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# PENNSYLVANIA BULLETIN

Volume 28

Number 21

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Pages 2357—2486

**Agencies in this issue:**

The Governor  
The Courts  
Delaware River Basin Commission  
Department of Agriculture  
Department of Banking  
Department of Conservation and Natural  
Resources  
Department of Environmental Protection  
Department of General Services  
Department of Public Welfare  
Department of Transportation  
Executive Board  
Health Care Cost Containment Council  
Independent Regulatory Review Commission  
Insurance Department  
Liquor Control Board  
Pennsylvania Public Utility Commission  
Public School Employes' Retirement Board  
State Board of Psychology  
Treasury Department  
Turnpike Commission

**Detailed list of contents appears inside.**

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

**No. 282, May 1998**

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**PENNSYLVANIA**



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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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# List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 1998.

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# THE GOVERNOR

## Title 4—ADMINISTRATION

### PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 5]

[EXECUTIVE ORDER NO. 1998-3]

### Pennsylvania Greenways Partnership Commission

April 29, 1998

*Whereas*, under Article I, Section 27 of The Pennsylvania Constitution, the people have the right to the preservation of the natural, scenic, historic, and aesthetic value of the environment; and

*Whereas*, Pennsylvania is blessed with a scenic beauty, a rich cultural heritage, and an environment of waterways, forests, farms, natural areas, and open space lands; and

*Whereas*, a network of greenways across the State will help to preserve environmental values and protect these natural, cultural, historic, and scenic assets for future generations; and

*Whereas*, a network of greenways across the State will enhance outdoor recreation opportunities; provide wildlife corridors and habitat; provide intermodal transportation options; stimulate our tourism industry; contribute to environmentally sensitive growth strategies; and improve the quality of life and livability of our neighborhoods, communities, and regions; and

*Whereas*, developing a network of greenways requires the formulation of partnerships which include government agencies, nonprofit organizations, business interests, and property owners; and

*Whereas*, the concept of creating greenway connections through public and private partnerships was addressed at the Governor's Conference on Greenways and Trails in April 1997 and creation of a Greenways Commission was a high priority of conference attendees.

*Now, Therefore*, I, Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws of the Commonwealth, do hereby establish The Pennsylvania Greenways Partnership Commission (hereafter referred to as "Commission") as hereinafter set forth:

#### Annex A

#### TITLE 4. ADMINISTRATION

#### PART I. GOVERNOR'S OFFICE

#### CHAPTER 5. COUNCILS AND COMMITTEES

#### Subchapter QQQ. PENNSYLVANIA GREENWAYS PARTNERSHIP COMMISSION

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5.981.	Purpose.
5.982.	Composition and appointments.
5.983.	Functions and scope.
5.984.	State agency coordination.
5.985.	Meetings and communication.

#### § 5.981. Purpose.

The purpose of the Pennsylvania Greenways Partnership Commission is to promote the development of greenways throughout this Commonwealth.

#### § 5.982. Composition and appointments.

(a) The Pennsylvania Greenways Partnership Commission (Commission) consists of 21 individuals who are appointed by and serve at the pleasure of the Governor. The membership of the Commission reflects a cross section of greenway interests and the geographic diversity of this Commonwealth.

(1) The existing Executive Committee of the Greenways Partnership Advisory Committee comprised of the Secretary of the Department of Conservation and Natural Resources (DCNR), the Secretary of the Department of Transportation (PennDOT) and one representative from each of the following organizations will serve on the Commission:

- (i) The Pennsylvania Environmental Council.
- (ii) The Conservation Fund.
- (iii) The Pennsylvania Rails-to-Trails Conservancy.
- (iv) The Pennsylvania Recreation and Parks Society.
- (v) The Pennsylvania Planning Association.
- (vi) The Pennsylvania Chamber of Business and Industry.
- (vii) The Pennsylvania Land Trust Association.
- (viii) The Pennsylvania Heritage Parks Association.
- (ix) The Pennsylvania Recreational Trails Advisory Board.
- (x) The National Park Service.

(2) The remaining nine members of the Commission are selected from a diversity of greenway interests.

(b) The Secretary of DCNR and the Secretary of PennDOT will serve as the Commission's chairpersons for 1 year, after which time, the Commission will select chairpersons or cochairpersons or extend the term of the existing cochairpersons.

(c) The DCNR and PennDOT are the primary State agencies for the planning and coordination of the Commission and will provide administrative support services.

(d) Each Commission member may designate an alternate to represent him on the Commission.

**§ 5.983. Functions and scope.**

The Pennsylvania Greenways Partnership Commission (Commission) will advise and assist the Secretaries of the Department of Conservation and Natural Resources and the Department of Transportation in carrying out the following responsibilities:

(1) Developing an action plan for advancing a Pennsylvania greenways partnership program into the 21st century. This action plan will include related recommendations from the 21st Century Environment Commission.

(2) Pursuing the creation of partnership opportunities to plan, implement, maintain and fund a greenways network for this Commonwealth.

(3) Maintaining an inventory, catalog and map of the network of greenways and trails in this Commonwealth.

(4) Exploring creative financial and technical assistance programs and strategies to benefit the creation and sustainability of State and local greenway efforts.

(5) Researching and identifying "best practices" of existing greenways efforts within this Commonwealth and other states.

(6) Creating a Statewide clearinghouse system for collecting, maintaining and disseminating materials on greenways and trails legal, design and mapping information.

(7) Developing a public education, outreach and coalition building strategy (including local government) for greenways and trails.

(8) Developing strategies for incorporating greenways opportunities into Federal, State and local planning efforts dealing with issues such as:

- (i) Land use/smart growth.
- (ii) Open space preservation.
- (iii) Watershed protection.

- (iv) Natural areas protection.
- (v) Heritage conservation.
- (vi) Recreation.
- (vii) Tourism development.
- (viii) Intermodal transportation systems.

(9) Coordinating existing State agency initiatives dealing with the Pennsylvania Public Utility Commission, disposition of crossing structures and existing funding programs.

**§ 5.984. State agency coordination.**

All State agencies shall cooperate with and provide assistance as needed to the Pennsylvania Greenways Partnership Commission (Commission) in performing its mission and functions. The following State agencies will designate a liaison to the Commission who will serve as the coordinator of greenway-related activities and primary contact for the Commission:

- (1) The Department of Agriculture.
- (2) The Department of Community and Economic Development.
- (3) The Department of Education.
- (4) The Department of Environmental Protection.
- (5) The Fish and Boat Commission.
- (6) The Game Commission.
- (7) The Historical and Museum Commission.

**§ 5.985. Meetings and communication.**

The Pennsylvania Greenways Partnership Commission (Commission) members will meet at least twice a year during the life of the Commission. In addition, the Commission will inform the public of its activities and solicit advice and direction by holding forums around this Commonwealth and through the use of a variety of communication media.

*Governor*

[Pa.B. Doc. No. 98-797. Filed for public inspection May 22, 1998, 9:00 a.m.]

# THE COURTS

## Title 225—RULES OF EVIDENCE

### SUPREME COURT OF PENNSYLVANIA Pennsylvania Rules of Evidence

#### Order

Now, this 8th day of May, 1998, upon recommendation of the Pennsylvania Supreme Court Ad Hoc Committee on Evidence; the proposed draft of the Pennsylvania Rules of Evidence having been published in the *Pennsylvania Bulletin* (Vol. 27, No. 11 at 1282 et seq., March 15, 1997); and public review of the proposal having been solicited, received, and considered:

*It Is Hereby Ordered* pursuant to Article V, Section 10 of the Constitution of the Commonwealth of Pennsylvania that the Pennsylvania Rules of Evidence are hereby adopted in the attached form.

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

JOHN P. FLAHERTY,  
*Chief Justice*

#### Preface

The Comments to these rules have been prepared by the Ad Hoc Committee on Evidence for the convenience of the Bench and Bar. They have not been adopted by the Supreme Court of Pennsylvania, and it is not intended that they have precedential significance.

The Comments are designed to identify the sources for the rules, to compare the Pennsylvania Rules of Evidence to the Federal Rules of Evidence, and to explain the differences. Although the Pennsylvania rules closely follow the format of the Federal Rules, the guiding principle has been to preserve the Pennsylvania law of evidence. For that reason, the decisions of other courts applying the Federal Rules are not intended to have precedential significance. Whenever a rule departs from Pennsylvania law the Comments identify the departure.

#### Annex A

### TITLE 225. RULES OF EVIDENCE ARTICLE I. GENERAL PROVISIONS

Rule	
101.	Scope and Citation of the Rules.
102.	Purpose and Construction.
103.	Rulings on Evidence.
104.	Preliminary Questions.
105.	Limited Admissibility.
106.	Remainder of or Related Writings or Recorded Statements.

#### Rule 101. Scope and Citation of the Rules.

(a) *Scope.* These rules of evidence shall govern proceedings in all courts of the Commonwealth of Pennsylvania's unified judicial system, except as otherwise provided by law.

(b) *Citation.* These rules of evidence are adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968. They shall be known as the Pennsylvania Rules of Evidence and shall be cited as "Pa.R.E."

#### Comment

A principal goal of these rules is to construct a comprehensive code of evidence governing court proceedings in the Commonwealth of Pennsylvania. However, these rules cannot be all-inclusive. Some of our law of evidence is governed by the Constitutions of the United States and of Pennsylvania. Some is governed by statute. Some evidentiary rules are contained in the Rules of Civil and Criminal Procedure and the rules governing proceedings before courts of limited jurisdiction. Traditionally, our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, bail hearings, grand jury proceedings, sentencing hearings, parole and probation hearings, extradition or rendition hearings, and others. Traditional rules of evidence have also been relaxed to some extent in custody matters, see, e.g., Pa.R.C.P. 1915.11(b) (court interrogation of a child), and other domestic relations matters, see, e.g., Pa.R.C.P. 1930.3 (telephone testimony). The Pennsylvania Rules of Evidence are not intended to supersede these other provisions of law unless they do so expressly or by necessary implication.

These rules are applicable only to courts. They are applicable in all divisions of the Courts of Common Pleas including the Civil Division, Criminal Division, Trial Division, Orphans' Court Division and Family Division. They are not applicable to other tribunals, such as administrative agencies and arbitration panels, except as provided by law or unless the tribunal chooses to apply them. See, e.g., Pa.C.R.P. 1305 (rules of evidence shall be followed in compulsory arbitration hearings, with specific provisions relating to the admissibility of certain written evidence and official documents).

#### Rule 102. Purpose and Construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

#### Comment

This rule is identical to F.R.E. 102.

#### Rule 103. Rulings on Evidence.

(a) *Effect of Erroneous Ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection, motion to strike or motion in limine appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of Proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or by motion in limine or was apparent from the context within which the evidence was offered.

(b) *Record of Offer and Ruling.* The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) *Hearing of Jury.* In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent

inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

#### Comment

Paragraph 103(a) differs from F.R.E. 103(a) in that the Federal Rule says, "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and" (emphasis added). The italicized words have been deleted because they are inconsistent with Pennsylvania law in criminal cases. In criminal cases, the accused is entitled to relief for an erroneous ruling unless the court is convinced beyond a reasonable doubt that the error is harmless. See *Commonwealth v. Story*, 476 Pa. 391, 383 A.2d 155 (1978). Civil cases are governed by Pa.R.C.P. 126 which permits the court to disregard an erroneous ruling "which does not affect the substantial rights of the parties." Pa.R.E. 103(a) does not change the existing rule.

Paragraphs 103(a)(1) and (a)(2) are consistent with Pennsylvania law. See *Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974); *Commonwealth v. Clair*, 458 Pa. 418, 326 A.2d 272 (1974). Paragraphs 103(a)(1) and (a)(2) are similar to F.R.E. 103(a)(1) and (a)(2). The term "motion in limine" has been added and the last three words have been changed. Motions in limine permit the trial court to make rulings on evidence prior to trial or at trial but before the evidence is offered. Such motions can expedite the trial and assist in producing just determinations. A ruling on a motion in limine on the record is sufficient to preserve the issue for appeal, without renewal of the objection or offer at trial. The change in language is intended to make clear that the requirement that offers of proof be made is applicable to testimonial and other types of evidence.

Paragraphs 103(b) and (c) are identical to F.R.E. 103(b) and (c) and are consistent with Pennsylvania practice.

F.R.E. 103(d) permits a court to grant relief for "plain errors affecting substantial rights although they were not brought to the attention of the court." This paragraph has been deleted because it is inconsistent with paragraphs (a)(1) and (a)(2) and with Pennsylvania law as established in *Dilliplaine* and *Clair*. In some capital cases, the Supreme Court has relaxed traditional waiver concepts. See *Commonwealth v. Zettlemoyer*, 500 Pa. 16, 454 A.2d 937 (1982).

#### Rule 104. Preliminary Questions.

(a) *Questions of Admissibility Generally.* Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) *Relevancy Conditioned on Fact.* When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) *Hearing of Jury.* Hearings on the admissibility of evidence alleged to have been obtained in violation of the defendant's rights shall in all cases be conducted outside the presence of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) *Testimony by Accused.* The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) *Weight and Credibility.* Even though the court has decided that evidence is admissible, this does not preclude a party from offering evidence relevant to the weight or credibility of that evidence.

#### Comment

Paragraph 104(a) is identical to F.R.E. 104(a). The first sentence is consistent with Pennsylvania law. See *Commonwealth v. Chester*, 526 Pa. 578, 587 A.2d 1367 (1991).

The second sentence of paragraph 104(a) is based on the premise that, by and large, the law of evidence is a "child of the jury system" and that the rules of evidence should not be applied when the judge is the fact finder. The theory is that the judge should be empowered to hear any relevant evidence to resolve questions of admissibility. Under the Federal Rule, the court may consider even the allegedly inadmissible evidence in deciding whether to admit the evidence. See *Bourjaily v. United States*, 483 U.S. 171 (1987). There is no express authority in Pennsylvania on whether the court is bound by the rules of evidence in making its determinations on preliminary questions. In view of this, the approach of the Federal Rule has been adopted.

Pa.R.E. 104(a) does not resolve whether the allegedly inadmissible evidence alone is sufficient to establish its own admissibility. Some other rules specifically address this issue. For example, Pa.R.E. 902 provides that some evidence is self-authenticating. But under Pa.R.E. 803(25), the allegedly inadmissible evidence alone is not sufficient to establish some of the preliminary facts necessary for admissibility. In other cases the question must be resolved by the trial court on a case-by-case basis.

Paragraph 104(b) is identical to F.R.E. 104(b) and appears to be consistent with Pennsylvania law. See *Commonwealth v. Carpenter*, 472 Pa. 510, 372 A.2d 806 (1977).

The first sentence of paragraph 104(c) differs from the first sentence of F.R.E. 104(c) in that the Federal Rule says "Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury." The first sentence of Pa.R.E. 104(c) has been changed to be consistent with Pa.R.Crim.P. 323(f), which requires hearings outside the presence of the jury in all cases in which it is alleged that the evidence was obtained in violation of the defendant's rights.

The second sentence of paragraph 104(c) is identical to the second sentence of F.R.E. 104(c). Paragraph 104(c) indicates that hearings on other preliminary matters, both criminal and civil, shall be conducted outside the jury's presence when required by the interests of justice. Certainly, the court should conduct the hearing outside the presence of the jury when the court believes that it is necessary to prevent the jury from hearing prejudicial information. The right of an accused to have his testimony on a preliminary matter taken outside the presence of the jury does not appear to have been discussed in Pennsylvania law.

Paragraph 104(d) is identical to F.R.E. 104(d). In general, when a party offers himself as a witness, the party may be questioned on all relevant matters in the case. See *Agate v. Dunleavy*, 398 Pa. 26, 156 A.2d 530 (1959). Under Pa.R.E. 104(d), however, when the accused in a criminal case testifies only with regard to a prelimi-

nary matter, he or she may not be cross-examined as to other matters. Although there is no Pennsylvania authority on this point, it appears that this rule is consistent with Pennsylvania practice. This approach is consistent with paragraph 104(c) in that it is designed to preserve the defendant's right not to testify generally in the case.

Paragraph 104(e) differs from F.R.E. 104(e) to clarify the meaning of this paragraph. See 21 Wright and Graham, *Federal Practice and Procedure* § 5058 (1977). This paragraph is consistent with Pennsylvania law.

#### **Rule 105. Limited Admissibility.**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court upon request shall, or on its own initiative may, restrict the evidence to its proper scope and instruct the jury accordingly.

#### **Comment**

This rule differs from F.R.E. 105 in that the language "or on its own initiative may" has been added. This rule, as amended, is consistent with Pennsylvania law. In addition to the approach taken by Pa.R.E. 105, there are other ways to deal with evidence that is admissible as to one party or for one purpose, but not admissible as to another party or for another purpose. For example, the evidence may be redacted. See *Commonwealth v. Johnson*, 474 Pa. 410, 378 A.2d 859 (1977). Or, a severance may be an appropriate remedy. See *Commonwealth v. Young*, 263 Pa. Super. 333, 397 A.2d 1234 (1979). Where the danger of unfair prejudice outweighs probative value, the evidence may be excluded. See Pa.R.E. 403; *McShain v. Indemnity Ins. Co. of North America*, 338 Pa. 113, 12 A.2d 59 (1940).

#### **Rule 106. Remainder of or Related Writings or Recorded Statements.**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

#### **Comment**

This rule is identical to F.R.E. 106. It is consistent with Pennsylvania law. See *Pedretti v. Pittsburgh Rys. Co.*, 417 Pa. 581, 209 A.2d 289 (1965). A similar principle is expressed in Pa.R.C.P. 4020(a)(4), which states: "If only part of a deposition is offered in evidence by a party, any other party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts."

The purpose of Pa.R.E. 106 is to give the adverse party an opportunity to correct a misleading impression that may be created by the use of portions of a writing or recorded statement that are taken out of context. This rule gives the adverse party the right to correct the misleading impression at the time that the evidence is introduced. The trial court has discretion to decide whether other parts, or other writings or recorded statements, ought in fairness to be considered contemporaneously with the original portion.

### **ARTICLE II. JUDICIAL NOTICE**

Rule  
201. Judicial Notice of Adjudicative Facts.

#### **Rule 201. Judicial Notice of Adjudicative Facts.**

(a) *Scope of Rule.* This rule governs only judicial notice of adjudicative facts.

(b) *Kinds of Facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) *When Discretionary.* A court may take judicial notice, whether requested or not.

(d) *When Mandatory.* A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to Be Heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) *Time of Taking Notice.* Judicial notice may be taken at any stage of the proceeding.

(g) *Instructing Jury.* The court shall instruct the jury that it may, but is not required to, accept as conclusive, any fact judicially noticed.

#### **Comment**

This rule is identical to F.R.E. 201, except for paragraph (g).

Paragraph (a) limits the application of this rule to adjudicative facts. This rule is not applicable to judicial notice of law. Adjudicative facts are facts about the events, persons and places relevant to the matter before the court. See 2 McCormick, *Evidence* § 328 (4th ed. 1992).

In determining the law applicable to a matter, the judge is sometimes said to take judicial notice of law. See 21 Wright and Graham, *Federal Practice and Procedure*, § 5102 (1977). In Pennsylvania, judicial notice of law has been regulated by decisional law and statute. See *In re Annual Controller's Reports for Years 1932, 1933, 1934, 1935 and 1936*, 333 Pa. 489, 5 A.2d 201 (1939) (judicial notice of public laws); 42 Pa.C.S.A. § 6107 (judicial notice of municipal ordinances); 42 Pa.C.S.A. § 5327 (judicial notice of laws of any jurisdiction outside the Commonwealth); 45 Pa.C.S.A. § 506 (judicial notice of the contents of the Pennsylvania Code and the Pennsylvania Bulletin). These rules are not intended to change existing provisions of law.

Paragraph (b) is consistent with Pennsylvania law. See *Appeal of Albert*, 372 Pa. 13, 92 A.2d 663 (1952); *In re Siemens' Estate*, 346 Pa. 610, 31 A.2d 280 (1943).

Paragraph (c) is consistent with Pennsylvania practice.

Paragraph (d) is new to Pennsylvania. Heretofore, the taking of judicial notice has been discretionary, not mandatory. The approach of the Federal Rule has been adopted because it has not been problematic in the jurisdictions that have adopted it.

Paragraph (e) provides that parties will have an opportunity to be heard on the propriety of the court's taking judicial notice. No formal procedure has been provided. Pennsylvania practice appears to have operated satisfactorily without a formal procedure.

Paragraph (f) resolves an apparent inconsistency in Pennsylvania law. Pennsylvania law has not been completely consistent with regard to whether a court may take judicial notice at the pleading stage of proceedings. See *Clouser v. Shamokin Packing Co.*, 240 Pa. Super. 268, 361 A.2d 836 (1976) (trial court generally should not take



judicial notice at the pleading stage); *Bykowski v. Chesed Co.*, 425 Pa. Super. 595, 625 A.2d 1256 (1993) (trial court may take judicial notice in ruling on motion for judgment on the pleadings). Similarly, older authority has held that judicial notice may not be taken at the appellate stage. See *Wilson v. Pennsylvania R.R. Co.*, 421 Pa. 419, 219 A.2d 666 (1966). More recently, the Supreme Court has taken judicial notice at the appellate stage. See *Commonwealth v. Tau Kappa Epsilon*, 530 Pa. 416, 609 A.2d 791 (1992). Pa.R.E. 201(f) permits judicial notice to be taken at any stage.

Paragraph (g) differs from F.R.E. 201(g). Under the Federal Rule the court is required to instruct the jury to accept as conclusive any fact judicially noticed in a civil case. In a criminal case, the judicially noticed fact is not treated as conclusive. Under Pennsylvania law, the judicially noticed fact has not been treated as conclusive in either civil or criminal cases, and the opposing party may submit evidence to the jury to disprove the noticed fact. See *Appeal of Albert*, 372 Pa. 13, 92 A.2d 663 (1952); *Commonwealth v. Brown*, 428 Pa. Super. 587, 631 A.2d 1014 (1993). This paragraph follows established Pennsylvania law.

### ARTICLE III. PRESUMPTIONS

Rule  
301. General Rule.

#### Rule 301. General Rule.

Presumptions as they now exist or may be modified by law shall be unaffected by the adoption of these rules.

#### Comment

Pa.R.E. 301 is similar to F.R.E. 301 in that it does not modify existing law. Pa.R.E. 301 differs from F.R.E. 301 in that this rule does not establish the effect of a presumption on the burden of proof.

### ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule  
401. Definition of "Relevant Evidence."  
402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.  
403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.  
404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes.  
405. Methods of Proving Character.  
406. Habit; Routine Practice.  
407. Subsequent Remedial Measures.  
408. Compromise and Offers to Compromise.  
409. Payment of Medical and Similar Expenses.  
410. Inadmissibility of Pleas, Plea Discussions and Related Statements.  
411. Liability Insurance.  
412. Sex Offense Cases: Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition (Rape Shield Law) [Not Adopted].

#### Rule 401. Definition of "Relevant Evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

#### Comment

Pa.R.E. 401 is identical to F.R.E. 401. The rule codifies existing Pennsylvania law, as represented by the Supreme Court's definition of relevance in *Commonwealth v. Scott*, 480 Pa. 50, 54, 389 A.2d 79, 82 (1978): "Evidence which tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable, is relevant." Whether evidence has a tendency to make a given fact more or less probable is to be determined by

the court in the light of reason, experience, scientific principles and the other testimony offered in the case.

The relevance of a piece of evidence may be conditional, or dependent on facts not yet of record. Under Pa.R.E. 104(b), the evidence may be admitted subject to the introduction of further evidence demonstrating that all conditions necessary to a finding of relevance have been met.

#### Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible.

#### Comment

Pa.R.E. 402 is similar to F.R.E. 402. The only variance is in the language of the exceptions clause in the first sentence. The exceptions clause of the federal rule specifically enumerates the various sources of federal rule-making power. Pa.R.E. 402 substitutes the phrase, "by law," to encompass analogous sources of rule-making power within the Commonwealth.

The rule states a fundamental concept of the law of evidence. Relevant evidence is admissible; evidence that is not relevant is not admissible. This concept is modified by the exceptions clause of the rule, which states another fundamental principle of evidentiary law. Evidence otherwise relevant may be excluded by operation of constitutional law, by statute, by rules of evidence created by decisional law, by these rules, or by other rules promulgated by the Supreme Court.

As noted in the Comment to Pa.R.E. 101, a principal goal of these rules is to construct a comprehensive code of evidence governing court proceedings in the Commonwealth. Pa.R.E. 402 explicitly recognizes, however, that these rules cannot be all inclusive. The law of evidence is also shaped by constitutional principle, legislative enactment, procedural rule-making and decisional law. These rules of evidence are not intended to supersede other provisions of law, unless they do so expressly or by necessary implication.

Examples of decisionally created rules of exclusion that are not abrogated by the adoption of these rules include: the corpus delicti rule, *Commonwealth v. Ware*, 459 Pa. 334, 329 A.2d 258 (1974); the collateral source rule, *Boudwin v. Yellow Cab Co.*, 410 Pa. 31, 188 A.2d 259 (1963); the parol evidence rule, *Gianni v. R. Russell and Co., Inc.*, 281 Pa. 320, 126 A. 791 (1924); and the rule excluding certain evidence to rebut the presumption of legitimacy, *John M. v. Paula T.*, 524 Pa. 306, 571 A.2d 1380 (1990).

#### Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

#### Comment

Pa.R.E. 403 differs from F.R.E. 403. The federal rule provides that relevant evidence may be excluded if its probative value is "substantially outweighed." Pa.R.E. 403 eliminates the word "substantially" to conform the text of the rule more closely to Pennsylvania law. See *Commonwealth v. Boyle*, 498 Pa. 486, 447 A.2d 250 (1982);

*Morrison v. Commonwealth, Dept. of Pub. Welfare*, 538 Pa. 122, 646 A.2d 565 (1994).

"Unfair prejudice" means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially.

With regard to evidence of other crimes, wrongs or acts of the defendant in a criminal case, see Pa.R.E. 404(b)(3).

**Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes.**

(a) *Character Evidence Generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except as follows:

(1) *Character of Accused.* In a criminal case, evidence of a pertinent trait of character of the accused is admissible when offered by the accused, or by the prosecution to rebut the same.

(2) *Character of Complainant.*

(i) In a criminal case, evidence of a pertinent trait of character of the complainant is admissible when offered by the accused, or by the prosecution to rebut the same.

(ii) In a homicide case, where the accused has offered evidence that the deceased was the first aggressor, evidence of a character trait of the deceased for peacefulness is admissible when offered by the prosecution to rebut the same.

(iii) In a civil action for assault and battery, evidence of a character trait of violence of the plaintiff may be admitted when offered by the defendant to rebut evidence that the defendant was the first aggressor.

(3) *Character of witness.* Evidence of a pertinent trait of character of a witness is admissible as provided in rules 607 (impeachment of witness), 608 (character and conduct of witness) and 609 (evidence of conviction of crime).

(b) *Other Crimes, Wrongs, or Acts.*

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.

(2) Evidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(3) Evidence of other crimes, wrongs, or acts proffered under subsection (b)(2) of this rule may be admitted in a criminal case only upon a showing that the probative value of the evidence outweighs its potential for prejudice.

(4) In criminal cases, the prosecution shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of any such evidence it intends to introduce at trial.

**Comment**

The basic principle of Pa.R.E. 404 is consistent with F.R.E. 404 and Pennsylvania law. Pa.R.E. 404, with certain enumerated exceptions, provides that character evidence cannot be used to prove conduct. Under this rule, evidence that an employee had a character trait of absent-mindedness would not be admissible to prove that on a particular occasion he or she failed to fasten the safety latch on a piece of equipment. The rule does not preclude the use of character evidence for other purposes, including where character is an element of a claim or defense. See, e.g., *Dempsey v. Walso Bureau, Inc.*, 431 Pa.

562, 246 A.2d 418 (1968) (negligent employment); *Commonwealth ex rel. Grimes v. Grimes*, 281 Pa. Super 484, 422 A.2d 572 (1980) (parental fitness).

The exceptions to the Rule differ from F.R.E. 404 as indicated below.

*Subsection (a).* Subsection (a) of the rule differs from F.R.E. 404(a). The exception provided at Pa.R.E. 404(a)(2)(iii) does not appear in the federal rule. It is consistent with Pennsylvania decisional law. See *Bell v. Philadelphia*, 341 Pa. Super. 534, 491 A.2d 1386 (1985).

Subsection (a)(2) is consistent with Pennsylvania law. See, e.g., *Commonwealth v. Dillon*, 528 Pa. 417, 598 A.2d 963 (1991); *Commonwealth v. Amos*, 445 Pa. 297, 284 A.2d 748 (1971); see also Pa.R.E. 405 (regarding means of proof of the complainant's character for violence).

*Subsection (b).* This rule is similar to F.R.E. 404(b) in recognizing legitimate evidentiary purposes for the introduction of evidence of other crimes, wrongs or bad acts. Unlike the federal rule, however, Pennsylvania law provides a distinct standard for balancing the inherent prejudice of such evidence against its probative value. Under federal law, if evidence of other crimes, wrongs or bad acts is offered for a legitimate evidentiary purpose, the evidence is admissible if it meets the general standard of F.R.E. 403. F.R.E. 403 provides that relevant evidence is admissible unless its probative value is substantially outweighed by prejudicial danger. Under Pennsylvania law, evidence of other crimes, wrongs or bad acts offered for a legitimate evidentiary purpose is admissible only if its probative value outweighs the potential for prejudice. See *Commonwealth v. Morris*, 493 Pa. 164, 425 A.2d 715 (1981). Pa.R.E. 404(b)(3) codifies Pennsylvania decisional law and is an exception to the general rule defined by Pa.R.E. 403.

**Rule 405. Methods of Proving Character.**

(a) *Reputation Evidence.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross-examination of the reputation witness, inquiry is allowable into specific instances of conduct probative of the character trait in question, except that in criminal cases inquiry into arrests of the accused not resulting in conviction is not permissible.

(b) *Specific Instances of Conduct.* Specific instances of conduct are not admissible to prove character or a trait of character, except as follows:

(1) In civil cases where character or a trait of character is admissible as an element of a claim or defense, character may be proved by specific instances of conduct.

(2) In criminal cases where character or a trait of character is admissible under Pa.R.E. 404(a)(2), the accused may prove the complainant's character or trait of character by specific instances of conduct.

**Comment**

Pa.R.E. 405 differs from F.R.E. 405. One of the principal points of divergence is that Pennsylvania law does not permit proof of character by opinion evidence. See *Com. v. Lopinson*, 427 Pa. 284, 234 A.2d 552 (1967).

Reputation evidence is an exception to the hearsay rule under Pa.R.E. 803(21).

*Subsection (a).* Pa.R.E. 405(a) differs from F.R.E. 405 because Pa.R.E. 405(a) prohibits cross-examination of reputation witnesses offered on behalf of a defendant in a criminal case regarding arrests of the defendant not resulting in conviction. This is consistent with Pennsylvania

nia law. See *Commonwealth v. Scott*, 496 Pa. 188, 436 A.2d 607 (1981). Where a reputation witness is cross-examined regarding specific instances of conduct, the court should take care that the cross-examiner has a reasonable basis for the questions asked. See *Commonwealth v. Adams*, 426 Pa. Super. 332, 626 A.2d 1231 (1993).

*Subsection (b)*. Unlike F.R.E. 405(b), Pa.R.E. 405(b) distinguishes between civil and criminal cases in permitting the use of specific instances of conduct to prove character.

Cf. Pa.R.E. 608(b)(use of specific instances of conduct to attack or support credibility of witness, either on cross-examination or as extrinsic evidence).

*Subsection (b)(1)*. With regard to civil cases, Pa.R.E. 405(b)(1) is identical to the federal rule in permitting proof of character by specific instances of conduct where character is an essential element of the claim or defense. This is consistent with Pennsylvania law. See *Matusak v. Kulczewski*, 295 Pa. 208, 145 A. 94 (1928); *Dempsey v. Walso Bureau, Inc.*, 431 Pa. 562, 246 A.2d 418 (1968); *Commonwealth ex rel. Grimes v. Grimes*, 281 Pa. Super. 484, 422 A.2d 572 (1980).

*Subsection (b)(2)*. In criminal cases under Pa.R.E. 404(a)(2), the accused may offer evidence of a pertinent trait of character of the complainant. In such a case the trait may be proven by specific instances of conduct. This is consistent with Pennsylvania law. See *Commonwealth v. Dillon*, 528 Pa. 417, 598 A.2d 963 (1991); *Commonwealth v. Amos*, 445 Pa. 297, 284 A.2d 748 (1971).

#### **Rule 406. Habit; Routine Practice.**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

#### **Comment**

This rule is identical to F.R.E. 406 and is consistent with Pennsylvania law. See *Baldrige v. Matthews*, 378 Pa. 566, 106 A.2d 809 (1954) (uniform practice of hotel permitted to establish conduct in conformity with practice). The concepts of "habit" and "routine practice" denote conduct that occurs with fixed regularity in repeated specific situations. Like the federal rule, Pa.R.E. 406 does not set forth the ways in which habit or routine practice may be proven, but leaves this for case-by-case determination. See, e.g., *Commonwealth v. Rivers*, 537 Pa. 394, 644 A.2d 710 (1994) (allowing testimony based on familiarity with another's conduct); *Baldrige*, 378 Pa. at 570; 106 A.2d at 811 (testimony of uniform practice apparently permitted without examples of specific instances).

Evidence of habit must be distinguished from evidence of character. Character applies to a generalized propensity to act in a certain way without reference to specific conduct, and frequently contains a normative, or value-laden, component (e.g., a character for truthfulness). Habit connotes one's conduct in a precise factual context, and frequently involves mundane matters (e.g., recording the purpose for checks drawn). The Advisory Committee's Note to F.R.E. 406 sets forth a description of this distinction: "Character is a generalized description of one's disposition in respect to a general trait, such as honesty, temperance, or peacefulness. . . . A habit, on the other hand, is the person's regular practice of meeting a particular kind of situation with a specific type of con-

duct, such as the habit of going down a particular stairway two stairs at a time, or of giving the hand-signal for a left turn, or of alighting from railway cars while they are moving." F.R.E. 406 advisory committee's note (quoting 1 McCormick, *Evidence* § 162).

#### **Rule 407. Subsequent Remedial Measures.**

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove that the party who took the measures was negligent or engaged in culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for impeachment or to prove other controverted matters, such as ownership, control, or feasibility of precautionary measures.

#### **Comment**

Pa.R.E. 407 is consistent with Pennsylvania law. It restates the traditional Pennsylvania doctrine that evidence of subsequent remedial measures is not admissible to prove fault or negligence. See *Baran v. Reading Iron Co.*, 202 Pa. 274, 51 A. 979 (1902).

Pa.R.E. 407 differs from F.R.E. 407 in several ways. First, F.R.E. 407 provides that evidence of subsequent measures is not admissible to prove "a defect in a product, a defect in a product's design, or a need for a warning or instruction." Pa.R.E. 407 is silent on the issue whether it excludes subsequent remedial measures when offered to prove a defect in strict products liability. The Pennsylvania Superior Court has issued partially conflicting decisions on whether subsequent remedial measures are admissible to prove defect in strict products liability cases. Compare *Matsko v. Harley Davidson Motor Co., Inc.*, 325 Pa. Super. 452, 473 A.2d 155 (1984) (proof of recall admitted to prove defect) (2-1 split opinion), with *Connelly v. Roper Corp.*, 404 Pa. Super. 67, 590 A.2d 11 (1991) (post-sale design changes not admissible to prove design defect) (2-1 split opinion); *Dunkle v. West Penn Power Co.*, 400 Pa. Super. 334, 583 A.2d 814 (1990) (post-sale safety standard not admissible to prove defective design or inadequate warning where no recall required); and *Gottfried v. American Can Co.*, 339 Pa. Super. 403, 489 A.2d 222 (1985) (post-sale design changes not admissible to prove design defect). Pa.R.E. 407 allows the Pennsylvania courts to continue to develop the law in this area, leaving the Supreme Court of Pennsylvania free to decide this matter in the context of a case or controversy.

Pa.R.E. 407 makes clear in the first sentence that the rule of exclusion operates only in favor of a party who took the subsequent remedial measures. F.R.E. 407 is silent as to whether there is any restriction on the actor who must have taken the subsequent remedial measure for the rule to preclude admissibility of such evidence. The majority of federal courts have held that the rule does not apply when one other than the allegedly liable party takes the action because the reason for the rule (to encourage remedial measures) is not implicated. See, e.g., *TLT-Babcock, Inc. v. Emerson Electric Co.*, 33 F.3d 397 (4th Cir. 1994) (collecting cases). Pa.R.E. 407 does not, however, address whether measures taken by another party are admissible against a party that did not take the measures.

Regardless of Pa.R.E. 407, evidence of subsequent remedial measures is not admissible unless it satisfies the standards of Pa.R.E. 401, 402, and 403.

The last sentence of Pa.R.E. 407 differs from F.R.E. 407 to make clear that, when subsequent remedial measures are offered to prove issues such as ownership, control or feasibility of precautionary measures, those issues must be controverted.

**Rule 408. Compromise and Offers to Compromise.**

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. This rule does not require the exclusion of an admission of fact merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**Comment**

This rule is similar to F.R.E. 408. Contrary to its federal counterpart, however, Pa.R.E. 408 does not bar the use of all statements and conduct occurring during settlement negotiations. In this respect, the rule is consistent with Pennsylvania law that distinct admissions of fact made during settlement discussions are admissible. See *Rochester Machine Corp. v. Mulach Steel Corp.*, 498 Pa. 545, 449 A.2d 1366 (1982) (plurality); *Heyman v. Hanauer*, 302 Pa. 56, 152 A. 910 (1930); *Hammel v. Christian*, 416 Pa. Super. 78, 610 A.2d 979 (1992).

Like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liability, such as showing bias or prejudice. See *Heyman v. Hanauer*, 302 Pa. 56, 152 A. 910 (1930) (if proposal was offer to settle, it could have been used to impeach witness).

Pa.R.E. 408 is consistent with 42 Pa.C.S.A. § 6141 which provides, in pertinent part, as follows:

*§ 6141. Effect of certain settlements*

(a) *Personal injuries.*—Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to property.*—Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in evidence.*—Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

See *Hatfield v. Continental Imports, Inc.*, 530 Pa. 551, 610 A.2d 446 (1992) (evidence of Mary Carter agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with Pennsylvania law. See *Commonwealth v. Pettinato*, 360 Pa. Super. 242, 520 A.2d 437 (1987). Pa.R.E. 408 does not permit, however, the use of evidence relating to good faith compromises or offers to compromise when made for the purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 314 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 145 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence.

**Rule 409. Payment of Medical and Similar Expenses.**

Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

**Comment**

This rule is identical to F.R.E. 409 and is consistent with Pennsylvania law. See 42 Pa.C.S.A. § 6141(c) (payment of expenses not admissible) (text quoted in Comment to Pa.R.E. 408); see also *Burns v. Joseph Flaherty Co.*, 278 Pa. 579, 123 A. 496 (1924) (guarantee of medical expenses cannot be used as basis for liability). As with F.R.E. 409 and Pa.R.E. 408 (but not F.R.E. 408), collateral admissions of fact made in the course of offering to pay for medical expenses are not excluded by this rule.

**Rule 410. Inadmissibility of Pleas, Plea Discussions and Related Statements.**

(a) *General rule.* Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;

(3) any statement made in the course of any proceedings under Rules 59, 177, 179 or 319 of the Pennsylvania Rules of Criminal Procedure, Fed. R. Crim. P. 11, or any comparable rule or provision of law of another state regarding the pleas identified in subsections (1) and (2) of this rule; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty later withdrawn.

(b) *Exception.* A statement made in the course of a plea, proceedings or discussions identified in subsection (a) of this rule is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced by the defendant and the statement ought in fairness to be considered contemporaneously with it, or (2) in a criminal proceeding for perjury, false swearing or unsworn falsification to authorities if the statement was made by the defendant, under oath, and in the presence of counsel.

**Comment**

This rule is similar to F.R.E. 410. References to Rules 59, 177, 179 and 319 of the Pennsylvania Rules of Criminal Procedure and the comparable rules or other

provisions of other states have been added. Unlike the federal rule, subsection (b) of the Pennsylvania rule is set forth separately to indicate that it creates an exception applicable to all of subsection (a).

Pa.R.E. 410 reflects present Pennsylvania law. See *Commonwealth v. Jones*, 375 Pa. Super. 194, 544 A.2d 54 (1988); *Commonwealth ex rel. Warner v. Warner*, 156 Pa. Super. 465, 40 A.2d 886 (1945); Pa.R.Crim.P. 177(b), 179(b).

Pa.R.E. 410 does not prohibit the use of a conviction that results from a plea of *nolo contendere*, as distinct from the plea itself, to impeach in a later proceeding (subject to Pa.R.E. 609) or to establish an element of a charge in a later administrative proceeding. See *Commonwealth v. Snyder*, 408 Pa. 253, 182 A.2d 495 (1962) (conviction based on *nolo contendere* plea could be used to impeach witness in later criminal proceeding); *Eisenberg v. Commonwealth, Dep't. of Public Welfare*, 512 Pa. 181, 516 A.2d 333 (1986) (conviction based on *nolo contendere* plea permitted to establish element of charge in administrative proceeding).

In addition, Pa.R.E. does not govern the admissibility of pleas in summary proceedings involving motor vehicle matters, which is addressed in 42 Pa.C.S.A. § 6142. § 6142 provides:

*§ 6142. Pleas in vehicle matters*

(a) *General Rule*.—A plea of guilty or *nolo contendere*, or a payment of the fine and costs prescribed after any such plea, in any summary proceeding made by any person charged with a violation of Title 75 (relating to vehicles) shall not be admissible as evidence in any civil matter arising out of the same violation or under the same facts or circumstances.

(b) *Exception*.—The provisions of subsection (a) shall not be applicable to administrative or judicial proceedings involving the suspension of a motor vehicle or tractor operating privilege, learner's permit, or right to apply for a motor vehicle or tractor operating privilege, or the suspension of a certificate of appointment as an official inspection station, or the suspension of a motor vehicle, tractor, or trailer designation.

**Rule 411. Liability Insurance.**

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

**Comment**

This rule is identical to F.R.E. 411 and is consistent with Pennsylvania law that evidence of insurance may be admitted, notwithstanding some prejudicial effect, if the evidence is relevant to prove an issue other than negligence or wrongful conduct. E.g., *Beechwoods Flying Serv. v. Al Hamilton Contracting Corp.*, 504 Pa. 618, 476 A.2d 350 (1984); *Price v. Yellow Cab Co.*, 443 Pa. 56, 278 A.2d 161 (1971) (plurality) (collecting cases); *Fleischman v. Reading*, 388 Pa. 183, 130 A.2d 429 (1957); *Copozi v. Hearst Publishing Co.*, 371 Pa. 503, 92 A.2d 177 (1952); *McGowan v. Devonshire Hall Apartments*, 278 Pa. Super. 229, 420 A.2d 514 (1980); *Jury v. New York Central R.R. Co.*, 167 Pa. Super. 244, 74 A.2d 531 (1950). As with all evidence, evidence not excluded by this rule may be excluded under Pa.R.E. 403.

**Rule 412. Sex Offense Cases: Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition (Rape Shield Law) [ Not Adopted ].**

**Comment**

Pennsylvania has not adopted a Rule of Evidence comparable to F.R.E. 412. In Pennsylvania this subject is governed by 18 Pa.C.S. § 3104 (the "Rape Shield Law").

18 Pa.C.S.A. § 3104 provides as follows:

*§ 3104. Evidence of victim's sexual conduct*

(a) *General rule*.—Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

(b) *Evidentiary proceedings*.—A defendant who proposes to offer evidence of the alleged victim's past sexual conduct pursuant to subsection (a) shall file a written motion and offer of proof at the time of trial. If, at the time of trial, the court determines that the motion and offer of proof are sufficient on their faces, the court shall order an in camera hearing and shall make findings on the record as to the relevance and admissibility of the proposed evidence pursuant to the standards set forth in subsection (a).

