25, 2010.
33. East Resources, Inc., Pad ID: Sharretts 805, ABR-20100229, Clymer Township, Tioga County, PA; Approval Date: February 25, 2010.
34. Fortuna Energy, Inc., Pad ID: Barrett 03 009, ABR-20100230, Columbia Township, Bradford County, PA; Approval Date: February 25, 2010.
35. Cabot Oil & Gas Corporation, Pad ID: RussoB P1, ABR-20100231, Springville Township, Susquehanna County, PA; Approval Date: February 26, 2010.
36. Fortuna Energy, Inc., Pad ID: Boor 03 015, ABR-20100232, Columbia Township, Bradford County, PA; Approval Date: February 26, 2010.
37. Fortuna Energy, Inc., Pad ID: Putnam 01 076, ABR-20100233, Armenia Township, Bradford County, PA; Approval Date: February 26, 2010.
38. WhitMar Exploration Company, Pad ID: Buda 1H, ABR-20100301, Fairmount Township, Luzerne County, PA; Approval Date: March 1, 2010.
39. Talisman Energy USA, Inc., Pad ID: Morgan 01 074, ABR-20100302, Armenia Township, Bradford County, PA; Approval Date: March 1, 2010.
40. Anadarko E&P Company, LP, Pad ID: COP Tract 255A, ABR-20100303, Snow Shoe Township, Centre County, PA; Approval Date: March 1, 2010, including a partial waiver of 18 CFR 806.15.
41. Anadarko E&P Company, LP, Pad ID: COP Tract 231C, ABR-20100304, Boggs Township, Centre County, PA; Approval Date: March 1, 2010, including a partial waiver of 18 CFR 806.15.
42. Chesapeake Appalachia, LLC, Pad ID: Updike, ABR-20100305, West Burlington Township, Bradford County, PA; Approval Date: March 1, 2010.
43. EXCO Resources (PA), Inc., Pad ID: Bogumil, ABR-20100306, North Abington Township, Lackawanna County, PA; Approval Date: March 1, 2010.
44. Seneca Resources Corporation, Pad ID: DCNR 595 Pad E, ABR-20100307, Blossburg Borough, Tioga County, PA; Approval Date: March 1, 2010, including a partial waiver of 18 CFR 806.15.
45. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 013, ABR-20100308, Ward Township, Tioga County, PA; Approval Date: March 1, 2010.
46. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 014, ABR-20100309, Ward Township, Tioga County, PA; Approval Date: March 1, 2010.
47. Cabot Oil & Gas Corporation, Pad ID: KellyP P1, ABR-20100310, Dimock Township, Susquehanna County, PA; Approval Date: March 3, 2010.
48. East Resources, Inc., Pad ID: Parthemer 284, ABR-20100311, Charleston Township, Tioga County, PA; Approval Date: March 3, 2010.
49. Chesapeake Appalachia, LLC, Pad ID: Cappucci, ABR-20100312, Mehoopany Township, Wyoming County, PA; Approval Date: March 5, 2010.
50. Novus Operating, LLC, Pad ID: Austinburg 1H, ABR-20100313, Brookfield Township, Tioga County, PA; Approval Date: March 8, 2010.