F.R.E. 412 is applicable in civil cases. There is no comparable provision in Pennsylvania law.

**ARTICLE V. PRIVILEGES**

Rule 501. General Rules.

**Rule 501. General Rule.**

Privileges as they now exist or may be modified by law shall be unaffected by the adoption of these rules.

**Comment**

The Federal Rules of Evidence do not modify the existing law with regard to privileges. These rules take a similar approach.

**ARTICLE VI. WITNESSES**

Rule 601.	Competency.
602.	Lack of Personal Knowledge.
603.	Oath or Affirmation.
604.	Interpreters.
605.	Competency of Judge as Witness.
606.	Competency of Juror as Witness.
607.	Impeachment of Witness.
608.	Evidence of Character and Conduct of Witness.
609.	Impeachment by Evidence of Conviction of Crime.
610.	Religious Beliefs or Opinions.
611.	Mode and Order of Interrogation and Presentation.
612.	Writing or Other Item Used to Refresh Memory.
613.	Prior Statements of Witnesses.
614.	Calling and Interrogation of Witnesses by Court.
615.	Sequestration of Witnesses.

**Rule 601. Competency.**

(a) *General Rule*. Every person is competent to be a witness except as otherwise provided by statute or in these Rules.

(b) *Disqualification for Specific Defects*. A person is incompetent to testify if the Court finds that because of a mental condition or immaturity the person:

- (1) is, or was, at any relevant time, incapable of perceiving accurately;
- (2) is unable to express himself or herself so as to be understood either directly or through an interpreter;
- (3) has an impaired memory; or
- (4) does not sufficiently understand the duty to tell the truth.

#### Comment

Pa.R.E. 601(a) differs from F.R.E. 601. F.R.E. 601 abolishes all existing grounds of incompetency except for those specifically provided in later rules dealing with witnesses and in civil actions governed by state law. Pa.R.E. 601(b) has no counterpart in the Federal Rules.

Pa.R.E. 601(a) is consistent with Pennsylvania statutory law. 42 Pa.C.S.A. §§ 5911 and 5921 provide that all witnesses are competent except as otherwise provided. Pennsylvania statutory law provides several instances in which witnesses are incompetent. See, e.g., 42 Pa.C.S.A. § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S.A. § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S.A. §§ 5925, 5926, and 5927); 42 Pa.C.S.A. §§ 5930—5933 and 20 Pa.C.S.A. § 2209 (“Dead Man’s statutes”).

Pa.R.E. 601(a) does not recognize any decisional grounds for incompetency. At one time Pennsylvania law provided that neither a husband nor a wife was competent to testify to non-access or absence of sexual relations if the effect of that testimony would illegitimize a child born during the marriage. See *Commonwealth ex rel. Leider v. Leider*, 434 Pa. 293, 254 A.2d 306 (1969). This rule was abandoned in *Commonwealth ex rel. Savruk v. Derby*, 235 Pa. Super. 560, 344 A.2d 624 (1975).

Pa.R.E. 601(b) is consistent with Pennsylvania law concerning the competency of persons with a mental defect and children of tender years. See *Commonwealth v. Goldblum*, 498 Pa. 455, 447 A.2d 234 (1982) (mental capacity); *Rosche v. McCoy*, 397 Pa. 615, 156 A.2d 307 (1959) (immaturity). The application of the standards in Pa.R.E. 601(b) is a factual question to be resolved by the Court. Expert testimony has been used when competency under these standards has been an issue. E.g., *Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976); *Commonwealth v. Gaertner*, 355 Pa. Super. 203, 484 A.2d 92 (1984). Pa.R.E. 601(b) is intended to preserve existing law and not to expand it.

Pa.R.E. 601(b) does not address the admissibility of hypnotically refreshed recollection. In *Commonwealth v. Nazarovitch*, 496 Pa. 97, 436 A.2d 170 (1981), the Supreme Court rejected hypnotically refreshed testimony, where the witness had no prior independent recollection. Applying the test of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) for scientific testimony, the Court was not convinced that the process of hypnosis as a means of restoring forgotten or repressed memory had gained sufficient acceptance in its field. *Commonwealth v. Nazarovitch*, *supra*; see also *Commonwealth v. Romanelli*, 522 Pa. 222, 560 A.2d 1384 (1989) (when witness has been hypnotized, he or she may testify concerning matters recollected prior to hypnosis, but not about matters recalled only during or after hypnosis); *Commonwealth v. Smoyer*, 505 Pa. 83, 476 A.2d 1304 (1984) (same). Pa.R.E. 601(b) is not intended to change these results. For the constitutional implications when a defendant in a criminal case, whose memory has been hypnotically refreshed, seeks to testify, see *Rock v. Arkansas*, 483 U.S. 44 (1987).

#### Rule 602. Lack of Personal Knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness’ own testimony. This Rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

#### Comment

This rule is identical to F.R.E. 602. It is consistent with Pennsylvania law.

Firsthand or personal knowledge is a universal requirement of the law of evidence. See *Johnson v. Peoples Cab Co.*, 386 Pa. 513, 514-15, 126 A.2d 720, 721 (1956) (“The primary object of a trial in our American courts is to bring to the tribunal, which is passing on the dispute involved, those persons who know of their own knowledge the facts to which they testify.”). Pa.R.E. 602 refers to Pa.R.E. 703 to make clear that there is no conflict with Rule 703, which permits an expert to base an opinion on facts not within the expert’s personal knowledge.

It is implicit in Pa.R.E. 602 that the party calling the witness has the burden of proving personal knowledge. This is consistent with Pennsylvania law. *Carney v. Pennsylvania R.R. Co.*, 428 Pa. 489, 240 A.2d 71 (1968). As the Advisory Committee’s Notes to F.R.E. 602 state, “the rule is a specialized application of the provisions of Rule 104(b) on conditional relevancy.” Thus, the issue of personal knowledge is a question to be decided by the jury, and the judge may do no more than determine if the evidence is sufficient to support a finding of such knowledge. 27 Wright & Gold, *Federal Practice and Procedure* § 6027 (1990). This appears to be consistent with Pennsylvania law. See *Commonwealth v. Pronkoskie*, 477 Pa. 132, 383 A.2d 858 (1978).

A witness having firsthand knowledge of a hearsay statement who testifies to the making of the statement satisfies Pa.R.E. 602; the witness may not, however, testify to the truth of the statement if the witness has no personal knowledge of the truth of the statement. Whether the hearsay statement is admissible is governed by Pa.R.E. 801 through 805. Generally speaking, the firsthand knowledge requirement of Rule 602 is applicable to the declarant of a hearsay statement. See, e.g., *Commonwealth v. Pronkoskie*, *supra* and *Carney v. Pennsylvania R.R. Co.*, *supra*. However, in the case of admissions of a party opponent, covered by Pa.R.E. 803(25), personal knowledge is not required. See *Salvitti v. Throppe*, 343 Pa. 642, 23 A.2d 445 (1942); *Carswell v. SEPTA*, 259 Pa. Super. 167, 393 A.2d 770 (1978). Moreover, Pa.R.E. 804(b)(4) explicitly dispenses with the need for personal knowledge for statements of personal or family history. In addition, Pa.R.E. 803(19), (20) and (21) impliedly do away with the personal knowledge requirement for statements dealing with reputation concerning personal or family history, boundaries or general history, and a person’s character.

#### Rule 603. Oath or Affirmation.

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness’ conscience and impress the witness’ mind with the duty to do so.

#### Comment

This rule is identical to F.R.E. 603, which was designed to be flexible enough to cover persons with any or no

religious beliefs, persons with mental defects, and children. F.R.E. 603 advisory committee notes. The rule is consistent with Pennsylvania law. See *Dunsmore v. Dunsmore*, 309 Pa. Super. 503, 455 A.2d 723 (1983) (holding that it was error to allow a witness to testify without oath or affirmation); *Commonwealth ex rel. Freeman v. Superintendent*, 212 Pa. Super. 422, 242 A.2d 903 (1968) (same). Pennsylvania law requires both the mentally impaired and children to understand the obligation to tell the truth. See *Commonwealth v. Mazzoccoli*, 475 Pa. 408, 380 A.2d 786 (1977); *Commonwealth v. Kosh*, 305 Pa. 146, 157 A. 479 (1931).

Pa.R.E. 603 is also consistent with 42 Pa.C.S.A. § 5901. Although § 5901 provides that every witness "shall take an oath in the usual or common form by laying the hand upon an open copy of the Holy Bible or by lifting up the right hand and pronouncing or assenting to" a specific incantation set forth in the statute, it also permits affirmation by a witness who desires to do so. See also 42 Pa.C.S.A. § 5902 (providing that a person's capacity to testify "shall not be affected by his opinions on matters of religion" and that no witness shall be questioned "concerning his religious beliefs"). Religious belief as a ground for impeachment is treated in Pa.R.E. 610.

#### Rule 604. Interpreters.

An interpreter is subject to the provisions of Rule 702 (relating to qualification as an expert) and Rule 603 (relating to the administration of an oath or affirmation).

#### Comment

This Rule adopts the substance of F.R.E. 604; the only change is the explicit reference to Pa.R.E. 702 and 603, rather than the general reference to "the provisions of these rules" in F.R.E. 604.

The need for an interpreter whenever a witness' natural mode of expression or the language of a document is not intelligible to the trier of fact is well settled. 3 Wigmore, *Evidence* § 911 (Chadbourn rev. 1970). Under Pa.R.E. 604, an interpreter is treated as an expert witness who must have the necessary skill to translate correctly and who must promise to do so by oath or affirmation.

Pa.R.E. 604 is consistent with those Pennsylvania statutes providing for the appointment of interpreters for the deaf. See 42 Pa.C.S.A. § 7103 (deaf party in a civil case); 2 Pa.C.S.A. 505.1 (deaf party in hearing before Commonwealth agency); 42 Pa.C.S.A. § 8701 (deaf defendant in criminal case); see also *Commonwealth v. Wallace*, 433 Pa. Super. 518, 641 A.2d 321 (1994) (applying § 8701). Under each of these statutes, an interpreter must be "qualified and trained to translate for or communicate with deaf persons" and must "swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability."

There is little statutory authority for the appointment of interpreters, but the practice is well established. See Pa.R.Crim.P. 264(b) (authorizing presence of interpreter while investigating grand jury is in session if supervising judge determines necessary for presentation of evidence); 51 Pa.C.S.A. § 5507 (under regulations prescribed by governor, convening authority of military court may appoint interpreters). The decision whether to appoint an interpreter is within the discretion of the trial court. See *Commonwealth v. Pana*, 469 Pa. 43, 364 A.2d 895 (1976) (holding that it was an abuse of discretion to fail to

appoint an interpreter for a criminal defendant who had difficulty in understanding and expressing himself in English).

#### Rule 605. Competency of Judge as Witness.

The judge presiding at a trial or other proceeding may not testify as a witness in that trial or proceeding.

#### Comment

This rule differs from F.R.E. 605. Pa.R.E. 605 departs from the first sentence of F.R.E. 605 to clarify the meaning of the rule. The second sentence of F.R.E. 605 which provides, "[n]o objection need be made in order to preserve the point," has not been adopted.

Pa.R.E. 605 makes a judge absolutely incompetent to be a witness on any matter in any proceeding at which the judge presides. Cf., *Municipal Publications, Inc. v. Court of Common Pleas*, 507 Pa. 194, 489 A.2d (1985) (applying Canon 3C of the Pennsylvania Code of Judicial Conduct, and holding that at a hearing on a motion to recuse a judge, the judge himself could not testify on the issues raised in the motion and continue to preside at the hearing).

There is no Pennsylvania authority on the meaning of "testify as a witness." However, based upon the legislative history of F.R.E. 605, a judge may be said to "testify" even if he has not been called to the witness stand. See 27 Wright & Gold, *Federal Practice and Procedure* § 6063 (1990) (citing *United States v. Lillie*, 953 F.2d 1188 (10th Cir. 1992) (judge in bench trial taking a view without knowledge or presence of counsel and parties)); *Jones v. Beneficial Trust Life Ins. Co.*, 800 F.2d 1397 (5th Cir. 1986) (introduction at trial of judge's pretrial ruling); *United States v. Pritchett*, 699 F.2d 317 (6th Cir. 1983) (judge's comments from bench).

Pa.R.E. 605 does not include the final sentence of F.R.E. 605, which provides, in effect, an "automatic" objection to testimony by the presiding judge. The Federal Rule includes the "automatic" objection to free the opponent of the testimony from having to choose between waiving a challenge to the testimony by not objecting and risking offense to the judge by objecting. F.R.E. 605 advisory committee notes. This puts undue emphasis on the sensibilities of trial judges. Moreover, since courts have applied F.R.E. 605 to situations where the trial judge has not been called to the stand, the "automatic" objection precludes the only means of alerting the trial judge to the need for corrective action before it is too late. For these reasons, Pa.R.E. 605 takes the opposite approach—an objection must be made to preserve the issue of violation of the Rule. This is consistent with the provisions of Pa.R.E. 103 that error may not be predicated on a ruling admitting evidence in the absence of a timely objection, motion to strike, or motion in limine. Of course, the court should provide an opportunity for the making of the objection out of the presence of the jury.

#### Rule 606. Competency of Juror as Witness.

(a) *At the Trial.* A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) *Inquiry into Validity of Verdict.* Upon an inquiry into the validity of a verdict, including a sentencing verdict pursuant to 42 Pa.C.S.A. § 9711 (relating to capital sentencing proceedings), a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon



that or any other juror's mind or emotions in reaching a decision upon the verdict or concerning the juror's mental processes in connection therewith, and a juror's affidavit or evidence of any statement by the juror about any of these subjects may not be received. However, a juror may testify concerning whether prejudicial facts not of record, and beyond common knowledge and experience, were improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

### Comment

Pa.R.E. 606(a) is identical to F.R.E. 606(a). Section (a) is contrary to the traditional common law rule and Pennsylvania law. See 6 Wigmore, *Evidence* § 1910 (Chadbourn rev. 1976); 1 McCormick, *Evidence* § 68 (4th ed. 1992); *Howser v. Commonwealth*, 51 Pa. 332 (1866) (jurors are competent witnesses in both civil and criminal cases); *Commonwealth v. Sutton*, 171 Pa. Super. 105, 90 A.2d 264 (1952). Since the adoption of the Federal Rules, most states have enacted or promulgated provisions consistent with the substance of section (a). See 27 Wright & Gold, *Federal Practice and Procedure* § 6071 nn. 59-73 (1990). Of course, the calling of a juror as a witness will be a rarity; voir dire will generally expose a juror's knowledge of facts relevant to a case, which will usually mean disqualification of the juror for cause.

Note that section (a) bars a jury member from testifying "before that jury in the trial of the case in which the juror is sitting." The phrase "before that jury" did not appear in the preliminary draft of F.R.E. 606(a); its addition leads to the conclusion that a juror may testify outside the presence of the rest of the jury on matters occurring during the course of the trial. 3 Weinstein & Berger, *Evidence* ¶ 606[02], at 606-18; see also *United States v. Robinson*, 645 F.2d 616 (8th Cir. 1981) (holding that on motion for mistrial, F.R.E. 606 did not bar juror from testifying, out of presence of other jurors, concerning his observation of accused being escorted from court house under guard); *United States v. Day*, 830 F.2d 1099 (10th Cir. 1987) (stating that during course of trial, juror could have been called to testify regarding whether bias arose from remarks between juror and investigating F.B.I. agent). Current Pennsylvania law is in accord. See *Commonwealth v. Santiago*, 456 Pa. 265, 318 A.2d 737 (1974) (jurors permitted to testify at hearing in chambers during trial on question of whether they received improper prejudicial information).

Pa.R.E. 606(b) is based upon F.R.E. 606(b) with certain language and organizational changes that do not alter substance. The reference to sentencing verdicts in capital cases does not appear in the Federal Rule; it reflects existing Pennsylvania law. See *Commonwealth v. Williams*, 514 Pa. 62, 522 A.2d 1058 (1987). The word "indictment," which is in the Federal Rule, has been removed throughout Pa.R.E. 606(b) because the indicting grand jury has now been abolished throughout Pennsylvania pursuant to Article I, § 10 of the Pennsylvania constitution and 42 Pa.C.S.A. § 8931(b).

For simplification, the Federal Rule language "as influencing the juror to assent to or dissent from," used in connection with effects upon a juror's mind or emotions, has been deleted in favor of the phrase "in reaching a decision upon." No substantive change is intended.

The sentence structure of the Federal rule has been changed. The two exceptions to juror incompetency appear as the second sentence of Pa.R.E. 606(b), and the provision concerning juror affidavits and evidence of

juror's statements, with minor language differences, has been moved from the end of the section and placed at the end of the first sentence, since it is to the subjects thereof that it is relevant.

Finally, the words "extraneous prejudicial information" in the first exception of the Federal Rule have been replaced by the phrase "prejudicial facts not of record and beyond common knowledge and experience." This makes clear that the exception is directed at evidence brought before the jury which was not presented during the trial, and which was not tested by the processes of the adversary system and subjected to judicial screening for a determination of admissibility. The qualification of "common knowledge and experience" is a recognition that all jurors bring with them some common facts of life. See generally, 27 Wright and Gold, *Federal Practice and Procedure: Evidence*, § 6075 (1990).

Like its Federal counterpart, the first sentence of Pa.R.E. 606(b), making jurors incompetent to testify about the matters referred to therein, is designed to protect all "components of [a jury's] deliberations, including arguments, statements, discussions, mental and emotional reactions, votes and any other feature of the process." See F.R.E. 606(b) advisory committee notes. This is consistent with Pennsylvania law. See *Commonwealth v. Pierce*, 453 Pa. 319, 309 A.2d 371 (1973); *Commonwealth v. Zlatovich*, 440 Pa. 388, 269 A.2d 469 (1970); *Commonwealth v. Patrick*, 416 Pa. 437, 206 A.2d 295 (1965).

Pennsylvania cases have also recognized the two exceptions to juror incompetency set forth in the second sentence of Pa.R.E. 606(b). *Carter v. U.S. Steel Corp.*, 529 Pa. 409, 604 A.2d 1010 (1992); *Commonwealth v. Williams*, *supra*; *Welshire v. Bruaw*, 331 Pa. 392, 200 A.2d 67 (1938). Note that when jurors are permitted to testify about facts not of record and outside influences, they may not be questioned about the effect upon them of what was improperly brought to their attention. See *Carter*, *supra*; 3 Weinstein & Berger, *Evidence* ¶ 606[5] at pp.606-53-606-55. Pa.R.E. 606(b) does not purport to set forth the substantive grounds for setting aside verdicts because of an irregularity.

### Rule 607. Impeachment of Witness.

(a) *Who May Impeach.* The credibility of any witness may be attacked by any party, including the party calling the witness.

(b) *Evidence to Impeach.* The credibility of a witness may be impeached by any evidence relevant to that issue, except as otherwise provided by statute or these Rules.

### Comment

Pa.R.E. 607(a) is identical to F.R.E. 607. The Federal Rules have no provision similar to section (b).

*Section (a)*—Pa.R.E. 607(a) abolishes completely the common law rule that prohibited a party from impeaching a witness called by that party. The common law rule, which applied to all forms of impeachment, has been criticized. See *Chambers v. Mississippi*, 410 U.S. 284 (1973); 3A Wigmore, *Evidence* §§ 897-99 (Chadbourn rev. 1970); 1 McCormick, *Evidence* § 38 (4th ed. 1992). To the extent that there are any vestiges of the "no impeachment" prohibition remaining in Pennsylvania, Pa.R.E. 607(a) sweeps them away.

Pa.R.E. 607(a) allows impeachment by all of the methods provided for in Pa.R.E. 607(b), 608, 609 and 613.

*Section (b)*—The methods that may be used to impeach credibility are subject to Pa.R.E. 401, which defines



relevant evidence. For example, the United States Supreme Court held that the Federal Rules clearly contemplated that evidence of bias could be used to impeach credibility even though nothing in those Rules specifically covered the subject. *United States v. Abel*, 469 U.S. 45 (1984). The Court pointed to F.R.E. 401, defining relevancy, and F.R.E. 402, providing for the admissibility of all relevant evidence, in support of its holding. *Id.* The Court commented that “[a] successful showing of bias . . . would have a tendency to make the facts to which [the witness] testified less probable in the eyes of the jury than it would be without such testimony.” *Id.* at 51.

Pa.R.E. 401 and 402 are similar to their Federal counterparts, and they, too, support the impeaching of credibility by any means having any tendency to cast doubt on the witness’ testimony. However, the words “except as otherwise provided by statute or these Rules” in Pa.R.E. 607(b) incorporate a number of provisions that circumscribe the breadth of the Rule. See, e.g., 18 Pa.C.S.A. § 3104 (the Rape Shield Law). Impeachment evidence is also subject to Pa.R.E. 403, which provides that relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. Similarly, Pa.R.E. 501, which preserves all privileges “as they now exist or may be modified by law,” would exclude any evidence relevant to credibility that might be covered by existing or later developed privileges, including those created by case law. In addition, Pa.R.E. 607(b) is limited and supplemented by Pa.R.E. 608 (dealing with evidence of character and conduct of a witness), Pa.R.E. 609 (relating to impeachment by evidence of conviction of crime), Pa.R.E. 610 (covering religious beliefs or opinions) and Pa.R.E. 613 (regarding prior statements of witnesses).

Pa.R.E. 607(b), however, is not curtailed by 42 Pa.C.S.A. § 5918, which prohibits, with certain exceptions, the questioning of a defendant who testifies in a criminal case for the purpose of showing that the defendant has committed, been convicted of or charged with another offense or that the defendant has a bad character or reputation. In *Commonwealth v. Bigham*, 452 Pa. 554, 307 A.2d 255 (1973), this statute was interpreted to apply only to cross-examination. Hence, it affects only the timing and method of impeachment of a defendant; it does not bar the impeachment entirely.

Since the credibility of any witness depends upon his or her powers of perception, capacity to remember, ability to communicate accurately and honesty or integrity, it may always be attacked by showing shortcomings in any of those areas. See *Commonwealth v. Gwaltney*, 497 Pa. 505, 442 A.2d 236 (1982); *Commonwealth v. Hamm*, 474 Pa. 487, 378 A.2d 1219 (1977); (McCormick, *Evidence*, § 44 (4th ed. 1992).

#### **Rule 608. Evidence of Character and Conduct of Witness.**

(a) *Reputation Evidence of Character.* The credibility of a witness may be attacked or supported by evidence in the form of reputation as to character, but subject to the following limitations:

- (1) the evidence may refer only to character for truthfulness or untruthfulness; and
- (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence or otherwise.

(b) *Specific Instances of Conduct.* Except as provided in Rule 609 (relating to evidence of conviction of crime),

(1) the character of a witness for truthfulness may not be attacked or supported by cross-examination or extrinsic evidence concerning specific instances of the witness’ conduct; however,

(2) in the discretion of the court, the credibility of a witness who testifies as to the reputation of another witness for truthfulness or untruthfulness may be attacked by cross-examination concerning specific instances of conduct (not including arrests) of the other witness, if they are probative of truthfulness or untruthfulness; but extrinsic evidence thereof is not admissible.

#### **Comment**

Pa.R.E. 608(a)(1) and (2) differ from F.R.E. 608(a) in that they permit character for truthfulness or untruthfulness to be proven only by reputation evidence. Opinion evidence is not admissible. This approach is consistent with Pennsylvania law. See *Commonwealth v. Lopinson*, 427 Pa. 284, 234 A.2d 552 (1967), vacated on other grounds, 392 U.S. 647 (1968); see also Pa.R.E. 405(a) and Pa.R.E. 803(21). Pa.R.E. 608(a)(1) and (a)(2) are also consistent with Pennsylvania law to the effect that evidence of character for untruthfulness is admissible to attack credibility. See *Commonwealth v. Payne*, 205 Pa. 101, 54 A. 489 (1903). Evidence to support or bolster a witness’ character for truthfulness is admissible only if there has first been an attack on that trait of character. See *Commonwealth v. Fowler*, 434 Pa. Super. 148, 642 A.2d 517 (1994); *Commonwealth v. Smith*, 389 Pa. Super. 626, 567 A.2d 1080 (1989).

Pa.R.E. 608(b) differs from F.R.E. 608(b). Both ban all use of extrinsic evidence of specific instances of conduct for the purpose of attacking or supporting a witness’ credibility, except for evidence of conviction of crime (Pa.R.E. 609 and F.R.E. 609). The two rules diverge, however, in their treatment of cross-examination concerning specific instances of conduct.

Under the F.R.E. 608(b), the court has discretion to permit cross-examination of a witness about specific instances of conduct in two situations: when the specific instances are probative of the witness’ own character for truthfulness and when they concern the character for truthfulness of another witness and the witness being cross-examined has testified about the truthfulness of that witness. In the latter case, cross-examination about specific instances of conduct may undermine the credibility of the witness being cross-examined (the “character witness”) and the credibility of the other witness (the “principal witness”). See 28 Wright and Gold, *Federal Practice and Procedure* § 6120 (1993).

Unlike F.R.E. 608(b), Pa.R.E. 608(b)(1) prohibits the use of specific instances of a witness’ own conduct for the purpose of attacking the witness’ character for truthfulness. This follows existing Pennsylvania law. See *Commonwealth v. Taylor*, 475 Pa. 464, 381 A.2d 418 (1977); *Commonwealth v. Coyle*, 281 Pa. Super. 434, 422 A.2d 547 (1980).

Like F.R.E. 608(b), however, Pa.R.E. 608(b)(2) permits a character witness to be cross-examined, in the discretion of the court, concerning specific instances of conduct of the principal witness. However, unlike the Federal Rule, Pa.R.E. 608(b)(2) makes it clear that although the cross-examination concerns the specific acts of the principal witness, those specific acts affect the credibility of the character witness only. This is in accord with Pennsylvania law. See *Commonwealth v. Peterkin*, 511 Pa. 299, 513 A.2d 373 (1986); *Commonwealth v. Adams*, 426 Pa. Super. 332, 626 A.2d 1231 (1993). In addition, it excludes the use

of arrests; this, too, is consistent with Pennsylvania law. See *Commonwealth v. Scott*, 496 Pa. 188, 436 A.2d 607 (1981). Because cross-examination concerning specific incidents of conduct is subject to abuse, the cross-examination is not automatic; rather, its use is specifically placed in the discretion of the court, and like all other relevant evidence, it is subject to the balancing test of Pa.R.E. 403. Moreover, the court should take care that the cross-examiner has a reasonable basis for the questions asked. See *Adams, supra*.

Finally, Pa.R.E. 608 does not include the last paragraph of F.R.E. 608(b), which provides that the giving of testimony by an accused or any other witness is not a waiver of the privilege against self-incrimination when the examination concerns matters relating only to credibility. Pa.R.E. 608(b)(1) bars cross-examination of any witness concerning specific acts of the witness' own conduct; thus, the provision is not needed.

**Rule 609. Impeachment by Evidence of Conviction of Crime.**

(a) *General Rule.* For the purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime, whether by verdict or by plea of guilty or nolo contendere, shall be admitted if it involved dishonesty or false statement.

(b) *Time Limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) *Effect of Pardon or Other Equivalent Procedure or Successful Completion of Rehabilitation Program.* Evidence of a conviction is not admissible under this rule if the conviction has been the subject of one of the following:

(1) a pardon or other equivalent procedure based on a specific finding of innocence; or

(2) a pardon or other equivalent procedure based on a specific finding of rehabilitation of the person convicted, and that person has not been convicted of any subsequent crime.

(d) *Juvenile Adjudications.* In a criminal case only, evidence of the adjudication of delinquency for an offense under the Juvenile Act, 42 Pa.C.S.A. §§ 6301 et seq., may be used to impeach the credibility of a witness if conviction of the offense would be admissible to attack the credibility of an adult.

(e) *Pendency of Appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

**Comment**

Pa.R.E. 609(a) differs from F.R.E. 609(a). Pa.R.E. 609(a), subject to the time limitations in Pa.R.E. 609(b), is similar to F.R.E. 609(a)(2) because it permits impeachment of any witness by evidence of conviction of a crime involving dishonesty or false statement, regardless of what the punishment for that crime may be. However,

Pa.R.E. 609(a) does not permit use of evidence of conviction of a crime punishable by death or imprisonment for more than one year, which is allowed under F.R.E. 609(a)(1), subject to certain balancing tests. This limitation on the type of crime evidence admissible is consistent with Pennsylvania law. See *Commonwealth v. Randall*, 515 Pa. 410, 528 A.2d 1326 (1987); *Commonwealth v. Bigham*, 452 Pa. 554, 307 A.2d 255 (1973). Moreover, Pa.R.E. 609(a), unlike F.R.E. 609(a)(2), specifically provides that a conviction based upon a plea of nolo contendere may be used to impeach; this, too, is consistent with Pennsylvania law. See *Commonwealth v. Snyder*, 408 Pa. 253, 182 A.2d 495 (1962).

As a general rule, evidence of a jury verdict of guilty or a plea of guilty or nolo contendere may not be used to impeach before the court has pronounced sentence. See *Commonwealth v. Zapata*, 455 Pa. 205, 314 A.2d 299 (1974). In addition, evidence of admission to an Accelerated Rehabilitative Disposition program under Pa.R.Crim.P. 176-186 may not be used to impeach credibility. See *Commonwealth v. Krall*, 290 Pa. Super. 1, 434 A.2d 99 (1981).

Where the target of impeachment is the accused in a criminal case, 42 Pa.C.S.A. § 5918 again comes into play. See Comment to Pa.R.E. 607, 608 pointing out that § 5918's prohibition against questioning defendant who takes stand about conviction of any offense other than the one for which he is on trial applies only to cross-examination. Hence, evidence of conviction of a crime may be introduced in rebuttal after the defendant has testified. See *Commonwealth v. Bigham*, 452 Pa. 554, 307 A.2d 255 (1973).

Pa.R.E. 609(b) differs slightly from F.R.E. 609(b) in that the phrase "supported by specific facts and circumstances," used in the latter with respect to the balancing of probative value and prejudicial effect, has been eliminated. Pa.R.E. 609(b) basically tracks what was said in *Commonwealth v. Randall*, 515 Pa. 410, 528 A.2d 1326 (1987). Where the date of conviction or last date of confinement is within ten years of the trial, evidence of the conviction of a crimen falsi is per se admissible. If more than ten years have elapsed, the evidence may be used only after written notice and the trial judge's determination that its probative value substantially outweighs its prejudicial effect. The relevant factors for making this determination are set forth in *Binhum, supra*, and *Commonwealth v. Roots*, 482 Pa. 33, 393 A.2d 364 (1978). For the computation of the ten-year period, where there has been a reincarceration because of a parole violation, see *Commonwealth v. Jackson*, 526 Pa. 294, 585 A.2d 1061 (1991).

Pa.R.E. 609(c) is similar to F.R.E. 609(c). There are no Pennsylvania cases dealing squarely with the matters covered by section (c). Where a pardon is based upon a finding that a defendant was in fact innocent, the conviction is a nullity and has no probative value; accordingly, there is no basis to permit its use. A pardon based upon a finding of rehabilitation is an indication that the character flaw which gave rise to the inference of untruthfulness has been overcome and so should no longer be taken into account. A subsequent conviction of any crime, whether or not it involves dishonesty or false statement, casts substantial doubt on the finding of rehabilitation and justifies use of the evidence. In the case of both types of pardon, the instrument embodying the pardon must set forth the finding of innocence or rehabilitation. A pardon granted to restore civil rights or to reward good behavior does not make evidence of the conviction inadmissible

under Pa.R.E. 609(c), but is admissible in rebuttal if the conviction is used to impeach. *Commonwealth v. Quaranta*, 295 Pa. 264, 145 A.2d 89 (1926).

Pa.R.E. 609(d) differs from F.R.E. 609(d). Under the latter, evidence of juvenile adjudications is generally inadmissible to impeach credibility, except in criminal cases against a witness other than the accused where the court finds that the evidence is necessary for a fair determination of guilt or innocence. Pa.R.E. 609(d), to be consistent with 42 Pa.C.S.A. § 6354(b)(4) permits a broader use; a juvenile adjudication of an offense may be used to impeach in a criminal case if conviction of the offense would be admissible if committed by an adult. Juvenile adjudications may also be admissible for other purposes. See 42 Pa.C.S.A. § 6354(b)(1), (2) and (3).

Moreover, under the confrontation clause of the United States Constitution, the accused in a criminal case has the right to use the juvenile record of a witness to show the witness' possible bias, regardless of the type of offense involved. See *Davis v. Alaska*, 415 U.S. 309 (1974); *Commonwealth v. Simmons*, 521 Pa. 218, 555 A.2d 860 (1989).

Pa.R.E. 609(e) is identical to F.R.E. 609(e). There is no Pennsylvania law on this issue. According to the Advisory Committee Notes to F.R.E. 609(e), a witness may be impeached by evidence of a prior conviction regardless of a pending appeal because of the "presumption of correctness that ought to attend judicial proceedings." This is the predominant view. 1 McCormick, *Evidence*, § 42 (4th ed. 1992).

#### **Rule 610. Religious Beliefs or Opinions.**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

##### **Comment**

This Rule is identical to F.R.E. 610. It is consistent with 42 Pa.C.S.A. § 5902, which provides that religious beliefs and opinions shall not affect a person's "capacity" to testify, that no witness shall be questioned about those beliefs or opinions, and that no evidence shall be heard on those subjects for the purpose of affecting "competency or credibility." This is also consistent with Pennsylvania decisional law. See *Commonwealth v. Greenwood*, 488 Pa. 618, 413 A.2d 655 (1980); *Commonwealth v. Mimms*, 477 Pa. 553, 358 A.2d 334 (1978).

Pa.R.E. 610 bars evidence of a witness' religious beliefs or opinions only when offered to show that the beliefs or opinions affect the witness' truthfulness because of their nature. Pa.R.E. 610 does not bar such evidence introduced for other purposes. See *McKim v. Philadelphia Transp. Co.*, 364 Pa. 237, 72 A.2d 122 (1950); *Commonwealth v. Riggins*, 373 Pa. Super. 243, 542 A.2d 1004 (1988).

#### **Rule 611. Mode and Order of Interrogation and Presentation.**

(a) *Control by Court.* The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time and (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of Cross-Examination.* Cross-examination of a witness other than a party in a civil case should be

limited to the subject matter of the direct examination and matters affecting credibility; however, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. A party witness in a civil case may be cross-examined by an adverse party on any matter relevant to any issue in the case, including credibility, unless the court, in the interests of justice, limits the cross-examination with respect to matters not testified to on direct examination.

(c) *Leading Questions.* Leading questions should not be used on the direct or redirect examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party or a witness identified with an adverse party, interrogation may be by leading questions; a witness so examined should usually be interrogated by all other parties as to whom the witness is not hostile or adverse as if under redirect examination.

##### **Comment**

Pa.R.E. 611(a) is identical to F.R.E. 611(a). It places responsibility for the conduct of the trial squarely within the discretion of the trial judge and spells out guidelines for the exercise of that discretion. It is consistent with Pennsylvania law. See *Commonwealth v. Smith*, 518 Pa. 15, 540 A.2d 246 (1988); see also Pa.R.Civ.P. 223 (relating to the conduct of civil jury trials); Pa.R.Civ.P. 224 (relating to the order of proof in civil cases).

Pa.R.E. 611(b) differs from F.R.E. 611(b). F.R.E. 611(b) limits the scope of cross-examination of all witnesses to matters testified to on direct and matters bearing on credibility, unless the court in its discretion allows inquiry into additional matters as if on direct examination. This has been the traditional view in the Federal courts and many State courts. The cross-examiner does not lose the opportunity to develop the evidence because, unless the witness is the accused in a criminal case, the cross-examiner may call the witness as his or her own. Therefore, the introduction of the evidence is merely deferred.

Pa.R.E. 611(b), which is based on Pennsylvania law, applies the traditional view in both civil and criminal cases to all witnesses except a party in a civil case. See *Woodland v. Philadelphia Transportation Co.*, 428 Pa. 379, 238 A.2d 593 (1968); *Commonwealth v. Cessna*, 371 Pa. Super., 89, 537 A.2d 834 (1988). In applying the rule of limited cross-examination, the Supreme Court said in *Conley v. Mervis*, 324 Pa. 577, 188 A.350 (1936) that "cross-examination may embrace any matter germane to the direct examination, qualifying or destroying it or tending to develop facts which have been improperly suppressed or ignored by the [witness]". See also *Commonwealth v. Lopinson*, 427 Pa. 300, 234 A.2d 562 (1961).

Under Pa.R.E. 611(b), a party in a civil case may be cross-examined on all relevant issues and matters affecting credibility. See *Agate v. Dunleavy*, 398 Pa. 26, 156 A.2d 530 (1959); *Greenfield v. Philadelphia*, 282 Pa. 344, 127 A.768 (1925). However, in both of those cases, the Court stated that the broadened scope of cross-examination of a party in a civil case does not permit a defendant to put in a defense through cross-examination of the plaintiff. The qualifying clause in the last sentence of Pa.R.E. 611(b) is intended to give the trial judge discretion to follow this longstanding rule.

When the accused in a criminal case is the witness, there is an interplay between the limited scope of cross-examination and the accused's privilege against self-

incrimination. When the accused testifies generally as to facts tending to negate or raise doubts about the prosecution's evidence, he or she has waived the privilege and may not use it to prevent the prosecution from bringing out on cross-examination every circumstance related to those facts. See *Commonwealth v. Green*, 525 Pa. 424, 581 A.2d 544 (1990). However, when the accused's testimony is more selective or limited, the waiver of the privilege is only coextensive with the permissible scope of cross-examination relative to the accused's direct testimony; it is not a general waiver. See *Commonwealth v. Camm*, 443 Pa. 253, 277 A.2d 325 (1971); *Commonwealth v. Ulen*, 414 Pa. Super. 502, 607 A.2d 77 (1992), rev'd on other grounds, 359 Pa. 51, 650 A.2d 416 (1994).

Pa.R.E. 611(c) makes two changes in the comparable section of the Federal Rule. First, Pa.R.E. 611(c) includes the words "or redirect," which do not appear in the first sentence of the Federal Rule. The additional words should remove any doubt that the rule on leading questions applies to redirect as well as direct examination. See *Commonwealth v. Reidenbaugh*, 282 Pa. Super. 300, 422 A.2d 1126 (1980). Second, the last sentence of section (c) includes a clause providing that when the court gives permission to use leading questions to a party who has called a hostile witness, an adverse party or one identified with an adverse party, the court should not extend that permission to other parties to whom the witness is not hostile or adverse.

Pa.R.E. 611(c) is consistent with Pennsylvania law. A leading question has been defined as one which indicates or suggests the answer desired by the examiner. See *Commonwealth v. Chambers*, 528 Pa. 558, 599 A.2d 630 (1991); *Commonwealth v. Dreibelbis*, 493 Pa. 466, 426 A.2d 1111 (1981). Leading questions may be used on cross-examination, but not on direct. See *Rogan Estate*, 404 Pa. 205, 171 A.2d 177 (1961). As in the Federal Rule, Pa.R.E. 611(c) qualifies the right to lead a witness on cross-examination by the word "ordinarily." That qualification permits the court to bar the use of leading questions when the cross-examination is in form only, such as when a party's own attorney questions the party after the party was called by an opponent, or when the plaintiff's attorney cross-examines an insured defendant who is friendly to the plaintiff. See F.R.E. 611 advisory committee notes.

Leading questions may be put to a hostile witness, *Commonwealth v. Settles*, 442 Pa. 159, 275 A.2d 61 (1978), and to an adverse party, *Agate, supra*. Pa.R.E. 611(c) is also consistent with 42 Pa.C.S.A. § 5935, which authorizes the calling and cross-examination of an adverse party or a person having an adverse interest. This authorization implies the use of leading questions.

A party who calls a hostile witness, adverse party or one identified with an adverse party may use leading questions because these witnesses are "unfriendly" to the party calling them and there is little risk that they will be susceptible to any suggestions inherent in the questions. The risk of susceptibility to suggestion is present, however, when a party to whom the witness is "friendly" (i.e. to whom the witness is not hostile, an adverse party or one identified with the an adverse party) interrogates the witness. The last clause of Pa.R.E. 611(c) restricts the use of leading questions by a party to whom the witness is "friendly." The word "usually," however, was included to give the court discretion to permit leading questions in an appropriate case. For example, leading questions may be appropriate when the testimony of a witness who was called and examined as a hostile witness by one party

substantially harms the interest of another party with whom the witness is neither friendly nor unfriendly.

#### **Rule 612. Writing or Other Item Used to Refresh Memory.**

(a) *Right to Refresh Memory and Production of Refreshing Materials.* A witness may use a writing or other item to refresh memory for the purpose of testifying. If the witness does so, either—

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing or other item produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness on it and to introduce in evidence those portions which relate to the testimony of the witness.

(b) *Redaction of Writing or Other Item and Sanctions.* If it is claimed that the writing or other item contains matters not related to the subject matter of the testimony, the court shall examine it in camera, excise any portion not so related and order delivery of the remainder to the party entitled to it. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or other item is not produced or delivered pursuant to an order under this section, the court shall make any order justice requires, except that in criminal cases when the prosecution does not comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial, or the court may use contempt procedures.

#### **Comment**

Pa.R.E. 612 and F.R.E. 612 are substantively equivalent, but differ somewhat in language and structure:

1. Pa.R.E. 612 covers the same subject matter as F.R.E. 612, but does so in two sections rather than one lengthy paragraph. The organization of Pa.R.E. 612 is derived, in part, from the Uniform Rules of Evidence, Rule 612 (1974).

2. Pa.R.E. 612 explicitly sets forth the right to refresh memory, which is implicit in the Federal Rule.

3. Pa.R.E. 612 does not include the reference to 18 U.S.C. § 3500 (the Jencks Act) appearing in the Federal Rule, because it is inapposite.

4. Pa.R.E. 612 uses the phrase "writing or other item" where the Federal Rule uses the term "writing."

5. Pa.R.E. 612(a) includes the words "trial or deposition" after the word "hearing" primarily to make clear that the rule applies to depositions. The addition of "trial" is for completeness.

6. The last sentence of Pa.R.E. 612(b) uses the phrase "prosecution does not" instead of the phrase "prosecution elects not to," which appears in the Federal Rule. Additionally, Pa.R.E. 612(b) adds "contempt procedures" to the sanctions usable in criminal cases listed in the Federal Rule.

Section (a) The right to refresh a witness' memory is well established in Pennsylvania. See *Commonwealth v. Payne*, 455 Pa. 503, 317 A.2d 208 (1974). Although usually the witness' memory is refreshed by a writing, most courts recognize that many other things, such as photographs, can spur the memory. 1 McCormick, *Evidence* § 9 (4th ed. 1992) ("any memorandum or other object may be used as a stimulus to present memory,

without restriction by rule as to authorship, guarantee of correctness or time of making.") The addition of the words "or other item" in section (a) takes this into account.

This is consistent with Pennsylvania law. See *Dean Witter Reynolds, Inc. v. Genteel*, 346 Pa. Super. 336, 499 A.2d 637 (1985); *Commonwealth v. Fromal*, 202 Pa. Super. 45, 195 A.2d 174 (1963). An item may be used to refresh memory even though it is inadmissible in evidence. See *Commonwealth v. Weeden*, 457 Pa. 436, 322 A.2d 343 (1974); *Panik v. Didra*, 370 Pa. 488, 88 A.2d 730 (1952); *Dean Witter*, 346 Pa. Super. at 344, 494 A.2d at 641.

The procedures for refreshing a witness' memory are reviewed in *Commonwealth v. Proctor*, 253 Pa. Super. 369, 385 A.2d 383 (1978).

Pa.R.E. 612(a) gives the adverse party access to the item used to refresh the witness' memory while the witness is testifying. This is consistent with Pennsylvania law. See *Commonwealth v. Proctor*, supra; see also *Commonwealth v. Allen*, 220 Pa. Super. 403, 289 A.2d 476 (1972). The rule protects against the risk that the item used to refresh memory may suggest testimony to the witness instead of refreshing present recollection. Production of the item to the adverse party is discretionary with the court, however, when it is used to refresh memory before testifying. See *Commonwealth v. Samuels*, 235 Pa. Super. 192, 340 A.2d 880 (1975); *Commonwealth v. Fromal*, 202 Pa. Super. 45, 195 A.2d 174 (1963).

Pa.R.E. 612(a), like F.R.E. 612(a), specifically provides that the adverse party may use the item in cross-examination and may introduce the item into evidence. There is no prior Pennsylvania authority on the issue of the item's admissibility. By admitting the item into evidence, the trier of fact can put the whole matter—what the witness was shown, how the witness testified on direct and cross examination—in proper context. The evidence is received for impeachment purposes only unless it comes within one of the exceptions to the hearsay rule in Pa.R.E. 803, 803.1 and 804(b).

Pa.R.E. 612(a) is not intended to change the rule that in a criminal case, written statements made by a witness to police prior to trial must be given to the defendant following the testimony of the witness on direct examination, even if the statements were not used to refresh memory. *Commonwealth v. Kantos*, 442 Pa. 343, 276 A.2d 830 (1971).

Pa.R.E. 612(a), unlike the Federal Rule, explicitly applies to deposition testimony. Most of the cases have applied the Federal Rule to depositions based upon Fed.R.Civ.P. 30(c), which states: "Examination and cross-examination of witnesses [at a deposition] may proceed as permitted at trial under the provisions of the Federal Rules of Evidence." 28 Wright & Gold, *Federal Practice and Procedure* § 6183 (1993); see, e.g., *Sporck v. Peil*, 759 F.2d 312 (3d Cir. 1985).

There are no Pennsylvania cases on this point and the Pennsylvania Rules of Civil Procedure do not have a provision similar to Fed.R.Civ.P. 30(c). In Pennsylvania, however, an adverse party's need for access to the item used to refresh memory is as great at a deposition as at trial because Pennsylvania statutes and procedural rules provide in certain circumstances for the introduction of deposition testimony at trial. Moreover, because the rule allows deposition testimony to be challenged, any suggestion arising from the refreshing can be exposed immediately and eliminated at the time of trial.

Pa.R.E. 612(a), like F.R.E. 612, applies to the use of a writing or other item to refresh memory "for the purpose of testifying." In the Federal Rule, the phrase was intended "to safeguard against using the rule as a pretext for wholesale exploration of an opposing party's files and to insure that access is limited only to those writings which may fairly be said in fact to have an impact upon the testimony of the witness." F.R.E. 612 advisory committee notes; see, e.g., *Sporck v. Peil*, supra (deposition witness examined large number of documents, selected by counsel, in preparation for testifying at deposition).

*Section (b)*—Except for the changes concerning sanctions in criminal cases when the prosecution fails to comply with an order to produce, Pa.R.E. 612(b) is the same as the last three sentences of F.R.E. 612. An adverse party has rights only to those parts of any materials used to refresh memory that bear upon the witness' testimony. When the party who did the refreshing contends that some part of what the witness was shown goes beyond the scope of the testimony, Pa.R.E. 609(b) requires the court to make an in camera inspection and to remove any extraneous matter. Of course, what is excised must be preserved in the event that the redaction is challenged on appeal. This is a well recognized technique.

The last sentence of Pa.R.E. 612(b) targets what will likely be the rare case of a failure to comply with an order to produce. In a civil case, the court is given broad discretion. The problem is akin to the failure of a party to comply with discovery orders, for which Pa.R.Civ.P. 4019 provides a wide range of sanctions. Similarly, under Pa.R.E. 609(b), the court may employ a sanction best calculated to remedy the harm caused by the failure to produce.

#### **Rule 613. Prior Statements of Witnesses.**

(a) *Examining Witness Concerning Prior Statement.* A witness may be examined concerning a prior statement made by the witness, whether written or not, and the statement need not be shown or its contents disclosed to the witness at that time, but on request the statement or contents shall be shown or disclosed to opposing counsel.

(b) *Extrinsic Evidence of Prior Inconsistent Statement of Witness.* Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is admissible only if, during the examination of the witness,

- (1) the statement, if written, is shown to, or if not written, its contents are disclosed to, the witness;
- (2) the witness is given an opportunity to explain or deny the making of the statement; and
- (3) the opposite party is given an opportunity to question the witness.

This section does not apply to admissions of a party-opponent as defined in Rule 803(25) (relating to admissions by a party opponent).

(c) *Evidence of Prior Consistent Statement of Witness.* Evidence of a prior consistent statement by a witness is admissible for rehabilitation purposes if the opposing party is given an opportunity to cross-examine the witness about the statement, and the statement is offered to rebut an express or implied charge of:

- (1) fabrication, bias, improper influence or motive or faulty memory and the statement was made before that which has been charged existed or arose; or

(2) having made a prior inconsistent statement, which the witness has denied or explained, and the consistent statement supports the witness' denial or explanation.

#### Comment

Pa.R.E. 613 differs from F.R.E. 613 both in organization and substance. Both Pa.R.E. 613 and F.R.E. 613 cover impeachment by prior inconsistent statements, but only Pa.R.E. 613 deals with rehabilitation by prior consistent statements.

*Section (a).*—This section of the Rule is identical to F.R.E. 613(a). By dispensing with the need to show the prior statement or disclose its contents to the witness before proceeding with examination about it, section (a) repudiates the decision in the *Queen's Case*, 129 Eng. Rep. 9761 (1820). Pa.R.E. 613(a) resolves the ambiguity in the scant Pennsylvania authority on this point. Compare *Kann v. Bennett*, 223 Pa. 36, 72 A. 342 (1909) (before witness may be cross-examined about prior inconsistent statement, witness must be shown the statement and asked if he wrote it) with *Commonwealth v. Petrakovich*, 459 Pa. 511, 329 A.2d 844 (1974) (overlooking *Kann* case, court stated it had never considered question of showing statement to witness, and found no need to resolve question under facts of case).

*Section (b).*—The first sentence of section (b) of Pa.R.E. 613 differs from F.R.E. 613(b). Like the Federal Rule, Pa.R.E. 613(b) permits introduction of extrinsic evidence of a prior inconsistent statement only if the witness was confronted with or informed of the statement, thus providing the witness with a chance to deny or explain the statement. Pa.R.E. 613(b), however, requires that the witness be confronted or informed during the examination; the Federal Rule sets no particular time or sequence. F.R.E. 613 advisory committee notes.

Pa.R.E. 613(b) follows the traditional common law approach. It establishes that the witness must be shown or made of aware of the prior inconsistent statement before extrinsic evidence of the statement may be introduced, unless relaxation of the rule would serve the interests of justice. This is a departure from Pennsylvania authority, which gives the trial court discretion whether to require showing or disclosure of the statement. See, e.g., *Commonwealth v. Manning*, 495 Pa. 652, 435 A.2d 1207 (1981); *Commonwealth v. Dennison*, 441 Pa. 334, 272 A.2d 180 (1971).

The rationale for the last sentence of section (b), which exempts admissions of a party-opponent, is that "parties have ample opportunities to testify and explain or deny statements attributed to them." 28 Wright & Gold, *Federal Practice and Procedure* § 6205 (1993). The exemption is in accord with Pennsylvania law. *Commonwealth v. Truscott v. Binstock*, 358 Pa. 644, 57 A.2d 884 (1948); *Commonwealth v. Dilworth*, 289 Pa. 498, 137 A. 683 (1927).

Finally, as noted in the Comment to Pa.R.E. 607(a), a prior inconsistent statement may be used only for impeachment purposes and not substantively unless it is an admission of a party opponent under Pa.R.E. 803(25), the statement of a witness other than a party opponent within the hearsay exception of Pa.R.E. 803.1(1), or a statement of prior identification under the hearsay exception of Pa.R.E. 803.1(2).

*Section (c).*—Pa.R.E. 613(c) does not appear in F.R.E. 613. F.R.E. 801(d)(1)(B) provides that the prior consistent statement of a testifying witness is not hearsay, and that the statement is admissible substantively if it is consistent with the witness' testimony and "is offered to rebut

an express or implied charge of recent fabrication, or improper influence or motive." Pa.R.E. 613(c) adds "bias," "faulty memory" and "prior inconsistent statement" to the kind of charges that may be rebutted by a consistent statement. In addition, it specifically provides in subsection (c)(1) that the consistent statement must have been made before the fabrication, bias, etc. Although F.R.E. 801(d)(1)(B) is silent on this point, the Supreme Court held that it permits the introduction of consistent statements as substantive evidence only when they were made before the challenged fabrication, influence or motive. See *Tome v. United States*, 513 U.S. 150 (1995). Unlike the Federal Rule, under Pa.R.E. 613(c), a prior consistent statement is always received for rehabilitation purposes only and not as substantive evidence.

Pa.R.E. 613(c)(1) is in accord with Pennsylvania law. See *Commonwealth v. Hutchinson*, 521 Pa. 482, 556 A.2d 370 (1989) (to rebut charge of recent fabrication); *Commonwealth v. Smith*, 518 Pa. 15, 540 A.2d 246 (1988) (to counter alleged corrupt motive); *Commonwealth v. Swinson*, 426 Pa. Super. 167, 626 A.2d 627 (1993) (to negate charge of faulty memory); *Commonwealth v. McEachin*, 371 Pa. Super. 188, 537 A.2d 883 (1988), appeal denied, 520 Pa. 603, 553 A.2d 965 (1988) (to offset implication of improper influence). All of these cases require that the consistent statement must have been made before the fabrication, bias, etc.

Pa.R.E. 613(c)(2) is arguably an extension of Pennsylvania law, but is based on the premise that when an attempt has been made to impeach a witness with an alleged prior inconsistent statement, a statement consistent with the witness' testimony should be admissible to rehabilitate the witness if it supports the witness' denial or explanation of the alleged inconsistent statement. Where there has been a denial of the alleged inconsistent statement, the consistent statement should almost invariably be admitted, regardless of its timing. When the witness admits and explains the inconsistent statement, the use of the consistent statement will depend upon the nature of the explanation and all of the circumstances that prompted the making of the consistent statement; the timing of that statement, although not conclusive, is one of the factors to be considered. If the witness acknowledges making the inconsistent statement and offers no explanation, a consistent statement, whether made earlier or later, should not be admitted.

Usually, evidence of a prior consistent statement is rebuttal evidence that may not be introduced until after witness has testified on direct examination and an express or implied attack has been made on the witness' testimony in one of the ways set forth in Pa.R.E. 613(c). But in at least two situations, Pennsylvania Courts have upheld the admission of a prior consistent statement in anticipation of an attack on the witness. See *Commonwealth v. Smith*, 518 Pa. 15, 540 A.2d 246 (1988) (prior consistent statements by prosecution witness admitted on direct examination where defense counsel's opening statement suggested that the witness had motives to fabricate evidence against the defendant to obtain a lenient sentence for herself); *Commonwealth v. Freeman*, 295 Pa. Super. 467, 441 A.2d 1327 (1982) (evidence of prompt complaint of rape by alleged victim may be introduced in prosecution's case in chief because alleged victim's testimony is "automatically vulnerable to attack by the defendant as recent fabrication in the absence of evidence of hue and cry on her part.").

**Rule 614. Calling and Interrogation of Witnesses by Court.**

(a) *Calling by Court.* Consistent with its function as an impartial arbiter, the court, with notice to the parties, may, on its own motion or at the suggestion of a party call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) *Interrogation by Court.* Where the interest of justice so requires, the court may interrogate witnesses, whether called by itself or by a party.

(c) *Objections.* An objection to the calling of a witness by the court must be made at the time of the court's notice of an intention to call the witness. An objection to a question by the court must be made at the time the question is asked; when requested to do so, the court shall give the objecting party an opportunity to make objections out of the presence of the jury.

**Comment**

Pa.R.E. 614(a) and (b) differ from F.R.E. 614(a) and (b) in several respects. The phrase relating to the court's "function as an impartial arbiter" and the provision for notice have been added in Pa.R.E. 614(a), and the clause regarding "interest of justice" has been added in Pa.R.E. 614 (b). The additions dealing with the court as an "impartial arbiter" and the "interest of justice" are consistent with Pennsylvania law. See *Commonwealth v. Crews*, 429 Pa. 16, 239 A.2d 350 (1968); *Commonwealth v. DiPasquale*, 424 Pa. 500, 230 A.2d 449 (1967); *Commonwealth v. Myrna*, 278 Pa. 505, 123 A. 486 (1924).

The provision requiring notice of the court's intention to call a witness will give all parties an opportunity to be heard regarding the need for this, to object and to prepare for the cross-examination of the witness.

Unlike F.R.E. 614(c), Pa.R.E. 614(c) does not permit objection to the court's calling or interrogating witnesses "at the next available opportunity when the jury is not present." The Federal Rule permits this to relieve counsel of "the embarrassment" which might arise by objecting to the judge's questions in the jury's presence. F.R.E. 614(c) advisory committee notes. This rationale is comparable to the rationale for the "automatic" objection when the judge is called as a witness in F.R.E. 605. Under the Pennsylvania rules, the appropriate time for objecting to the calling of a witness by the court is when the court gives notice of its intention as required by Pa.R.E. 614(a). The court's notice should always take place out of the presence of the jury. When the court's questions to a witness are thought to be objectionable, the issue must be raised when the questions are put. In this way, the jury will not hear the evidence sought if the objection is sustained.

**Rule 615. Sequestration of Witnesses.**

At the request of a party or on its own motion, the court may order witnesses sequestered so that they cannot learn of the testimony of other witnesses. This section does not authorize sequestration of the following:

- (1) a party who is a natural person or the guardian of a party who is a minor or an incapacitated person;
- (2) an officer or employee of a party which is not a natural person (including the Commonwealth) designated as its representative by its attorney; or
- (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

**Comment**

Pa.R.E. 615 differs from F.R.E. 615. Pa.R.E. 615 uses the term "sequestration" instead of "exclusion" and substi-

tutes "learn of" for "hear" in the first sentence. It also puts sequestration within the discretion of the court rather than making it mandatory upon motion of a party. Finally, Pa.R.E. 615 adds the guardian of a minor or incapacitated person to the first category of persons whom the court may not sequester.

Sequestration, i.e., barring a witness from the courtroom during the testimony of other witnesses and prohibiting direct and indirect communication both in and out of the courtroom is designed to discourage and expose fabrication, collusion, inaccuracies and inconsistencies. 1 McCormick, *Evidence*, § 50 (4th ed. 1992). Placing it within the discretion of the trial court is in conformity with Pennsylvania law. See *Commonwealth v. Albrecht*, 510 Pa. 603, 511 A.2d 764 (1986) (the decision of the trial court on whether or not to sequester a witness will not be reversed absent a clear abuse of discretion). Examples of abuse of discretion may be found in *Commonwealth v. Fant*, 480 Pa. 586, 391 A.2d 1040 (1978) and *Commonwealth v. Turner*, 371 Pa. 417, 88 A.2d 915 (1952) (refusal to sequester detectives who allegedly witnessed inculpatory statement).

The three categories of persons listed in Pa.R.E. 615 whom the court may not sequester are akin to those in the Federal Rule, with some slight differences. Clause (1) covers natural persons who are parties; their exclusion would raise constitutional problems of confrontation and due process. The inclusion of guardians of parties who are minors or incapacitated persons is consistent with Pa.R.Civ.P. 2027 (minors) and 2053 (incapacitated persons), which place the conduct of actions on behalf of those parties under the supervision and control of their guardians. Clause (2) applies to the designated representatives of a party that is not a natural person. The parenthetical phrase relating to the Commonwealth does not appear in F.R.E. 615(2); it is meant to make clear that in a criminal case, the prosecution has a right to have the law enforcement agent primarily responsible for investigating the case at the counsel table to assist in presenting the case, even though the agent will be a witness. See Notes of the Committee on the Judiciary, Senate Report No. 93-1274, and Advisory Committee Notes to F.R.E. 615(2). Clause (3) refers to persons such as the one who handled the transaction involved in the case or an expert relied upon by counsel for advice in managing the litigation.

The trial court has discretion in choosing a remedy for violation of a sequestration order. See *Commonwealth v. Smith*, 464 Pa. 314, 346 A.2d 757 (1975). Remedies include ordering a mistrial, forbidding the testimony of the offending witness, or an instruction to the jury. *Commonwealth v. Scott*, 496 Pa. 78, 436 A.2d 161 (1981).

The provisions of Pa.R.E. 615 are subject to the control of the trial court under Pa.R.E. 611(a).

**ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

Rule 701.	Opinion Testimony by Lay Witnesses.
702.	Testimony by Experts.
703.	Bases of Opinion Testimony by Experts.
704.	Opinion on Ultimate Issue.
705.	Disclosure of Facts or Data Underlying Expert Opinion.
706.	Court Appointed Experts.

**Rule 701. Opinion Testimony by Lay Witnesses.**

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness and helpful



to a clear understanding of the witness' testimony or the determination of a fact in issue.

#### Comment

This rule is identical to F.R.E. 701 except for the deletion of the (a) and (b) divisions within the text of the rule. No substantive changes result from this deletion.

Pa.R.E. 701 is consistent with Pennsylvania law. See *Lewis v. Mellor*, 259 Pa. Super. 509, 393 A.2d 941 (1978) (adopting F.R.E. 701). Under *Lewis*, lay opinion may embrace the ultimate issue. See Pa.R.E. 704. The trial judge may exclude the opinion if the trial judge decides that it would not be helpful, or would confuse, mislead, or prejudice the jury, or would waste time. *Lewis*, 259 Pa. Super. at 523-24, 393 A.2d at 949.

#### Rule 702. Testimony By Experts.

If scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

#### Comment

Pa.R.E. 702 differs from F.R.E. 702 in that the words "beyond that possessed by a lay person" have been added to make the rule consistent with Pennsylvania law. See *Commonwealth v. Dunkle*, 529 Pa. 168, 602 A.2d 830 (1992).

Adoption of Pa.R.E. 702 does not alter Pennsylvania's adoption of the standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which requires scientific evidence to have "general acceptance" in the relevant scientific community. See *Commonwealth v. Dunkle*, *supra*; *Commonwealth v. Nazarovitch*, 496 Pa. 97, 436 A.2d 170 (1981); *Commonwealth v. Topa*, 471 Pa. 223, 369 A.2d 1277 (1977). In 1993, the United States Supreme Court held that *Frye* was superseded in the federal courts by the adoption of F.R.E. 702. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Pennsylvania courts have not yet decided whether the rationale in *Daubert* supersedes or modifies the *Frye* test in Pennsylvania. *Commonwealth v. Crews*, 536 Pa. 508, n.2, 640 A.2d 395 (1994).

Pa.R.E. 702 does not change the Pennsylvania rule for qualifying a witness to testify as an expert. In *Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 480-81, 664 A.2d 525, 528 (1995), the Supreme Court stated:

The test to be applied when qualifying a witness to testify as an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.

Pa.R.E. 702 does not change the requirement that an expert's opinion must be expressed with reasonable certainty. See *McMahon v. Young*, 442 Pa. 484, 276 A.2d 534 (1971).

Pa.R.E. 702 states that an expert may testify in the form of an "opinion or otherwise." Much of the literature assumes that experts testify only in the form of an opinion. The language "or otherwise" reflects the fact that experts frequently are called upon to educate the trier of fact about the scientific or technical principles relevant to the case. See F.R.E. 702 advisory committee notes.

#### Rule 703. Bases of Opinion Testimony by Experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

#### Comment

Pa.R.E. 703 is identical to F.R.E. 703 and is consistent with Pennsylvania law.

Historically, Pennsylvania courts limited the facts or data upon which an expert could base an opinion to those obtained from firsthand knowledge or from the trial record. See *Collins v. Hand*, 431 Pa. 378, 246 A.2d 398 (1968). Beginning in 1971 with *Commonwealth v. Thomas*, 444 Pa. 436, 282 A.2d 693 (1971), Pennsylvania courts have endorsed and expanded the principle that experts may base their opinions on evidence which is otherwise inadmissible if the evidence is of a type reasonably relied upon by experts in the particular field. See *Commonwealth v. Daniels*, 480 Pa. 340, 390 A.2d 172 (1978); *Commonwealth v. Bowser*, 425 Pa. Super. 24, 624 A.2d 125 (1993); *In Re Glosser Bros., Inc.*, 382 Pa. Super. 177, 555 A.2d 129 (1989); *Bolus v. United Penn Bank*, 363 Pa. Super. 247, 525 A.2d 1215 (1987). If it be feared that enlargement of permissible data may tend to break down the rules of exclusion unduly, notice should be taken that the rule requires that the facts or data be "of a type reasonably relied upon by experts in the particular field." See F.R.E. 702 advisory committee notes. Whether evidence is reasonably relied upon by the expert is a preliminary question for determination by the trial court under Pa.R.E. 104.

When an expert testifies about the underlying facts and data that support the expert's opinion and the testimony would be otherwise inadmissible, the trial court should instruct the jury to consider the testimony only to explain the basis for the expert's opinion, and not as substantive evidence. *Compare* Pa.R.E. 105.

An expert's testimony is inadmissible if the opinion is not the opinion of the expert testifying, but rather a recitation or reaction to an opinion given by an expert who does not testify. See *Primavera v. Celotex Corp.*, 415 Pa. Super. 41, 608 A.2d 515 (1992).

#### Rule 704. Opinion on Ultimate Issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

#### Comment

Pa.R.E. 704 is substantively the same as F.R.E. 704(a) and is consistent with Pennsylvania law. F.R.E. 704(b) has not been adopted.

Under Pennsylvania law, the trial judge has discretion to allow lay opinion on the ultimate issue. The judge must balance the helpfulness of the testimony against its potential to cause confusion or prejudice. See *Lewis v. Mellor*, 259 Pa. Super. 509, 393 A.2d 941 (1978); Pa.R.E. 701 and its comment.

Pennsylvania law allows expert opinion testimony on the ultimate issue. See *Commonwealth v. Daniels*, 480 Pa. 340, 390 A.2d 172 (1978); *Cooper v. Metropolitan Life Ins. Co.*, 323 Pa. 295, 186 A. 125 (1936). As with lay opinions, the trial judge has discretion to admit or exclude expert opinions on the ultimate issue depending on the helpful-



ness of the testimony versus its potential to cause confusion or prejudice. See *Kozak v. Struth*, 515 Pa. 554, 531 A.2d 420 (1987); *Commonwealth v. Brown*, 408 Pa. Super. 246, 596 A.2d 840 (1991).

Pa.R.E. 704 omits F.R.E. 704(b) which prohibits an expert from testifying with respect to whether the defendant in a criminal case did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. When the Superior Court in *Lewis v. Mellor*, adopted F.R.E. 704 in 1978, it only contained part (a). F.R.E. 704(b) was added in 1984. The Pennsylvania Supreme Court has consistently held that expert psychiatric testimony is admissible to negate the specific intent to kill which is essential to first degree murder. See *Commonwealth v. Terry*, 513 Pa. 381, 521 A.2d 398 (1987); *Commonwealth v. Garcia*, 505 Pa. 304, 479 A.2d 473 (1984); *Commonwealth v. Walzack*, 468 Pa. 210, 360 A.2d 914 (1976).

#### **Rule 705. Disclosure of Facts or Data Underlying Expert Opinion.**

The expert may testify in terms of opinion or inference and give reasons therefor; however, the expert must testify as to the facts or data on which the opinion or inference is based.

#### **Comment**

The text and substance of Pa.R.E. 705 differ significantly from F.R.E. 705. The Federal Rule generally does not require an expert witness to disclose the facts upon which an opinion is based prior to expressing the opinion. Instead, the cross-examiner bears the burden of probing the basis of the opinion. Pennsylvania does not follow the Federal Rule. See *Kozak v. Struth*, 515 Pa. 554, 560, 531 A.2d 420, 423 (1987) (declining to adopt F.R.E. 705, the Court reasoned that "requiring the proponent of an expert opinion to clarify for the jury the assumptions upon which the opinion is based avoids planting in the juror's mind a general statement likely to remain with him in a jury room when the disputed details are lost.") Relying on cross examination to illuminate the underlying assumption, as F.R.E. 705 does, may further confuse jurors already struggling to follow complex testimony. Id.

Accordingly, *Kozak* requires disclosure of the facts used by the expert in forming an opinion. The disclosure can be accomplished in several ways. One way is to ask the expert to assume the truth of testimony the expert has heard or read. *The Kroeger Co. v. W.C.A.B.*, 101 Pa. Cmwlth. 629, 516 A.2d 1335 (1986); *Tobash v. Jones*, 419 Pa. 205, 213 A.2d 588 (1965). Another option is to pose a hypothetical question to the expert. *Dietrich v. J.I. Case Co.*, 390 Pa. Super. 475, 568 A.2d 1272 (1990); *Hussy v. May Department Stores, Inc.*, 238 Pa. Super. 431, 357 A.2d 635 (1976).

The salient facts relied upon as the basis of the expert opinion must be in the record so that the jury may evaluate the opinion. See *Commonwealth v. Rounds*, 518 Pa. 204, 542 A.2d 997 (1988). The expert's testimony regarding the facts or data on which the opinion is based is subject to Pa.R.E. 703.

#### **Rule 706. Court Appointed Experts.**

Where the court has appointed an expert witness, the witness appointed shall advise the parties of the witness' findings, if any. The witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness. In civil cases, the witness' deposition may be taken by any party.

#### **Comment**

Pa.R.E. 706 differs from F.R.E. 706. Unlike the Federal Rule, Pa.R.E. 706 does not affect the scope of the trial court's power to appoint experts. Pa.R.E. 706 provides only the procedures for obtaining the testimony of experts after the court has appointed them.

Pennsylvania law provides for the appointment of experts in some instances. See 23 Pa.C.S.A. § 5104 (disputed paternity proceeding); Pa.R.C.P. 1515 & 1530(e) (in equity proceedings, court may appoint accountants and auditors as experts). In *Commonwealth v. Correa*, 437 Pa. Super. 1, 648 A.2d 1199 (1994), the Superior Court held that the trial court had inherent power to appoint an expert.

See also Pa.R.E. 614 (Calling and Interrogation of Witnesses By Court).

### **ARTICLE VIII. HEARSAY**

Rule	
801.	Definitions.
802.	Hearsay Rule.
803.	Hearsay Exceptions; Availability of Declarant Immaterial.
803.1.	Hearsay Exceptions; Testimony of Declarant Necessary.
804.	Hearsay Exceptions; Declarant Unavailable.
805.	Hearsay Within Hearsay.
806.	Attacking and Supporting Credibility of Declarant.
807.	Residual Exception [Not Adopted].

#### **Introductory Comment**

The Federal Rules of Evidence list 24 exceptions to the hearsay rule in which the availability of the declarant is immaterial, five exceptions in which the declarant must be unavailable, and four exceptions to the definition of hearsay (which are, in reality, exceptions to the hearsay rule), for a total of 33.

The Pennsylvania Rules of Evidence, while following the federal numbering system as far as possible, recognize fewer exceptions, and arrange them more logically. Article VIII of the Pennsylvania Rules of Evidence lists 16 exceptions to the hearsay rule in which the availability of the declarant is immaterial, five exceptions in which the declarant must be unavailable, and three exceptions in which the testimony of the declarant is necessary, for a total of 24.

#### **Defendant's Constitutional Right of Confrontation in Criminal Cases**

The hearsay rule is applicable both in civil and criminal cases. In a criminal case, however, hearsay that is offered against a defendant under an exception to the hearsay rule may sometimes be excluded because its admission would violate defendant's right "to be confronted with the witnesses against him" under the Sixth Amendment to the United States Constitution, or Article I, § 9 of the Pennsylvania Constitution.

The relationship between the hearsay rule and the Confrontation Clause in the Sixth Amendment was explained by the Supreme Court in *California v. Green*, 399 U.S. 149, 155-56 (1970):

While it may readily be conceded that hearsay rules and the Confrontation Clause are generally designed to protect similar values, it is quite a different thing to suggest that the overlap is complete and that the Confrontation Clause is nothing more or less than a codification of the rules of hearsay and their exceptions as they existed historically at common law. Our decisions have never established such a congruence; indeed, we have more than once found a violation of confrontation values even though the

statements in issue were admitted under an arguably recognized hearsay exception. . . .

Given the similarity of the values protected, however, the modification of a State's hearsay rules to create new exceptions for the admission of evidence against a defendant, will often raise questions of compatibility with the defendant's constitutional right to confrontation.

In short, when hearsay is offered against a defendant in a criminal case, the defendant may interpose three separate objections: (1) admission of the evidence would violate the hearsay rule, (2) admission of the evidence would violate defendant's right to confront the witnesses against him under the Sixth Amendment to the United States Constitution, and (3) admission of the evidence would violate defendant's right of confrontation under Article I, § 9 of the Pennsylvania Constitution.

#### **Rule 801. Definitions.**

The following definitions apply under this article:

(a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

#### **Comment**

Pa.R.E. 801 is identical to subsections (a), (b) and (c) of F.R.E. 801. It is consistent with Pennsylvania law. F.R.E. 801(d) is not adopted. The subjects of F.R.E. 801(d), admissions and prior statements of witnesses, are covered in Pa.R.E. 803(25), Pa.R.E. 803.1., and Pa.R.E. 613(c).

##### *a. Statement.*

The definition of "statement" is consistent with Pennsylvania law. See, e.g., *Rafter v. Raymark Indus., Inc.*, 429 Pa. Super. 360, 632 A.2d 897 (1993) (oral or written assertion); *Commonwealth v. Rush*, 529 Pa. 498, 605 A.2d 792 (1992) (non-verbal conduct intended as an assertion). Communications that are not assertions are not hearsay. These would include questions, greetings, expressions of gratitude, exclamations, offers, instructions, warnings, etc.

##### *b. Declarant.*

Subsection (b) is consistent with Pennsylvania law. For hearsay purposes, the "declarant" is the person who makes an out-of-court statement, not the person who repeats it on the witness stand.

##### *c. Definition of Hearsay.*

Subsection (c), which defines hearsay, is consistent with Pennsylvania law, although the Pennsylvania cases have usually used the phrase "out-of-court statement," in place of the phrase "other than one made by the declarant while testifying at the trial or hearing." See *Heddings v. Steele*, 514 Pa. 569, 526 A.2d 349 (1987). The adoption of the language of the Federal Rule is not intended to change existing law.

A statement, other than one made by the declarant while testifying at the trial or hearing (an out-of-court statement), is hearsay only if it is offered to prove the truth of the matter asserted. There are many situations

in which evidence of an out-of-court statement is offered for a purpose other than to prove the truth of the matter asserted.

Sometimes an out-of-court statement has direct legal significance, whether or not it is true. For example, one or more out-of-court statements may constitute an offer, an acceptance, a promise, a guarantee, a notice, a representation, a misrepresentation, defamation, perjury, compliance with a contractual or statutory obligation, etc.

More often, an out-of-court statement, whether or not it is true, constitutes circumstantial evidence from which the trier of fact may infer, alone or in combination with other evidence, the existence or non-existence of a fact in issue. For example, a declarant's out-of-court statement may imply his or her particular state of mind, or it may imply that a particular state of mind ensued in the recipient. Evidence of an out-of-court statement, particularly if it is proven untrue by other evidence, may imply the existence of a conspiracy, or fraud. Evidence of an out-of-court statement made by a witness, if inconsistent with the witness' testimony, may imply that the witness is an unreliable historian. Conversely, evidence of an out-of-court statement made by a witness that is consistent with the witness' testimony may imply the opposite. See Pa.R.E. 613.

#### **Rule 802. Hearsay Rule.**

Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.

#### **Comment**

Pa.R.E. 802 is similar to F.R.E. 802. It differs by referring to other rules prescribed by the Pennsylvania Supreme Court, rather than the United States Supreme Court, and by referring to statutes in general, rather than Acts of Congress. This rule is consistent with Pennsylvania law.

Often, hearsay will be admissible under an exception provided by these rules. See, e.g., Pa.R.E. 803, 803.1 and 804. On occasion, hearsay may be admitted pursuant to another rule promulgated by the Pennsylvania Supreme Court. For example, in civil cases, all or part of a deposition may be admitted pursuant to Pa.R.C.P. 4020, or a videotape deposition of an expert witness may be admitted pursuant to Pa.R.C.P. 4017.1(g).

Also, hearsay may be admitted pursuant to a state statute. Examples include:

1. A public record may be admitted pursuant to 42 Pa.C.S.A. § 6104. See Comment located at Pa.R.E. 803(8) [Not Adopted].
2. A record of vital statistics may be admitted pursuant to 35 Pa.C.S.A. § 450.810. See Comment located at Pa.R.E. 803(9) [Not Adopted].
3. In an action arising out of a contract under the Uniform Commercial Code, a document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party, may be introduced as prima facie evidence of the document's own authenticity and of the facts stated therein by the third party, pursuant to 13 Pa.C.S.A. § 1202.
4. In a civil case, a deposition of a licensed physician may be admitted pursuant to 42 Pa.C.S.A. § 5936.

5. In a criminal case, a deposition of a witness may be admitted pursuant to 42 Pa.C.S.A. § 5919.
6. In a criminal case, an out-of-court statement of a witness under 13 years of age, describing certain kinds of sexual abuse, may be admitted pursuant to 42 Pa.C.S.A. § 5985.1.
7. In a dependency hearing, an out-of-court statement of a witness under 14 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S.A. § 5986.
8. In a prosecution for speeding under the Pennsylvania Vehicle Code, a certificate of accuracy of an electronic speed timing device (radar) from a calibration and testing station appointed by the Pennsylvania Department of Motor Vehicles may be admitted pursuant to 75 Pa.C.S.A. § 3368(d).

On rare occasion, hearsay may be admitted pursuant to a federal statute. For example, when a person brings a civil action, in either federal or state court, against a common carrier to enforce an order of the Interstate Commerce Commission requiring the payment of damages, the findings and order of the Commission may be introduced as evidence of the facts stated in them. 49 U.S.C. § 11704(d)(1).

**Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial.**

The following statements, as hereinafter defined, are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (1) Present Sense Impression.
- (2) Excited Utterance.
- (3) Then Existing Mental, Emotional, or Physical Condition.
- (4) Statements for Purposes of Medical Diagnosis or Treatment.
- (5) Recorded Recollection [Not Adopted].
- (6) Records of Regularly Conducted Activity.
- (7) Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6) [Not Adopted].
- (8) Public Records and Reports [Not Adopted].
- (9) Records of Vital Statistics [Not Adopted].
- (10) Absence of Public Record or Entry [Not Adopted].
- (11) Records of Religious Organizations.
- (12) Marriage, Baptismal, and Similar Certificates.
- (13) Family Records.
- (14) Records of Documents Affecting an Interest in Property.
- (15) Statements in Documents Affecting an Interest in Property.
- (16) Statements in Ancient Documents.
- (17) Market Reports, Commercial Publications.
- (18) Learned Treatises [Not Adopted].
- (19) Reputation Concerning Personal or Family History.
- (20) Reputation Concerning Boundaries or General History.
- (21) Reputation as to Character.
- (22) Judgment of Previous Conviction [Not Adopted].

(23) Judgment as to Personal, Family, or General History, or Boundaries [Not Adopted].

(24) Other Exceptions [Not Adopted].

(25) Admission by Party-Opponent.

(1) *Present Sense Impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

**Comment**

Pa.R.E. 803(1) is identical to F.R.E. 803(1). It is consistent with Pennsylvania law. See *Commonwealth v. Peterkin*, 511 Pa. 299, 513 A.2d 373 (1986).

For this exception to apply, declarant need not be excited or otherwise emotionally affected by the event or condition perceived. The trustworthiness of the statement arises from its timing. The requirement of contemporaneity, or near contemporaneity, reduces the chance of premeditated prevarication or loss of memory.

(2) *Excited Utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

**Comment**

Pa.R.E. 803(2) is identical to F.R.E. 803(2). It is consistent with Pennsylvania law. See *Allen v. Mack*, 345 Pa. 407, 28 A.2d 783 (1942); *Commonwealth v. Barnes*, 310 Pa. Super. 480, 456 A.2d 1037 (1983).

This exception has a more narrow base than the exception for a present sense impression, because it requires an event or condition that is startling. However, it is broader in scope because an excited utterance (1) need not describe or explain the startling event or condition; it need only relate to it, and (2) need not be made contemporaneously with, or immediately after, the startling event. It is sufficient if the stress of excitement created by the startling event or condition persists as a substantial factor in provoking the utterance.

There is no set time interval following a startling event or condition after which an utterance relating to it will be ineligible for exception to the hearsay rule as an excited utterance. In *Commonwealth v. Gore*, 262 Pa. Super. 540, 547-48, 396 A.2d 1302, 1305 (1978), the court explained:

The declaration need not be strictly contemporaneous with the existing cause, nor is there a definite and fixed time limit. . . . Rather, each case must be judged on its own facts, and a lapse of time of several hours has not negated the characterization of a statement as an "excited utterance." . . . The crucial question, regardless of the time lapse, is whether, at the time the statement is made, the nervous excitement continues to dominate while the reflective processes remain in abeyance.

(3) *Then Existing Mental, Emotional, or Physical Condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health. A statement of memory or belief offered to prove the fact remembered or believed is included in this exception only if it relates to the execution, revocation, identification, or terms of declarant's will.

**Comment**

Pa.R.E. 803(3) is similar to F.R.E. 803(3). The wording has been changed to improve readability and to eliminate a confusing double negative. The meaning remains the same.

This exception combines what might otherwise be considered several different exceptions to the hearsay rule. The common factor is that they are all sometimes referred to by the non specific phrase, "state of mind."

This exception is consistent with Pennsylvania law. See *Commonwealth v. Pronkoskie*, 477 Pa. 132, 383 A.2d 858 (1978) (statements of present physical condition and emotional feelings); *Commonwealth v. Marshall*, 287 Pa. 512, 135 A. 301 (1926) (statement of intent or plan); *Ickes v. Ickes*, 237 Pa. 582, 85 A. 885 (1912) (statement of motive or design).

The exception for a declarant's statement of memory or belief concerning declarant's will is consistent with Pennsylvania law. See *Glockner v. Glockner*, 263 Pa. 393, 106 A. 731 (1919); *In re Kirkander*, 326 Pa. Super. 380, 474 A.2d 290 (1984).

(4) *Statements for Purposes of Medical Diagnosis or Treatment.* A statement made for purposes of medical treatment, or medical diagnosis in contemplation of treatment, and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to treatment, or diagnosis in contemplation of treatment.

#### Comment

Pa.R.E. 803(4) is similar to F.R.E. 803(4) in that both admit statements made for purposes of medical treatment. Pa.R.E. 803(4) differs from F.R.E. 803(4) because it permits admission of statements made for purposes of medical diagnosis only if they are made in contemplation of treatment. Statements made to persons retained solely for the purpose of litigation are not admissible under this rule. The rationale for admitting statements for purposes of treatment is that the declarant has a very strong motivation to speak truthfully. This rationale is not applicable to statements made for purposes of litigation. Pa.R.E. 803(4) is consistent with Pennsylvania law. See *Commonwealth v. Smith*, 545 Pa. 487, 681 A.2d 1288 (1996).

An expert medical witness may base an opinion on the declarant's statements of the kind discussed in this Rule, even though the statements were not made for purposes of treatment, if the statements comply with Pa.R.E. 703. Such statements may be disclosed as provided in Pa.R.E. 705, but are not substantive evidence.

This exception is not limited to statements made to physicians. Statements to a nurse have been held to be admissible. See *Smith, supra*. Statements as to causation may be admissible, but statements as to fault or identification of the person inflicting harm have been held to be inadmissible. See *Smith, supra*.

(5) *Recorded Recollection* [Not Adopted].

#### Comment

Recorded recollection is dealt with in Pa.R.E. 803.1(3). It is an exception to the hearsay rule in which the current testimony of the declarant is necessary.

(6) *Records of Regularly Conducted Activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the

sources of information or other circumstances indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

#### Comment

Pa.R.E. 803(6) is similar to F.R.E. 803(6), but with two differences. One difference is that Pa.R.E. 803(6) does not include opinions and diagnoses. This is consistent with Pennsylvania law. See *Williams v. McClain*, 513 Pa. 300, 520 A.2d 1374 (1987); *Commonwealth v. DiGiacomo*, 463 Pa. 449, 345 A.2d 605 (1975). The second difference is that Pa.R.E. 803(6) allows the court to exclude business records that would otherwise qualify for exception to the hearsay rule if the "sources of information or other circumstances indicate lack of trustworthiness." The federal rule allows the court to do so only if "the source of information or the method or circumstances of preparation indicate lack of trustworthiness."

If offered against a defendant in a criminal case, an entry in a business record may be excluded if its admission would violate the defendant's constitutional right to confront the witnesses against him. See *Commonwealth v. Mc Cloud*, 457 Pa. 310, 322 A.2d 653 (1974).

Pa.R.E. 803(6) differs only slightly from 42 Pa.C.S.A. § 6108, which provides:

- (a) *Short title of section.*—This section shall be known and may be cited as the "Uniform Business Records as Evidence Act."
- (b) *General Rule.*—A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business at or near the time of the act, condition or event, and if, in the opinion of the tribunal, the sources of information, method and time of preparation were such as to justify its admission.
- (c) *Definition.*—As used in this section "business" includes every kind of business, profession, occupation, calling, or operation of institutions whether carried on for profit or not.

Pa.R.E. 803(6) refers to "data compilation" and includes a record "in any form." This language encompasses computerized data storage.

Pa.R.E. 803(6) expressly includes an association in the definition of a business.

Pa.R.E. 803(6) places the burden on an opposing party to show that the sources of information or other circumstances indicate that a business record is untrustworthy, and thus does not qualify for exception to the hearsay rule. The statute places the burden on the proponent of the evidence to show circumstantial trustworthiness.

(7) *Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6)* [Not Adopted].

#### Comment

Pennsylvania has not adopted F.R.E. 803(7), which reads as follows:

*Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6).* Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to

prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

Principles of logic and internal consistency have led Pennsylvania to reject this rule. The absence of an entry in a record is not hearsay, as defined in Pa.R.E. 801(c). Hence, it appears irrational to except it to the hearsay rule.

On analysis, absence of an entry in a business record is circumstantial evidence,—it tends to prove something by implication, not assertion. Its admissibility is governed by principles of relevance, not hearsay. See Pa.R.E. 401, et seq.

Pennsylvania law is in accord with the object of F.R.E. 803(7), i.e., to allow evidence of the absence of a record of an act, event, or condition to be introduced to prove the nonoccurrence or nonexistence thereof, if the matter was one which would ordinarily be recorded. See *Klein v. F.W. Woolworth Co.*, 309 Pa. 320, 163 A. 532 (1932) (absence of person's name in personnel records admissible to prove that he was not an employee). See also *Stack v. Wapner*, 244 Pa. Super. 278, 368 A.2d 292 (1976).

(8) *Public Records and Reports* [Not Adopted].

#### Comment

Pennsylvania has not adopted F.R.E. 803(8). An exception to the hearsay rule for public records is provided by 42 Pa.C.S.A. § 6104:

- (a) *General rule*.—A copy of a record of governmental action or inaction authenticated as provided in section 6103 (relating to proof of official records) shall be admissible as evidence that the governmental action or inaction disclosed therein was in fact taken or omitted.
- (b) *Existence of facts*.—A copy of a record authenticated as provided in section 6103 disclosing the existence or nonexistence of facts which have been recorded pursuant to official duty or would have been so recorded had the facts existed shall be admissible as evidence of the existence or nonexistence of such facts, unless the sources of information or other circumstances indicate lack of trustworthiness.

Subsection (b) of the statute is limited to "facts." It does not include opinions or diagnoses. This is consistent with Pa.R.E. 803(6), as well as Pennsylvania decisional law interpreting 42 Pa.C.S.A. § 6108 (Uniform Business Records As Evidence Act). See Comment to Pa.R.E. 803(6).

(9) *Records of Vital Statistics* [Not Adopted].

#### Comment

Pennsylvania has not adopted F.R.E. 803(9). Records of vital statistics are also business records and may be excepted to the hearsay rule by Pa.R.E. 803(6). Records of vital statistics are public records and they may be excepted to the hearsay rule by 42 Pa.C.S.A. § 6104 (text quoted in Comment to Pa.R.E. 803(8)).