51. Ultra Resources, Inc., Pad ID: Paul 906, ABR-20100314, West Branch Township, Potter County, PA; Approval Date: March 8, 2010.
52. XTO Energy Incorporated, Pad ID: Dietterick, ABR-20100315, Jordan Township, Lycoming County, PA; Approval Date: March 9, 2010.
53. Seneca Resources Corporation, Pad ID: Murray Pad A, ABR-2010317, Richmond Township, Tioga County, PA; Approval Date: March 10, 2010.
54. Chesapeake Appalachia, LLC, Pad ID: Otis, ABR-20100318, Herrick Township, Bradford County, PA; Approval Date: March 10, 2010.
55. Chesapeake Appalachia, LLC, Pad ID: Claude, ABR-20100319, Auburn Township, Susquehanna County, PA; Approval Date: March 10, 2010.
56. Chesapeake Appalachia, LLC, Pad ID: Sivers, ABR-20100320, Tuscarora Township, Bradford County, PA; Approval Date: March 10, 2010.
57. Chesapeake Appalachia, LLC, Pad ID: Marbaker, ABR-20100321, Auburn Township, Susquehanna County, PA; Approval Date: March 11, 2010.
58. Cabot Oil & Gas Corporation, Pad ID: HinkleyR P1, ABR-20100322, Springville Township, Susquehanna County, PA; Approval Date: March 12, 2010.
59. Chesapeake Appalachia, LLC, Pad ID: Engelke, ABR-20100323, Troy Township, Bradford County, PA; Approval Date: March 12, 2010.
60. Chesapeake Appalachia, LLC, Pad ID: Acla, ABR-20100324, Terry Township, Bradford County, PA; Approval Date: March 15, 2010.
61. Cabot Oil & Gas Corporation, Pad ID: BlaisureJo P1, ABR-20100325, Jessup Township, Susquehanna County, PA; Approval Date: March 15, 2010.
62. Cabot Oil & Gas Corporation, Pad ID: RussoB P2, ABR-20100326, Springville Township, Susquehanna County, PA; Approval Date: March 15, 2010.
63. Chesapeake Appalachia, LLC, Pad ID: Rose, ABR-20100327, Towanda Township, Bradford County, PA; Approval Date: March 16, 2010.
64. Chesapeake Appalachia, LLC, Pad ID: Hoffman, ABR-20100328, Towanda Township, Bradford County, PA; Approval Date: March 17, 2010.
65. Chesapeake Appalachia, LLC, Pad ID: Walt, ABR-20100329, Albany Township, Bradford County, PA; Approval Date: March 17, 2010.
66. East Resources, Inc., Pad ID: Waskiewicz 445, ABR-20100330, Delmar Township, Tioga County, PA; Approval Date: March 17, 2010.
67. Cabot Oil & Gas Corporation, Pad ID: WarnerA P1, ABR-20100331, Dimock Township, Susquehanna County, PA; Approval Date: March 17, 2010.
68. Chesapeake Appalachia, LLC, Pad ID: Kalinowski, ABR-20100332, West Burlington Township, Bradford County, PA; Approval Date: March 18, 2010.
69. Cabot Oil & Gas Corporation, Pad ID: GrosvenorD P1, ABR-20100333, Dimock Township, Susquehanna County, PA; Approval Date: March 18, 2010.
70. Chief Oil & Gas, LLC, Pad ID: Duane Jennings Drilling Pad No. 1, ABR-20100334, Granville Township, Bradford County, PA; Approval Date: March 22, 2010.
71. East Resources, Inc., Pad ID: Webster 549, ABR-20100335, Delmar Township, Tioga County, PA; Approval Date: March 22, 2010.
72. Chief Oil & Gas, LLC, Pad ID: Kingsley Drilling Pad No. 1, ABR-20100336, Monroe Township, Bradford County, PA; Approval Date: March 23, 2010.
73. Chief Oil & Gas, LLC, Pad ID: Sechrist Drilling Pad No. 1, ABR-20100337, Canton Township, Bradford County, PA; Approval Date: March 23, 2010.
74. Chief Oil & Gas, LLC, Pad ID: Ransom Drilling Pad No. 1, ABR-20100338, Lenox Township, Susquehanna County, PA; Approval Date: March 23, 2010.
75. Chesapeake Appalachia, LLC, Pad ID: Elevation, ABR-20100339, North Towanda Township, Bradford County, PA; Approval Date: March 24, 2010.
76. Chesapeake Appalachia, LLC, Pad ID: Lundy, ABR-20100340, Standing Stone Township, Bradford County, PA; Approval Date: March 24, 2010.
77. Chesapeake Appalachia, LLC, Pad ID: Plymouth, ABR-20100341, Terry Township, Bradford County, PA; Approval Date: March 24, 2010.
78. Chesapeake Appalachia, LLC, Pad ID: Leaman, ABR-20100342, West Burlington Township, Bradford County, PA; Approval Date: March 24, 2010.
79. Cabot Oil & Gas Corporation, Pad ID: Depaola P1, ABR-20100343, Dimock Township, Susquehanna County, PA; Approval Date: March 25, 2010.
80. Ultra Resources, Inc., Pad ID: 808 Thomas, ABR-20100344, Elk Township, Tioga County, PA; Approval Date: March 26, 2010.
81. Chesapeake Appalachia, LLC, Pad ID: Schoonover, ABR-20100345, Wysox Township, Bradford County, PA; Approval Date: March 26, 2010.
82. Penn Virginia Oil & Gas Corporation, Pad ID: Kibbe No. 1, ABR-20100346, Harrison Township, Potter County, PA; Approval Date: March 27, 2010.
83. Talisman Energy USA, Inc., Pad ID: Moretz 03 036, ABR-20100347, Wells Township, Bradford County, PA; Approval Date: March 27, 2010.
84. Chesapeake Appalachia, LLC, Pad ID: Rosalie, ABR-20100348, Windham Township, Wyoming County, PA; Approval Date: March 29, 2010.
85. Anadarko E&P Company, LP, Pad ID: COP Tract 342 D, ABR-20100349, Beech Creek Township, Clinton Township, PA; Approval Date: March 29, 2010, including a partial waiver of 18 CFR 806.15.
86. East Resources, Inc., Pad ID: Cummings 823, ABR-20100350, Chatham Township, Tioga County, PA; Approval Date: March 29, 2010.
87. East Resources, Inc., Pad ID: Bartlett 531, ABR-20100351, Richmond Township, Tioga County, PA; Approval Date: March 29, 2010.
88. EOG Resources, Inc., Pad ID: PHC Pad B, ABR-20100352, Lawrence Township, Clearfield County, PA; Approval Date: March 29, 2010.
89. EOG Resources, Inc., Pad ID: PHC Pad A, ABR-20100353, Lawrence Township, Clearfield County, PA; Approval Date: March 29, 2010.
90. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 005, ABR-20100354, Ward Township, Tioga County, PA; Approval Date: March 30, 2010.

91. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 006, ABR-20100355, Ward Township, Tioga County, PA; Approval Date: March 30, 2010.

92. Turm Oil, Inc., Pad ID: J. Bowen, ABR-20100356, Rush Township, Susquehanna County, PA; Approval Date: March 30, 2010.

93. Turm Oil, Inc., Pad ID: L. Hardic, ABR-20100357, Rush Township, Susquehanna County, PA; Approval Date: March 30, 2010.

94. Turm Oil, Inc., Pad ID: B Poulsen, ABR-20100358, Auburn Township, Susquehanna County, PA; Approval Date: March 30, 2010.

95. Turm Oil, Inc., Pad ID: La Rue, ABR-20100359, Rush Township, Susquehanna County, PA; Approval Date: March 30, 2010.

96. Turm Oil, Inc., Pad ID: MJ Barlow, ABR-20100360, Auburn Township, Susquehanna County, PA; Approval Date: March 30, 2010.

Authority: Pub. L. No. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806—808. Date: April 26, 2010.

PAUL O. SWARTZ,
Executive Director

[Pa.B. Doc. No. 10-857. Filed for public inspection May 7, 2010, 9:00 a.m.]

Public Hearing and Meeting

Susquehanna River Basin Commission (Commission) held its regular business meeting on March 18, 2010, in State College, PA. The Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: 1) approved and tabled certain water resources projects; 2) rescinded approval for a water resources project; and 3) approved settlements involving three water resources projects. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

For further information contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, (717) 238-0423, Ext. 304, fax (717) 238-2436, srichardson@srbc.net. Regular mail inquiries may be sent to Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

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) a presentation by the Department of Conservation and Natural Resources Deputy Secretary for Parks & Forestry James Grace on Marcellus Shale natural gas leasing in state forests in this Commonwealth; 2) an update on the implementation of the Commission Remote Water Quality Monitoring Network; 3) a report on hydrologic conditions in the Susquehanna Basin with an emphasis on National Flood Safety Week; 4) approval/ratification of one grant related to the Susquehanna Flood Forecast and Warning System, and five contracts related to ArcGIS, establishment of a Commission satellite office in Sayre, PA, consulting services for instream flow studies, aquatic resource surveys, and flood mapping; 5) ratified the

Executive Director's retention of outside counsel and other professional services regarding the relicensing proceedings for lower Susquehanna River hydroelectric projects; and 6) approved a revision of the Fiscal Year (FY) 2011 Budget. The Commission also heard counsel's report on legal matters affecting the Commission and recognized retiring Chief Administrative Officer Duane A. Friends for his 25 years of valuable service.

The Commission convened a public hearing and took the following actions:

Public Hearing—Compliance Actions

The Commission approved a settlement in lieu of civil penalties for the following projects:

1. Chesapeake Energy Corporation—Eastern Division. Pad ID: Ward (ABR-20090519), Burlington Township, and Sullivan 1 (ABR-20080715), Athens Township, Bradford County, PA—\$20,000.