The Vital Statistics Law of 1953 (35 P. S. § 450.101 et seq.) provides for registration of births, deaths, fetal deaths, and marriages, with the State Department of Health. The records of the Department, and duly certified copies thereof, are excepted to the hearsay rule by 35 P. S. § 450.810 which provides:

Any record or duly certified copy of a record or part thereof which is (1) filed with the department in accordance with the provisions of this act and the regulations of the Advisory Health Board and which (2) is not a "delayed" record filed under section seven hundred two of this act or a record "corrected" under section seven hundred three of this act shall constitute prima facie evidence of its contents, except that in any proceeding in which paternity is controverted and which affects the interests of an alleged father or his successors in interest no record or part thereof shall constitute prima facie evidence of paternity unless the alleged father is the husband of the mother of the child.

(10) *Absence of Public Record or Entry* [Not Adopted].

#### Comment

Pennsylvania has not adopted F.R.E. 803(10) for the same reasons that it did not adopt F.R.E. 803(7). See Comment to Pa.R.E. 803(7).

42 Pa.C.S.A. § 6104(b), provides for admissibility of evidence of the absence of an entry in a public record to prove the nonexistence of a fact:

- (b) *Existence of facts*.—A copy of a record authenticated as provided in section 6103 disclosing the . . . nonexistence of facts which . . . would have been . . . recorded had the facts existed shall be admissible as evidence of the . . . nonexistence of such facts, unless the sources of information or other circumstances indicate lack of trustworthiness.

Pennsylvania also has a complementary statute, 42 Pa.C.S.A. § 5328, entitled "Proof of Official Records," which provides, in pertinent part:

- (d) *Lack of records*.—A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in this section in the case of a domestic record, or complying with the requirements of this section for a summary in the case of a record in a foreign country, is admissible as evidence that the records contain no such record or entry.

(11) *Records of Religious Organizations*. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

#### Comment

Pa.R.E. 803(11) is identical to F.R.E. 803(11). It is an expansion of a more limited exception that was statutorily adopted in Pennsylvania.

42 Pa.C.S.A. § 6110 provides:

- (a) *General rule*.—The registry kept by any religious society in their respective meeting book or books of any marriage, birth or burial, within this Commonwealth, shall be held good and authentic, and shall be allowed of upon all occasions whatsoever.
- (b) *Foreign burials*.—The registry of burials of any religious society or corporate town, in places out of the United States, shall be prima facie evidence of the death of any person whose burial is therein registered, and of the time of his interment, if the time be stated in the registry, and extracts from such registries, certified by the proper officers, in the mode of authentication

usual in the place in which they are made and authenticated as provided in section 5328 (relating to proof of official records), shall be received as copies of such registries, and be evidence accordingly.

(12) *Marriage, Baptismal, and Similar Certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

#### Comment

Pa.R.E. 803(12) is identical to F.R.E. 803(12). It is consistent with Pennsylvania law. See *Estate of Loik*, 493 Pa. 512, 426 A.2d 1134 (1981); *District of Columbia's Appeal*, 343 Pa. 65, 21 A.2d 883 (1941).

(13) *Family Records.* Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

#### Comment

Pa.R.E. 803(13) is identical to F.R.E. 803(13). It is consistent with Pennsylvania law. See *Carskadden v. Poorman*, 10 Watts 82 (1840).

(14) *Records of Documents Affecting an Interest in Property.* The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

#### Comment

Pa.R.E. 803(14) is identical to F.R.E. 803(14). It is consistent with Pennsylvania law. See *David v. Titusville & Oil City Ry. Co.*, 114 Pa. 308, 6 A. 736 (1886).

(15) *Statements in Documents Affecting an Interest in Property.* A statement contained in a document, other than a will, purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

#### Comment

Pa.R.E. 803(15) is similar to F.R.E. 803(15). It differs in that Pennsylvania does not include a statement made in a will.

Pa.R.E. 803(15) is consistent with 21 P. S. § 451, which provides that an affidavit swearing to matters delineated in the statute that may affect the title to real estate in Pennsylvania, filed in the county in which the real estate is located, shall be admissible evidence of the facts stated in it.

Pa.R.E. 803(15) appears inconsistent with dictum in *Brock v. Atlantic Refining Co.*, 273 Pa. 76, 80, 116 A. 552, 553 (1922), which states that "recitals in deeds are mere hearsay, and inadmissible as against third persons who claim by a paramount title." However, the holding in the *Brock* case approved admission of such a recital on the ground that there was an exception "in the case of ancient deeds accompanied by possession."

Whatever the significance of the above cited dictum, Pa.R.E. 803(15) brings Pennsylvania law close to that which now prevails in the great majority of jurisdictions in this country.

Pennsylvania's variation from the federal rule with respect to wills is consistent with its more recent decisional law. See *In Re Estate of Kostik*, 514 Pa. 591, 526 A.2d 746 (1987).

(16) *Statements in Ancient Documents.* Statements in a document in existence thirty years or more the authenticity of which is established.

#### Comment

Pa.R.E. 803(16) is similar to F.R.E. 803(16), except that Pennsylvania adheres to the common law view that a document must be at least 30 years old to qualify as an ancient document. The federal rule reduces the age to 20 years.

Pa.R.E. 803(16) is consistent with Pennsylvania law. See *Louden v. Apollo Gas Co.*, 273 Pa. Super. 549, 417 A.2d 1185 (1980); *Commonwealth ex rel. Ferguson v. Ball*, 227 Pa. 301, 121 A. 191 (1923).

(17) *Market Reports, Commercial Publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

#### Comment

Pa.R.E. 803(17) is identical to F.R.E. 803(17). It is consistent with Pennsylvania law. See *Rosche v. McCoy*, 397 Pa. 615, 156 A.2d 307 (1959).

When the price or value of goods that are regularly bought and sold in a commodity market is at issue, 13 Pa.C.S.A. § 2724 provides:

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or newspapers or periodicals of general circulation published as the reports of such markets shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

(18) *Learned Treatises* [Not Adopted].

#### Comment

Pennsylvania has not adopted F.R.E. 803(18). Pennsylvania does not recognize an exception to the hearsay rule for learned treatises. See *Majdic v. Cincinnati Machine Co.*, 370 Pa. Super. 611, 537 A.2d 334 (1988).

(19) *Reputation Concerning Personal or Family History.* Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

#### Comment

Pa.R.E. 803(19) is identical to F.R.E. 803(19). It changes prior Pennsylvania decisional law by expanding the sources from which the reputation may be drawn to include (1) a person's associates and (2) the community. Prior Pennsylvania decisional law, none of which is recent, limited the source to the person's family. See *Picken's Estate*, 163 Pa. 14, 29 A. 875 (1894); *American Life Ins. and Trust Co. v. Rosenagle*, 77 Pa. 507 (1875).

(20) *Reputation Concerning Boundaries or General History*. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

**Comment**

Pa.R.E. 803(20) is identical to F.R.E. 803(20). It is consistent with prior Pennsylvania law, at least with respect to boundaries of land. See *Hostetter v. Commonwealth*, 367 Pa. 603, 80 A.2d 719 (1951).

(21) *Reputation as to Character*. Reputation of a person's character among associates or in the community.

**Comment**

Pa.R.E. 803(21) is identical to F.R.E. 803(21). It is consistent with prior Pennsylvania law. It is also consistent with Pa.R.E. 404(a), 405(a), and 608(a). See *Commonwealth v. Lopinson*, 427 Pa. 284, 234 A.2d 552 (1967); Comment to Pa.R.E. 405.

(22) *Judgment of Previous Conviction* [Not Adopted].

**Comment**

Pennsylvania has not adopted F.R.E. 803(22).

With respect to facts essential to sustain a judgment of criminal conviction, there are four basic approaches that a court can take:

1. The judgment of conviction is conclusive, i.e., estops the party convicted from contesting any fact essential to sustain the conviction.

2. The judgment of conviction is admissible as evidence of any fact essential to sustain the conviction, only if offered against the party convicted.

3. The judgment of conviction is admissible as evidence of any fact essential to sustain the conviction when offered against any party (this is the federal rule for felonies, except that the Government cannot offer someone else's conviction against the defendant in a criminal case, other than for purposes of impeachment).

4. The judgment of conviction is neither conclusive nor admissible as evidence to prove a fact essential to sustain the conviction (common law rule).

For felonies and other major crimes, Pennsylvania takes approach number one. In subsequent litigation, the convicted party is estopped from denying or contesting any fact essential to sustain the conviction. Once a party is estopped from contesting a fact, no evidence need be introduced by an adverse party to prove it. See *Hurt v. Stirone*, 416 Pa. 493, 206 A.2d 624 (1965); *In re Estate of Bartolovich*, 420 Pa. Super. 419, 616 A.2d 1043 (1992) (judgment of conviction conclusive under Slayer's Act, 20 Pa.C.S.A. § 8801-8815).

For minor offenses, Pennsylvania takes approach number four; it applies the common law rule. Evidence of a conviction is inadmissible to prove a fact necessary to sustain the conviction. See *Loughner v. Schmelzer*, 421 Pa. 283, 218 A.2d 768 (1966).

A plea of guilty to a crime is excepted to the hearsay rule as an admission of all facts essential to sustain a conviction, but only when offered against the pleader by a party-opponent. See Pa.R.E. 803(25); see also Pa.R.E. 410. A plea of guilty may also qualify as an exception to the hearsay rule as a statement against interest, if the declarant is unavailable to testify at trial. See Pa.R.E. 804(b)(3).

(23) *Judgment as to Personal, Family, or General History or Boundaries* [Not Adopted].

**Comment**

Pennsylvania has not adopted F.R.E. 803(23).

(24) *Other Exceptions* [Not Adopted].

**Comment**

Pennsylvania has not adopted F.R.E. 803(24) (now F.R.E. 807). The Federal Rule is often called the residual exception to the hearsay rule.

(25) *Admission by Party-Opponent*. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement may be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

**Comment**

Pa.R.E. 803(25) differs from F.R.E. 801(d)(2), in that the word "shall" in the second sentence has been replaced with the word "may."

The federal rules call an admission by a party-opponent an exception to the definition of hearsay, and place it in rule 801 under the heading of "Definitions." The Pennsylvania rules, like the common law, call an admission by a party-opponent an exception to the hearsay rule. The Pennsylvania rules, therefore, place admissions by a party opponent in Pa.R.E. 803 with other exceptions to the hearsay rule in which the availability of the declarant is immaterial. The difference between the federal and Pennsylvania formulations is organizational. It has no substantive effect.

The second sentence of Pa.R.E. 803(25), as amended, is consistent with Pennsylvania law. See *Commonwealth v. Smith*, 523 Pa. 577, 568 A.2d 600 (1989); *Commonwealth v. Dreibelbis*, 493 Pa. 466, 426 A.2d 1111 (1981).

The personal knowledge rule (Pa.R.E. 602) is not applicable to admissions. See *Salvitti v. Throppe*, 343 Pa. 642, 23 A.2d 445 (1942).

A. *Party's Own Statement*. The admissibility of a party's own statement offered against the party as an exception to the hearsay rule is consistent with Pennsylvania law. See *Salvitti v. Throppe*, supra.

B. *Adoptive Admission*. Pa.R.E. 803(25)(b) is consistent with Pennsylvania law. See *Commonwealth v. Cheeks*, 429 Pa. 89, 239 A.2d 793 (1968) (party expressly adopted statement); *Commonwealth v. Cocciolletti*, 493 Pa. 103, 425 A.2d 387 (1981) (party impliedly adopted statement by failing to deny the truth of a statement that party would be expected to deny under the circumstances).

C. *Statement by Authorized Agent*. Admitting, as an exception to the hearsay rule, the statement of a person authorized to speak for the party against the party is

consistent with Pennsylvania law. See *McGarity v. New York Life Ins. Co.*, 359 Pa. 308, 59 A.2d 47 (1948).

D. *Statement by Agent Concerning Matter Within Scope of Agency.* This exception to the hearsay rule is new to Pennsylvania law. It is consistent with the overwhelming majority of American jurisdictions.

E. *Statement by a Co-conspirator.* The admissibility of a statement by a coconspirator as provided by this rule is consistent with Pennsylvania law. See *Commonwealth v. Mayhue*, 536 Pa. 271, 639 A.2d 421 (1994); *Commonwealth v. Dreibelbis*, 493 Pa. 466, 426 A.2d 1111 (1981).

**Rule 803.1 Hearsay Exceptions; Testimony of Declarant Necessary.**

The following statements, as hereinafter defined, are not excluded by the hearsay rule if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement:

- (1) Inconsistent Statement of Witness.
- (2) Statement of Identification.
- (3) Recorded Recollection.

(1) *Inconsistent Statement of Witness.* A statement by declarant that is inconsistent with the declarant's testimony, and (a) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) is a writing signed and adopted by the declarant, or (c) is a verbatim contemporaneous recording of an oral statement.

**Comment**

Subsection (a) is similar to F.R.E. 801(d)(1)(A), except that Pennsylvania classifies inconsistent statements as exceptions to the hearsay rule, not exceptions to the definition of hearsay. Subsections (b) and (c) are an expansion of the exception as defined in the federal rule. Pa.R.E. 803.1(1) is consistent with Pennsylvania law. See *Commonwealth v. Halstead*, 542 Pa. 318, 666 A.2d 655 (1995); *Commonwealth v. Lively*, 530 Pa. 464, 610 A.2d 7 (1992).

(2) *Statement of Identification.* A statement by a witness of identification of a person or thing, made after perceiving the person or thing, provided that the witness testifies to the making of the prior identification.

**Comment**

Pa.R.E. 803.1(2) differs from F.R.E. 801(d)(1)(C) in several respects:

1. Pa.R.E. 803.1(2) classifies a statement of identification as an exception to the hearsay rule, not an exception to the definition of hearsay.
2. Pa.R.E. 803.1(2) is broader than its federal counterpart in that it includes identification of a thing, in addition to a person.
3. Pa.R.E. 803.1(2) is more restrictive than its federal counterpart in that it requires the witness to testify to making the identification.

Pa.R.E. 803.1(2) is consistent with Pennsylvania law, although we have found no reported cases dealing with prior identification of a thing, as distinguished from a person. See *Commonwealth v. Ly*, 528 Pa. 523, 599 A.2d 613 (1991); *Commonwealth v. Saunders*, 386 Pa. 149, 125 A.2d 442 (1956).

(3) *Recorded Recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable

the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory, providing that the witness testifies that the record correctly reflects that knowledge. If admitted, the memorandum or record may be read into evidence and received as an exhibit, but may be shown to the jury only in exceptional circumstances or when offered by an adverse party.

**Comment**

Pa.R.E. 803.1(3) is similar to F.R.E. 803(5), but differs in the following ways:

1. Pa.R.E. 803.1(3) classifies recorded recollection as an exception to the hearsay rule in which the testimony of the declarant is necessary, not as an exception in which the availability of the declarant is immaterial.
2. Pa.R.E. 803.1(3) makes clear that, to qualify recorded recollection as an exception to the hearsay rule, the witness must testify that the record correctly reflects the knowledge that the witness once had. In other words, the witness must vouch for the reliability of the record. The federal rule is ambiguous on this point and the applicable federal cases are conflicting.
3. Pa.R.E. 803.1(3) allows the record to be received as an exhibit, and grants the trial judge discretion to show it to the jury in exceptional circumstances, even when not offered by an adverse party.

Pa.R.E. 803.1(3) is consistent with Pennsylvania law. See *Commonwealth v. Cargo*, 498 Pa. 5, 444 A.2d 639 (1982); *Commonwealth v. Cooley*, 484 Pa. 14, 398 A.2d 637 (1979).

**Rule 804. Hearsay Exceptions; Declarant Unavailable.**

(a) *Definition of Unavailability.* "Unavailability as a witness" includes situations in which the declarant:

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant's statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay Exceptions.* The following statements, as hereinafter defined, are not excluded by the hearsay rule if the declarant is unavailable as a witness:

- (1) Former Testimony.
- (2) Statement Under Belief of Impending Death.



- (3) Statement Against Interest.
- (4) Statement of Personal or Family History.
- (5) Other Exceptions [Not Adopted].
- (6) Forfeiture by Wrongdoing.

**Comment**

Pa.R.E. 804(a) is identical to F.R.E. 804(a). Though there is no common definition of unavailability for hearsay purposes in prior Pennsylvania law, the rule is consistent with case law applying the four hearsay exceptions that require unavailability.

The exceptions to the hearsay rule in F.R.E. 804(b) apply only if the declarant is unavailable to testify in person. It seems reasonable to apply the same definition of unavailability to all of them. This definition is supplied by F.R.E. 804(a).

Pa.R.E. 804(b) differs somewhat from F.R.E. 804(b). The differences are explained in the Comments to the rule's subdivisions, which define individual exceptions to the hearsay rule.

(1) *Former Testimony*. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an adequate opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

**Comment**

Pa.R.E. 804(b)(1) is identical to F.R.E. 804(b)(1), except that it adds the word "adequate" in front of opportunity. It is consistent with Pennsylvania law.

Pennsylvania has two statutes that provide exceptions to the hearsay rule for former testimony. Both are entitled, "Notes of evidence at former trial." 42 Pa.C.S. § 5917 applies only to criminal cases. 42 Pa.C.S. § 5934 applies only to civil cases. Both are reenactments of statutes that were originally passed in 1887.

These two statutes, which are limited in scope, have less significance than they might otherwise have because the Pennsylvania Supreme Court has recognized a broader exception to the hearsay rule for former testimony as a matter of its developing common law. See, e.g., *Commonwealth v. Graves*, 484 Pa. 29, 398 A.2d 644 (1979); *Commonwealth v. Rodgers*, 472 Pa. 435, 372 A.2d 771 (1977). The addition of an "adequate" opportunity to cross-examine is consistent with Pennsylvania law. See *Commonwealth v. Bazemore*, 531 Pa. 582, 614 A.2d 684 (1992) (requiring a "full and fair" opportunity to cross-examine).

*Depositions*

Depositions are the most common form of prior testimony that is introduced at a modern trial. Their use is provided for not only by Pa.R.E. 804(b)(1), but also by statute and rules of procedure promulgated by the Pennsylvania Supreme Court.

The Judicial Code provides for the use of depositions in criminal cases. 42 Pa.C.S.A. § 5919 provides:

*Depositions in criminal matters*

The testimony of witnesses taken in accordance with section 5325 (relating to when and how a deposition may be taken outside this Commonwealth) may be read in evidence upon the trial of any criminal matter unless it shall appear at the trial

that the witness whose deposition has been taken is in attendance, or has been or can be served with a subpoena to testify, or his attendance otherwise procured, in which case the deposition shall not be admissible.

42 Pa.C.S.A. § 5325 sets forth the procedure for taking depositions, by either prosecution or defendant, outside Pennsylvania.

Again, the Pennsylvania Supreme Court, as a matter of common law development, has recognized an exception to the hearsay rule for depositions that is broader than the statute. See *Commonwealth v. Stasko*, 471 Pa. 373, 370 A.2d 350 (1977).

In civil cases, the introduction of depositions, or parts thereof, at trial is provided for by Pa.R.C.P. 4020(a)(3) and (5):

- (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds
  - (a) that the witness is dead, or
  - (b) that the witness is at a greater distance than one hundred (100) miles from the place of trial or is outside the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition, or
  - (c) that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment, or
  - (d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or
  - (e) upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used....
- (5) A deposition upon oral examination of a medical witness, other than a party, may be used at trial for any purpose whether or not the witness is available to testify.

A videotape deposition of a medical witness, or any expert witness, other than a party to the case, may be introduced in evidence at trial, regardless of the witness's availability, pursuant to Pa.R.C.P. 4017.1(g).

By statute, the testimony of a licensed physician taken by deposition in accordance with the Pennsylvania Rules of Civil Procedure is admissible in a civil case. There is no requirement that the physician testify as an expert witness. 42 Pa.C.S. § 5936 provides:

*Medical testimony by deposition*

- (a) *General rule*.—The testimony of any physician licensed to practice medicine may be taken by oral interrogation in the manner prescribed by general rule for the taking of depositions.
- (b) *Admissibility*.—A deposition taken under subsection (a) shall be admissible in a civil matter.

(2) *Statement Under Belief of Impending Death*. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

**Comment**

Pa.R.E. 804(b)(2) is similar to F.R.E. 804(b)(2), except that the Pennsylvania rule applies in all cases, not just in homicide cases and civil actions. This is a departure from prior Pennsylvania law, which applied the exception only to statements made by the victim in a criminal prosecution for homicide.

The rationale for this exception to the hearsay rule was set forth in *Commonwealth v. Smith*, 454 Pa. 515, 517-18, 314 A.2d 224, 225 (1973):

The reliability of a dying declaration is provided not by an oath, nor by cross-examination; rather, its admissibility is based on the premise that no one "who is immediately going into the presence of his Maker will do so with a lie upon his lips." Luch, L.J., *Regina v. Osman*, 15 Cox C.C. 1, 3 (Eng. 1881).

The common law has traditionally, but illogically, accepted a dying declaration to the hearsay rule in a criminal prosecution for homicide, but not in a criminal prosecution for another crime, or in a civil case. Prior Pennsylvania case law followed the common law. See *Commonwealth v. Antonini*, 165 Pa. Super. 501, 69 A.2d 436 (1949).

Reasoned analysis dictates a change. If a dying declaration is trustworthy enough to be introduced against a defendant charged with murder, it should be trustworthy enough to be introduced against a defendant charged with attempted murder, robbery, or rape. It should also be trustworthy enough to be introduced against a party in a civil case.

(3) *Statement Against Interest*. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. In a criminal case, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

**Comment**

The first sentence of Pa.R.E. 804(b)(3) is identical to the first sentence of F.R.E. 804(b)(3). The second sentence differs by requiring corroborating circumstantial evidence of trustworthiness before an assertion against the declarant's penal interest can be introduced by either side in a criminal case. The federal formulation requires such corroboration only when the statement is offered to exculpate the defendant.

Pa.R.E. 804(b)(3) is consistent with prior Pennsylvania decisional law. See *Rudisill v. Cordes*, 333 Pa. 544, 5 A.2d 217 (1939) (civil case); *Commonwealth v. Williams*, 537 Pa. 1, n.8, 640 A.2d 1251 (1994) (criminal case).

(4) *Statement of Personal or Family History*. A statement, made before the controversy arose:

(A) concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) concerning the foregoing matters, and death also, of another person, if the declarant was related to the other

by blood, adoption, or marriage, or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

**Comment**

Pa.R.E. 804(b)(4) differs from F.R.E. 804(b)(4) by requiring the statement of pedigree to be made before the controversy arose, i.e., ante litem motem.

Pa.R.E. 804(b)(4) expands prior Pennsylvania decisional law in two respects:

1. The exception applies if the declarant is unavailable, as "unavailability" is defined in Pa.R.E. 804(a). Formerly, it was required that the declarant be dead. See *In re McClain's Estate*, 481 Pa. 435, 392 A.2d 1371 (1978). The need for the evidence is the same, whether the declarant is dead or unavailable to testify for one of the other reasons delineated in Pa.R.E. 804(a).
2. Under Pa.R.E. 804(b)(4)(B), the declarant need not be related to the person of whom he or she spoke. It is sufficient that the declarant be so closely associated with the person's family as to have accurate information. Formerly, a familial relationship was required. See *In re Garrett's Estate*, 371 Pa. 284, 89 A.2d 531 (1952). A statement of this type by a person closely associated with the person or family of which he or she spoke is likely to be sufficiently reliable to justify an exception to the hearsay rule.

Pennsylvania retains the requirement that the statement must be made before the controversy arose. See *In re McClain's Estate*, *supra*; *In re Garrett's Estate*, *supra*.

(5) *Other Exceptions* [Not Adopted].

**Comment**

Pennsylvania has not adopted F.R.E. 804(b)(5) (now F.R.E. 807). The Federal rule is often called the residual exception to the hearsay rule.

(6) *Forfeiture by Wrongdoing*. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**Comment**

Pa.R.E. 804(b)(6) is identical to F.R.E. 804(b)(6). This exception is new to Pennsylvania law.

**Rule 805. Hearsay Within Hearsay.**

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

**Comment**

Pa.R.E. 805 is identical to F.R.E. 805. It is consistent with Pennsylvania law. See *Commonwealth v. Galloway*, 302 Pa. Super. 145, 448 A.2d 568 (1982).

**Rule 806. Attacking and Supporting Credibility of Declarant.**

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded

an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

#### Comment

Pa.R.E. 806 is similar to F.R.E. 806, except that Pa.R.E. 806 makes no reference to Rule 801(d)(2). The subject matter of F.R.E. 801(d)(2) (admissions) is covered by Pa.R.E. 803(25). The change is not substantive. Pa.R.E. 806 is consistent with Pennsylvania law. See *Commonwealth v. Davis*, 363 Pa. Super. 562, 526 A.2d 1205 (1987), appeal denied 518 Pa. 624, 541 A.2d 1135 (1988).

The requirement that a witness be given an opportunity to explain or deny the making of an inconsistent statement provided by Pa.R.E. 613(b) is not applicable when the prior inconsistent statement is offered to impeach a statement admitted under an exception to the hearsay rule. In most cases, the declarant will not be on the stand at the time when the hearsay statement is offered and for that reason the requirement of Pa.R.E. 613(b) is not appropriate.

The last sentence of Pa.R.E. 806 allows the party against whom a hearsay statement has been admitted to call the declarant as a witness and cross-examine the declarant about the statement. This is consistent with Pennsylvania law. See *Commonwealth v. Haber*, 351 Pa. Super. 79, 505 A.2d 273 (1986).

#### Rule 807. Residual Exception [ Not Adopted ].

#### Comment

Pennsylvania has not adopted F.R.E. 807.

### ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901.	Requirement of Authentication or Identification.
902.	Self-Authentication.
903.	Subscribing Witness' Testimony Unnecessary.

#### Rule 901. Requirement of Authentication or Identification.

(a) *General Provision.* The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) *Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of Witness With Knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert Opinion on Handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by Trier or Expert Witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive Characteristics and the Like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice Identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon

hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone Conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public Records or Reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient Documents or Data Compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 30 years or more at the time it is offered.

(9) *Process or System.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods Provided by Law.* Any method of authentication or identification provided by statute or by other rules prescribed by the Supreme Court.

#### Comment

Paragraph 901(a) is identical to F.R.E. 901(a) and consistent with Pennsylvania law. Although the authentication or identification requirement has not been authoritatively defined, Pennsylvania courts have imposed the requirement. It may be expressed as follows: When a party offers evidence contending either expressly or impliedly that the evidence is connected with a person, place, thing or event, the party must provide evidence sufficient to support a finding of the contended connection. See *Commonwealth v. Pollock*, 414 Pa. Super. 66, 606 A.2d 500 (1992); *Commonwealth v. Hudson*, 489 Pa. 620, 414 A.2d 1381 (1980).

In some cases, real evidence may not be relevant unless its condition at the time of trial is similar to its condition at the time of the incident in question. In such cases, the party offering the evidence must also introduce evidence sufficient to support a finding that the condition is similar. Pennsylvania law treats this requirement as an aspect of authentication. See *Commonwealth v. Hudson*, 489 Pa. 620, 414 A.2d 1381 (1980); *Heller v. Equitable Gas Co.*, 333 Pa. 433, 3 A.2d 343 (1939).

Demonstrative evidence such as photographs, motion pictures, diagrams and models must be authenticated by evidence sufficient to support a finding that the demonstrative evidence fairly and accurately represents that which it purports to depict. See *Nyce v. Muffley*, 384 Pa. 107, 119 A.2d 530 (1956).

Paragraph 901(b) is identical to F.R.E. 901(b).

Paragraph 901(b)(1) is identical to F.R.E. 901(b)(1). It is consistent with Pennsylvania law in that the testimony of a witness with personal knowledge may be sufficient to authenticate or identify the evidence. See *Commonwealth v. Hudson*, 489 Pa. 620, 414 A.2d 1381 (1980); *Heller v. Equitable Gas Co.*, 333 Pa. 433, 3 A.2d 343 (1939).

Paragraph 901(b)(2) is identical to F.R.E. 901(b)(2). It is consistent with 42 Pa.C.S.A. § 6111, which also deals with the admissibility of handwriting.

Paragraph 901(b)(3) is identical to F.R.E. 901(b)(3). It is consistent with Pennsylvania law. When there is a question as to the authenticity of an exhibit, the trier of fact will have to resolve the issue. This may be done by comparing the exhibit to authenticated specimens. See *Commonwealth v. Gipe*, 169 Pa. Super. 623, 84 A.2d 366 (1951) (comparison of typewritten document with authenticated specimen). Under this rule, the court must decide whether the specimen used for comparison to the exhibit is authentic. If the court determines that there is sufficient evidence to support a finding that the specimen is authentic, the trier of fact is then permitted to compare the exhibit to the authenticated specimen. Under Pennsylvania law, lay or expert testimony is admissible to assist the jury in resolving the question. See, e.g., 42 Pa.C.S.A. § 6111.

Paragraph 901(b)(4) is identical to F.R.E. 901(b)(4). Pennsylvania law has permitted evidence to be authenticated by circumstantial evidence similar to that discussed in this illustration. The evidence may take a variety of forms including: evidence establishing chain of custody, see *Commonwealth v. Melendez*, 326 Pa. Super. 531, 474 A.2d 617 (1984); evidence that a letter is in reply to an earlier communication, see *Roe v. Dwelling House Ins. Co. of Boston*, 149 Pa. 94, 23 A. 718 (1892); testimony that an item of evidence was found in a place connected to a party, see *Commonwealth v. Bassi*, 284 Pa. 81, 130 A. 311 (1925); a phone call authenticated by evidence of party's conduct after the call, see *Commonwealth v. Gold*, 123 Pa. Super. 128, 186 A. 208 (1936); and the identity of a speaker established by the content and circumstances of a conversation, see *Bonavitacola v. Cluver*, 422 Pa. Super. 556, 619 A.2d 1363 (1993).

Paragraph 901(b)(5) is identical to F.R.E. 901(b)(5). Pennsylvania law has permitted the identification of a voice to be made by a person familiar with the alleged speaker's voice. See *Commonwealth v. Carpenter*, 472 Pa. 510, 372 A.2d 806 (1977).

Paragraph 901(b)(6) is identical to F.R.E. 901(b)(6). This paragraph appears to be consistent with Pennsylvania law. See *Smithers v. Light*, 305 Pa. 141, 157 A. 489 (1931); *Wahl v. State Workmen's Ins. Fund*, 139 Pa. Super. 53, 11 A.2d 496 (1940); see also 2 McCormick, *Evidence* § 226 (4th ed. 1992).

Paragraph 901(b)(7) is identical to F.R.E. 901(b)(7). This paragraph illustrates that public records and reports may be authenticated in the same manner as other writings. In addition, public records and reports may be self-authenticating as provided in Pa.R.E. 902. Public records and reports may also be authenticated as otherwise provided by statute. See paragraph 901(b)(10) and its Comment.

Paragraph 901(b)(8) is identical to F.R.E. 901(b)(8), except that the Pennsylvania rule requires thirty years, while the Federal Rule requires twenty years. This change makes the rule consistent with Pennsylvania law. See *Commonwealth ex rel. Ferguson v. Ball*, 277 Pa. 301, 121 A. 191 (1923); *Jones v. Scranton Coal Co.*, 274 Pa. 312, 118 A. 219 (1922).

Paragraph 901(b)(9) is identical to F.R.E. 901(b)(9). There is very little authority in Pennsylvania discussing authentication of evidence as provided in this illustration. The paragraph is consistent with the authority that exists. For example, in *Commonwealth v. Viscontio*, 301

Pa. Super. 543, 448 A.2d 41 (1982), a computer print-out was held to be admissible. In *Appeal of Chartier Valley School District*, 67 Pa. Cmwlth. 121, 447 A.2d 317 (1982), computer studies were not admitted as business records, in part, because it was not established that the mode of preparing the evidence was reliable. The court used a similar approach in *Commonwealth v. Westwood*, 324 Pa. 289, 188 A. 304 (1936) (test for gun powder residue) and in other cases to admit various kinds of scientific evidence. See *Commonwealth v. Middleton*, 379 Pa. Super. 502, 550 A.2d 561 (1988) (electrophoretic analysis of dried blood); *Commonwealth v. Rodgers*, 413 Pa. Super. 498, 605 A.2d 1228 (1992) (results of DNA/RFLP testing).

Paragraph 901(b)(10) differs from F.R.E. 901(b)(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law.

There are a number of statutes that provide for authentication or identification of various types of evidence. See, e.g., 42 Pa.C.S.A. § 6103 (official records within the Commonwealth); 42 Pa.C.S.A. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P. S. § 450.810 (vital statistics); 42 Pa.C.S.A. § 6106 (documents filed in a public office); 42 Pa.C.S.A. § 6110 (certain registers of marriages, births and burials records); 75 Pa.C.S.A. § 1547(c) (chemical tests for alcohol and controlled substances); 75 Pa.C.S.A. § 3368 (speed timing devices); 75 Pa.C.S.A. § 1106(c) (certificates of title); 42 Pa.C.S.A. § 6151 (certified copies of medical records); 23 Pa.C.S.A. § 5104 (blood tests to determine paternity); 23 Pa.C.S.A. § 4343 (genetic tests to determine paternity).

In general, evidence may be authenticated or identified in any manner provided by statute, these rules or decisional law. In some situations, decisional law has required strict compliance with a statute providing for authentication or identification of evidence. See *Commonwealth v. Townsend*, 418 Pa. Super. 48, 613 A.2d 564 (1992); *Commonwealth v. Martorano*, 387 Pa. Super. 151, 563 A.2d 1229 (1989).

#### Rule 902. Self-Authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic Public Documents Under Seal.* A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic Public Documents Not Under Seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates

of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any statute or rule prescribed by the Supreme Court.

(5) *Official Publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and Periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade Inscriptions and the Like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged Documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial Paper and Related Documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions Authorized by Statute.* Any signature, document or other matter declared by statute to be presumptively or prima facie genuine or authentic.

#### Comment

This rule permits some evidence to be authenticated without extrinsic evidence of authentication or identification. In other words, the requirement that a proponent must present authentication or identification evidence as a condition precedent to admissibility, as provided by Pa.R.E. 901(a), is inapplicable to the evidence discussed in Pa.R.E. 902. The rationale for the rule is that, for the types of evidence covered by Pa.R.E. 902, the risk of forgery or deception is so small, and the likelihood of discovery of forgery or deception is so great, that the cost of presenting extrinsic evidence and the waste of court time is not justified. Of course, this rule does not preclude the opposing party from contesting the authenticity of the evidence. In that situation, authenticity is to be resolved by the finder of fact.

Paragraphs 902(1), (2), (3) and (4) deal with self-authentication of various kinds of public documents and records. They are identical to F.R.E. 902(1), (2), (3) and (4), except that Pa.R.E. 901(4) eliminates the reference to Federal law. These paragraphs are consistent with Pennsylvania statutory law. See 42 Pa.C.S.A. § 6103 (official records within the Commonwealth); 42 Pa.C.S.A. § 5328 (domestic records outside the Commonwealth and foreign

records); 35 P. S. § 450.810 (vital statistics); 42 Pa.C.S.A. § 6106 (documents filed in a public office).

Paragraphs 902(5), (6) and (7) are identical to F.R.E. 902(5), (6) and (7). There are no corresponding statutory provisions in Pennsylvania; however, 45 Pa.C.S.A. § 506 (judicial notice of the contents of the *Pennsylvania Code* and the *Pennsylvania Bulletin*) is similar to Pa.R.E. 902(5). Although these paragraphs are new to Pennsylvania, their adoption is amply supported by the rationale for Pa.R.E. 902.

Paragraph 902(8) is identical to F.R.E. 902(8). It is consistent with Pennsylvania law. See *Sheaffer v. Baeringer*, 346 Pa. 32, 29 A.2d 697 (1943); *Williamson v. Barrett*, 147 Pa. Super. 460, 24 A.2d 546 (1942); 21 P. S. § 291.1-291.13 (Uniform Acknowledgement Act); 57 P. S. §§ 147-169 (Notary Public Law). An acknowledged document is a type of official record and the treatment of acknowledged documents is consistent with Paragraphs 902(1), (2), (3) and (4).

Paragraph 902(9) is identical to F.R.E. 902(9). Pennsylvania law treats various kinds of commercial paper and documents as self-authenticating. See, e.g., 13 Pa.C.S.A. § 1202 (documents authorized or required by contract to be issued by a third party); 13 Pa.C.S.A. § 3505 (evidence of dishonor of negotiable instruments).

Paragraph 902(10) differs from F.R.E. 902(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law. In some Pennsylvania statutes, the self-authenticating nature of a document is expressed by language creating a "presumption" of authenticity. See 13 Pa.C.S.A. § 3505. In other Pennsylvania statutes, the self-authenticating nature of a document is expressed by language that the document is "prima facie" authentic or genuine. See 13 Pa.C.S.A. § 1202. This paragraph recognizes the continuing vitality of such statutes.

#### Rule 903. Subscribing Witness' Testimony Unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

#### Comment

This rule is identical to F.R.E. 903. The rule is consistent with Pennsylvania law in that there are no laws in Pennsylvania requiring the testimony of a subscribing witness to authenticate a writing.

### ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule	
1001.	Definitions.
1002.	Requirement of Original.
1003.	Admissibility of Duplicates.
1004.	Admissibility of Other Evidence of Contents.
1005.	Public Records.
1006.	Summaries.
1007.	Testimony or Written Admission of Party.
1008.	Functions of Court and Jury.

#### Rule 1001. Definitions.

For purposes of this article the following definitions are applicable:

(1) *Writings and Recordings.* "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, print-

ing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs*. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) *Original*. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) *Duplicate*. A "duplicate" is a copy produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

#### Comment

This rule is identical to F.R.E. 1001, except that the word "copy" in Pa.R.E. 1001(4) replaces the word "counterpart" used in F.R.E. 1001(4).

Paragraphs 1001(1) and (2) have no precise equivalent in Pennsylvania law, but the definitions of the terms writings, recordings and photographs are consistent with lay and legal usage in Pennsylvania.

The definition of an original writing, recording or photograph contained in paragraph 1001(3) appears to be consistent with Pennsylvania practice.

The definition of an original of data stored in a computer or similar device in paragraph 1001(3) is consistent with Pa.R.E. 901(b)(9) (authentication of evidence produced by a process or system).

Paragraph 1001(4) defines the term duplicate. This term is important because of the admissibility of duplicates under Pa.R.E. 1003. This Rule differs from the Federal Rule in that the word "counterpart" has been replaced by the word "copy." The word "counterpart" is used in paragraph 1001(3) to refer to a copy intended to have the same effect as the writing or recording itself. The word "copy" is used to mean a copy that was not intended to have the same effect as the original. Pennsylvania law has permitted the use of duplicates produced by the same impression as the original, as is the case with carbon copies. See *Brenner v. Leshner*, 332 Pa. 522, 2 A.2d 731 (1938); *Commonwealth v. Johnson*, 373 Pa. Super. 312, 541 A.2d 332 (1988); *Pennsylvania Liquor Control Bd. v. Evolo*, 204 Pa. Super. 225, 203 A.2d 332 (1964). Pennsylvania has not treated other duplicates as admissible unless the original was shown to be unavailable through no fault of the proponent. See *Hera v. McCormick*, 425 Pa. Super. 432, 625 A.2d 682 (1993); *Warren v. Mosites Constr. Co.*, 253 Pa. Super. 395, 385 A.2d 397 (1978). For this reason, the definition of duplicates, other than those produced by the same impression as the original, is new to Pennsylvania law. The justification for adopting the new definition is discussed in the Comment to Pa.R.E. 1003.

#### Rule 1002. Requirement of Original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules, by other rules prescribed by the Supreme Court, or by statute.

#### Comment

Pa.R.E. 1002 differs from F.R.E. 1002 to eliminate the reference to Federal law and to make the Rule conform to Pennsylvania law. Pa.R.E. 1002 is consistent with Pennsylvania law.

This rule corresponds to the common law "best evidence rule." See *Warren v. Mosites Constr. Co.*, 253 Pa. Super. 395, 385 A.2d 397 (1978). The rationale for the rule was not expressed in Pennsylvania cases, but commentators have mentioned four reasons justifying the rule.

- (1) The exact words of many documents, especially operative or dispositive documents, such as deeds, wills or contracts, are so important in determining a party's rights accruing under those documents.
- (2) Secondary evidence of the contents of documents, whether copies or testimony, is susceptible to inaccuracy.
- (3) The rule inhibits fraud because it allows the parties to examine the original documents to detect alterations and erroneous testimony about the contents of the document.
- (4) The appearance of the original may furnish information as to its authenticity.

5 Weinstein & Berger, *Weinstein's Evidence* § 1002(2) (Sandra D. Katz rev. 1994).

The common law formulation of the rule provided that the rule was applicable when the terms of the document were "material." The materiality requirement has not been eliminated, but is now dealt with in Pa.R.E. 1004(4). That rule provides that the original is not required when the writing, recording or photograph is not closely related to a controlling issue.

The case law has not been entirely clear as to when a party is trying "to prove the content of a writing, recording, or photograph." However, writings that are viewed as operative or dispositive have usually been considered to be subject to the operation of the rule. Such writings include deeds, see *Gallagher v. London Assurance Corp.*, 149 Pa. 25, 24 A. 115 (1892), contracts, see *In re Reuss' Estate*, 422 Pa. 58, 220 A.2d 822 (1966), and attachments, see *L.C.S. Colliery, Inc. v. Globe Coal Co.*, 369 Pa. 1, 84 A.2d 776 (1951). On the other hand, writings are not usually treated as subject to the rule if they are only evidence of the transaction, thing or event. See *Hamill-Quinlan, Inc. v. Fisher*, 404 Pa. Super. 482, 591 A.2d 309 (1991); *Noble C. Quandt Co. v. Slough Flooring, Inc.*, 384 Pa. Super. 236, 558 A.2d 99 (1989). Thus, testimony as to a person's age may be offered; it is not necessary to produce a birth certificate. See *Commonwealth ex rel. Park v. Joyce*, 316 Pa. 434, 175 A. 422 (1934). Or, a party's earnings may be proven by testimony; it is not necessary to offer business records. See *Noble C. Quandt Co. v. Slough Flooring, Inc.*, 384 Pa. Super. 236, 558 A.2d 99 (1989).

Traditionally, the best evidence rule applied only to writings. Photographs, which under the definition established by Pa.R.E. 1001(2) include x-ray films, videotapes, and motion pictures, are usually only evidence of the transaction, thing or event. It is rare that a photograph would be operative or dispositive, but in cases involving matters such as infringement of copyright, defamation, pornography and invasion of privacy, the requirement for the production of the original should be applicable. There is support for this approach in Pennsylvania law. See *Commonwealth v. Lewis*, 424 Pa. Super. 531, 623 A.2d 355

(1993) (video tape); *Anderson v. Commonwealth*, 121 Pa. Cmwlth. 521, 550 A.2d 1049 (1988) (film).

**Rule 1003. Admissibility of Duplicates.**

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

**Comment**

This rule is identical to F.R.E. 1003 and is a modest extension of Pennsylvania law.

Under the traditional best evidence rule, copies of documents were not routinely admissible. This view dated back to the time when copies were made by hand copying and were therefore subject to inaccuracy. On the other hand, Pennsylvania courts have admitted copies made by techniques that are more likely to produce accurate copies. For example, when a writing is produced in duplicate or multiply each of the copies is treated as admissible for purposes of the best evidence rule. See *Brenner v. Leshner*, 332 Pa. 522, 2 A.2d 731 (1938); *Pennsylvania Liquor Control Bd. v. Evolo*, 204 Pa. Super. 225, 203 A.2d 332 (1964).