2. Novus Operating, LLC. Pad ID: Sylvester 1H and North Fork 1H, Brookfield Township, Tioga County, PA—\$100,000.

3. Southwestern Energy Production Company. Pad ID: Ferguson, Wyalusing Township, Bradford County, PA—\$50,000.

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Carrizo Oil & Gas, Inc. (Mosquito Creek—Hoffman), Karthaus Township, Clearfield County, PA. Surface water withdrawal of up to 0.720 mgd.

2. Project Sponsor and Facility: EQT Production Company (West Branch Susquehanna River—Kuntz), Greenwood Township, Clearfield County, PA. Surface water withdrawal of up to 0.900 mgd.

3. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (West Branch Susquehanna River—Johnson), Clinton Township, Lycoming County, PA. Surface water withdrawal of up to 0.999 mgd.

4. Project Sponsor and Facility: Fortuna Energy, Inc. (Fall Brook—Bense), Troy Township, Bradford County, PA. Surface water withdrawal of up to 1.000 mgd.

5. Project Sponsor and Facility: Fortuna Energy, Inc. (Unnamed Tributary to North Branch Sugar Creek—Besley), Columbia Township, Bradford County, PA. Surface water withdrawal of up to 2.000 mgd.

6. Project Sponsor and Facility: Fortuna Energy, Inc. (South Branch Sugar Creek—Shedden), Troy Township, Bradford County, PA. Surface water withdrawal of up to 0.900 mgd.

7. Project Sponsor and Facility: Fortuna Energy, Inc. (Sugar Creek—Hoffman), West Burlington Township, Bradford County, PA. Surface water withdrawal modification increase from 0.250 mgd up to 2.000 mgd (Docket No. 20090327).

8. Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, PA. Groundwater withdrawal of 0.050 mgd (30-day average) from the Plant Make-up Well.

9. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, PA. Modification to project features of the withdrawal approval (Docket No. 19900715).

10. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, PA. Modification to add a groundwater

withdrawal of 0.585 mgd (30-day average) from Well CW-20 to the remediation system, without any increase to total system withdrawal quantity (Docket No. 19980901).

11. Project Sponsor and Facility: Healthy Properties, Inc. (Sugar Creek—owner), North Towanda Township, Bradford County, PA. Surface water withdrawal of up to 0.450 mgd.

12. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek—Deer Park Lumber, Inc.), Tunkhannock Township, Wyoming County, PA. Surface water withdrawal of up to 0.999 mgd.

13. Project Sponsor and Facility: Randy M. Wiernusz (Bowman Creek—owner), Eaton Township, Wyoming County, PA. Surface water withdrawal of up to 0.249 mgd.

14. Project Sponsor and Facility: TerraAqua Resource Management (Tioga River—Losey), Lawrenceville Borough, Tioga County, PA. Surface water withdrawal of up to 0.375 mgd and consumptive water use of up to 0.375 mgd.

15. Project Sponsor and Facility: XTO Energy, Inc. (Lick Run—Dincher), Shrewsbury Borough, Lycoming County, PA. Surface water withdrawal of up to 0.249 mgd.

16. Project Sponsor and Facility: XTO Energy, Inc. (Little Muncy Creek—Temple), Moreland Township, Lycoming County, PA. Surface water withdrawal of up to 0.249 mgd.

Public Hearing—Projects Tabled

1. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, PA. Application for groundwater withdrawal of 0.190 mgd (30-day average) from two wells and three collection sumps.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and

Caernarvon Townships, Lancaster County, PA. Application for consumptive water use of up to 0.075 mgd.

3. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, PA. Application for an existing into-basin diversion of up to 0.050 mgd from the Delaware River Basin.

4. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River—1—owner), Curwensville Borough, Clearfield County, PA. Application for surface water withdrawal of up to 1.270 mgd.

5. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River—2—owner), Curwensville Borough, Clearfield County, PA. Application for surface water withdrawal of up to 0.710 mgd.

6. Project Sponsor and Facility: Sunnyside Ethanol, LLC, Curwensville Borough, Clearfield County, PA. Application for consumptive water use of up to 1.980 mgd.

7. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, PA. Modification to increase the total groundwater system withdrawal limit (30-day average) from 0.523 mgd to 0.962 mgd (Docket No. 20070905).

Public Hearing—Rescission of Project Approval

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, PA.

Authority: Pub. L. No. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806—808. Dated: April 20, 2010.

PAUL O. SWARTZ,
Executive Director

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