In addition, various Pennsylvania statutes have treated some accurate copies as admissible. See 42 Pa.C.S.A. § 6104 (governmental records in the Commonwealth); 42 Pa.C.S.A. § 5328 (domestic records outside the Commonwealth and foreign records); 42 Pa.C.S.A. § 6106 (documents recorded or filed in a public office); 42 Pa.C.S.A. § 6109 (photographic copies of business and public records); 42 Pa.C.S.A. § 6151-59 (certified copies of medical records).

The extension of similar treatment to all accurate copies seems justified in light of modern practice. Pleading and discovery rules such as Pa.R.C.P. 4009.1 (requiring production of originals of documents and photographs etc.) and Pa.R.Crim.P. 305(B)(1)(f) and (g) (requiring disclosure of originals of documents, photographs and recordings of electronic surveillance) will usually provide an adequate opportunity to discover fraudulent copies. As a result, Pa.R.E. 1003 should tend to eliminate purely technical objections and unnecessary delay. In those cases where the opposing party raises a genuine question as to authenticity or the fairness of using a duplicate, the trial court may require the production of the original under this rule.

**Rule 1004. Admissibility of Other Evidence of Contents.**

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if—

- (1) *Originals Lost or Destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
- (2) *Original Not Obtainable.* No original can be obtained by any available judicial process or procedure; or
- (3) *Original in Possession of Opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or
- (4) *Collateral Matters.* The writing, recording, or photograph is not closely related to a controlling issue.

**Comment**

This rule is identical to F.R.E. 1004.

Paragraph 1004(1) is consistent with Pennsylvania law. See *Olson & French, Inc. v. Commonwealth*, 399 Pa. 266, 160 A.2d 401 (1960); *Brenner v. Leshner*, 332 Pa. 522, 2 A.2d 731 (1938). When the proponent of the evidence alleges that it is lost, there should be evidence that a sufficient search was made. See *Brenner v. Leshner*, 332 Pa. 522, 2 A.2d 731 (1938); *Hera v. McCormick*, 425 Pa. Super. 432, 625 A.2d 682 (1993).

Paragraphs 1004(2), 1004(3) and 1004(4) are consistent with Pennsylvania law. See *Otto v. Trump*, 115 Pa. 425, 8 A. 786 (1887) (consistent with Pa.R.E. 1004(2)); *Abercrombie v. Bailey*, 326 Pa. 65, 190 A. 725 (1937) (consistent with Pa.R.E. 1004(3)); *Durkin v. Equine Clinics, Inc.*, 313 Pa. Super. 75, 459 A.2d 417 (1983) (consistent with Pa.R.E. 1004(4)); *McCullough v. Holland Furnace Co.*, 293 Pa. 45, 141 A. 631 (1928) (consistent with Pa.R.E. 1004(4)); see also Comment to Pa.R.E. 1002.

Under F.R.E. 1004, when production of the original is not required, the proffering party need not offer a duplicate even if that is available; the proffering party may present any evidence including oral testimony. See F.R.E. 1004 advisory committee's note. There is no hierarchy of secondary evidence. There is some authority in Pennsylvania that seems to require the next best evidence when presentation of the original is not required. See *Otto v. Trump*, 115 Pa. 425, 8 A. 786 (1887); *Stevenson, Bowen & Nesmith v. Hoy*, 43 Pa. 191 (1862). This approach adds an unnecessary level of complexity. The normal motivation of a party to produce the most convincing evidence together with the availability of discovery to uncover fraud seems adequate to control abuse. Thus, Pa.R.E. 1004 follows the approach of F.R.E. 1004.

**Rule 1005. Public Records.**

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by a copy as provided by Pa.R.E. 901 or 902, by statute, or by testimony of a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

**Comment**

The language of the first sentence of this rule differs somewhat from F.R.E. 1005 to conform more closely to Pa.R.E. 901 and 902. The changes are not intended to be substantive. This rule is consistent with Pennsylvania law. There are several statutes that provide that copies of various kinds of public documents and records are admissible. See Comments to Pa.R.E. 901 and 902.

**Rule 1006. Summaries.**

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

**Comment**

This rule is identical to F.R.E. 1006 and is consistent with Pennsylvania law. See *Scaife Co. v. Rockwell-Standard Corp.*, 446 Pa. 280, 285 A.2d 451 (1971); *Royal Pioneer Paper Box Mfg. Co. v. Louis Dejonge & Co.*, 179

Pa. Super. 155, 115 A.2d 837 (1955); *Keller v. Porta*, 172 Pa. Super. 651, 94 A.2d 140 (1953).

**Rule 1007. Testimony or Written Admission of Party.**

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

**Comment**

This rule is identical to F.R.E. 1007. There is no precise equivalent to Pa.R.E. 1007 under Pennsylvania law, but the rule is consistent with Pennsylvania practice. Pa.R.C.P. 1019(h) requires a party to attach a copy of a writing to a pleading if any claim or defense is based on the writing. A responsive pleading admitting the accuracy of the writing would preclude an objection based on the original writings rule. Similarly, Pa.R.C.P. 4014(a) permits a party to serve any other party with a request for admission as to the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request. Pa.R.C.P. 4014(d) provides that any matter admitted is conclusively established.

**Rule 1008. Functions of Court and Jury.**

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Pa.R.E. 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

**Comment**

This rule is identical to F.R.E. 1008 except for the reference to "Pa.R.E." instead of "rule." There is no equivalent to this rule under Pennsylvania law, but this approach is consistent with Pennsylvania practice.

[Pa.B. Doc. No. 98-798. Filed for public inspection May 22, 1998, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### DELAWARE COUNTY

**Adoption of Civil Rule \*205.2; Misc. No. 98-80157**

**Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rule \*205.2 be adopted as follows:

**Rule \*205.2—Filing Legal Papers with the Office of Judicial Support.**

The facing page of all pleadings, petitions, motions and all other matters filed with the Office of Judicial Support shall provide a space, 3 inches in height, on the top right

under the docket number for the use of the Office of Judicial Support in affixing the date and time of the filing.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-799. Filed for public inspection May 22, 1998, 9:00 a.m.]

### DELAWARE COUNTY

**Amendment of Civil Rule \*241(b); Misc. No. 98-80156**

**Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rule \*241(b) be amended to read as follows: (b) Assessment of damage cases may be certified as ready for trial at any time by sending a certificate of readiness to all other parties and filing two copies of the certificate and one copy of a certification of service with the Court Administrator.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-800. Filed for public inspection May 22, 1998, 9:00 a.m.]

### DELAWARE COUNTY

**Amendment of Civil Rules \*1920.53(a), (d) and (f); Misc. No. 98-80154**

**Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rules \*1920.53(a) and (f) be amended by the deletion of all reference to the former Divorce Code; and that Civil Rule \*1920.53(d) be amended to increase from thirty (30) days to forty-five (45) days the time in which the master shall set a hearing date.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-801. Filed for public inspection May 22, 1998, 9:00 a.m.]

### DELAWARE COUNTY

**Amendment and Redesignation of Civil Rule \*206 B2; Misc. No. 98-80150**

**Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rule \*206 B2 be redesignated \*206C and amended to read as follows:



**Emergency Matters or Stays of Proceedings in Family and in Non-Family Matters.**

- (a) Redesignated (1)
- (b) Redesignated (2)
- (c) Redesignated (3)

(d) Redesignated (4) and (5) and amended to read as follows:

The moving party shall make a good faith effort to give all parties affected by the application as much advance notice as reasonably possible of the date and time he/she intends to present his/her application and shall attach to the application a certification of the good faith effort that has been made. This certification shall provide the specific details of the moving party's efforts to comply with the advance notice requirement of this section to include, but not limited to, the method(s) by which notice was sought to be given, the date(s) and time(s) when notice was sought to be given, the address(es) and/or phone number(s) and/or fax number(s) at which notice was sought to be given and the identity(ies) of the party(ies) to whom notice was sought to be given. When the court fixes a hearing date following the submission of an application under this Rule, a second certification shall be filed by the moving party providing similar specific information setting forth the efforts that have been made to give to all affected parties as much notice as possible of the date, time and place set by the court for the hearing.

(5) Except in emergency situations no stay of proceedings shall be granted without actual prior notice to all parties affected thereby.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-802. Filed for public inspection May 22, 1998, 9:00 a.m.]

**DELAWARE COUNTY****Renumbering of Civil Rule \*223(a)(4); Misc. No. 98-80152****Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that the Civil Rule \*223(a)(4) be renumbered \*223(a)(5) to conform to the numbering of Pa.R.C.P. 223(a).

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-803. Filed for public inspection May 22, 1998, 9:00 a.m.]

**DELAWARE COUNTY****Renumbering of Civil Rule \*228(a), (b) and (c); Misc. No. 98-80153****Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rule \*228(a), (b) and (c) be renum-

bered \*223(a)(5), (6) and (7) to conform to the subject matter of Pa.R.C.P. 223(a).

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-804. Filed for public inspection May 22, 1998, 9:00 a.m.]

**DELAWARE COUNTY****Rescission of Civil Rule \*1915.4 and the Adoption in Its Place of Civil Rule \*1915.19; Misc. No. 98-80151****Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rule \*1915.4 be rescinded and that Civil Rule \*1915.19 be adopted in its place, as follows:

**Rule \*1915.19—Seminar for Separated and Divorced Parents.**

(a) If a case is not resolved at the first conciliation conference, the court may order the parties to attend an educational seminar. The court may also order such attendance at any time sua sponte or by stipulation of the parties.

(b) This seminar should be conducted in the courthouse complex or at such other location approved by the court.

(c) Each party shall be responsible for payment of his/her share of the seminar costs prior to the seminar. The provider shall waive for any party who has been qualified by the court to proceed in forma pauperis that party's share of the costs.

(d) A certificate of compliance shall be given to the attendees and filed by the provider with the Office of Judicial Support.

(e) Any party who fails to comply with the court's order directing completion of this educational seminar may be subject to a finding of contempt; and the court may impose whatever sanctions it deems appropriate including, but not limited to, an order imposing the payment of counsel fees. A hearing on a custody petition shall not be delayed by a party's refusal or delay in complying with this order.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-805. Filed for public inspection May 22, 1998, 9:00 a.m.]

**DELAWARE COUNTY****Rescission of Civil Rules \*204(a) and 227.5; Misc. No. 98-80155****Order**

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rules \*204(a) and \*227.5 be rescinded

as superfluous in the case of \*204(a) and is not an appropriate subject for local rule making in the case of \*227.5.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-806. Filed for public inspection May 22, 1998, 9:00 a.m.]

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### DELAWARE COUNTY

**Rescission of Civil Rules \*1920.4(f); 1920.12(d); 1920.31(d), (e) and (g); 1920.42(d); 1920.43(d), (e), (f) and (g); 1920.51(f); 1920.76(a) and (b) and 1920.89; Misc. No. 98-80158**

#### Order

*And Now*, this 4th day of May, 1998, it is hereby *Ordered* that Civil Rules \*1920.4(f); \*1920.12(d); \*1920.31(d), (e) and (g); \*1920.42(d); \*1920.43(d), (e), (f) and (g); \*1920.51(f); \*1920.76(a) and (b) and \*1920.89 be rescinded as not in conformity with the Pennsylvania Rules of Civil Procedure and/or as inconsistent with present local practice.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-807. Filed for public inspection May 22, 1998, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that Robert H. Obringer, who resides outside the Commonwealth of Pennsylvania, having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated May 5, 1998, disbaring Robert H. Obringer from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly

admitted attorney has never practiced in Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary and Executive Director  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 98-808. Filed for public inspection May 22, 1998, 9:00 a.m.]

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### Notice of Disbarment

Notice is hereby given that John William Morris, who resides outside the Commonwealth of Pennsylvania, having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated May 5, 1998, disbaring John William Morris from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney has never practiced in Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary and Executive Director  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 98-809. Filed for public inspection May 22, 1998, 9:00 a.m.]

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### Notice of Suspension

Notice is hereby given that the Supreme Court of Pennsylvania issued an Order dated May 5, 1998, suspending Jill Louise Rygwalski from the Bar of this Commonwealth for a period of five (5) years, retroactive to November 13, 1995. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary and Executive Director  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 98-810. Filed for public inspection May 22, 1998, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

#### [31 PA. CODE CH. 27]

#### Disclosure of Material Transactions

The Insurance Department (Department) adopts Chapter 27 (relating to disclosure of material transactions) to read as set forth in Annex A.

Insurers transacting business in this Commonwealth are required to file financial statements with the Department on at least an annual basis. At the discretion of the Insurance Commissioner (Commissioner), insurers may be required to file additional statements concerning their affairs and financial condition. These regulations require domestic insurers to file interim statements disclosing specific material transactions to allow the Department to better monitor the financial condition of the insurers.

#### *Statutory Authority*

These regulations are adopted under the authority of section 320 of The Insurance Company Law of 1921 (40 P. S. § 443) (act).

#### *Comments*

Notice of proposed rulemaking was published at 26 Pa.B. 752 (February 24, 1996) with a 30-day public comment period.

No comments were received from the standing committees. Comments were received during the 30-day public comment period from The Insurance Federation of Pennsylvania, Inc. (IFP) and the Pennsylvania Association of Mutual Insurance Companies (PAMIC). On April 24, 1996, the Independent Regulatory Review Commission (IRRC) submitted its comments and recommendations to the Department. The following is a summary of the comments and the Department's response in its final rulemaking.

#### *IFP Comments*

During the 30-day public comment period, the IFP expressed support for the regulations and stated that IFP members look forward to seeing it approved at the earliest possible date. Upon enactment of the act of June 18, 1997 (P. L. 221, No. 20) (Act 20), the IFP subsequently commented that the provisions of § 27.5 (relating to confidentiality of statements disclosing material transactions) should be amended to be consistent with Act 20. In response, the Department withdrew its final-form rulemaking for further amendments to § 27.5 as described in item 1 of the Department's response to comments submitted by IRRC.

#### *PAMIC Comments*

The PAMIC requested additional clarification of language in proposed § 27.6(a) describing a material acquisition or disposition of assets as "a transaction that is nonrecurring and not in the ordinary course of business." IRRC agreed that this phrase, as well as the phrase "series of related" transactions, needed further clarification, either through definitions or rewording, and provided suggested language. IRRC also recommended that § 27.4(d) be merged with § 27.6(a). The PAMIC specifically asked whether ordinary investment activity is excluded from reporting.

In response to these comments and recommendations, the Department has amended the language in proposed § 27.6(a) as set forth in Annex A in § 27.3(a) (relating to disclosure of material acquisitions of assets or material dispositions of assets). The Department has adopted IRRC's suggested language with the following modifications:

(a) IRRC's language states that a material transaction shall be reported if all of the listed criteria apply. The use of the word "material" in this context implies that there are other transactions that may have a material effect on the financial condition of an insurer but that are not required to be reported. However, in fact, "materiality" is defined by the listed criteria. The purpose of the regulation is to provide for disclosure of transactions that are material and that are not otherwise being timely reported to the Department. The Department believes its language more accurately reflects that purpose.

(b) IRRC deleted the language in proposed § 27.6(a) that identifies the insurer's total admitted assets as that amount reported in the insurer's most recent annual statutory financial statement filed with the Department. The Department believes this language is needed to clearly identify the specific number to which the 5% threshold should be applied and, therefore, has retained it in this final-form rulemaking.

(c) In referring to the PAMIC's comments, IRRC incorrectly quoted the phrase "a transaction that is nonrecurring and not in the ordinary course of business" as "a transaction that is nonrecurring and not in the normal course of business." The term "normal" is also used in IRRC's suggested language. The Department has retained the term "ordinary" in its final form-rulemaking. The Department believes that the phrase "ordinary course of business" is standard, commonly understood business phraseology. This phrase is used in the model legislation developed by the National Association of Insurance Commissioners (NAIC) and recommended for adoption by the states. The Department believes that substituting the term "normal" for "ordinary" in this regulation would not improve the clarity of the regulation but would instead create uncertainty about whether the Commonwealth's regulation requires the reporting of the same type of transactions contemplated by the model and required to be reported in other states. Therefore, the Department has not reworded or defined this phrase in its final form-rulemaking.

The Department has reworded the language referring to a "series of related" acquisitions or assets or dispositions of assets as recommended by IRRC. The amended language remains consistent with the NAIC model legislation and requirements in other states. The regulation refers to a series of related transactions in addition to a single transaction because a material financial transaction may consist of, or could be broken down into, a series of smaller transactions that, considered as a whole, involve more than 5% of the insurer's total admitted assets. The Department believes the reference to a single transaction, or a series of related transactions, is also commonly understood and does not require further definition.

(d) Proposed § 27.4(d) has been moved to § 27.3(e), rather than merged with proposed § 27.6(a) as recommended by IRRC. Proposed § 27.6(a), now found in § 27.3(a), defines the types of acquisitions of assets or

dispositions of assets that are required to be reported under the regulation. Proposed § 27.4(d), now found in § 27.3(e), is an example of how to report a series of related transactions, as opposed to a single transaction, within the time frame established by proposed § 27.4(c), now found in § 27.3(d). The Department believes that the example of how the 30-day filing requirement works for a series of related transactions (§ 27.3(e)) should follow rather than precede the provision that establishes the 30-day time frame (§ 27.3(d)). In consideration of IRRC's comments, the Department has made editorial changes to the language in § 27.3(d) and (e) for clarification purposes.

(e) In response to the PAMIC's question, "ordinary" investment activity would be considered in the ordinary course of business, and therefore would be excluded by definition from reporting under the regulation. For example, the purchase or sale of United States Treasury Notes would be considered ordinary investment activity and would not be required to be reported under the regulations.

*IRRC Comments*

*1. Confidentiality of Statements Disclosing Material Transactions.*

Proposed § 27.5(a) provided for statements obtained by or disclosed to the Department under this chapter to be treated confidentially unless any of the following occurred: (1) the insurer gave its prior written consent to publish the information; (2) the Commissioner, after giving the insurer notice and an opportunity to be heard, determined that the interest of policyholders, shareholders or the public would be served by the publication of the statements; (3) the statements were subpoenaed.

Proposed § 27.5(b) provided for the Department's ability to share statements obtained by or disclosed to the Department with the National Association of Insurance Commissioners (NAIC) and with insurance departments of other states or jurisdictions if those parties demonstrate the necessary authority and intent to provide the statements with the same confidential treatment required by this chapter.

In response to IRRC's specific comments regarding the clarity of language in § 27.5(a)(2), the Department has revised the proposed language to read as follows:

(a) Statements filed under this chapter shall be given confidential treatment, unless any of the following occur:

\* \* \* \* \*

(2) The Commissioner exercises discretion and determines that all of any part of the information related to the transaction be published. Prior to making a determination to publish all of any part of the information, the Commissioner will notify the affected insurer of the right to request a confidential review by the Commissioner. At the review, the affected insurer shall have an opportunity to demonstrate why the transaction and related information should remain confidential. After the review, the Commissioner may order some, all or none of the information related to the transaction be made public. Any of the Commissioner's responsibilities may be delegated to a designee.

The Department also amended § 27.5(b) to address IRRC's concerns with the clarity of the regulations. The final-form rulemaking was filed on July 8, 1997. In response to subsequent comments from the IFP, the final-form rulemaking was withdrawn on August 4, 1997, for further amendments to § 27.5 consistent with Act 20.

Act 20 authorizes the Commissioner to maintain the confidentiality of documents received from other regulatory or law enforcement officials or from the National Association of Insurance Commissioners (NAIC). Act 20 also authorizes the Commissioner to share confidential documents with other regulatory or law enforcement officials, as long as those parties demonstrate, by written statement, the necessary authority and intent to provide the information with the same confidential treatment required by Act 20. Finally, Act 20 authorizes the Commissioner to grant access to confidential information to the NAIC, if that organization also demonstrates by written statement the intent to provide the information with the same confidential treatment required by Act 20.

The Department has amended § 27.5(b) to replace references to this chapter with references to Act 20. Act 20 provides that confidential information obtained by, or shared with, other regulatory or law enforcement officials or the NAIC may not be subject to subpoena. Therefore, these final amendments are needed to clarify that (1) only statements filed by domestic insurers under the regulation are subject to subpoena; and (2) statements filed under the regulation are only subject to a subpoena served directly upon the Department, not upon any other party with which the statements may have been shared under § 27.5(b).

*2. Structural clarity.*

IRRC provided a recommended structure for the regulations to consolidate it into two primary sections. Specific structural changes made in response to IRRC's recommendations and in Annex A are as follows:

(a) Proposed § 27.2 (relating to purpose) and proposed § 27.3 (relating to application) have been replaced by a new § 27.2 (relating to scope).

(b) Proposed § 27.4 (relating to statements disclosing material transactions) has been eliminated. The language in proposed § 27.4(a) has been deleted. The language in proposed § 27.4(b) now appears in § 27.3(f) and § 27.4(h). Proposed § 27.4(c) now appears in § 27.3(d) and § 27.4(g). Proposed § 27.4(d) now appears in § 27.3(e).

(c) Proposed § 27.5 (relating to confidentiality of statements disclosing material transactions) has been moved to just prior to new § 27.6 (relating to penalties).

(d) Proposed §§ 27.6 and 27.7 (relating to nature and scope of material acquisitions and dispositions of assets; and content of statements of material acquisitions or disposition of assets) have been combined under new § 27.3 (relating to reporting of material acquisitions of assets or material dispositions of assets). Proposed § 27.6(b) and (c) have been moved to § 27.1 (relating to definitions). As noted in item (b), proposed § 27.4(b), (c) and (d) are now in § 27.3.

(e) Proposed §§ 27.8—27.10 (relating to nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to property and casualty insurers; nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to life insurers; and contents of statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements) have been combined under new § 27.4. As noted in item (b), § 27.4(b) and (c) are now in this section. Sections 27.8(b) and (c) have been reordered as § 27.4(a)(2) and (b). Subsections 27.9(b) and (c) have been reordered as § 27.4(c)(2) and (d).

### 3. *Clarity of §§ 27.6(a) and 27.4(d).*

The Department's response to IRRC's comments relating to these subsections is included in the response to the PAMIC's comment.

### 4. *Unnecessary or redundant language, or both.*

In response to IRRC's comments, the following phrases have been deleted throughout the regulations:

- (a) "Notwithstanding this section"
- (b) "one or more" (This phrase has been replaced by "any.")
- (c) "For purposes of this chapter," "subject to this chapter," "under this chapter," "under this section."

In addition, the Department has also deleted proposed § 27.6 (relating to penalties) as unnecessary and redundant. The applicable penalties are clearly set forth in the authorizing statute. See section 320 of the act.

### 5. *Clarity of the term "licensed."*

In response to IRRC's comments, the Department has included a definition of "licensed" in § 27.1 and has used the defined term consistently throughout the regulations.

### 6. *Material acquisitions "and/or" dispositions of assets.*

In response to IRRC's comments, the Department has amended the regulations to consistently use the conjunction "or" to clarify that acquisitions of assets and dispositions of assets are to be treated as separate transactions.

### 7. *Clarity of conditions in § 27.8(b)(2) and § 27.9(b)(2).*

In response to IRRC's comments, the Department has inserted the word "and" in new § 27.4(b)(2)(i) and (d)(2)(i) to clarify that both conditions are necessary.

### 8. *Reporting on a consolidated versus nonconsolidated basis.*

IRRC recommended that proposed § 27.10(b) be broken down into two subsections and that the two conditions under which statements may be prepared on a consolidated basis be written as a list. The Department has made the recommended changes in new § 27.4(f); except that the section has not been broken down into two subsections. Since statements must be prepared on a nonconsolidated basis except when the insurer meets the two listed conditions, the Department believes it is clearer to present the two conditions in the same subsection as a limited exception to the rule. The Department has made additional editorial changes to the language in this section to parallel language used throughout the regulations.

### 9. *Clarity of proposed § 27.4(b).*

Consistent with IRRC's comments, proposed § 27.4(b) now appears in § 27.3(f) and § 27.4(h). The language has been reworded as recommended by IRRC; except the phrase "material transactions" has been replaced with "acquisition or disposition of assets" in § 27.4(c) and with "statements disclosing material nonrenewals, cancellations or revisions of ceded reinsurance agreements" in § 27.4(h). The Department believes it is important to identify these specific types of material transactions to clearly distinguish them from other types of material transactions required to be reported under other laws.

### 10. *Parallel language in § 27.5(a).*

In response to IRRC's comments, the Department has amended this subsection to consistently use the word "insurer" and has eliminated the modifying language.

### 11. *Definition of "insurer."*

As recommended by IRRC, the Department has recited the statutory language for the definition of "insurer" in § 27.1.

### 12. *Format of § 27.9.*

In response to IRRC's comment, the provisions of proposed § 27.9 have been redesignated as § 27.4(c) (2) and (d).

### *Fiscal Impact*

The reporting requirements in the regulations will impose no significant costs on domestic insurers. Review of reports filed under the regulations will not have a measurable impact on Department costs associated with the analyses of financial statements filed by domestic insurers. The regulations have no impact on costs to political subdivisions. While the regulations have no immediate fiscal impact on the general public, the general public will benefit to the extent that adoption of the regulations enhance the ability of the Department to monitor the financial solvency of domestic insurers.

### *Paperwork*

The regulations require additional reporting by domestic insurers to disclose material transactions that occur between financial statement filing dates. The additional disclosure is necessary for the Department to determine whether these material transactions may have an adverse impact on the interests of policyholders or on the financial stability of the insurer.

### *Persons Regulated*

The regulations apply to all domestic insurers licensed by the Commissioner to transact business in this Commonwealth.

### *Contact Person*

Any questions regarding these regulations, should be directed to: Peter Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120 (717) 787-4429.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 8, 1996, the Department submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 752 (February 24, 1996) to IRRC and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public. These final-form regulations were deemed approved by the House and Senate Committee, on April 13, 1998. In accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), IRRC met on April 23, 1998, and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act.

### *Findings*

The Commissioner finds that:

- (1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No.

240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

*Order*

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

(a) The regulations of the Department, 31 Pa. Code, are amended by adding §§ 27.1—27.5 and Appendix A, to read as set forth in Annex A.

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

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

(d) The regulations adopted by this order shall take effect upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

*(Editor's Note: The proposal to add §§ 27.6—27.10, included in the proposed rulemaking at 26 Pa. B. 752, has been withdrawn by the Department.)*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa. B. 2189 (May 9, 1998).)*

**Fiscal Note:** Fiscal Note 11-132 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 31. INSURANCE**

**PART I. GENERAL PROVISIONS**

**Subpart B. SECURITIES AND STOCK TRANSACTIONS**

**CHAPTER 27. DISCLOSURE OF MATERIAL TRANSACTIONS**

Sec.	
27.1.	Definitions.
27.2.	Scope.
27.3.	Disclosure of material acquisitions or dispositions of assets.
27.4.	Disclosure of material nonrenewals, cancellations or revisions of ceded reinsurance agreements.
27.5.	Confidentiality of statements disclosing material transactions.

**§ 27.1. Definitions.**

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

*Acquisition of assets*—The purchase, lease, exchange, succession or other acquisition of assets, other than the following:

(i) The purchase, construction or development of real property occupied or to be occupied by the insurer for the transaction of its business or the acquisition of materials for that purpose.

(ii) Electronic data processing hardware and operating software acquired by the insurer to support the transaction of its business.

*Act*—The Insurance Company Law of 1921 (40 P. S. §§ 341—991.1718).

*Association*—Individuals, partnerships or associations of individuals, authorized to engage in the business of insurance in this Commonwealth as insurers on the Lloyds plan.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Department*—The Insurance Department of the Commonwealth.

*Disposition of assets*—The sale, lease, transfer, exchange, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, alienation or other conveyance of an interest in assets.

*Domestic*—Incorporated or organized under the laws of the Commonwealth.

*Exchange*—Individuals, partnerships and corporations, authorized by the laws of the Commonwealth to exchange with each other inter-insurance or reciprocal insurance contracts.

*Insurer*—A stock or mutual insurance company (including title insurance companies), association or exchange.

*Licensed*—Currently authorized by the Commissioner to transact the business of insurance in this Commonwealth under the act, as evidenced by a certification issued by the Commissioner.

**§ 27.2. Scope.**

(a) This chapter provides for the interim filing of statements of transactions that may have a material effect on the financial condition of a domestic insurer.

(b) This chapter applies to licensed domestic insurers subject to section 320 of the act (40 P. S. § 443) relating to the filing of statements of financial condition.

(c) This chapter does not supersede or in any way affect an insurer's duty to comply with the act of July 31, 1968 (P. L. 941, No. 288) (40 P. S. §§ 995.1—995.4), relating to prior notice to the Commissioner of disposal of assets and certain reinsurance cessions.

**§ 27.3 Disclosure of material acquisitions or dispositions of assets.**

(a) An insurer shall file a statement disclosing an acquisition of assets or disposition of assets if the following apply:

(1) A single transaction, or a series of related transactions during a 30-day period, involves more than 5% of the insurer's total admitted assets as reported in the insurer's most recent annual statutory financial statement filed with the Department.

(2) The transaction is nonrecurring.

(3) The transaction is not in the ordinary course of business.

(b) Statements of material acquisitions or dispositions of assets as required under subsection (a) shall include the following information:

(1) The dates of the transactions.

(2) The manner of acquisition or disposition.

(3) A description of the assets involved.

(4) The nature and amount of the consideration given or received.

(5) The purpose of or reason for the transactions.

(6) The manner by which the amount of consideration was determined.

(7) The gain or loss recognized or realized as a result of the transaction.

(8) The name of person from whom the assets were acquired or to whom they were disposed.

(9) The name, title, address and telephone number of the individual to whom notices and correspondence concerning the statements should be addressed.

(10) A certification by an officer of the insurer as provided in Appendix A (relating to certification for statement disclosing material transaction).

(c) Insurers shall prepare statements disclosing material acquisitions and dispositions of assets as required under subsection (a) on a nonconsolidated basis.

(d) An insurer shall file a statement disclosing a material acquisition or disposition of assets consisting of a single transaction as required under subsection (a) with the Department within 30 days after the date on which the transaction was closed.

(e) An insurer shall file a statement disclosing a material acquisition or disposition of assets consisting of a series of related transactions as required under subsection (a) within 30 days after the closing date of any transaction within a 30-day period that results in the aggregate of related transactions within that period involving more than 5% of the reporting insurer's total admitted assets as reported in that insurer's most recent annual statutory financial statement filed with the Department. For example:

**Company A has total admitted assets of \$5 million.  
Threshold for Filing Statement: \$250,000.**

**Series of Related Transactions**

<i>Closing Date</i>	<i>Amount</i>	<i>30-Day Total</i>	<i>% of 30-Day Assets</i>	<i>30-Day Total</i>	<i>Filing Required</i>
1 — Jan. 1	\$50,000	\$	1%		No
1 — Jan. 15	100,000	150,000	2%	3%	No
2 — Jan. 21	200,000	250,000	4%	7%	Yes-1
2 — Feb. 8	25,000	325,000	5%	6.5%	Yes-2

Filing 1 shall be made within 30 days of January 21.

Filing 2 shall be made within 30 days of February 8.

(f) A filing is not required if statements disclosing the acquisition of assets or disposition of assets have been submitted to the Department under other laws, regulations or requirements.

**§ 27.4. Disclosure of material nonrenewals, cancellations or revisions of ceded reinsurance agreements.**

(a) A property and casualty insurer shall file:

(1) A statement disclosing a nonrenewal, cancellation or revision of a ceded reinsurance agreement with respect to property and casualty business—including accident and health business written by a property and casualty insurer—if it relates to reinsurance cessions which generate any of the following.

(i) Fifty percent or more of the insurer's ceded written premiums as reported in the most recent annual statutory financial statement filed by the insurer.

(ii) Fifty percent or more of the insurer's total ceded indemnity loss and loss adjustment expense reserves.

(2) A statement disclosing a revision of a ceded reinsurance agreement with respect to property and casualty business—including accident and health business written by a property and casualty insurer—if any of the following events occur:

(i) A reinsurer which represents more than 10% of a total cession and which is licensed to transact business in this Commonwealth or included on the Department's list of qualified reinsurers is replaced by one or more reinsurers that are neither licensed nor on the Department's list of qualified reinsurers.

(ii) Previously established collateral requirements have been reduced or waived for one or more reinsurers that are neither licensed nor on the Department's list of qualified reinsurers, representing collectively more than 10% of a total cession.

(iii) The percentage increase in the net aggregate retention by the domestic ceding insurer is equal to or greater than 50%.

(b) A property and casualty insurer is not required to file a statement under subsection (a) if any of the following conditions are met:

(1) The total ceded written premium of a property and casualty insurer represents, on an annualized basis, less than 10% of the sum of the insurer's total written premium, for direct and assumed business as reported in the insurer's most recent annual statutory financial statement filed with the Department.

(2) A ceded reinsurance agreement which is nonrenewed or canceled is replaced under the following conditions: The replacement reinsurer is licensed or on the Department's list of qualified reinsurers and the percentage increase in the net aggregate retention by the domestic ceding insurer is less than 50%.

(3) A revision to a ceded reinsurance agreement does not increase the ceding insurer's retention of risk or exposure to loss.

(4) A revision is made to an inter-company pooling reinsurance agreement among affiliated insurers.

(c) A life insurer shall file:

(1) A statement disclosing a nonrenewal, cancellation or revision of a ceded reinsurance agreement with respect to life, annuity and accident and health business if the transaction affects more than 50% of the total reserve credit taken for business ceded as reported in the insurer's most recent annual statutory financial statement filed with the Department.

(2) A statement disclosing a revision of a ceded reinsurance agreement with respect to life, annuity and accident and health business if any of the following events occur:

(i) A reinsurer that represents more than 10% of a total cession and that is either licensed or included on the Department's list of qualified reinsurers is replaced by any reinsurers that are neither licensed nor on the Department's list of qualified reinsurers.

(ii) Previously established collateral requirements have been reduced or waived with regard to any reinsurers that are neither licensed nor on the Department's list of qualified reinsurers, representing collectively more than 10% of a total cession.

(d) A life insurer is not required to file a statement under subsection (c) if any of the following conditions are met:

(1) The total reserve credit taken for business ceded represents less than 10% of the amount of gross reserves reported in the insurer's most recent annual statutory financial statement filed with the Department.

(2) A ceded reinsurance agreement that is nonrenewed or canceled is replaced under the following conditions: The replacement reinsurer is either licensed or on the Department's list of qualified reinsurers and the percentage increase in the amount of reserve credit taken by the domestic ceding insurer under the replacement agreement does not exceed 50% of the reserve credit which was taken under the agreement being replaced.

(3) A revision to a ceded reinsurance agreement does not increase the ceding insurer's retention of risk or exposure to loss.

(4) A revision is made to an intercompany pooling reinsurance agreement among affiliated insurers.

(e) Statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements as required under this section shall include the following information:

(1) The effective date of the nonrenewal, cancellation or revision.

(2) A description of the transaction.

(3) Identification of the party which initiated the transaction.

(4) The purpose of or reason for the transaction.

(5) The identity of replacement reinsurers, if applicable.

(6) Quantification of additional risk to the insurer resulting from the transaction.

(7) The name, title, address and telephone number of the individual to whom notices and correspondence concerning the statements should be addressed.

(8) A certification of an officer of the insurer as provided in Appendix A (relating to certification for statement disclosing material transaction).

(f) Statements disclosing material nonrenewals, cancellations or revisions of ceded reinsurance agreements as required under this section shall be prepared on a nonconsolidated basis; except that statements may be prepared on a consolidated basis if the insurer meets the following requirements:

(1) The insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100% reinsurance agreement which affects the solvency and integrity of the reporting insurer's reserves.

(2) The insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1 million total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus as reported in its most recent annual statutory financial statement filed with the Department.

(g) An insurer shall file a statement disclosing a material nonrenewal, cancellation or revision of a ceded reinsurance agreement as required under this section with the Department within 30 days after the date on which the transaction was closed.

(h) A filing is not required under this section if statements disclosing material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Department under other laws, regulations or requirements.

**§ 27.5. Confidentiality of statements disclosing material transactions.**

(a) Statements filed under this chapter shall be given confidential treatment, unless any of the following occur:

(1) The insurer gives its prior written consent that the information may be published.

(2) The Commissioner exercises discretion and determines that all or any part of the information related to the transaction be published. Prior to making a determination to publish all or any part of the information, the Commissioner will notify the affected insurer of the right to request a confidential review by the Commissioner. At the review, the affected insurer shall have an opportunity to demonstrate why the transaction and related information should remain confidential. After the review, the Commissioner may order some, all or none of the information related to the transaction be made public. Any of the Commissioner's responsibilities may be delegated to a designee.

(3) The statements are subpoenaed. The Department will notify the insurer prior to providing the information subject to subpoena, unless otherwise prohibited by statute or rule of court.

(b) The Department may share statements filed under this chapter with regulatory or law enforcement officials of this Commonwealth or other jurisdictions, as long as, prior to the Department's disclosure, those officials or jurisdictions demonstrate by written statement the authority and intent to provide the same confidential treatment required by Article II-A of The Insurance Department Act of 1921 (40 P. S. §§ 65.1A and 65.2A) regarding authority to share confidential information with other Jurisdictions (Act 20 of 1997). The Department may also share statements filed under this chapter with the National Association of Insurance Commissioners, or successor organization, if that organization agrees in writing prior to receiving the information to provide to it the same confidential treatment as required by Act 20 of 1997.

**APPENDIX A**

**CERTIFICATION FOR STATEMENT DISCLOSING MATERIAL TRANSACTION**

**CERTIFICATION**

The undersigned deposes and says that (s)he has executed the attached Statement of Material Transaction dated \_\_\_\_\_, \_\_\_\_\_, for and on behalf of (NAME OF INSURER); that (s)he is the (TITLE OF OFFICER) of such company and that (s)he is authorized to execute and file the attached statement on such company's behalf. Deponent further says that (s)he is familiar with the statement and the contents thereof, and that the facts therein set forth are true and correct to the best of her/his knowledge, information and belief.



(SEAL)

(SIGNATURE OF OFFICER)

(NAME AND TITLE)

Attest:

(SIGNATURE OF OFFICER)  
(NAME AND TITLE)

□

[Pa.B. Doc. No. 98-811. Filed for public inspection May 22, 1998, 9:00 a.m.]

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

### Examinations, Repeals and Editorial Changes

The State Board of Psychology (Board) amends §§ 41.1, 41.41, 41.52, 41.54 and 41.61 to read as set forth in Annex A.

The amendments update existing language to reflect the new names for the Council on Postsecondary Accreditation and the American Association of State Psychology Boards. The amendments also delete § 41.54 (relating to licensure of master's degree candidates) because the Board's statutory authority to license master's degree candidates expired December 31, 1995.

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), because the Board has, for good cause, determined that notice of proposed rulemaking is unnecessary. The amendments seek only to delete provisions which are no longer enforceable and to update language to reflect the new names for the Council on Postsecondary Accreditation and the American Association of State Psychology Boards.

#### *Compliance with Executive Order 1996-1*

The Board reviewed this rulemaking and considered the purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted regulations are in compliance with Executive Order 1996-1.

#### *Statutory Authority*

The amendments are adopted under the authority of section 3.2(2) of the Professional Psychologists Practice Act (63 P. S. § 1203.2(2)).

#### *Fiscal Impact and Paperwork Requirements*

The amendments should have no negative fiscal impact on the Commonwealth, its political subdivisions or the general public, and should result in no additional paperwork requirements.

#### *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5.1(c)), on April 13, 1998, a copy of the amendments was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of

the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. A copy of the amendments was submitted on the same date to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the amendments were deemed approved by the House and Senate Committees on May 3, 1998, and were approved by IRRC on May 7, 1998.

#### *Additional Information*

Individuals who desire information are invited to submit inquiries to Melissa Wilson, Board Administrator, State Board of Psychology, Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

#### *Findings*

The Board finds that:

(1) Public notice of intention to amend its regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), has been omitted under the authority contained in section 204(3) of the CDL because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, unnecessary. The provisions deleted under § 41.54 are no longer enforceable. The amendments to §§ 41.1, 41.41, 41.52 and 41.61 simply update existing language to reflect the new names for the Council on Postsecondary Accreditation and the American Association of State Psychology Boards.

(2) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

#### *Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending §§ 41.1, 41.41, 41.52 and 41.61 and deleting § 41.54 to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

*(Editor's Note: A proposal to amend § 41.1 (relating to definitions) amended in this document, remains outstanding at 28 Pa.B. 1421 (March 21, 1998).)*

YVONNE E. KEAIRNS, Ph.D.,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)*

**Fiscal Note:** 16A-634. No fiscal impact; (8) recommends adoption.

Annex A

MISCELLANEOUS

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

§ 41.52. Persons licensed in other states.

PART I. DEPARTMENT OF STATE

(a) A person who holds a current license or certificate to practice psychology issued by a statutory board of psychologist examiners of a state with requirements for licensure which are deemed by the Board to be equivalent to those of the Commonwealth may be exempt from examination. Application for licensure under these circumstances shall be made on forms supplied by the Board and shall be accompanied by the initial application fee specified in § 41.12 (relating to fees).

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

(b) An applicant who has passed the written examination prepared by the Association of State and Provincial Psychology Boards with a score equivalent to or higher than the passing score then prevailing in this Commonwealth will not be required to repeat this examination.

CHAPTER 41. STATE BOARD OF PSYCHOLOGY

GENERAL

(c) In accordance with section 3(7) of the act (63 P. S. § 1203(7)), a psychologist licensed for independent practice by a statutory board of psychologist examiners of another state or a province of Canada, whose license is current and in good standing, may practice psychology on temporary assignment in this Commonwealth for up to 6 months, after written notification to the Board and receipt from the Board, in writing, of temporary permission to practice. The Board will grant no more than one extension of the 6-month period, the extension not to exceed an additional 6 months. Requests for extensions shall be made to the Board in writing. A psychologist on temporary assignment in this Commonwealth for an aggregate of no more than 14 days is exempted from the notification requirement.

§ 41.1. Definitions.

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

Accredited college or university—An institution which is recognized as an institution of higher education under 22 Pa. Code (relating to education) or which is accredited by a regional accrediting association recognized by the Commission on Recognition of Postsecondary Accreditation (CORPA).

\* \* \* \* \*

Doctoral degree in psychology—A degree awarded upon successful completion of a program in psychology which is accredited by the American Psychological Association (APA) or which is designated by the Association of State and Provincial Psychology Boards (ASPPB) or by other designating groups acceptable to the Board; which is approved by the Board under § 41.31(b)(3); or which meets the following criteria:

\* \* \* \* \*

EXAMINATIONS

§ 41.54. (Reserved).

CODE OF ETHICS

§ 41.41. Examinations.

(a) The Board has adopted the written examination developed by the Association of State and Provincial Psychology Boards, which is given at regularly scheduled times and places specified by the Board. Applicants shall obtain a passing score as established by the Board to qualify for licensure. Information about the content of the examination is available from the Board office.

§ 41.61. Code of Ethics.

\* \* \* \* \*

Principle 2. Competency.

\* \* \* \* \*

(b) The Board reserves the right to direct the professional testing organization responsible for administering its examination to adopt alternative or additional examination procedures such as simulation techniques; other written examinations; essay or oral examinations; submission of work samples to demonstrate knowledge or skills in specified areas of psychology; and demonstration of familiarity with ethical, statutory or regulatory requirements bearing on the practice of psychology. The Board will exercise this right only in conformity with section 812.1 of the act of April 9, 1929 (P. L. 177, No. 175), known as the Third-Party Testing Law (71 P. S. § 279.3a(a)). Notice of substantive changes in the licensing examination will be given at least 6 months before the first administration of the new examination.

(d) Psychologists accurately represent their competence, education, training and experience. They claim as evidence of psychological educational qualifications only those degrees obtained from institutions accredited by a regional accrediting association approved by the Commission on Recognition of Postsecondary Accreditation (CORPA). Degrees earned from foreign colleges and universities may be represented only if they are determined to be equivalent to the degrees conferred by these accredited institutions. Determinations of equivalency shall be made by an agency acceptable to the Board, subject to the Board's final approval. Representations of nonpsychological earned academic degrees are not prohibited, if the degrees are from accredited schools. If these degrees are generic, such as Ph.D., Ed.D., M.S., M.A. and M.Ed., the holder may represent them, but shall specify the discipline in which each particular degree was earned.

\* \* \* \* \*

(c) It is the policy of the Board to accommodate persons with handicapping conditions who qualify to take the licensing examination.

[Pa.B. Doc. No. 98-812. Filed for public inspection May 22, 1998, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Public Welfare

The Executive Board approved a reorganization of the Department of Public Welfare effective May 1, 1998.

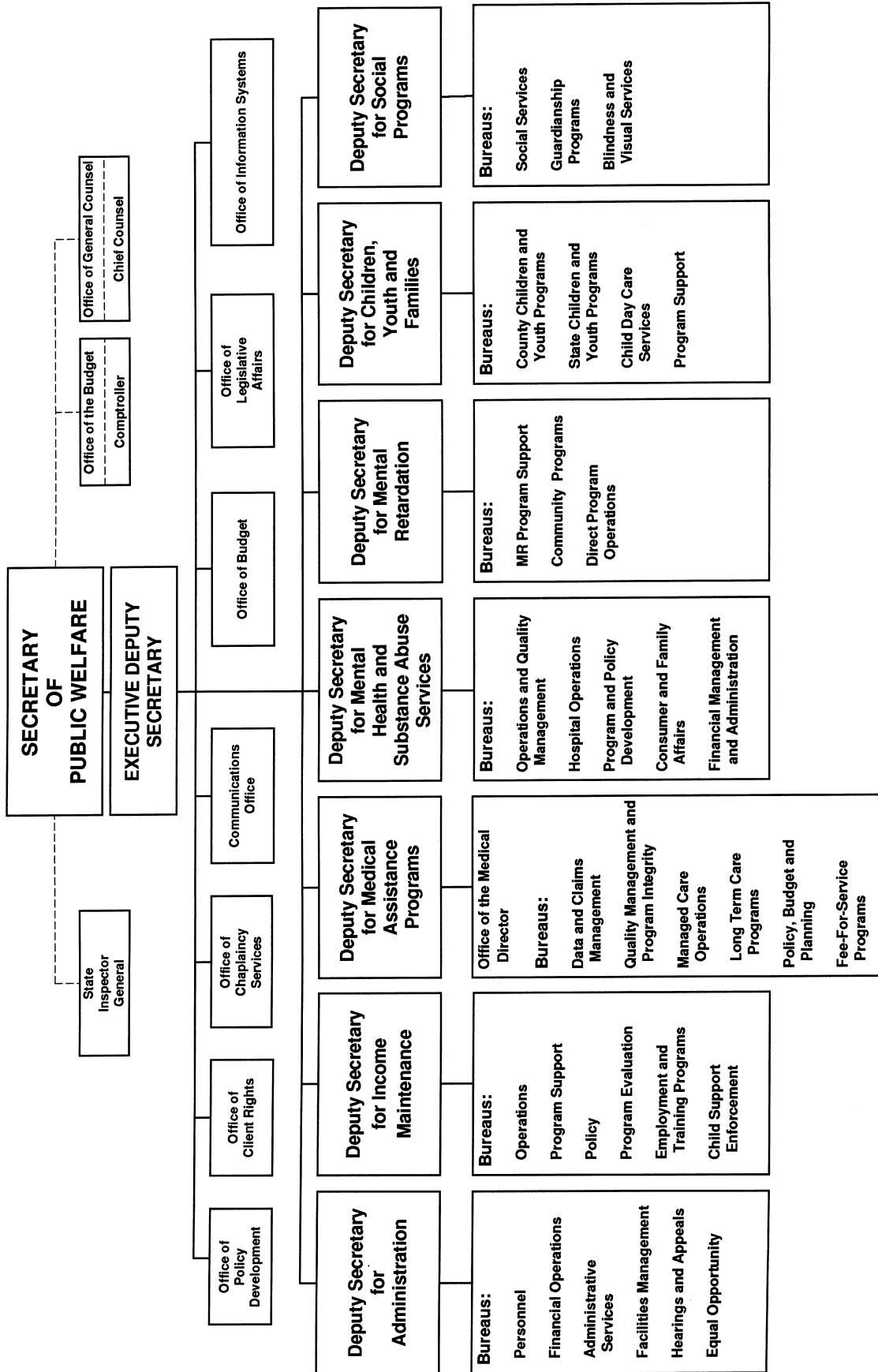
The organization chart at 28 Pa.B. 2415 (May 23, 1998) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 98-813. Filed for public inspection May 22, 1998, 9:00 a.m.]

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**DEPARTMENT OF PUBLIC WELFARE**



# Title 70—WEIGHTS, MEASURES AND STANDARDS

DEPARTMENT OF AGRICULTURE

[70 PA. CODE CH. 39]

## Certification of Inspectors of Commercially Used Universal Product Code Scanning Systems and Price Look-Up Devices

The Department of Agriculture (Department) gives notice of the interim guidelines for the certification of inspectors of commercially used universal product code (UPC) scanning systems and price look-up (PLU) devices under 3 Pa.C.S. §§ 4101—4194 (relating to Consolidated Weights and Measures Act) (act).

### *Authority*

These interim guidelines are authorized under section 4112(d) of the act (relating to general testing and inspections), which grants the Department the power and authority to promulgate, adopt and use guidelines to provide for the certification of individuals to test and inspect all commercially used UPC scanning systems and PLU devices in this Commonwealth. Guidelines published under this section of the act are not subject to review under section 205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1205); sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P. S. §§ 732-204(b) and 732-301(b)) or the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

### *Need for the Statement of Policy*

These interim guidelines are required by section 4112(d) of the act. In addition, there is a compelling public need to establish uniform minimum training, competency and enforcement requirements for those persons who inspect commercially used UPC scanning systems and PLU devices throughout this Commonwealth. These interim guidelines will allow the Department to move forward to meet its statutory obligation to see that all of the commercially used UPC scanning systems and PLU devices in this Commonwealth are inspected by June 30, 1999, and within every 12-month period thereafter. This will also facilitate the development of a new industry: the private certification programs described in section 4112(c) of the act. The interim guidelines also meet the other relevant regulatory criteria described in Executive Order 1996-1, "Regulatory Review and Promulgation."

### *Background*

UPC scanning systems and PLU devices comprise the bar code scanner technology that consumers typically encounter in their shopping. In summary, the technology allows a store to maintain a computerized database of each item in its inventory and its corresponding price. When a consumer purchases an item from that inventory, a code number is scanned or manually entered into the system and the resulting sales receipt reflects the item and its corresponding price.

The act makes it the responsibility of the Department to inspect all commercially used weights and measures on an annual basis. Although UPC scanning systems and PLU devices do not actually weigh or measure, they are designated weights and measures under the act and the Department is required to inspect them. The act requires

the Department inspect every commercially used UPC scanning system and PLU device by June 30, 1999, and thereafter at intervals of no greater than 12 months.

The Department may conduct the required UPC scanning system/PLU device inspections or delegate responsibility to a city or county under a memorandum of understanding. In addition, a UPC scanning system or PLU device is exempt from the requirement of annual inspection if it is inspected at least once annually on an unannounced basis by a private certification program which conforms with the examination procedure for price verification adopted by the National Conference of Weights and Measures (NCWM).

This "Examination Procedure for Price Verification" is published in NCWM Publication No. 19 (August 1995).

Section 4112(d) of the act requires the Department's interim guidelines establish standards under which persons can be certified as competent to conduct inspections of UPC scanning systems and PLU devices. There are courses of instruction available with respect to NCWM's Examination Procedure for Price Verification. The Examination Procedure for Price Verification presents a detailed, step-by-step approach to the inspection and testing of UPC scanning systems and PLU devices. Pre-inspection procedures, inspection and sampling procedures, documentation protocols, accuracy requirements and enforcement/compliance procedures are among the topics covered in that document. On balance, the Department is satisfied that a person who has successfully completed a course of instruction in NCWM's Procedure for Price Verification is qualified to inspect any commercially used UPC scanning system or PLU device in the Commonwealth.

These interim guidelines require a person who seeks to inspect commercially used UPC scanning systems or PLU devices under section 4112(b) of the act to successfully complete a course of instruction in NCWM's Examination Procedure for Price Verification, apply to the Department and obtain a certificate from the Department prior to conducting any such inspection. This requirement applies to any inspector, whether an employe of the Department, a city or county sealer intending to conduct inspections under a memorandum of understanding with the Department or a person seeking to conduct inspections for a private certification program.

A person who receives a certificate from the Department in accordance with these interim guidelines will be known as a certified UPC/PLU inspector. This term is intended to distinguish a certified UPC/PLU inspector from the certified examiners of weights and measures referenced in sections 4110(a)(4) and 4112(b) of the act.

The interim guidelines also require a private certification program to register with the Department and identify those certified UPC/PLU inspectors who will be performing inspections on the private certification program's behalf. Although the Department does not certify, review or approve private certification programs it believes this registration requirement is a reasonable measure by which to verify that private certification programs are using qualified persons to conduct inspections of UPC scanning systems and PLU devices and to provide businesses which seek to engage private certification programs to inspect UPC scanning systems and PLU devices a list of these programs.

The interim guidelines allow a private certification program to be a for-profit business, and also allow an employe of a company to inspect that company's UPC

scanning systems and PLU devices. The Department, and a number of persons who have assisted in the drafting of the forthcoming regulations, have some concerns regarding self-inspection or inspections conducted by for-profit entities. The Department will monitor private certification program inspections conducted under these interim guidelines and consider whether self-inspection or for-profit inspections should be allowed in the forthcoming regulations. The interim guidelines require a certified UPC/PLU inspector to submit a price verification inspection report form to the Department with respect to each inspection it conducts. This will allow the Department to monitor the number and quality of self-inspections and for-profit inspections conducted by private certification programs under these interim guidelines.

#### *Persons Likely to be Affected*

These interim guidelines will affect the three basic groups which will conduct inspections of UPC scanning systems and PLU devices under section 4112(c) of the act: 1) inspectors employed by the Department; 2) city or county sealers conducting inspections of UPC scanning systems and PLU devices under a memorandum of understanding with the Department; and 3) persons conducting inspections on behalf of private certification programs. Persons in each of these groups will have to obtain the required training and be designated a certified UPC/PLU inspector by the Department. Although the application and certification process is without charge, there may be slight costs involved in obtaining the required training in NCWM's Examination Procedure for Price Verification.

Consumers will be the ultimate beneficiaries of these interim guidelines. These interim guidelines will allow the Department and private industry to field a group of inspectors who have demonstrated competence to perform inspections of UPC scanning systems and PLU devices, and who apply a uniform approach to enforcement. The implementation of these annual inspections should result in greater accuracy and fewer errors with respect to merchandise pricing.

#### *Fiscal Impact*

##### *Commonwealth*

The statement of policy will impose costs and have a fiscal impact upon the Commonwealth. It is expected the Department will require one additional staff person to process the paperwork required under this statement of policy. The initial cost of this employe is estimated to be \$30,000 in the first year, increasing by \$1,000 each year thereafter.

##### *Political Subdivisions*

The statement of policy will impose no costs and have no fiscal impact upon political subdivisions. The Department will offer the initial training required under this statement of policy free or at cost to city or county sealers who propose to inspect UPC scanning systems and PLU devices under a memorandum of understanding with the Department.

##### *Private Sector*

The statement of policy will impose no costs and have no appreciable fiscal impact upon the private sector, other than the cost of training a person who wishes to inspect UPC scanning systems and PLU devices as part of a private certification program in NCWM's Examination Procedure for Price Verification.

#### *General Public*

The statement of policy will impose no costs and have no fiscal impact upon the general public. Although the interim guidelines should ultimately result in fewer overcharges to consumers, the fiscal impact of the change is not readily measurable.

#### *Paperwork Requirements*

The statement of policy will result in the Department having to process applications from certified UPC/PLU inspector candidates and register private certification programs. This increase in paperwork is expected to create the need for a full-time employe within the Department.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Ride and Measurement Standards, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Charles Bruckner, Director, (717) 787-9089.

#### *Sunset/Expiration Date*

In accordance with section 4112(d) of the act, these interim guidelines shall be effective for no more than 2 years, and will be replaced by regulations.

#### *Effective Date*

These interim guidelines will take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,  
*Secretary*

*(Editor's Note: The regulations of the Department of Agriculture, 7 Pa. Code, are amended by adding §§ 39.1—39.20 to read as set forth in Annex A.)*

**Fiscal Note:** 2-121. (1) General Fund; (2) Implementing Year 1998-99 is \$30,000; (3) 1st Succeeding Year 1999-00 is \$31,000; 2nd Succeeding Year 2000-01 is \$32,000; 3rd Succeeding Year 2001-02 is \$33,000; 4th Succeeding Year 2002-03 is \$34,000; 5th Succeeding Year 2003-04 is \$35,000; (4) Fiscal Year \$N/A; Fiscal Year \$N/A; Fiscal Year \$N/A; (7) General Government Operations; (8) recommends adoption.

#### **Annex A**

### **TITLE 70. WEIGHTS, MEASURES AND STANDARDS**

#### **PART III. INSPECTION AND DEVICES**

### **CHAPTER 39. INTERIM GUIDELINES FOR THE CERTIFICATION OF INSPECTORS OF COMMERCIALY USED UNIVERSAL PRODUCT CODE SCANNING SYSTEMS AND PRICE LOOK UP DEVICES—STATEMENT OF POLICY**

Sec.	
39.1.	Purpose.
39.2.	Definitions.
39.3.	Requirement of annual testing and inspection.
39.4.	Testing and inspection standards.
39.5.	Certified UPC/PLU inspector.
39.6.	Authority of certified UPC/PLU inspector.
39.7.	Certification requirements.
39.8.	Training courses.
39.9.	Applying for certification.
39.10.	Certificate.
39.11.	Expiration of certificate.
39.12.	Obtaining a new certificate.
39.13.	Inspections: reporting procedures.
39.14.	Inspections: enforcement levels.
39.15.	Inspection and testing by the Department.
39.16.	Suspension or revocation of certification.
39.17.	Certified UPC/PLU Inspector list.
39.18.	Private certification programs: registration.

- 39.19. Private certification program list.  
39.20. Contacting the Department.

### § 39.1. Purpose.

Section 4112(c) of the act (relating to general testing and inspections) requires the inspection of all commercially used UPC scanning systems and PLU devices within this Commonwealth by June 30, 1999, and thereafter at intervals of no greater than 12 months. It is the purpose of this chapter to accomplish the following:

- (1) Establish the Department's specifications, tolerances and procedures with respect to the inspection of UPC scanning systems and PLU devices.
- (2) Identify the minimum level of training necessary for a person to be qualified to inspect UPC scanning systems and PLU devices.
- (3) Establish a procedure by which a person can apply to the Department to become a certified UPC/PLU inspector.
- (4) Prescribe a procedure pursuant to which the Department can review inspections performed by certain certified UPC/PLU inspectors and revoke or suspend certification.
- (5) Establish minimum requirements for the "private certification programs" referenced in section 4112(c) of the act.
- (6) Otherwise comply with of section 4112(d) of the act.

### § 39.2. Definitions.

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

*Act*—The Consolidated Weights and Measures Act, 3 Pa.C.S. §§ 4101—4194.

*Bureau*—The Bureau of Ride and Measurement Standards in the Department.

*Certified UPC/PLU inspector*—A person who is certified by the Department as meeting the training and application requirements of this chapter and who is lawfully qualified to inspect UPC scanning systems and PLU devices for purposes of the testing and inspections required under section 4112(c) of the act (relating to general testing and inspections).

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

*NCWM*—The National Conference on Weights and Measures.

*NIST*—The National Institute of Standards and Technology.

*Person*—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

*PLU—Price look-up*—A pricing system where numbers are assigned to items or commodities, and the price is stored in a database for recall when the numbers are manually entered. Price look-up codes are used with scales, cash registers and point-of-sale systems.

*PLU or Price look-up device*—A device that can access a database price file. The term includes bar code beam or contact scanners, Optical Character Recognition (OCR) scanners or readers, magnetic scanners or readers, alpha or numeric keyboards, voice response systems and computer-based retail price retrieval systems.

*Private certification program*—A program under which a certified UPC/PLU inspector inspects a commercially used UPC scanning system or PLU device at least annually on an unannounced basis, and which otherwise conforms with section 4112(c) of the act and this chapter.

*Scanning system*—A general term for any of the several types of price look-up technologies capable of communicating with a database price file or retail price retrieval system. The term includes hardware, software and supporting computer systems.

*Secretary*—The Secretary of the Department.

*State inspector or inspector*—A State inspector of weights and measures.

*UPC—universal product code*—A general term for any of several types of bar code symbology. The term may refer to various versions of symbology developed by the Uniform Code Council, including UPC versions A or E of the Uniform Code Council: Codes 2 of 5, 3 of 9, 128 or any others available now or in the future.

*UPC scanning system*—A universal product code scanning system.

*UPC/PLU inspector's certificate*—A document issued by the Department to a particular person to evidence that the named individual has successfully completed the training necessary for the person to be qualified to inspect UPC scanning systems and PLU devices for purposes of section 4112(c) of the act.

### § 39.3. Requirement of annual testing and inspection.

(a) *General requirement.* The Department will, by June 30, 1999, and within every 12-month period thereafter, inspect and test each commercially used UPC scanning system and PLU device in this Commonwealth to ascertain if it is correct, unless the system or device is inspected by a city or county sealer, as described in subsection (b), or the system or device is exempt from inspection, as described in subsection (c).

(b) *Delegation of inspection responsibilities.* The Department may assign responsibility for conducting the testing and inspections described in subsection (a) to a city or county by a memorandum of understanding between the Department and the city or county entered into in accordance with section 4125 of the act (relating to division of responsibilities).

(c) *Exemption for UPC scanning systems and PLU devices inspected by a private certification program.* A commercially used UPC scanning system or PLU device shall be exempt from the annual testing and inspection described in subsection (a) if the following occur:

- (1) The system or device is inspected at intervals of no greater than 1 year.
- (2) The inspection is unannounced.
- (3) The inspection is conducted as part of a private certification program.
- (4) The private certification program has registered with the Department in accordance with § 39.18 (relating to private certification programs: registration).
- (5) The certified UPC/PLU inspector conducting the inspection on behalf of the private certification program files a price verification inspection report with the Department in accordance with the procedure described at § 39.13 (relating to inspections: reporting procedures).

**§ 39.4. Testing and inspection standards.**

(a) *Standards.* The *Examination Procedure for Price Verification* adopted by NCWM in Publication No. 19 (August 1995), or a subsequent amendment thereof, are adopted as the interim specifications and tolerances of the Department with respect to commercially used UPC scanning systems and PLU devices.

EXAMPLE: A certified UPC/PLU inspector shall evaluate "errors" and the "accuracy" of UPC scanning systems and PLU devices in accordance with the "Examination Procedure for Price Verification" set forth in NCWM Publication No. 19 (August 1995), which requires that a UPC scanning system or PLU device have an accuracy rate of 98% or higher to "pass" an inspection.

EXAMPLE: A certified UPC/PLU inspector shall verify the price of sale items by allowing the sales clerk to determine the price of the item using the store's customary procedures, including manually entering discounts, in accordance with Paragraph 7.3, Note 3, of the "Examination Procedure for Price Verification" set forth in NCWM Publication No. 19 (August 1995).

(b) *Applicability.* The standards described in subsection (a) will be used by any person conducting testing and inspection of a commercially used UPC scanning system or PLU device in the capacity of a certified UPC/PLU inspector under section 4112(c) of the act (relating to general testing and inspections).

**§ 39.5. Certified UPC/PLU inspector.**

A person shall be a certified PLU/UPC inspector to conduct an inspection of a commercially used UPC scanning system or PLU device described in section 4112 of the act (relating to general testing and inspections), regardless of whether the inspection is performed by a State inspector, an employe of a city or county acting in accordance with a memorandum of understanding entered into with the Department or a person acting as part of a private certification program. A person may apply to the Department to become a certified UPC/PLU inspector for purposes of section 4112 of the act and this chapter.

**§ 39.6. Authority of a certified UPC/PLU inspector.**

(a) *General.* A certified UPC/PLU inspector is qualified to perform the annual testing and inspection of any commercially used UPC scanning system or PLU device which is required under section 4112 of the act (relating to general testing and inspections).

(b) *Limitation on authority.* A certified UPC/PLU inspector may exercise authority only in one of the following contexts:

(1) The certified UPC/PLU inspector is a State inspector of weights and measures.

(2) The certified UPC/PLU inspector is an employe of a city or county, and is acting in accordance with a memorandum of understanding entered into with the Department in accordance with section 4125 of the act (relating to division of responsibilities).

(3) The certified UPC/PLU inspector is acting as part of a private certification program.

(c) *Fees.* A certified UPC/PLU inspector may not charge a fee for inspection and testing services, unless that person is acting as part of a private certification program.

**§ 39.7. Certification requirements.**

A person seeking to become a certified UPC/PLU inspector shall do the following:

(1) Successfully complete a training course in examination procedures for price verification as adopted by NIST/NCWM, and as described in § 39.8 (relating to training courses).

(2) Comply with the application requirements and other requirements of this chapter.

**§ 39.8. Training courses.**

(a) *General approval of NIST/NCWM training courses.* The Department approves any NIST/NCWM price verification training course utilizing the *Examination Procedure for Price Verification* in NCWM Publication No. 19 (August 1995), or a subsequent successor publication thereto, as an approved training course for certified UPC/PLU inspector candidates.

(b) *Current approved NIST/NCWM training courses.* The current approved NIST/NCWM training courses are the "NIST/NCWM Price Verification Training" course and the "NIST/NCWM Price Verification Instructor's Training" course. An approved training course may be conducted by any person who has successfully completed the NIST/NCWM Price Verification Instructor's training course.

(c) *New or additional training courses.* The Department will update or revise the list of approved NIST/NCWM training courses in subsection (b) by publishing notice describing this update or revision in the *Pennsylvania Bulletin*.

(d) *Effect of addition of a course to list of approved courses.* If the Department approves a new or additional training course for certified UPC/PLU inspector candidates, a person who has successfully completed that course within 2 years prior to its approval will be deemed to have completed an approved course.

**§ 39.9. Applying for certification.**

(a) *Application required.* A person who has successfully completed an approved training course (as described in § 39.8 (relating to training courses)) within 2 years of the date of application may apply to be certified as a UPC/PLU inspector. Certification is granted through issuance of the certificate described in § 39.10 (relating to certificate).

(b) *Form of application.* A person seeking to become a certified UPC/PLU inspector may obtain an application form from the Department at the address in § 39.20 (relating to contacting the Department). The applicant shall complete the form and return it to that address. The application form requires the following information:

(1) The name and mailing address of the person seeking a certificate.

(2) Whether the applicant seeks to conduct UPC/PLU inspections as a State inspector of weights and measures, an employe of a city or county acting in accordance with a memorandum of understanding with the Department or as part of a private certification program.

(3) The name, location and date of completion of any approved training course completed by the person seeking a certificate.

(4) A copy of any certificate of completion with respect to the approved training course.

(5) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.



(6) The date of the application.

(7) Other information the Department might reasonably require.

(c) *Departmental action on application.* The Department will, within 30 days of receiving an application, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation.

**§ 39.10. Certificate.**

(a) *Form of certificate.* The Department will format the certificate into an identification card sized document, so it may be carried conveniently on a certified UPC/PLU inspector's person while performing inspections or tests under authority of that certificate.

(b) *Contents of certificate.* A certificate will bear the following information:

(1) The name of the person to whom it is issued.

(2) The expiration date of the certificate, which, in accordance with § 39.11 (relating to expiration of certificate), shall be 3 years from the date of issuance

(3) A unique identification number.

(4) A photograph of the person to whom it is issued.

(5) A statement that the Department has determined the person identified on the certificate to be a "certified UPC/PLU inspector" in accordance with section 4112 of the act (relating to general testing and inspections).

(6) Other information the Department might reasonably include.

(c) *Ownership of certificate.* A certificate issued by the Department will remain the property of the Department. A certified UPC/PLU inspector or other person having physical possession of a certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(d) *Obligation to produce certificate for inspection.* A certified UPC/PLU inspector shall have his certificate with him whenever performing inspections or tests under authority of that certificate, and shall produce the certificate for inspection upon demand by the Department or any person on whose behalf the certified UPC/PLU inspector is performing the inspection or test.

**§ 39.11. Expiration of certificate.**

A certificate will expire no greater than 3 years from the date it is issued.

**§ 39.12. Obtaining a new certificate.**

(a) *No renewals: new certificate required.* The Department will not renew a certificate or extend the expiration date of a certificate. A person shall, instead, apply for and obtain a new certificate in accordance with § 39.9 (relating to applying for certification) to remain a certified UPC/PLU inspector.

(b) *Training course.* A person who is applying for certification shall have successfully completed an approved training course as described in § 39.8 (relating to training courses) within 2 years of the date of the application form.

(c) *Timing of application.* A person may apply for certification at any time. A current certified UPC/PLU inspector who seeks to avoid any lapse in certification is encouraged to apply for certification at least 60 days in advance of the expiration date of the inspector's current certificate.

**§ 39.13. Inspections: reporting procedures.**

(a) *Inspection report form required.* A certified UPC/PLU inspector shall prepare and submit to the Bureau a price verification inspection report form with respect to any inspection the certified UPC/PLU inspector conducts. A copy of this price verification inspection form is set forth in Appendix A (relating to model form—price verification report). The form is substantively identical to the *Appendix A Model Form—Price Verification Report* form in NCWM's Examination Procedure for Price Verification.

(b) *Acquiring forms.* The Department will provide a sample price verification inspection report form upon the request of a certified UPC/PLU inspector. This sample form may be copied at the certified UPC/PLU inspector's expense.

(c) *Distribution of forms.* A completed price verification inspection report form shall be distributed as follows:

(1) The certified UPC/PLU inspector shall distribute the original of this form to the owner of the systems and devices inspected, or to a responsible person at the site where the inspection occurred.

(2) The certified UPC/PLU inspector shall forward a copy of this form to the Department by mailing or delivering it to the Department by the 10th day of the month immediately following the month the inspection was conducted. Delivery may be accomplished by electronic means such as modem transmission/E-mail or facsimile transmission (Fax) machine. If delivery is accomplished by Fax machine, the certified UPC/PLU inspector shall retain the transmittal receipt as proof of compliance with this requirement.

(3) The certified UPC/PLU inspector shall retain a copy of this form and any transmittal receipt evidencing delivery of the form to the Department for at least 3 years from the date the testing and inspection services are performed.

**§ 39.14. Inspections: enforcement levels.**

The *Model Enforcement Levels* in section 11.2 of the NCWM's Examination Procedure for Price Verification are adopted as the interim enforcement levels to be applied by the Department and certified UPC/PLU inspectors.

**§ 39.15. Inspection and testing by the Department.**

(a) *Inspections generally.* The Department may evaluate the performance of a certified UPC/PLU inspector who conducts inspections for a private certification program by conducting a follow-up inspection of any UPC scanning system or PLU device that has been inspected and tested by the certified UPC/PLU inspector.

(b) *Time lapse and other factors effecting results.* In evaluating the inspection and testing performed by a certified UPC/PLU inspector as described in subsection (a), the Department will consider any factor that might reasonably account for a variance between the Department's inspection results and those of the certified UPC/PLU inspector, including a lapse of time between an inspection performed by the Department and the inspection performed by the certified UPC/PLU inspector.

(c) *Reporting of results.* Within 30 days following a follow-up inspection the Department will mail the certified UPC/PLU inspector written notice of the inspection and the results of that inspection.

(d) *Use of results.* The Department may use the results of its follow-up inspection to suspend or revoke the certificate of a certified UPC/PLU inspector, as described in subsection (a), under § 39.16 (relating to suspension or

revocation of certification), as the basis for a warning or instruction directed to the certified UPC/PLU inspector, or as a basis for enforcement action against the entity using the UPC scanning system or PLU device in commerce.

**§ 39.16. Suspension or revocation of certification.**

(a) *Basis for action.* The Department may suspend or revoke the certificate of a certified UPC/PLU inspector if that person conducts inspections for a private certification program and does one or more of the following:

- (1) Violates this chapter.
- (2) Violates the act.

(3) Is found, following inspection and testing by the Department under § 39.15 (relating to inspection and testing by the Department), to have inaccurately, improperly or incompetently performed testing and inspections of a UPC scanning system or PLU device.

(b) *Notice.* The Department will provide a certified UPC/PLU inspector with written notice of its intention to suspend or revoke certification, which will afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) *Delivery of notice.* The Department will deliver the notice described in subsection (b) to the affected certified UPC/PLU inspector by personal service or by regular mail to the address provided by the certified UPC/PLU inspector on the inspector's most recent application for a certificate, or to the address most recently provided to the Department in writing by the certified UPC/PLU inspector as the address to which notices should be sent.

**§ 39.17. Certified UPC/PLU inspector list.**

(a) *List to be maintained.* The Department will maintain a current list containing the following information with respect to each certified UPC/PLU inspector:

- (1) The name and address.
- (2) The telephone number.
- (3) The Fax number (if available).
- (4) The expiration date of certification.

(5) The unique identification number of the certified UPC/PLU inspector's certificate.

(b) *Distribution of copies.* The Department will provide a copy of the current certified UPC/PLU inspector list upon request.

**§ 39.18. Private certification programs: registration.**

(a) *General requirement.* A person who owns or operates a commercially used UPC scanning system or PLU device may avoid the requirement of annual State or local

inspection described in section 4112(c) of the act (relating to general testing and inspections) by having the inspection performed by a private certification program. A private certification program shall meet the requirements of this chapter and shall, prior to commencing testing and inspection of commercially used UPC scanning systems or PLU devices, file two copies of a written statement with the Department, at the address in § 39.20 (relating to contacting the Department). The statements shall be accompanied by a self-addressed stamped envelope.

(b) *Contents of written statement.* The written statement referenced in subsection (a) shall contain the following:

(1) The name, business address and telephone number of the private certification program.

(2) The name of any certified UPC/PLU inspector who will be conducting UPC scanning system or PLU device inspections on behalf of the private certification program, together with the unique identification number appearing on the certificate of the certified UPC/PLU inspector.

(3) The signature, printed name and title of the person making the statement.

(c) *Action by Department.* Within 30 days of receiving a written statement as described in subsection (b), the Department will mail the applicant a copy of the written statement bearing a legible stamp or seal indicating the original document has been filed with the Department.

(d) *Updating the written statement.* A private certification program shall, within 30 days of a change affecting the accuracy of a written statement it has filed with the Department, provide the Department an update of its written statement.

**§ 39.19. Private certification program list.**

(a) *List to be maintained.* The Department will maintain a current list of private certification programs. The list will contain the name, business address, telephone number and Fax number (if available) of each private certification program.

(b) *Distribution of copies.* The Department will provide a copy of the current private certification program list upon request.

**§ 39.20. Contacting the Department.**

For purposes of this chapter, the Department may be contacted at the following address:

Department of Agriculture  
ATTN: Director, Bureau of Ride and Measurement  
Standards  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
Telephone: (717) 787-9089  
Fax: (717) 783-4158

STATEMENTS OF POLICY

APPENDIX A  
Model Form—Price Verification Report I

Page \_\_\_\_ of \_\_\_\_

Inspection: 1st 2nd 3rd Complaint: Frequency: Normal Increased Type: Stratified Automated Randomized

Location of Test (Store Name, Address, County, Zip Code)	Date:	Telephone:
	Manager:	Type of Store:

Identity, Brand Name, Item or Style Number	Number of Items, Size, Location in Store, or U.P.C. Code	Offered Price	Price Charged	Price Error in Cents ±
1.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
2.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
3.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
4.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
5.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
6.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
7.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
8.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			

Comments/Remarks:

Evaluation of Results:

Report Acknowledgement

Name/Title \_\_\_\_\_  
Inspector \_\_\_\_\_ Time In: \_\_\_\_\_ Time Out: \_\_\_\_\_

\_\_\_\_ Sample - \_\_\_\_ Not on File = \_\_\_\_ Adjusted Sample  
\_\_\_\_ Errors + \_\_\_\_ Adjusted Sample = \_\_\_\_ Error in %  
Accuracy \_\_\_\_ % Ratio: \_\_\_\_ Overcharges \_\_\_\_ Undercharges

[Pa.B. Doc. No. 98-814. Filed for public inspection May 22, 1998, 9:00 a.m.]

# NOTICES

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

The Delaware River Basin Commission (Commission) will hold a public hearing on Wednesday, May 27, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Stroud Water Research Center at 970 Spencer Road, Avondale, PA.

An informal conference among the Commissioners and staff will be held at 10 a.m. at the same location and will include a presentation and discussion on implementation of the Christina Basin strategy; discussion of Commission advisory committee functions and 1998 Commission meeting schedule and locations.

In addition to the following application which is scheduled for public hearing, the Commission will also address the following: Minutes of the April 21, 1998 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions; status of compliance—Evansburg Water Company; and public dialogue.

The subject of the hearing will be as follows:

*Application for Approval of the Following Project Under Article 10.3, Article 11 and/or Section 3.8 of the Compact:*

**1. Camden-Wyoming Sewer and Water Authority D-97-30 CP.** An application for approval of a groundwater withdrawal project to supply up to 21 million gallons (mg)/30 days of water to the applicant's distribution system from existing Well Nos. 2 and 4, and to limit the withdrawal from all wells to 21 mg/30 days. The project is located in Camden-Wyoming, Kent County, Delaware.

Documents relating to this item may be examined at the Commission's offices. A preliminary docket is available upon request. Contact Thomas L. Brand at (609) 883-9500, Ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883-9500, Ext. 203 prior to the hearing.

SUSAN M. WEISMAN,  
*Secretary*

[Pa.B. Doc. No. 98-815. Filed for public inspection May 22, 1998, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending May 12, 1998.

### BANKING INSTITUTIONS

#### Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
4-40-98	Main Street Bancorp, Inc., Reading, acquired 100% of the voting shares of BCB Financial Services Corporation, Reading, and Heritage Bancorp, Inc., Pottsville	Reading	Effective
	Main Street Bancorp, Inc., Reading, a new bank holding company, is the parent holding company of Berks County Bank, Reading, and Heritage National Bank, Pottsville.		
5-6-98	Citizens Bancshares, Inc. Salineville, Ohio, to acquire 100% of the voting shares of Century Financial Corporation, Rochester, PA	Salineville, OH	Approved

### BRANCH APPLICATIONS

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-5-98	Dauphin Deposit Bank and Trust Company Harrisburg Dauphin County	107 W. Market Street York York County (Loan Production Office)	Opened

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-6-98	Investors Trust Company Wyomissing Berks County	The Atrium 234 Mall Boulevard King of Prussia Montgomery County	Filed
5-7-98	Citizens & Northern Bank Wellsboro Tioga County	1085 S. Main Street Mansfield Tioga County	Filed
5-7-98	Fidelity Deposit and Discount Bank Dunmore Lackawanna County	Bruno's Market 401 Kennedy Boulevard Pittston Luzerne County	Filed
5-11-98	Summit Bank Bethlehem Northampton County	Genuardi's Family Market 1000 Easton Road Cheltenham Montgomery County	Filed

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-8-98	Investors Trust Company Wyomissing Berks County	8200 Flourtown Ave. Wyndmoor Montgomery County	Filed

**Articles of Amendment**

<i>Date</i>	<i>Name of Bank</i>	<i>Purpose</i>	<i>Action</i>
5-11-98	Clearfield Bank & Trust Company Clearfield Clearfield County	To amend and restate the Articles of Incorporation in their entirety.	Approved and Effective

**SAVINGS ASSOCIATIONS**

No activity.

**CREDIT UNIONS****Articles of Amendment**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Purpose</i>	<i>Action</i>
5-8-98	Local #38 and Associates Credit Union Milton Northumberland County	To provide for a change in the field of membership.	Approved and Effective

RICHARD C. RISHEL,  
*Secretary*

[Pa.B. Doc. No. 98-816. Filed for public inspection May 22, 1998, 9:00 a.m.]

**Maximum Lawful Rate of Interest for Residential Mortgages for the Month of June 1998**

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of June, 1998, is 8 1/2%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221). Further preemption was instituted with the signing of Pub. L. 96-399, which overrode State interest rate limitations on an individual who finances the sale or exchange of residential real

property which the individual owns and which the individual occupies or has occupied as his principal residence.

Each month the Department of Banking is required by State law to compute and announce the ceiling rate on residential mortgages in Pennsylvania. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 5.98 to which was added 2.50 percentage points for a total of 8.50% that by law is rounded off to the nearest quarter at 8 1/2%.

RICHARD C. RISHEL,  
*Secretary*

[Pa.B. Doc. No. 98-817. Filed for public inspection May 22, 1998, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Proposed Exchange of Lands between DCNR, Bureau of Forestry, and George E. Logue, Inc.

The Department of Conservation and Natural Resources, acting through the Bureau of Forestry, and George E. Logue, Inc. of Montoursville, PA, are proposing to negotiate an exchange of lands in Lycoming County, PA.

The Bureau of Forestry is proposing to acquire from George E. Logue, Inc. a total of 658 acres of land in three separate parcels. The first is a tract of 400 acres in McNett Township on the headwaters of Lycoming Creek and bounded on three sides by the Tiadaghton State Forest. The second is a tract of 90 acres at Jersey Mills, McHenry Township, bounded by the Tiadaghton State Forest and the Pine Creek Trail. The third is a tract of 168 acres in Gamble Township near the mouth of Wallis Run bounded on the west by the Tiadaghton State Forest and on the east by SR 1003.

In return, the Bureau of Forestry proposes to convey to George E. Logue, Inc. 250 acres of the Tiadaghton State

Forest in Armstrong Township. This parcel will encompass an existing quarry site along Pa. Rt. 554 south of the Borough of South Williamsport. Subsequently, George E. Logue, Inc. will convey back to the Commonwealth all of this parcel in 10 acre units when each unit is restored to compliance with Department of Environmental Protection regulations.

As is the policy of the Department of Conservation and Natural Resources, the public is hereby notified of this exchange. A 30-day period for public inquiry and/or comment will be in effect commencing May 26, 1998, and ending June 24, 1998. Oral or written comments or questions concerning this proposed exchange may be addressed to: Dr. James R. Grace, State Forester, Pennsylvania Bureau of Forestry, P. O. Box 8552, Harrisburg, PA 17105-8552; telephone (717) 787-2703. These oral and/or written comments will become part of the official document used in the final decision process.

If, in the duration of the 30-day comment period, a significant amount of public concern develops, the Secretary of the Department of Conservation and Natural Resources may schedule a public informational meeting.

JOHN C. OLIVER,  
*Secretary*

[Pa.B. Doc. No. 98-818. Filed for public inspection May 22, 1998, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

#### APPLICATIONS

### APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

#### [National Pollution Discharge Elimination System Program (NPDES)]

#### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

#### (Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

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**Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.**


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*Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**PA 0057401.** Sewage, **Sarah Wulffleff, S & S Styles**, 6801 Easton Road, Pipersville, PA 18947.

This application is for issuance of an NPDES permit to discharge treated sewage from a small flow sewage treatment plant in Bedminster Township, **Bucks County**. This is a new discharge to an unnamed tributary to Cabin Run.

The receiving stream is classified for the following uses: cold water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 1,405 gpd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub> (5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
Suspended Solids	10	20
Total Nitrogen	10	20
Total Residual Chlorine	1.2	2.0
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
pH	within limits of 6.0—9.0 standard units at all times	

The EPA waiver is in effect.

**PA 0013391.** Industrial waste, **Tuscan/Lehigh Dairies L. P.**, 880 Allentown Road, Lansdale, PA 19446-5206.

This application is for renewal of an NPDES permit to discharge noncontact cooling water and stormwater from the Tuscan/Lehigh Dairies facility in Upper Gwynedd Township, **Montgomery County**. This is an existing discharge to an unnamed tributary to Towamencin Creek.

The receiving stream is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.065 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
1,1 Dichloroethylene (years 1 and 2)	0.0012	0.0024	0.003
(years 3, 4 and 5)	0.00023	0.00046	0.00058
Tetrachloroethylene	0.0026	0.0052	0.0065
Trichloroethylene (years 1 and 2)	0.058	0.116	0.145
(years 3, 4 and 5)	0.0113	0.0226	0.0283
Total Copper	monitor/report		
Phosphorus as P	monitor/report		
Temperature	110°F		
pH	within limits of 6.0—9.0 standard units at all times		
Total Residual Chlorine	0.2		0.5

**PA 0028584, Amendment No. 1.** Sewage, **West Goshen Sewer Authority**, 520 Veronica Road, West Chester, PA 19380.

This application is for an amendment of an NPDES permit to discharge treated sewage from West Goshen Sewer Authority sewage treatment plant in West Goshen Township, **Chester County**. This is an existing discharge to Chester Creek (Goose Creek).

The receiving stream is classified for the following uses: warm water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfalls 001 and 002, based on an average flow of 6.0 mgd after completion of plant expansion and upgrade are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub> (5-1 to 10-31)	15	23	30
(11-1 to 4-30)	25	38	50
Suspended Solids	30	45	60

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Ammonia (as N) (5-1 to 10-31)	2		4
(11-1 to 4-30)	6		12
Total Residual Chlorine	0.02		0.06
Fecal Coliform	200 colonies/100 ml as a geometric average		
Dissolved Oxygen	minimum of 5 mg/l at all times		
pH	within limits of 6.0—9.0 standard units at all times		
Total Copper	0.012	max. daily 0.024	0.03
Free Cyanide	monitor		monitor

The EPA waiver is not in effect.

**PA 0042021.** Sewage, **Milford-Trumbauersville Area Sewer Authority**, P. O. Box 126, Spinnerstown, PA 18968.

This application is for renewal of an NPDES permit to discharge treated sewage from a sewage treatment plant in Milford Township, **Bucks County**. This is an existing discharge to Unami Creek.

The receiving stream is classified for the following uses: high quality trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.8 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub> (5-1 to 10-31)	10	15	20
(11-1 to 4-30)	20	30	40
Suspended Solids	30	45	60
Ammonia (as N) (5-1 to 10-31)	2.3	3.5	4.6
(11-1 to 4-30)	6.9	10.4	13.8
Total Copper	monitor/report	monitor/report	monitor/report
Phosphorus (as P)	1.25	1.9	2.5
Total Residual Chlorine (0—2 years)	0.45		0.9
(3—5 years)	0.04		0.13
Fecal Coliform	200 colonies/100 ml as a geometric average		
Dissolved Oxygen	minimum of 6.0 mg/l at all times		
pH	within limits of 6.0—9.0 standard units at all times		

The EPA waiver is in effect.

**PA 0057436.** Sewage, **Stephen J. Castellan**, 112 Heather Hill Drive, Downingtown, PA 19335-1826.

This application is for issuance of an NPDES permit to discharge treated sewage from a single residence STP in Upper Uwchlan Township, **Chester County**. This is a new discharge to UNT to Marsh Creek.

The receiving stream is classified for the following uses: high quality trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 500 gpd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10	20
Suspended Solids	20	40
Ammonia (as N) (5-1 to 10-31)	1.5	3.0
(11-1 to 4-30)	4.5	9.0
Dissolved Oxygen	inst. min. 6.0	
Total Residual Chlorine	monitor/report	monitor/report
Fecal Coliform	200 colonies/100 ml as a geometric average	
pH	within limits of 6.0—9.0 standard units at all times	

*Other Conditions:*

The EPA waiver is in effect.



*Northeast Region: Environmental Protection Manager, Water Management, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2553.*

**PA 0032077.** Sewerage, **Commonwealth of Pennsylvania, Tuscarora State Park**, R. R. 1, Box 1051, Barnesville, PA 18214-9715.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into Locust Creek in Rush Township, **Schuylkill County**.

The receiving stream is classified for the following uses: cold water fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub> fluoride and phenolics, the existing downstream potable water supply (PWS) considered during the evaluation is Pottsville Borough Water Authority on the Schuylkill River.

The proposed effluent limits for Outfall 001, based on a design flow of 0.026 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25.0	50.0
Total Suspended Solids	30.0	60.0
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)	200/100 ml as a geometric mean 2,000/100 ml as a geometric mean	
pH	6.0—9.0 standard units at all times	
Total Residual Chlorine (1st month—24th month) (25th month—60th month)	1.2	2.8

The EPA waiver is in effect.

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

**PA 0008508.** Industrial waste, SIC: 3671, **Burle Industries, Inc.**, 1000 New Holland Avenue, Lancaster, PA 17601.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to the Conestoga River, in Lancaster City, **Lancaster County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Holtwood Power Plant located in Martic Township, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.393 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		6.0—9.0 standard units	
Oil and Grease	15.0		30.0
Total Cadmium	0.14	0.28	0.35
Total Copper	0.82	1.60	2.00
Hexavalent Chromium	0.33	0.66	0.82
Total Fluoride		monitor	

The proposed effluent limits for Outfall 101 for a design flow of 0.264 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		6.0—9.0 standard units	
Suspended Solids	31.0	60.0	77.5
Total Chromium	1.71	2.77	4.3
Total Lead	0.43	0.69	1.0
Total Nickel	2.38	3.98	6.0
Total Silver	0.24	0.43	0.6
Total Zinc	1.48	2.61	3.7
Total Cyanide	0.65	1.2	1.6
Total Toxic Organics		2.13	

The proposed effluent limits for Outfall 201 for a design flow of 0.129 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Temperature		110°F as daily average	

The EPA waiver is not in effect.

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

**PA 0095826.** Sewage, **Rostraver Sewage Corporation**, R. D. 3, Box 59, Monongahela, PA 15063.

This application is for renewal of an NPDES permit to discharge treated sewage from the Budget Host in Rostraver Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Cedar Creek, which are classified as a trout stocked 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 Westmoreland County Municipal Authority—McKeesport.

*Outfall 001:* existing discharge, design flow of 0.021 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			60
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	5			10
(11-1 to 4-30)	14			28
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1			2.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA 0216852.** Sewage, **Orin Bache, Wen-Dell Mobile Home Park**, R. D. 3, Box 58, Ruffsedale, PA 15679.

This application is for amendment of an NPDES permit to discharge treated sewage from the Wen-Dell Mobile Home Park Sewage Treatment Plant in East Huntingdon Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Buffalo Run, which are classified as a warm 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 Westmoreland County Municipal Authority—McKeesport located on the Youghiogheny River.

*Outfall 001:* proposed expanded discharge, design flow of 0.025 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	3.5			7
(11-1 to 4-30)	10.5			21
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.6			1.5
Dissolved Oxygen	not less than 3.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The above limitations are in effect after the treatment facility has been expanded and is operational.

The EPA waiver is in effect.

**PA 0217522.** Sewage, **Municipal Authority of the Borough of Smithton**, P. O. Box 350, Smithton, PA 15479.

This application is for amendment of an NPDES permit to discharge treated sewage from the proposed Smithton Borough Sewage Treatment Plant in Smithton Borough, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as an unnamed tributary of the Youghiogheny River, which are classified as a warm 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 Westmoreland County Municipal Authority—McKeesport.

Outfall 001: new discharge, design flow of 0.066 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	3.5	5.3		7
(11-1 to 4-30)	10.5	15.8		21
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	3,500/100 ml as a geometric mean			
Total Residual Chlorine	0.6			1.3
Dissolved Oxygen	not less than 5 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA 0217859.** Sewage, **Country Care Development, Inc.**, R. D. 2, Box 335D, Fayette City, PA 15438.

This application is for issuance of an NPDES permit to discharge treated sewage from the Country Care Development Sewage Treatment Plant in Washington Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary to an unnamed tributary of Little Redstone Creek, which are classified as a warm 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 Washington Township Municipal Authority.

Outfall 001: new discharge, design flow of 0.02 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	3			6
(11-1 to 4-30)	9			18
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.2			0.5
Dissolved Oxygen	not less than 3 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

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*Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.*

**PA 0220795.** Sewage, SIC: 3544, **Technical Precision, Inc.**, 2343 Perry Highway, Hadley, PA 16130.

This application is for renewal of an NPDES permit to discharge treated sewage to an unnamed tributary to the Shenango River in Perry Township, **Mercer County**. This is an existing discharge.

The receiving water is classified for the following uses: trout stocking, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Greenville Municipal Water Authority on the Little Shenango River located at river mile 0.97, approximately 18.7 miles below point of discharge.

The proposed discharge limits for Outfall No. 001, based on a design flow of 0.000800 mgd, are:

Parameter	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow	xx	xx	xx
CBOD <sub>5</sub>	10		20
TSS	20		40
TRC	1.5		3.5
pH	within limits of 6.0—9.0 standard units at all times		

xx—monitor and report

The EPA waiver is in effect.

**PA 0034380.** Sewage. **Quadland Corporation**, 7041 Truck World Boulevard, Hubbard, OH 44425.

This application is for renewal of an NPDES permit to discharge treated sewage to the Unnamed Tributary to Allegheny River in Scrubgrass Township, **Venango County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Allegheny River located at Emlenton, approximately 3 miles below point of discharge.

The proposed effluent limits for Outfall No. 001, based on a design flow of 0.02 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	monitor and report	
CBOD <sub>5</sub>	25	50
TSS	30	60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
Total Residual Chlorine	1.0	2.3
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

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### Proposed NPDES Permit Renewal Actions for Minor Sewage Discharges

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The following parties have applied to renew their current NPDES permit to allow the continued discharge of controlled wastewater into the surface waters of this Commonwealth. The Department of Environmental Protection (Department) has made a tentative determination to renew these permits and proposes to issue them, subject to their current permit effluent limitations and monitoring and reporting requirements, with appropriate and necessary updated requirements to reflect new or changed regulations and other requirements. The updates may include, but will not be limited to, applicable permit conditions and/or requirements addressing combined sewer overflows (CSOs), municipal sewage sludge management and total residual chlorine control (TRC). Any major changes to or deviations from the terms of the existing permit will be documented and published with the final Department actions.

The EPA, Region III, Regional Administrator has waived the right to review or object to these proposed permit actions under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permits are invited to submit a statement to the Field Operations indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding these applications and proposed permit actions. Comments should include the name, address and telephone number of the writer and a brief statement to inform the Field Office of the basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit renewal application and related documents, proposed effluent limitations and special conditions, comments received and other information are on the Department's file. The documents may be inspected at, or a copy requested from, the Field Office that has been indicated above the application notice.

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

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA 0085456	Golden Menu Restaurant 1885 Baltimore Pike Gettysburg, PA 17325	Adams Mt. Joy Twp.	Rock Creek	TRC
PA 0080560	TA Operating Corp. 24601 Center Ridge Rd. Suite 200 Westlake, OH 44145-5634	Dauphin West Hanover Twp.	Manada Creek	TRC
PA 0085278	Deerwood Homeowners Assn. 11375 Lafayette Rd. Mercersburg, PA 17236	Franklin Montgomery Twp.	Licking Creek	TRC

**DISCHARGE OF CONTROLLED INDUSTRIAL  
WASTE AND SEWERAGE WASTEWATER**

**Applications under the Pennsylvania Clean  
Streams Law**

**(Part II Permits)**

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department). Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed; and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest. Each writer will be notified in writing of the time and place if a hearing or conference concerning the plan, action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

**Applications received for industrial waste and sewage applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).**

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

**A. 0198402.** Sewage, submitted by **RBL Development Corporation**, 3902 Autumn Lane, Stewartstown, PA 17363 in Berwick Township, **Adams County** to construct a sewage treatment plant to serve the Eagle View Mobile Home Park was received in the Southcentral Region on April 24, 1998.

**A. 2191406 (98-1).** Sewage, submitted by **Doubling Gap Center, Inc.**, 1550 Doubling Gap Road, Newville, PA 17241-9757 in Lower Mifflin Township, **Cumberland County** to construct modifications to their existing treatment facility was received in the Southcentral Region on April 24, 1998.

**A. 6798406.** Sewage, submitted by **Newberry Township Municipal Authority**, 1915 Old Trail Road, Etters, PA 17319 in Newberry Township, **York County** to upgrade and expand their existing wastewater treatment plant from .4 mgd to 1.3 mgd was received in the Southcentral Region on April 23, 1998.

**A. 2198404.** Sewage, submitted by **Carrie Forry-Roush**, 3614 Cloverfield Road, Harrisburg, PA 17109 in Upper Frankford Township, **Cumberland County** to construct a single family residence treatment system was received in the Southcentral Region on May 5, 1998.

**A. 2298201.** Industrial waste, submitted by **Joseph F. Connors**, 2731 Powell Valley Road, Halifax, PA 17032 to construct and operate a concentrated animal feeding operation in Jefferson Township, **Dauphin County** was received in the Southcentral Regional Office on May 5, 1998.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 6298403.** Sewage, **Katie J. and Thomas F. Spetz**, SRSTP, 303 Egypt Rd., Warren, PA 16365. This project is for the construction of a single residence sewage treatment plant in Glade Township, **Warren County**.

**WQM Permit No. 1098403.** Sewage. **Glade Run United Presbyterian Church**, 1091 Pittsburgh Road, Valencia, PA 16059. This project is for the installation of a small flow sewage treatment facility and appurtenances in Middlesex Township, **Butler County**.

**INDIVIDUAL PERMITS**

**(PAS)**

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. The proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision of 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construction activity, are on file and may be inspected at the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

*Southeast Regional Office: Regional Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**NPDES Permit PAS10-D105.** Stormwater. **Michael M. Kelly**, P. O. Box 550-A, Villanova, PA 19085, has applied to discharge stormwater from a construction activity located in Buckingham Township, **Bucks County**, to Paunacussing Creek.

**NPDES Permit PAS10-G316.** Stormwater. **Greenhill Station**, 7 West Gay Street, West Chester, PA 19380, has applied to discharge stormwater from a construction activity located in Uwchlan Township, **Chester County**, to Shamona Creek.

**NPDES Permit PAS10-G371.** Stormwater. **Paoli Shopping Center, LTD.**, 1301 Lancaster Avenue, Berwyn, PA 19312-1290, has applied to discharge stormwater from a construction activity located in Tredyfrin Township, **Chester County**, to Unnamed Tributary to Crum Creek.

**NPDES Permit PAS10-G318.** Stormwater. **352 Associates**, 50 Exter Avenue, Haverford, PA 19041, has applied to discharge stormwater from a construction activity located in East Whiteland Township, **Chester County**, to Valley Creek.

*Southcentral Regional Office: Regional Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

*Lancaster County Conservation District, District Manager; 1383 Arcadia Rd., Room 6, Lancaster, PA 17601, (717) 299-5361.*

**NPDES Permit PAS-10-O-072.** Stormwater. **Tanglewood Manor Inc.**, P. O. Box 300, Quarryville, PA 17566 has applied to discharge stormwater from a construction activity located in East Drumore Township, **Lancaster County**, to UNT Conowingo Creek.

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

**NPDES Permit PAS10X090.** Stormwater. **PA Department of Transportation**, P. O. Box 459, Uniontown, PA 15401-0459 has applied to discharge water from a construction activity located in Salem Township and Delmont Borough, **Westmoreland County** to Beaver Run.

## SAFE DRINKING WATER

**Applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

*Southcentral Regional Office: Sanitarian Regional Manager; 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.*

**A. 0698505.** Public water supply. **Wernersville Municipal Authority**, Municipality: Wernersville Borough, **Berks County**. *Responsible Official:* Robert L. Walborn, Manager, Wernersville Municipal Authority, P. O. Box 145, Wernersville, PA 19565-0145; *Type of Facility:* Soda Ash feed system for corrosion control; *Consulting Engineer:* David M. Bright, P. E., Spotts, Stevens and McCoy, Inc., P. O. Box 6307, Reading, PA 19610-0307.

**A. 0598501.** Public water supply. **Hyndman Borough**, Municipality: Hyndman Borough, **Bedford County**. *Responsible Official:* Stanley Robinson, President—Hyndman Borough Council, P. O. Box 486, Hyndman, PA 15545; *Type of Facility:* Construction of a facility

to clean and reuse the top layer of scrapped sand from the slow sand filter plant. Facility will also recycle any waste water generated; *Consulting Engineer:* Steve Sesack, Neilan Engineers, Inc., 450 Aberdeen Drive, P. O. Box 837, Somerset, PA 15501.

**A. 2298501.** Public water supply. **Steelton Borough Authority**, Municipality: Borough of Steelton, **Dauphin County**. *Responsible Official:* Albert Gornik, Authority Chairperson, 123 N. Front Street, Steelton, PA 17113-2998; *Type of Facility:* Construction of a 150,000 gallon elevated storage tank with a chlorine booster facility; *Consulting Engineer:* Julia Schiefer, Herbert, Rowland and Grubic, Inc., 369 East Park Drive, Harrisburg, PA 17111.

**A. 0598502.** Public water supply. **Bedford Borough Water Authority**, Bedford Township, **Bedford County**. *Responsible Official:* Raymond A. Carlson, Chairperson, Bedford Borough Water Authority, 244 West Penn Street, Bedford, PA 15522; *Type of Facility:* Installation of water booster pump station, 5,000 gallon hydropneumatic water storage tank and control building; *Consulting Engineer:* Stuart W. Sibold, P. E., Gwin Engineers, Inc., as EADS Group Co., 1126 Eighth Avenue, Altoona, PA 16602.

*Regional Office: Northcentral Field Operations, Environmental Program Manager; 208 West Third Street, Suite 101, Williamsport, PA 17701.*

**A. M. A.** The Department has received a construction permit application from **Mahoning Township Authority** (1101 Bloom Road, Danville, PA 17821; Mahoning Township, **Montour County**) for modification by replacing the existing booster pump at Well No. 8.

**A. M. A.** The Department has received a construction permit application from **Upper Halfmoon Water Company, Inc.** (1952 Halfmoon Valley Road, Port Matilda, PA 16870; Halfmoon Township, **Centre County**) for installation of a 416,000 gallon finished water storage tank and 240 feet of 8" PVC waterline to connect it to existing system.

**A. WA47-1006.** The Department has received a water allocation permit for **Mahoning Township Authority** (1101 Bloom Road, Danville, PA 17821; Mahoning Township, **Montour County**). The application requests the rights to purchase water from the Danville Municipal Authority.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

**Under Act 2, 1995**

**Preamble 2**

**Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use a site-specific standard or who intend to remediate a site in a Special Industrial Area must file a Notice of Intent to Remediate with the Department. A

Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific cleanup standard, in whole or in part, and for sites determined to be located in Special Industrial Areas. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area by the person conducting remediation. For the sites identified, a municipality may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period a municipality may request that the person identified, as the remediator of a site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of a site. For further information concerning the content of a Notice of Intent to Remediate, contact the Department Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

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

*Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.*

**New Eagle Borough Municipal Sewer Authority**, Borough of New Eagle, **Washington County**. New Eagle Borough Municipal Sewer Authority, 157 Main Street, New Eagle, PA 15067 and Joseph A. Senita, Chester Engineers, Inc., 600 Clubhouse Drive, Moon Township, PA 15108 has submitted a Notice of Intent to Remediate the soil and groundwater contaminated with lead. The applicant proposes to remediate the site to meet a site specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Washington Observer Reporter* on April 24, 1998.

## AIR RESOURCES

### Notice of Plan Approval and Operating Permit Applications

#### Nonmajor 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. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not trigger major new source review or prevention of significant deterioration requirements.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Offices identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office.

Persons wishing to file protests or comments on the proposed plan approval and/or operating permits must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any 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 to the date of the hearing.

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 and regulations adopted under the act.

## OPERATING PERMITS

### Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001-4015).

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**15-320-021: De La Rue Card Systems Inc.** (523 James Hance Court, Exton, PA 19341) for the operation of a lithographic press in West Whiteland Township, **Chester County**.

**46-320-024A: National Label Co., Inc.** (2025 Joshua Road, Lafayette Hill, PA 19444) for the operation of a vapor degreaser in Whitemarsh Township, **Montgomery County**.

**PA-46-0035A: Smithkline Beecham Pharmaceuticals** (709 Swedeland Road, King of Prussia, PA 19406) for the operation of an emergency electric generator in Upper Merion Township, **Montgomery County**.

**23-302-132: Degussa Corporation** (1200 West Front Street, Chester, PA 19013) for the operation of a boiler (S28) in City of Chester, **Delaware County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**07-327-001A: Chicago Rivet and Machine Co., Tyrone Division** (Industrial Park, Tyrone, PA 16686) for the operation of a vapor degreaser controlled by a freeboard refrigeration device. This source is subject to 40 CFR 63, Subpart T, National Emission Standards for Hazardous Air Pollutants.

**21-05030: Ahlstrom Filtration, Inc.** (P. O. Box A, Mt. Holly Springs, PA 17065) for the operation of a natural gas/no. 2 oil-fired boiler in Mt. Holly Springs, **Cumberland County**.

**22-310-005C: Pennsy Supply, Inc.** (P. O. Box 3331, Harrisburg, PA 17105) for the operation of a rock crushing plant controlled by wet suppression and a fabric filter in South Hanover Township, **Dauphin County**.

**36-309-029F: Armstrong World Industries, Inc.** (P. O. Box 3001, Lancaster, PA 17604) for the operation of the No. 2 floor tile line in Lancaster, **Lancaster County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**14-399-009F: Murata Electronics North America, Inc.** (1900 West College Avenue, State College, PA 16801-2799) for the operation of five ceramic chip capacitor binder removal ovens and an electrically-heated thermal afterburners in Ferguson Township, **Centre County**.

*Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**OP-63-00002: Twilight Industries** (212 State Street, Belle Vernon, PA 15012) for coal staging/processing at I-70 Surface Mine in Somerset Township, **Washington County**.

**OP-26-00436: Nu-Kote, Inc.** (Route 119 South, P. O. Box 716, Connellsville, PA 15425) for dry toner production at Dunbar Township Plant in Dunbar Township, **Fayette County**.

**OP-65-00596: Clair Cemetery Association** (964 St. Clair Way, Greensburg, PA 15601) for a crematory in Greensburg, **Westmoreland County**.

#### PLAN APPROVALS

**Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015).**

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**01-310-001C: Valley Quarries, Inc.** (P. O. Box J, Chambersburg, PA 17201) for the installation of a Cedar Rapids 32X42 jaw crusher and a Telsmith triple deck 6X15 screen in Cumberland Township, **Adams County**.

**06-03041: Delaware County Solid Waste Authority** (583 Longview Road, Boyertown, PA 19512) for the installation of a landfill gas collection system and control device located at the Rolling Hills Landfill located in Earl Township, **Berks County**. This source is subject to 40 CFR 60, Subpart WWW, Standards of Performance for New Stationary Sources.

**06-310-003A: Eastern Industries, Inc.** (4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034) for the installation of a nonmetallic mineral crushing plant controlled by a wet suppression system in Maxatawny Township, **Berks County**. The source is subject to 40 CFR Part 60, Subpart OOO, Standards of Performance for New Stationary Sources.

**36-310-076: Eastern Industries, Inc.** (4401 Camp Meeting Rd., Suite 200, Center Valley, PA 18034) for the installation of a new impact crusher controlled by a wet suppression system located at their Schoeneck Plant in West Cocalico Township, **Lancaster County**.

**36-317-070F: Tyson Foods, Inc.** (P. O. Box 1156, New Holland, PA 17557) for the installation of a new deep fat food fryer controlled by a wet scrubber at their Plant No. 2 in Earl Township, **Lancaster County**.

**38-313-013B: O'Sullivan Corp.** (1507 Willow Street, Lebanon, PA 17042) for a modification to an existing PVC resin pneumatic conveying system at their Lebanon facility in Lebanon, **Lebanon County**.

**67-320-022C: Fry Communications, Inc.** (800 West Church Road, Mechanicsburg, PA 17055) for the installation of a regenerative thermal oxidizer in Building No. 5 in Manchester Township, **York County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**08-301-014A: Tioga Point Crematory, Inc.** (802 North Main Street, Athens, PA 18812) for the construction of a crematory incinerator in Athens Borough, **Bradford County**.

*Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**PA-63-147A: Union Camp Corp.** (P. O. Box 285, Washington, PA 15301) for a printing press at the Eighty-Four Facility in North Strabane Township, **Washington County**.

**PA-65-183A: Allegheny Ludlum Corp.** (100 River Road, Brackenridge, PA 15014) for a No. 71 anneal and pickle line at the West Leechburg Plant in West Leechburg Borough, **Westmoreland County**.

**OP-65-00361: R. L. Smeltz Oil Co.** (P. O. Box 100, 725 S. Main Street, Greensburg, PA 15601) for petroleum product storage at the Greensburg Facility in Greensburg, **Westmoreland County**.

**PA-56-257A: Pennsylvania Dept. of Corrections** (P. O. Box 631, Somerset, PA 15501) for two standby diesel generators at SCI Laurel Highlands in Somerset Township, **Somerset County**.

**PA-03-210A: Amerikohl Mining, Inc.** (202 Sunset Drive, Butler, PA 16001) for a portable coal crushing plant at Spera Surface Mine in Cowanshannock Township, **Armstrong County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA 42-184E: Keystone Powdered Metal Co.** (8 Hanley Drive, Lewis Run, PA 16738-0424) for the construction of a natural gas fired powdered metal tempering furnace (7,000 lbs capacity) with electrostatic precipitator control, in Lewis Run, **McKean County**.

**PA 42-184F: Keystone Powdered Metal Co.** (8 Hanley Drive, Lewis Run, PA 16738-0424) for the construction of a powder metal heat treating furnace (7,000 lbs parts capacity) in Lewis Run, **McKean County**.

**PA 24-124B: PA Industrial Heat Treaters** (Access Road, P. O. Box 348, St. Marys, PA 15857) for the installation of an electrostatic precipitator for controlling emissions from two continuous draw heat treat furnaces in St. Marys, **Elk County**.

**PA 10-293A: Quality Aggregates Inc., Tiche Mine** (Township Road 560, Boyers, PA 16020) for the modification of the limestone crushing and washing facility in Marion Township, **Butler County**.

**PA 61-012A: OMG Americas** (Two Mile Run Road, P. O. Box 111, Franklin, PA 16323) for the construction of two reactors and several processing tanks for production



of anitoxidants/stabilizers for polymers with a venturi scrubber for control in Sugar creek Borough, **Venango County**.

**PA 25-069B: Engelhard Corp.** (1729 East Avenue, Erie, PA 16503) for the installation of a replacement collector for the nickel plant fluid bed reactor no. 4 in Erie, **Erie County**.

**REASONABLY AVAILABLE CONTROL  
TECHNOLOGY  
(RACT)**

**Proposed Revision to the State Implementation  
Plan for Oxides of Nitrogen and Volatile Organic  
Compounds and Public Hearing**

Approval of an amendment of a Reasonably Available Control Technology (RACT) plan for Strick Corporation in Limestone Township, Montour County.

The Department of Environmental Protection (Department) has made a preliminary determination to approve an amendment of a Reasonably Available Control Technology (RACT) plan and an amendment to the State Implementation Plan (SIP) for a truck van chassis manufacturing facility owned and operated by Strick Corporation in Limestone Township, Montour County.

The proposed SIP revision does not adopt any new regulations. It incorporates the provisions and requirements contained in the RACT approval for the facility to comply with current regulations.

The preliminary RACT determination, if finally approved, will result in the revision of Operating Permit No. OP-47-0002 issued on August 28, 1996, and will be submitted to the United States Environmental Protection Agency (EPA) as a revision to Pennsylvania's State Implementation Plan.

The following is a summary of the preliminary RACT determination which the Department proposes to incorporate into Operating Permit No. OP-47-0002 for three additional minor sources of volatile organic compounds as a revision to the respective permit:

1) The combined potential to emit volatile organic compounds from each of the following source categories shall never exceed 3 pounds per hour, 15 pounds per day or 2.7 tons per year:

600,000 btu per hour kerosene-fired space heater (in combination with 11 small combustion sources previously identified in Operating Permit No. OP-47-0002).

275 gallon kerosene storage tank (in combination with a 10,000 gallon no. 2 fuel oil storage tank and a 5,000 gallon no. 2 fuel oil storage tank previously identified in Operating Permit No. OP-47-0002).

5,000 watt propane-fired emergency generator.

The Department also proposes to change the 7.5 ton per calendar year volatile organic compound emission limitation currently specified in condition 16 of Operating Permit No. OP-47-0002 for the respective facility's solvent cleaning operations to a limitation of 7.5 tons of volatile organic compounds per 12 consecutive month period.

One public hearing will be held for the purpose of receiving comments on the proposed operating permit revision and SIP revision. The hearing will be held on July 15, 1998, at 1 p.m. at the Department Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA. The public is invited to comment on the proposal. Persons interested in commenting are invited to appear at the public hearing.

Persons wishing to present testimony at the hearing should contact Daniel Spadoni at (717) 327-3659 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to a maximum of 10 minutes per individual and two written copies of the oral testimony are requested. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Daniel Spadoni at (717) 327-3659 or the Pennsylvania AT&T relay service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Those unable to attend the hearing, but wishing to comment, should provide written comments to David Aldenderfer, Air Quality Environmental Program Manager, Pennsylvania DEP, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448. Comments should be submitted by July 30, 1998.

All pertinent documents are available for review from 8 a.m. to 4 p.m. in the Department Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling (717) 327-3693.

## MINING

### APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for the certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-

based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

#### *Coal Applications Received*

**32980106. M & S Mining, Inc.** (P. O. Box 13, Indiana, PA 15701), commencement, operation and restoration of bituminous strip mine in East Mahoning Township, **Indiana County**, affecting 115.0 acres, receiving stream unnamed tributaries of Dixon Run and unnamed tributaries of Pickering Run to Pickering Run to Little Mahoning Creek and unnamed tributaries to Little Mahoning Creek. Application received April 22, 1998.

**56920110.** Permit Renewal. **Svonavec, Inc.** (140 West Union Street, Somerset, PA 15501), commencement, operation and restoration of bituminous strip mine, valid for reclamation, only in Black Township, **Somerset County**, affecting 355.4 acres, receiving streams two unnamed tributaries of Coxes Creek, and unnamed tributary of Laurel Run and an unnamed tributary of Wilson Creek, all to Coxes Creek to the Casselman River. Application received May 1, 1998.

**56920115.** Permit Renewal. **Svonavec, Inc.** (140 West Union Street, Somerset, PA 15501), commencement, operation and restoration of bituminous strip mine in Milford Township, **Somerset County**, affecting 68.6 acres, receiving stream unnamed tributaries to South Glade Creek and South Glade Creek. Application received May 1, 1998.

**11823004.** Permit Renewal. **M. B. Energy, Inc.** (250 Airport Road, P. O. Box 1319, Indiana, PA 15701-1319), commencement, operation and restoration of bituminous strip mine in Elder and Susquehanna Townships, **Cambria County**, affecting 1,458.5 acres, receiving stream Little Brubaker Run to Brubaker Run to Chest Creek. Application received May 5, 1998.

*Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.*

**17980109. Moravian Run Reclamation Company, Inc.** (605 Sheridan Drive, Clearfield, PA 16830), commencement, operation and restoration of a bituminous

surface mine-auger permit in Pike Township, **Clearfield County** affecting 145 acres, receiving streams: Hogback Run. Application received April 27, 1998.

**17980110. Junior Coal Contracting, Inc.** (R. D. 3, Box 225-A, Philipsburg, PA 16866), commencement, operation and restoration of a bituminous surface mine permit in Decatur Township, **Clearfield County** affecting 73.6 acres, receiving streams: Albert Run and Little Laurel Run. Application received May 8, 1998.

**14841601. Northern Counties Coal Co., Inc.** (P. O. Box 668, Philipsburg, PA 16866), revision to an existing bituminous surface mine permit for a change in land use from reclamation of areas with post operational land use of wildlife habitat to be reclaimed as industrial. Application received April 29, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54871303R2. D and D Coal Company** (139 East Independence Street, Shamokin, PA 17872), renewal of an existing anthracite underground mine operation in Cass Township, **Schuylkill County** affecting 26.0 acres, receiving stream none. Application received May 6, 1998.

**54860108C2 and 54713002C3. Reading Anthracite Company** (200 Mahantongo Street, P. O. Box 1200, Pottsville, PA 17901-7200), correction of existing anthracite mine operations to include auger mining as a method of mining in New Castle Township, **Schuylkill County**, affecting 1,687.0 acres, receiving stream unnamed tributary to Schuylkill River. Application received May 5, 1998.

*McMurray District Office, 3913 Washington Road, McMurray, PA 15317.*

**32921302. Helvetia Coal Co.** (P. O. Box 729, Indiana, PA 15701), to renew the permit for the Marshall Run Mine in Young and Conemaugh Township, **Indiana County**, no additional discharges. Application received March 12, 1998.

**32851302. Helvetia Coal Co.** (P. O. Box 729, Indiana, PA 15701), to renew the permit for the Lucerne No. 6E Mine in Black Lick and Center Township, **Indiana County**, no additional discharges. Application received March 12, 1998.

*Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.*

#### *Large Industrial Mineral Permit Applications Received*

**14980301. Bellefonte Lime Company, Inc.** (P. O. Box 448, Bellefonte, PA 16823), commencement, operation and restoration of a large industrial mineral (limestone) deep mine permit application in Spring and Benner Townships, **Centre County** affecting 481.1 acres, receiving streams: Logan Branch and Nittany Creek to Spring Creek to Bald Eagle Creek to the Susquehanna River. Application received March 9, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**45880301C5. Selig Construction Co., Inc.** (P. O. Box 185, Pocono Lake, PA 18347), renewal of NPDES Permit No. PA0594113 in Tobyhanna Township, **Monroe County**, receiving stream—Unnamed creek to Lehigh River. Application received April 30, 1998.

**21900301-02. E. E. Kough Sons** (P. O. Box 134, 195 Green Spring Road, Newville, PA 17241), application for stream variance to unnamed tributary to the Conodoguinet Creek in North Newton Township, **Cumberland County**. Application received April 16, 1998.

## APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

### ENCROACHMENTS

The following Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)) requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1311—1313, 1316 and 1317, as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Safety or Encroachment Permit or the approval of Environmental Assessments must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

*Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E09-766.** Encroachment. **Lower Makefield Township**, 1100 Edgewood Rd., Yardley, PA 19067-1696. To remove the 72-inch corrugated metal pipe culvert and associated endwalls along Oxford Road and to construct and maintain approximately 29.5 feet of twin cell 10-foot × 5-foot reinforced concrete box culverts and associated wingwalls, at this location, in and along Silver Creek (WWF). The site is located approximately 700 feet east of the intersection of Oxford Road and Oxford Valley Road (Trenton West, NJ-PA USGS Quadrangle N: 19.6 inches; W: 11.5 inches) in Lower Makefield Township and Yardley Borough, **Bucks County**.

**E15-576.** Encroachment. **David Harlan**, 4755 West Lincoln Highway, Parkesburg, PA 19365. To construct and maintain a low flow stream crossing consisting of steel reinforced timber decking, reinforced concrete abutments and roadway approach fill in and along an unnamed tributary to the West Branch Brandywine Creek (WWF-MF). This bridge will be 14 feet wide, having a span of 30 feet and average underclearance of 3.33 feet, and will provide access to a proposed single family residence. The site is located approximately 600 feet south of the intersection of Brandywine Creek Road and Green Valley Road (Coatesville, USG Quadrangle N: 10.3 inches; W: 0.85 inch) in Newlin Township, **Chester County**.

**E09-767.** Encroachment. **Toll Brothers, Inc.**, 3103 Philmont Ave., Huntingdon Valley, PA 19006. To modify two existing man-made farm irrigation ponds for the purpose of converting them to a stormwater detention facility for the proposed Dolington Estates II Residential Subdivision. The project is located along the eastern side of Lindenhurst Road, approximately a half mile south of Washington Crossing Road (S. R. 532) (Lambertville, PA Quadrangle N: 1.4 inches; W: 3.0 inches) in Lower Makefield Township, **Bucks County**.

*Northeast Regional Office: Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.*

**E13-112.** Encroachment. **Carbon County**, P. O. Box 129, Jim Thorpe, PA 18229. To repair, modify and maintain an existing stone masonry arch bridge having three spans of 20.5 feet with an underclearance of 11.5 feet on a 68 degree skew across Lizard Creek (TSF). The project is located approximately 0.3 mile downstream of the intersection of the Pennsylvania Turnpike Northeast Extension and Lizard Creek (Lehighon, PA Quadrangle N: 8.2 inches; W: 5.5 inches) in East Penn Township, **Carbon County** (Philadelphia District, Army Corps of Engineers).

**E13-113.** Encroachment. **Towamensing Township Supervisors**, 120 Stable Road, Lehighon, PA 18235. To place fill in a de minimis area of PFO wetlands equal to 0.01 acre; to remove the existing structure and to construct and maintain an adjacent prestressed box beam bridge having a span of 16 feet with an underclearance of 5 feet on a 74 degree skew across Pine Run (CWF). The project is located at the intersection of T419 and Pine Run (Pohopoco Mountains, PA Quadrangle N: 2.7 inches; W: 17.1 inches) in Towamensing Township, **Carbon County** (Philadelphia District, Army Corps of Engineers).

**E39-351.** Encroachment. **City of Allentown**, 435 Hamilton Street, Allentown, PA 18101-1699. To construct and maintain a 4-foot by 4.5-foot concrete box culvert inlet structure along the left bank of the Little Cedar Creek (HQ-CWF). The project is associated with the construction of an off stream stormwater detention facility within Trexler Park and is located south of the intersection of S. R. 1002 (Tilghman Street) and S. R. 1019 (Cedar Crest Boulevard) (Allentown West, PA Quadrangle N: 16.9 inches; W: 4.4 inches) in the City of Allentown, **Lehigh County** (Philadelphia District, U.S. Army Corps of Engineers).

**E40-495.** Encroachment. **Samuel and Doreen Kasper**, 223 Sutherland Drive, Mountaintop, PA 18707. To place fill in approximately 0.07 acre of PEM wetlands within the drainage basin of Big Wapwallopen Creek (CWF), for the purpose of filling a depression to provide a section of usable yard area adjacent to a newly-constructed home. The project is located on Lot 137, Kirby Estates (Wilkes-Barre West, PA Quadrangle N: 6.9 inches; W: 0.6 inch), in Fairview Township, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers).

**E45-354.** Encroachment. **S.I.D.E. Corporation**, P. O. Box 1050, Blakeslee, PA 18610. To construct and maintain an aluminum box culvert having a span of 9.6 feet and an underclearance of approximately 4.1 feet across Goose Run (HQ-CWS) along a proposed roadway named Park Avenue within New Ventures Park, Phase II, Industrial Subdivision. The project is located northeast of the intersection of S. R. 0080 and S. R. 0115 (Blakeslee, PA Quadrangle N: 14.4 inches; W: 11.0 inches) in Tobyhanna Township, **Monroe County** (Philadelphia District, U. S. Army Corps of Engineers).

**E64-190.** Encroachment. **Pennsylvania Department of Transportation, Engineering District 4-0**, P. O. Box 111, Scranton, PA 18501. To remove the existing structure and to construct, modify and maintain a road crossing of Dyberry Creek (HQ-CWF) and its associated floodplain, including the construction of a prestressed concrete spread box beam bridge, having a clear span of 61.7 feet (18.81m.) and an underclearance of 13.0 feet (3.96m.). The roadway elevation will be raised in the vicinity of the

structure. The project is located on S. R. 4009, Section 671, Segment 0010, Offset 1214, approximately 1 mile north of the General Edgar Jadwind Bingham (Aldensville, PA Quadrangle N: 0.5 inch; W: 1.7 inches), in Dyberry Township, **Wayne County** (Philadelphia District, U. S. Army Corps of Engineers).

*Northcentral Region, Water Management: Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third St., Suite 101, Williamsport, PA 17701.*

**E08-334.** Encroachment. **PA Dept. of Transportation**, P. O. Box 218, Montoursville, PA 17754. To widen and maintain an existing single span RC T-beam bridge with a span of 20 feet and underclearance of 5.3 feet across an unnamed tributary to South Branch of Sugar Creek located on SR 14 just south of T-532 and to widen and maintain an existing single cell 6 foot × 6 foot RC box culvert in an unnamed tributary to South Branch of Sugar Creek located on SR 14, 200 feet north of T-336, and to place fill in 0.05 acre of wetlands to widen 3 miles of SR 14 located just south of the Borough of Troy (Troy, PA Quadrangle N: 0.9 inch; W: 5.7 inches) in Troy Township, **Bradford County**. Estimated stream disturbance is 140 feet of stream with temporary wetland impacts of 0.19 acre and permanent wetland impacts of 0.05 acre; stream classification is TSF.

**E14-322.** Encroachment. **DCNR, Bur. Of Facility Design Const.**, P. O. Box 8451, Harrisburg, PA 17105-8451. To remove the existing structure and to construct and maintain a structural plate aluminum arch culvert skewed 65 degrees left ahead having a span of 10.5 feet and a maximum underclearance of 5.5 feet in Stone Creek located 50 feet upstream of Penn Roosevelt Lake (Barrville, PA Quadrangle N: 18.7 inches; W: 10.6 inches) in Harris Township, **Centre County**. Estimated stream disturbance is 25 linear feet; stream classification is High Quality-Cold Water Fishery.

**E17-319.** Encroachment. **PA Dept. of Transportation**, 1924-30 Daisy St., Clearfield, PA 16830. To remove an existing deteriorated structure and to construct and maintain a precast reinforced concrete box culvert with a 13 foot normal span and a 5 foot effective rise plus the associated precast reinforced concrete end sections in Goss Run on a 70 degree skew with SR 2007, Section 230 and is located 114 feet southwest from the intersection with Princess St. (Houtzdale, PA Quadrangle N: 15.75 inches; W: 13.50 inches) in Brisbin Borough, **Clearfield County**. Estimated stream disturbance is 85 linear feet; stream classification is Cold Water Fishery.

**E19-176.** Encroachment. **PA Dept. of Transportation, Engineering Dist. 3-0**, 715 Jordan Ave., Montoursville, PA 17754. To remove the existing structure and to construct and maintain a single span reinforced single span skewed 90 degrees ahead having a clear span of 45.0 feet and an average underclearance of 8.1 feet across East Branch of Briar Creek located 0.1 mile south on SR 1021 (Warren Ave.) from T-469 (Mifflinville, PA Quadrangle N: 11.0 inches; W: 0.8 inch) in the Borough of Berwick and Briar Creek Township, **Columbia County**. This project proposes to permanently impact approximately 60 linear feet of East Branch of Briar Creek which is a Cold Water Fishery.

*Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E03-372.** Encroachment. **Armstrong County Commissioners**, Administration Building, 450 Market Street, Kittanning, PA 16201. To remove the existing structure and to construct and maintain a bridge having a normal

span of 26.213 meters and an underclearance of 2.25 meters across Cowanshannock Creek (TSF) on T-572 (Nulton Bridge) approximately 1,400 feet south of SR 0085 (Mosgrove, PA Quadrangle N: 10.65 inches; W: 5.15 inches) in Rayburn Township, **Armstrong County**.

## WATER ALLOCATIONS

**Applications filed under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.**

*Southcentral Regional Office: Field Operations, Sanitarian Regional Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.*

**WA 28-1005.** Water Allocation. **Franklin County General Authority, Franklin County**. The applicant is requesting the right to withdraw 2.9 million gallons per day from Letterkenny Reservoir (Roxberry Dam) on Conodoguinet Creek.

## ACTIONS

### FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

**[National Pollution Discharge Elimination System Program (NPDES)]**

#### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

**(Part I Permits)**

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).**

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

**NPDES Permit No. PA0091391.** Industrial waste, **Polycum Huntsman, Inc.**, 90 W. Chestnut St., Washington, PA 15301 is authorized to discharge from a facility

located at Plant No. 1, Donora Borough, **Washington County** to Monongahela River.

**NPDES Permit No. PA0204293.** Industrial waste, **Polycom Huntsman, Inc.**, 90 W. Chestnut St., Washington, PA 15301 is authorized to discharge from a facility located at Plant No. 2, Donora Borough, **Washington County** to Monongahela River.

**NPDES Permit No. PA0026514.** Sewage, **West Mifflin Sanitary Sewer Municipal Authority**, 1302 Lower Bull Run Road, West Mifflin, PA 15122 is authorized to discharge from a facility located at Kenmore Sewage Treatment Plant, West Mifflin Borough, **Allegheny County** to Monongahela River.

**NPDES Permit No. PA0034797.** Sewage, **U. S. Department of Justice, Federal Bureau of Prisons**, Northeast Regional Office, U. S. Customs House—7th Floor, Second and Chestnut Sts., Philadelphia, PA 19106 is authorized to discharge from a facility located at Loretto Federal Correctional Institution STP, Allegheny Township, **Cambria County** to Unnamed Tributary of Clearfield Creek.

**NPDES Permit No. PA0091138.** Sewage, **Cecil Township Municipal Authority**, 3655 Millers Run Road, Cecil, PA 15321 is authorized to discharge from a facility located at Teodori Sewage Treatment Plant, Cecil Township, **Washington County** to Chartiers Creek.

**NPDES Permit No. PA0091146.** Sewage, **North Union Township Municipal Services Authority**, 7 South Evans Station Road, Lemont Furnace, PA 15456 is authorized to discharge from a facility located at Industrial Park No. 2 STP, North Union Township, **Fayette County** to Unnamed Tributary of Gist Run.

**NPDES Permit No. PA0094102.** Sewage, **Thom A. Yohe**, 125 Deerfield Road, Washington, PA 15301 is authorized to discharge from a facility located at Airways Mobile Home Park Sewage Treatment Plant, South Franklin Township, **Washington County** to Unnamed Tributary of Chartiers Creek.

**NPDES Permit No. PA0094111-Amendment No. 2.** Sewage, **Rimco Properties, Inc.**, 77 Pine Valley Drive, Pittsburgh, PA 15239 is authorized to discharge from a facility located at Wellington Estates Mobile Home Park, Washington Township, **Westmoreland County**.

**NPDES Permit No. PA0096857.** Sewage, **KRM, Inc.**, 876 Old Route 71, Charleroi, PA 15022 is authorized to discharge from a facility located at Colonial Meadows Sewage Treatment Plant, Fallowfield Township, **Washington County** to Unnamed Tributary of Maple Creek.

**NPDES Permit No. PA0098193-Amendment No. 1.** Sewage, **Gary A. Sippel**, 2593 Wexford-Bayne Road, Sewickley, PA 15143 is authorized to discharge from a facility located at Stone Mansion Sewage Treatment Plant, Franklin Park Borough, **Allegheny County**.

**NPDES Permit No. PA0216071.** Sewage, **Chemply, Division of E&E (US), Inc.**, Elizabeth—Bunola Road, Bunola, PA 15020 is authorized to discharge from a facility located at Chemply Sewage Treatment Plant, Forward Township, **Allegheny County** to Monongahela River.

**NPDES Permit No. PA0217824.** Sewage, **YMCA of Pittsburgh**, 126 Nagle Road, Fombell, PA 16123-9414 is authorized to discharge from a facility located at Camp Kon-O-Kwee/Spencer STP, Marion Township, **Beaver County** to Connoquenessing Creek.

**Permit No. 56217-T1-Amendment No. 2.** Industrial waste, **Consolidated Rail Corporation**, 2001 Market Street 6A, P. O. Box 41406, Philadelphia, PA 19101-1406. Construction of oil-water separator located in the Borough of Cresson, **Cambria County** to serve the Conrail Cresson Rail Yard.

**Permit No. 3290202-Amendment No. 1.** Industrial waste, **Borough of Glen Campbell**, P. O. Box 43, Glen Campbell, PA 15742-0043. Construction of water treatment plant located in the Borough of Glen Campbell, **Indiana County** to serve the Glen Campbell Borough Water Treatment Plant.

**Permit No. 6390201-Amendment No. 1.** Industrial waste, **Cooper Industries, Inc.**, P. O. Box 4446, Houston, TX 77210. Construction of power distribution and specialty transformer located in the Township of Cecil, **Washington County** to serve the Canonsburg Plant—Carbon Absorption Treatment Facility (Outfall 001).

**Permit No. 6397201.** Industrial waste, **Cooper Industries, Inc.**, P. O. Box 4446, Houston, TX 77210. Construction of power distribution and specialty transformer located in the Township of Cecil, **Washington County** to serve the Canonsburg Plant—Oil Removal System (Outfall 002).

**Permit No. 3096401-Amendment No. 1.** Sewerage, **Commonwealth of Pennsylvania, State Correctional Institution**, P. O. Box 598, Camp Hill, PA 17001-0598. Denial of the installation of additional treatment units located in the Township of Morgan, **Greene County** to serve the existing sewage treatment plant.

**Permit No. 6589423-Amendment No. 1-T1.** Sewerage, **Rimco Properties**, 772 Pine Valley Drive, Pittsburgh, PA 15239. Conversion of the existing aeration tank to an equalization tank located in the Township of Washington, **Westmoreland County** to serve the Wellington Estates Mobile Home Park.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 6298401.** Sewage, **Conewango Township Municipal Authority**, 4 Firemans Street, Warren, PA 16365. This project is for the construction of a pump station and all sewers and appurtenances in Conewango Township, **Warren County**.

**WQM Permit No. 2598406.** Sewage, **Scenic Heights Golf Course**, 7616 Knoyle Road, Erie, PA 16510. This project is for the construction of a nine hole golf course consisting of a clubhouse, parking lot and one residential lot in Venango Township, **Erie County**.

**WQM Permit No. 4398410.** Sewerage, **Terrence J. and Patricia A. Collins**, SRSTP, 206 McCullough Rd., Sharpsville, PA 16150. Construction of Terrence J. and Patricia A. Collins SRSTP located in Jefferson Township, **Mercer County**.

**NPDES Permit No. PA0222500.** Industrial waste, **Jay Township Water Authority**, 106B Kennedy Street, Byrnedale, PA 15827 is authorized to discharge from a facility located in Jay Township, **Elk County** to Kersey Run.

**NPDES Permit No. PA0101672.** Sewage, **Crestview Mobile Home Park**, 3599 State Route 322, Williamsfield, OH 44093 is authorized to discharge from a facility located in Vernon Township, **Crawford County** to an unnamed tributary to Van Horne Creek.

**NPDES Permit No. PA0101176.** Sewage. **Harvey J. Wolfe**, 1547 Rosely Rd., St. Marys, PA 15857 is authorized to discharge from a facility located in City of St. Marys, **Elk County** to Unnamed Tributary to the South Fork.

*Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17011, (717) 705-4707.*

**NPDES Permit No. PA0082341.** Sewerage. **Hopewell Borough**, P. O. Box 160, Hopewell, PA 16650 is authorized to discharge from a facility located in Hopewell Borough, **Bedford County** to the receiving waters named Raystown Branch.

**NPDES Permit No. PA0085804.** Sewerage. **Bedford County Air Industrial Park Authority**, P. O. Box 155, Bedford, PA 15522 is authorized to discharge from a facility located in Bedford Township, **Bedford County** to the receiving waters of an unnamed tributary of Brush Run.

**NPDES Permit No. PA0086428.** Sewerage. **Mazza Vineyard, Inc.**, P. O. Box 685, Cornwall, PA 17016 is authorized to discharge from a facility located in Rapho Township, **Lancaster County** to the receiving waters named Chickies Creek.

**NPDES Permit No. PA0034363.** Sewerage. **Pine View Acres**, 686 Bedington Circle, Manheim, PA 17545 is authorized to discharge from a facility located in Penn Township, **Lancaster County** to the receiving waters of an unnamed tributary to Chickies Creek.

**NPDES Permit No. PA0084085.** Sewerage. **Country View Estates MHP**, 105 Carlisle Road, Newville, PA 17241 is authorized to discharge from a facility located in Upper Frankford Township, **Cumberland County** to the receiving waters named Bloser Run.

**NPDES Permit No. PA0040541.** Sewerage. **Boyertown Area School District**, 911 Montgomery Avenue, Boyertown, PA 19512-9607 is authorized to discharge from a facility located in Earl Township, **Berks County** to the receiving waters of an unnamed tributary of Oysterville Creek.

**NPDES Permit No. PA0087459.** Sewerage. **Triple Crown Corporation**, 5351 Jaycee Avenue, Harrisburg, PA 17112 is authorized to discharge from a facility located in Centre Township, **Perry County** to the receiving waters of an unnamed tributary of Trout Run.

**NPDES Permit No. PA0085243.** Sewerage. **Manns Choice-Harrison Township Joint Municipal Authority**, P. O. Box 28, Manns Choice, PA 15550 is authorized to discharge from a facility located in Manns Choice Borough, **Bedford County** to the receiving waters named Raystown Branch of the Juniata River.

**NPDES Permit No. PA0021563.** Sewerage. **Gettysburg Municipal Authority**, 601 East Middle Street, P. O. Box 3307, Gettysburg, PA 17325-3307 is authorized to discharge from a facility located in Cumberland Township, **Adams County** to the receiving waters named Rock Creek.

**NPDES Permit No. PAG053519.** General Permit. **Redner's Markets Inc.**, Three Quarry Road, Reading, PA 19605 is authorized to discharge from a facility located in Bethel Township, **Lebanon County** to the receiving waters of an unnamed tributary to Beach Run.

**NPDES Permit No. PA0085561.** Industrial waste. **Wissahickon Spring Water, Inc.**, 10447 Drummond Road, Philadelphia, PA 19154 is authorized to discharge

from a facility located in Rapho Township, **Lancaster County** to the receiving waters of an unnamed tributary of Chickies Creek.

**NPDES Permit No. PA0087734.** Industrial waste. **The Marietta Gravity Water Company**, Route 441, Box 302, Marietta, PA 17547 is authorized to discharge from a facility located in Hellam Township, **York County** to the receiving waters named Dugan Run.

**NPDES Permit No. PA0007862.** Industrial waste. **Pennsylvania American Water Co.**, 800 West Hershey Park Drive, Hershey, PA 17033 is authorized to discharge from a facility located in Fairview Township, **York County** to the receiving waters named Yellow Breeches Creek.

**NPDES Permit No. PA0119121.** Industrial waste. **Glen Gery Corporation**, 423 Pottsville Pike, Shoemakersville, PA 19555 is authorized to discharge from a facility located in Perry Township, **Berks County** to the receiving waters of an unnamed tributary to the Schuylkill River.

**NPDES Permit No. PA0070319.** Industrial waste. **Reading-Berks Fire Training Center**, 895 Morgantown Road, R. D. 1, Reading, PA 19607 is authorized to discharge from a facility located in Reading City, **Berks County** to the receiving waters named Angelica Creek.

**NPDES Permit No. PA0087416, Amendment No. 1.** Industrial waste. **Schmidt Baking Company**, 7801 Fitch Lane, Baltimore, MD 21238 is authorized to discharge from a facility located in Manchester Township, **York County**.

**NPDES Permit No. PA0083542, Amendment No. 1.** Industrial waste. **Flight Systems Inc.**, 505 Fishing Creek Road, Lewisburg, PA 17339 is authorized to discharge from a facility located in Silver Spring Township, **Cumberland County** to a drainage ditch to Hogestown Run.

**NPDES Permit No. PA0044911, Amendment No. 2.** Industrial waste. **Land O'Lakes, Inc.**, P. O. Box 116, Minneapolis, MN 55440-0116 is authorized to discharge from a facility located in South Middleton Township, **Cumberland County** to the receiving waters named Mountain Creek.

**Permit No. 0794402-98-1.** Sewerage. **Duncansville Municipal Authority**, P. O. Box 502, Duncansville, PA 16635-1349. Modification to the construction of sewage treatment facilities in Duncansville Borough, **Blair County**.

**Permit No. 5098401.** Sewerage. **Meadow View Village Mobile Home Park**, 5351 Jaycee Avenue, Harrisburg, PA 17112. Construction of sewage treatment facilities in Centre Township, **Perry County**.

**Permit No. 3698401.** Sewerage. **Lancaster Municipal Authority**, 120 North Duke Street, P. O. Box 1599, Lancaster, PA 17608-1599. Modification to the operation of pump station in Lancaster Township, **Lancaster County**.

**Permit No. 0698401.** Sewerage. **Municipal Authority of the Township of Spring**, 2800 Shillington Road, Reading, PA 19608. Construction of pump station in Spring Township, **Berks County**.

**Permit No. 0197405.** Sewerage. **Timeless Towns of the Americas, Inc.**, 2636 Emmitsburg Road, Gettysburg,

PA 17325. Modification to the construction of sewage treatment facilities in Cumberland Township, **Adams County**.

**Permit No. 0197406.** Sewerage. **New Oxford Municipal Authority**, 409 Water Works Road, New Oxford, PA 17340-1511. Construction of sewage treatment facilities and pump stations in Oxford Township, **Adams County**.

**Permit No. 667S508 T-1, Amendment No. 98-1.** **Halifax Municipal Authority**, Box 443, Halifax, PA 17032. The construction of sewage treatment facilities and pump station in Halifax Township, **Dauphin County**.

**Permit No. 0586401, Amendment No. 1.** **Hopewell Borough**, P. O. Box 160, Hopewell, PA 16650. Modification to the construction of sewage treatment facilities in Hopewell Borough, **Bedford County**.

**Permit No. 5090402, Amendment No. 1.** **Loysville Village Municipal Authority**, P. O. Box 133, Loysville, PA 17047. Construction of equalization basin in Tyrone Township, **Perry County**.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County Municipality</i>	<i>Receiving Stream</i>
PAS10-G291	BJ Dueding Builders, Inc. 531 East Lancaster Avenue St. Davids, PA 19087	Tredyffrin Twp. Chester County	Valley Creek
PAS10-J042	Rose Tree Media School District 901 North Providence Road Media, PA 19063	Middletown Twp. Delaware Co.	Unnamed Tributaries to Ridley Crk. and Dismal Run

*Southcentral Regional Office: Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

**PAS-10-C018.** Individual NPDES. **Flory & Wolfe Builders**, R. R. 1, Box 461, Bernville, PA 19506. To implement an erosion and sedimentation control plan for a residential subdivision on 54.3 acres in Muhlenberg Township, **Berks County**. The project is located north of Rivervale Drive and east of Stoudts Ferry Bridge Road (Temple, PA Quadrangle N: 5.7 inches; W: 11.0 inches). Drainage will be to the Schuylkill River.

**PAS-10-C034.** Individual NPDES. **Forino Developers Company**, 3000 Penn Avenue, West Lawn, PA 19609. To implement an erosion and sedimentation control plan for the construction of a residential subdivision on 252.3 acres in Spring Township, **Berks County**. The project is located on the north side of Fritztown Road (SR 3016) and east of Fritztown (Sinking Spring, PA Quadrangle N: 8.7 inches; W: 8.7 inches). Drainage will be to Cacoosing Creek.

**PAS-10-C036.** Individual NPDES. **Wagner Farm Development, Inc.**, 2229 Creekhill Road, Lancaster, PA 17601. To implement an erosion and sedimentation control plan for the Wagner Farm Development on 53.55 acres in Sinking Spring Borough and Spring Township, **Berks County**. The project is located at the intersection of Iroquois Avenue and Windmill Road (Sinking Spring, PA Quadrangle N: 12.5 inches; W: 2.3 inches). Drainage will be to Cacoosing Creek.

**INDIVIDUAL PERMITS (PAS)**

**The following approvals for coverage under NPDES Individual Permit for Discharge of Stormwater from Construction Activities have been issued.**

These actions of the Department of Environmental Protection (Department) may be appealed to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483, by an aggrieved person under the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Appeals must be filed with the Board within 30 days from the date of this issue of the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Department's regulations governing practice and procedure before the Board may be obtained from the Board.

*Southeast Regional Office: Regional Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**INDIVIDUAL PERMITS (PAR)**

The following parties have submitted Notices of Intent (NOIs) for Coverage under (1) General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania. The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection approves the following coverages under the specified General Permit.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangement made for copying at the contact office noted.

*List of NPDES and/or other  
General Permit Type*

PAG-1	General Permit For Discharges From Stripper Oil Well Facilities
PAG-2	General Permit For Discharges of Stormwater From Construction Activities
PAG-3	General Permit For Discharges of Stormwater From Industrial Activities
PAG-4	General Permit For Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit For Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit For Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application
PAG-8	General Permit For Beneficial Use of Non-Exceptional Quality Sewage Sludge By Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

*General Permit Type—PAG-2*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Lackawanna Co. Scranton City	PAR10N060	Dr. John R. Williams Scranton School District 425 N. Washington Ave. Scranton, PA 18503	Lackawanna River	Lackawanna CD (717) 587-2607
Luzerne Co. Wright Twp.	PAR10R145	Caradon Mideast Aluminum Crestwood Ind. Park 330 Elmwood Dr. Mountaintop, PA	Bow Creek	Luzerne CD (717) 674-7991
Snyder Co. Middlecreek Twp.	PAR105903R	Joseph E. Ulrich R. R. 2, Box 191 Selinsgrove, PA 17870	Unt. Monongahala Crk.	Snyder CCD 403 W. Market St. Middleburg, PA 17842
Caernarvon Township Berks Co.	PAR-10-211	Penn Wynne Homes Inc. 7 Wynnewood Rd., Suite 203 Wynnewood, PA 19096	UNT Conestoga River	Berks County CD P. O. Box 520 1238 County Welfare Rd. Leesport, PA 19533 (610) 372-4657
Lower Paxton Twp. Dauphin Co.	PAR-10-I145	Kase Farm Associates P. O. Box 0888 Camp Hill, PA 17001-0888	Beaver Creek	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Lower Paxton Twp. Dauphin Co.	PAR-10-I146	Benjamin Slotznick P. O. Box 23 Mt. Gretna, PA 17064	Paxton Crk.	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Middle Paxton Twp. Dauphin Co.	PAR-10-I142	Country Club of Harrisburg 401 Fishing Creek Valley Road Harrisburg, PA 17112	Fishing Creek	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Lower Paxton Twp. Dauphin Co.	PAR-10-I143	Eastern Development & Planning Inc. 7300 Derry St. Harrisburg, PA 17111	Beaver Crk.	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100



<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Middle Paxton Twp. Dauphin Co.	PAR-10-I141	Angino & Rovener 4503 North Front St. Harrisburg, PA 17110-1708	Fishing Crk.	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Metal Township Franklin Co.	PAR-10-M150	Metal Township Municipal Authority P. O. Box 216 Willow Hill, PA 17271	West Branch Conococheague Crk.	Franklin County CD 550 Cleveland Ave. Chambersburg, PA 17201 (717) 264-8074
East Hempfield Twp. Lancaster Co.	PAR-10-O-300	Creek LLC 214A Willow Valley Lakes Drive Willow Street, PA 17584	Little Conestoga Crk.	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
Ephrata Twp. Lancaster Co.	PAR-10-O-300	Spring Glen Fresh Foods 314 Spring Glen Dr. Ephrata, PA 17522	UNT Conestoga Crk.	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
West Lampeter Twp. Lancaster Co.	PAR-10-O-306	Charlan Group Inc. 1085 Manheim Pike Lancaster, PA 17601	UNT Big Spring Run Mill Creek	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
West Lampeter Twp. Lancaster Co.	PAR-10-O-307	Kusan Development Corp. 2938 Columbia Avenue, Suite 402 Lancaster, PA 17603	Little Conestoga Crk.	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
Ephrata Twp. Lancaster Co.	PAR-10-O-308	Raymond S. Horst & Son 930 East Main St. New Holland, PA 17557	Cocalico Crk.	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
Warwick Twp. Lancaster Co.	PAR-10-O-309	Crown Properties 1891 Santa Barbara Dr. Lancaster, PA 17601	Santo Domingo Crk.	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
East Marlborough Twp. Chester Co.	PAR10-G264	New Bolton Center 382 West Street Rd. Kennett Square, PA	South Branch Red Clay Crk.	Southeast Regional Office 555 North Lane, Suite 6010, Lee Park Conshohocken, PA 19428 (610) 832-6131
East Bradford Twp.	PAR10-G271	West Glen, Inc. 115 Birmingham Rd. West Chester, PA	Blackhorse Run	Southeast Regional Office 555 North Lane, Suite 6010, Lee Park Conshohocken, PA 19428 (610) 832-6131

*General Permit Type—PAG-3*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Allegheny County Moon Twp.	PAR806184	PA Air National Guard Base 300 Tanker Rd. Coraopolis, PA 15108	McClarens Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Dr. Pittsburgh, PA 15222-4745 (412) 442-4000
Fairview Twp. Erie Co.	PAR218316	Elk Creek Ready Mix P. O. Box 182 Girard, PA 16417	Unnamed Tributary to Trout Run	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335 (814) 332-6942

*General Permit Type—PAG-04*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Cumberland Co. Upper Frankford Twp.	PAG043592	Carrie Forry-Roush 3614 Cloverfield Rd. Harrisburg, PA 17109	UNT to Conodoguinet Crk.	Southcentral Region 909 Elmerton Ave. Harrisburg, PA 17110 (717) 705-4707
Bedford Co. W. Providence Twp.	PAG043593	Gilbert Davis HCR-6, Box 53 Everett, PA 15537-0053	UNT to Clear Creek	Southcentral Region 909 Elmerton Ave. Harrisburg, PA 17110 (717) 705-4707
Jefferson Twp. Mercer Co.	PAG048494	Terrence J. and Patricia A. Collins 206 McCullough Rd. Sharpsville, PA 16150	Tributary Shenango Reservoir	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG 8*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
East Pennsboro Twp. Cumberland Co.	PAG-08-3515	East Pennsboro Township WWTP 21 East Dulles Dr. Camp Hill, PA 17011-1108		Southcentral Region 909 Elmerton Ave. Harrisburg, PA 17110

*General Permit Type—PAG 9*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Upper Mifflin Twp. Cumberland Co.	PAG-09-3511	Groff's Septic Service 99 Ickes Land Newville, PA 17241		Southcentral Region 909 Elmerton Ave. Harrisburg, PA 17110

**SEWAGE FACILITIES ACT  
PLAN APPROVAL**

**Plan approval granted under the Pennsylvania  
Sewage Facilities Act (35 P. S. §§ 750.1—750.20).**

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

*Location: Greenfield Township, Blair County, R. D. 1,  
Box 948, Claysburg, PA 16625.*

The approved plan provided for minor changes to pump station locations and sewer line alignments consisting of (1) elimination of existing Pump Station No. 2, the proposed pump station for the TR312 drainage area and

conveyance by gravity to an existing interceptor; (2) reconfiguration of the proposed sewer extension north of Friesville to provide service to an additional 12 customers; and (3) providing service to an additional three customers located west of Hillsboro Estates. The Department'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.

**SAFE DRINKING WATER**

**Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

*Regional Office: Sanitarian Regional Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.*

**Permit No. 3897501.** Public water supply. **Peter B. Shirk**, Millcreek Township, **Lebanon County**. *Responsible Official:* Peter B. Shirk, Owner, R. D. 2, Box 62A, Denver, PA 17517. *Type of Facility:* Installation of well pump, disinfection system, transmission main and finished water storage for Newberg Village Well A (Well No. 5).

**Permit No. 3697509.** Public water supply. **Northwestern Lancaster County Authority**, Penn Township, **Lancaster County**. *Responsible Official:* Robert Tucci, Chairperson, 97 North Penryn Road, Manheim, PA 17545. *Type of Facility:* The addition of a new well and related treatment to augment the existing PWS system. Proposal includes approximately 3,600 feet of water line, manganese removal and disinfection treatment and the new well.

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

**Permit No. 0298503-C1.** Public water supply. **Municipal Authority of the Borough of West View**, 210 Perry Highway, Pittsburgh, PA 15229.

*Type of Facility:* Designation of water quality parameter performance requirements.

*Permit to Operate Issued:* May 5, 1998.

**Permit No. 2691502-C1.** Public water supply. **Municipal Authority of Westmoreland County**, P. O. Box 730, Greensburg, PA 15601.

*Type of Facility:* Designation of water quality parameter performance requirements.

*Permit to Operate Issued:* May 5, 1998.

**Permit No. 0298501-C1.** Public water supply. **Wilkesburg-Penn Joint Water Authority**, 2200 Robinson Boulevard, Pittsburgh, PA 15221-1193.

*Type of Facility:* Designation of water quality parameter performance requirements.

*Permit to Operate Issued:* April 28, 1998.

**Permit No. 1197505.** Public water supply. **Gallitzin Water Authority**, 702 Jackson Street, Gallitzin, PA 16641.

*Type of Facility:* Sodium Bicarbonate for corrosion control and Potassium Permanganate for manganese treatment.

*Permit to Operate Issued:* April 28, 1998.

## **SOLID AND HAZARDOUS WASTE RESIDUAL WASTE PROCESSING FACILITIES**

**Permits revoked under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate solid waste processing or disposal area or site.**

*Regional Office: Regional Solid Waste Manager, Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428.*

**Permit No. 301243. Soil Remediation Systems, Inc.**, Front and Thurlow Streets, Chester, PA 19013. This permit has been revoked at the permittee's request, because Soil Remediation Systems, Inc. was never con-

structed in the City of Chester, **Delaware County**. Permit revoked in the Southeast Regional Office on April 30, 1998.

### **Permit Modifications (Forms Q) Granted to Authorize Alternatives to the Design Requirements in the Residual Waste Regulations**

In addition to the alternate designs approved under the municipal waste program, the following alternate designs have been approved by the Department under § 287.231 of the residual waste regulations. Any proposed equivalency, even if it's on the approved lists, must be submitted as a minor permit modification, and the applicant must demonstrate the alternate design will work in the proposed location and under the conditions included in the original equivalency approval. Please contact the Regional Solid Waste Manager in the appropriate regional office for site-specific issues and/or special conditions.

*Regional Office: Southcentral Regional Office, 909 Elmerton Ave., Harrisburg, PA 17110:*

1. Final cover:

Final cover slope of 50% at foundry waste landfill (Process Recovery Corporation).

2. Intermediate Cover:

Direct (soil-less) revegetation of fly/bottom ash as intermediate cover (PA Power & Light Company—Holtwood SES Ash Basin No. 2).

*Regional Office: Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701:*

1. Leachate Detection Zone

a. A leachate detection zone consisting of one layer of geonet composite (geonet heat laminated to two 8 oz/yd<sup>2</sup> needle punched non-woven geotextiles) on the cell side slopes and one layer of geonet on the cell floor. The LDZ does not have a piping system. (White Pines Landfill)

b. Geotextile/geonet/geotextile (GPU/GENCO—Shawville Plant)

2. Protective Cover/Leachate Collection System:

a. A protective cover and leachate collection material meeting the following specifications (White Pines Landfill):

i. Gradation of the protective cover material shall be AASHTO No. 57 as specified in Table 703.2(c) of PennDot Publication 408.

ii. The protective cover material shall be hard, durable coarse aggregate meeting the Type A quality requirements for coarse aggregates specified in Section 703.2 of PennDot Publication 408.

iii. The protective cover material shall be non-calcareous and the use of slag is not permitted.

iv. The protective cover material shall have a carbonate content of less than or equal to 15% as determined by ASTM D-3042-86.

v. The protective cover material shall be non-angular. Acceptable material shall be sub-angular, sub-rounded, and rounded aggregates as defined by Section 10.1 of ASTM D2488.

In addition to the material specifications stated above for the aggregate material, the protective cover and leachate collection system shall consist of an AMOCO 4516, 16 oz/yd<sup>2</sup> geotextile to be located directly over the primary liner. As part of this equivalency approval, a

static load test was performed to evaluate the impact the protective cover has on the liner system.

b. 4 feet of bottom ash underlain by a geotextile/geonet/geotextile layer (GPU/GENCO—Shawville Plant).

3. Alternate Daily Cover

- Rusmar AC-645 Long Duration Foam (White Pines Landfill).

4. Final Cover:

- Direct revegetation of lime in lieu of placing final cover. The lime is amended with sewage sludge compost. This equivalency was approved after a demonstration project involving several test plots was completed. (Bellefonte Lime)

*Regional Office: Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222-4745:*

1. Final Cover

(a) soil texture use clay loam, silty clay and sandy clay with <45% clay in fine earth fraction (Armstrong)

(b) soil thickness: 18 inch final cover with total plant available water storage equivalent to 24 inches of soil specified by regulations (Armstrong)

2. Subbase

- permeability: 10-4 cm/sec with 60 mil HDPE liner and meets other design requirements (Armstrong)

3. Leachate Detection Zone

- (a) geonet with geotextile above and below (composite liner) (Armstrong)

4. Leachate Collection Zone

- (a) double layer of geonet with geotextile above and modified pipe system (Armstrong)

5. Protective Cover

- (a) 12 inches of bottom ash and 12 inches of sand (Armstrong)

6. Grading

- (a) benches 20 feet wide every 25 feet of rise for overall 33% slope (Armstrong)

*Regional Office: Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16334-3581:*

- A double layer of geonet in the detection zone (Witco Corp. Landfill).

**OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE**

**Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

*Regional Office: Regional Solid Waste Manager, Lee Park, 555 North Lane, Suite 6010, Conshohocken, PA 19428.*

**Permit No. 400691. Upper Moreland Hatboro Joint Sewer Authority**, 2875 Terwood Road, Willow Grove, PA 19090-0535. This permit was approved for the permitting of an existing municipal sewage sludge incinerator located in Upper Moreland Township, **Montgomery County**. Permit issued in the Southeast Regional Office on April 30, 1998.

*Southcentral Regional Office: Regional Solid Waste Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4706.*

**Permit No. 301316. Keystone Environmental Services Transfer Station, Keystone Environmental Service, Inc.** (1,100 S. Pottsville Pike, Shoemakersville, PA 19555). Application for construction and operation of a residual waste transfer station located in Perry Township, **Berks County**. Permit issued in the Regional Office April 30, 1998.

**Permit No. 602247. A & M Composting, A & M Composting Inc.** (2022 Mountain Road, Manheim, PA 17545). Application for permit modification for the addition of a sludge receiving basin and Windrow Exhaust Collection System. Permit issued in the Regional Office April 29, 1998.

*Northwest Regional Office: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6848.*

**Permit No. 300995. Witco Chemical Corporation**, One Witco Lane, Petrolia, PA 16050, located in Fairview Township, **Butler County**. A permit was reissued to Witco Corporation to operate a captive Class I residual waste landfill at the Petrolia Plant in the Regional Office on April 30, 1998.

**Permits revoked under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate solid waste processing or disposal area or site.**

*Southcentral Regional Office: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4706.*

**Permit No. 602622. Rose Tree Farm, BFI, Inc.** (Mineview Drive, P. O. Box 128, Morgantown, PA 19543). This permit has been revoked at the applicant's request located in Union Township, **Berks County**. Permit revoked in the Regional Office on April 20, 1998.

**Permit No. 603356. Esbenshade Farm, BFI, Inc.** (Mineview Drive, P. O. Box 128, Morgantown, PA 19543). This permit has been revoked at the applicant's request located in East Drumore Township, **Lancaster County**. Permit revoked in the Regional Office on April 20, 1998.

**Permit No. 603222. Woodland Camp and Trailer Park, Groff's Septage Service** (99 Ickes Lane, Newville, PA 17241). This permit has been revoked at the applicant's request located in Toboyne Township, **Perry County**.

## AIR RESOURCES

### OPERATING PERMITS

**General Plan Approval and Operating Permit issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**GP-03-00153: Seven Sisters Mining Co., Inc.** (Box 147 Star Route, Spring Church, PA 15686) issued May 7, 1998, for the operation of nonmetallic mineral processing facility at Coleman Mine in South Bend Township, **Armstrong County**.

**GP-26-00485: Douglas Oil & Gas, Inc.** (400 Southpointe Blvd., Canonsburg, PA 15317) issued May 7, 1998, for the operation of a gas compressor station at Vanderbilt Station in Dunbar Township, **Fayette County**.

**Administrative Amendment of Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**CP-46-0005: Merck & Company, Inc.** (770 Sumneytown Pike, West Point, PA 19486) issued April 21, 1998, for Facility VOCs/Nox RACT in Upper Gwynedd Township, **Montgomery County**.

**23-301-099A: Foamex, L. P.** (1500 East Second Street, Eddystone, PA 19013) revoked May 5, 1998, for an incinerator in Eddystone Borough, **Delaware County**.

**Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**46-310-019B: Highway Materials, Inc.** (1128 Crusher Road, Perkiomenville, PA 18074) issued for the operation of a stone crusher in Marlborough Township, **Montgomery County**.

**09-399-025: Air Liquide America Corp, Alphagaz Division** (19 Steel Road West, Morrisville, PA 19067) issued for the operation of a specialty gas facility in Falls Township, **Bucks County**.

**46-399-113: Ford Electronics & Refrigeration Corp.** (2750 Morris Road, Lansdale, PA 19446) issued for the operation of two selective soldering machines in Worcester Township, **Montgomery County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**49-318-033: Shumaker Industries, Inc.** (P. O. Box 206, Northumberland, PA 17857) issued April 21, 1998, for the operation of a shotblasting and miscellaneous metal parts and products surface coating operation in Northumberland Borough, **Northumberland County**.

**41-309-004: P Stone, Inc.** (P. O. Box 254, Jersey Shore, PA 17740) issued April 21, 1998, for the operation of an agricultural limestone production facility and a fabric collector in Limestone Township, **Lycoming County**.

**55-302-013: Cherry Hill Hardwoods, Inc.** (R. R. 1, Box 900, Richfield, PA 17086) issued April 21, 1998, for the operation of a 9.6 million btu/hour wood-fired boiler and a multitube mechanical collector in West Perry Township, **Snyder County**.

**19-319-001: Schultz Electroplating, Inc.** (R. R. 5, Box 195, Bloomsburg, PA 17815-8942) issued April 28, 1998, for the operation of two hard chromium electroplating baths and a composite mesh pad mist eliminator in South Centre Township, **Columbia County**. These elec-

troplating baths are subject to Subpart N of the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 63.

*Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**63-303-007: Commercial Stone Co., Inc.** (2200 Springfield Pike, Connellsville, PA 15425) issued May 7, 1998, for the installation of bituminous asphalt manufacturing at Dunningsville in Somersett Township, **Washington County**.

**63-313-027A: Ametek, Inc.** (P. O. Box 427, Eighty Four, PA 15330) issued for the installation of a water atomization process at the Specialty Metal Products Division in North Strabane Township, **Washington County**.

**OP-63-00654: Elliott Turbomachinery Co., Inc.** (213 Scott Street Ext., Donora, PA 15033) issued May 7, 1998, for repair services at Elliott Support Services in Donora Borough, **Washington County**.

**OP-26-00020: Commercial Stone Co., Inc.** (2200 Springfield Pike, Connellsville, PA 15425) issued May 7, 1998, for the installation of limestone processing at Rich Hill in Bullskin Township, **Fayette County**.

**OP-56-00145: Berlin Brothersvalley School District** (1025 East Main Street, Berlin, PA 15530) issued May 7, 1998, for the installation of school boilers at the Elementary School in Berlin Borough, **Somerset County**.

#### PLAN APPROVALS

**Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**PA-46-0005E: Merck & Co., Inc.** (770 Sumneytown Pike, West Point, PA 19486) issued April 20, 1998, for the operation of a waste heat incinerator in Upper Gwynedd Township, **Montgomery County**.

**PA-23-0006B: Foamex LP** (1500 E. Second Street, Eddystone, PA 19022) issued April 28, 1998, for the operation of a felt press (E5) in Eddystone Borough, **Delaware County**.

**23-313-003C: Esschem, Inc.** (4000 Columbia Avenue, Linwood, PA 19061) issued April 29, 1998, for the operation of a methacrylate based polymer process in Lower Chichester Township, **Delaware County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**06-1007M: Carpenter Technology Corp.** (P. O. Box 14662, Reading, PA 19612-4662) issued April 27, 1998, for construction of the batch reheat furnace F-830 low Nox burners at Building 84 in Reading/Muhlenberg Township, **Berks County**.

**06-1069A: East Penn Mfg. Co., Inc.** (P. O. Box 147, Lyon Station, PA 19536-0147) issued April 27, 1998, construction of the wastewater treatment plant controlled by three fabric collectors in Richard Township, **Berks County**. This source is subject to 40 CFR 60, Subpart E, Standards of Performance for New Stationary Sources.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**08-302-038A: Leprino Foods Co.** (117 Bradford Street, South Waverly, PA 18840) issued April 14, 1998, for the construction of a 20.9 million btu per hour natural gas/no. 6 fuel oil fired boiler in South Waverly Borough, **Bradford County**.

**41-302-044B: Koppers Industries, Inc.** (P. O. Box 189, Montgomery, PA 17752) issued April 14, 1998, for the modification to increase allowable 3 hour carbon monoxide emission limit of a creosoted woodwaste fired cogeneration boiler and an electrostatic precipitator in Clinton Township, **Lycoming County**.

**49-309-007J: Meckley's Limestone Products, Inc.** (R. D. 1, Box 950, Herndon, PA 17830) issued April 15, 1998, for the construction of a screen and two conveyors in a stone crushing plant in Lower Mahanoy Township, **Northumberland County**. The screen and two conveyors are subject to Subpart OOO of the Federal Standards of Performance for New Stationary Sources.

**41-304-014B: Andritz, Inc.** (Sherman Street, Muncy, PA 17756) issued April 29, 1998, for the installation of a fabric collector on an iron castings finishing area in Muncy Borough, **Lycoming County**.

*Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**PA-63-565A: Washington Penn Plastic Co., Inc.** (2080 N. Main Street, Washington, PA 15301) issued May 7, 1998, for installation of an extrusion line at Performance Products in South Strabane Township, **Washington County**.

**PA-63-626A: Washington Penn Plastic Co., Inc.** (2080 N. Main St., P. O. Box 236, Washington, PA 15301) issued May 7, 1998, for installation of a banbury extruder line at V-Bat Division in Canton Township, **Washington County**.

**PA-04-044A: Zinc Corp. of America** (300 Frankfort Road, Monaca, PA 15061) issued May 7, 1998, for the construction of a zinc high grade column no. 29 at the Monaca Zinc Smelter in Porter Township, **Beaver County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA-43-290A: Winner Steel Services, Inc.** (277 Sharpsville Avenue, Sharon, PA 16146) issued April 19, 1998, for the construction of a galvanizing line furnace in Sharon, **Mercer County**.

**PA-20-232A: Meadville Plating Co.** (10775 Franklin Pike, Meadville, PA 16335) issued May 4, 1998, for the installation of a packed bed scrubber in West Mead Township, **Crawford County**.

**PA-25-028B: International Paper Co.** (1540 East Lake Road, Erie, PA 16533) issued May 4, 1998, for the installation of a lime silo and lime slaker in Erie, **Erie County**.

**PA-43-170A: Werner Co., Greenville Division** (93 Werner Road, Greenville, PA 16125) issued May 4, 1998, for the installation of a pultrusion process in Sugar Grove Township, **Mercer County**.

**Plan Approvals extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**15-317-020: Bakery Feeds, Inc.** (4221 Alexandria Pike, Cole Spring, KY 41076) issued November 30, 1997, for the operation of a bakery waste plant in Honeybrook Township, **Chester County**.

**15-314-004: Norwood Industries, Inc.** (57 Morehall Road, East Whiteland, PA 19355) issued April 21, 1998, for the operation of a dust collector in East Whiteland Township, **Chester County**.

**15-314-003: Norwood Industries, Inc.** (57 Morehall Road, East Whiteland, PA 19355) issued April 21, 1998, for the operation of a six storage tanks in East Whiteland Township, **Chester County**.

**15-314-002: Norwood Industries, Inc.** (57 Morehall Road, East Whiteland, PA 19355) issued April 21, 1998, for the operation of a medical device manufacturing process in East Whiteland Township, **Chester County**.

**15-301-071A: Wyeth-Ayerst Laboratories, Inc.** (31 Morehall Road, Paoli, PA 19301) issued April 21, 1998, for the operation of a waste incinerator in East Whiteland Township, **Chester County**.

**46-308-018: Hale Products, Inc.** (700 Spring Mill Avenue, Conshohocken, PA 19428) issued April 29, 1998, for the operation of a non-ferrous induction furnace in Plymouth Township, **Montgomery County**.

**09-318-074: RAMA Display Corporation** (780 Haunted Lane, Bensalem, PA 19020) issued April 29, 1998, for the operation of a fabric filter adhesives spray booth in Bensalem Township, **Bucks County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**21-312-021: Scranton-Altoona Terminals Corp.** (P. O. Box 2621, Harrisburg, PA 17105) granted May 1, 1998, to authorize temporary operation of the petroleum product loading rack (gasoline, diesel and No. 2 fuel oil) controlled by a vapor combustion unit covered by this Plan Approval until August 28, 1998, at their Mechanicsburg Terminal-Texaco Road, in Silver Spring Township, **Cumberland County**. This source is subject to 40 CFR 60, Subpart XX, Standards of Performance for New Stationary Sources.

**67-310-004F: Medusa Minerals Co.** (P. O. Box 220, Thomasville, PA 17364) granted April 1, 1998, to authorize temporary operation of the secondary crusher and screening circuit covered by this Plan Approval until July 29, 1998, in Jackson Township, **York County**.

*Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**PA-32-040A: GPU Generation, Inc.** (1001 Broad Street, Johnstown, PA 15907) issued May 7, 1998, for the installation of Boiler 15 at the Seward Station in East Wheatfield Township, **Indiana County**.

**65-307-054B: Teledyne Inc.** (P. O. Box 151, Latrobe, PA 15650) issued May 7, 1998, for the construction of an EAF oxygen lance and AOD vessel at the Teledyne Allvac facility in Derry Township, **Westmoreland County**.

**65-307-076: Allegheny Ludlum Steel Corp.** (100 River Road, Brackenridge, PA 15014) issued May 7, 1998, for the installation of a no. 91 anneal and pickle line at the Vandergrift Plant in Vandergrift Borough, **Westmoreland County**.

**26-305-034: Canestrале Contracting, Inc.** (P. O. Box 234, Belle Vernon, PA 15012) issued May 7, 1998, for the construction of a loading/unloading/stockpiling facility at the LaBelle Site in Luzerne Township, **Fayette County**.

**PA-56-263A: Penn Coal, Inc.** (214 College Park Plaza, Johnstown, PA 15904) issued May 7, 1998, for the installation of a coal screening facility at Sarah Mine in Jenner Township, **Somerset County**.

**56-322-002: Shade Landfill, Inc.** (Pk W Two, Ste. 420, 2000 Cliff Mine Road, Pittsburgh, PA 15275) issued May 7, 1998, for the construction of a landfill gas management system in Shade Township, **Somerset County**.

**63-307-023B: Lukens Steel Company** (P. O. Box 494, Washington, PA 15301) issued May 7, 1998, for the construction of a vessel/ladle lancing area at the Houston Plant in Houston Borough, **Westmoreland County**.

**65-309-061B: Norton Pakco Industrial Ceramics** (55 Hillview Avenue, Latrobe, PA 15650) issued May 7, 1998, for the operation of a ceramic mixing and firing facility at the Derry Plant in Derry Township, **Westmoreland County**.

**PA-63-101A: Maple Creek Mining, Inc.** (981 Route 917, Bentleyville, PA 15314) issued May 7, 1998, for the operation of a coal storage area at the Maple Creek Preparation Plant in New Eagle Borough, **Washington County**.

**56-307-001F: First Miss Steel, Inc.** (230 Box 509, Hollsopple, PA 15935) issued May 7, 1998, for the operation of an oxygen converter at the Stony Creek Plant in Quemahoning Borough, **Somerset County**.

**65-305-051: Canestrале Yards** (P. O. Box 396, Chagrin Falls, OH 44022) issued May 7, 1998, for the operation of coke processing at the Canestrале Yards in Rostraver Township, **Westmoreland County**.

**63-307-023A: Lukens Steel Co.** (P. O. Box 494, Washington, PA 15301) issued May 7, 1998, for the operation of two electric arc furnaces (EAF) at the Houston Plant in Houston Borough, **Washington County**.

**PA-63-110B: Corning Consumer Products Co.** (100 8th Street, Charleroi, PA 15022) issued May 7, 1998, for the operation of a Glass Melting Tank 56 at the Charleroi Plant in Charleroi Borough, **Washington County**.

**PA-65-093A: Hyde Park Foundry** (Railroad Street, P. O. Box 187, Hyde Park, PA 15641) issued May 7, 1998, for the operation of a magnesium inoculation at the National Roll Company in Hyde Park Borough, **Westmoreland County**.

**63-307-027: American Iron Oxide Co.** (Foster Plaza, # 7, 661 Andersen Drive, Pittsburgh, PA 15220) issued May 7, 1998, for the operation of iron oxide production at the Allenport Plant in Allenport Borough, **Washington County**.

**32-000-200: Indiana University of Pennsylvania** (425 Pratt Drive, Indiana, PA 15705) issued May 7, 1998, for the operation of a cogeneration facility at S. W. Jack Cogeneration Plant in Indiana, **Indiana County**.

## REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)

**Administrative Amendment of Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations for an Operating Permit to comply with 25 Pa. Code § 127.450 for Reasonable Available Control Technology.**

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**OP-46-0031: SmithKline Beecham Research Co.** (1250 S. Collegeville Road, Collegeville, PA 19426) revised May 1, 1998, for Facility NOx RACT in Upper Providence Township, **Montgomery County**.

**OP-23-0006A: Foamex International, Inc.** (1500 East Second Street, Eddystone, PA 19022) revised May 5, 1998, for Facility VOC/NOx RACT in Eddystone Borough, **Delaware County**.

## MINING

### APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

#### Coal Permits Issued

**56920110. Permit Renewal. Svonavec, Inc.** (140 West Union Street, Somerset, PA 15501), commencement, operation and restoration of bituminous strip mine, valid for reclamation only in Black Township, **Somerset County**, affecting 355.4 acres, receiving streams two unnamed tributaries of Coxes Creek, an unnamed tributary of Laurel Run and an unnamed tributary of Wilson Creek, all to Coxes Creek to the Casselman River. Application received May 1, 1998. Issued May 4, 1998.

**56960107. Godin Brothers, Inc.** (136 Godin Drive, Boswell, PA 15531), revision for a stream variance to conduct mining activities within 100 feet of an unnamed tributary to Quemahoning Creek. The primary purpose is for the construction of a haulroad crossing over an unnamed tributary to Quemahoning Creek. The haulroad crossing will be installed approximately 340 feet below where the unnamed tributary crosses T-655. SMP acres—128.6—receiving streams unnamed tributaries to/and Quemahoning Creek, located in Jenner Township, **Somerset County**. Application received March 27, 1998. Issued May 8, 1998.

*Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.*

**17980901. R. B. Contracting** (R. R. 1, Box 13, Curwensville, PA 16833), commencement, operation and restoration of an incidental coal extraction permit, Knox Township, **Clearfield County** affecting 5.8 acres, receiving streams: unnamed tributary to Potts Run to the West Branch of the Susquehanna River. Application received February 25, 1998. Permit issued April 27, 1998.

*McMurray District Office, 3913 Washington Road, McMurray, PA 15317.*

**32921302. Helvetia Coal Co.** (P. O. Box 729, Indiana, PA 15701), to revise the permit for the Marshall Run Mine in Young Township, **Indiana County**, revision to permit area and subsidence control plan area, no additional discharges. Permit issued April 22, 1998.

**30841316. Consol Pennsylvania Coal Co.** (P. O. Box 174, Graysville, PA 15337), to revise the permit for the Bailey Mine in Richhill Township, **Greene County** to add 625 permit and subsidence control plan acres, no additional discharges. Permit issued April 24, 1998.

**03871302. Triple K Coal Co.** (R. D. 1, Box 308, Rural Valley, PA 16249), to renew the permit for the Triple K No. 1 Mine in Burrell Township, **Armstrong County**, no additional discharges. Permit issued April 29, 1998.

**11841302. Trent Coal Co., Inc.** (1789 Stoystown Rd., Friedens, PA 15541), to renew the permit for the Rice #2/Arrow #3 Mine in Portage and Summerhill Township, **Cambria County**, no additional discharges. Permit issued April 29, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

#### *Noncoal Permits Issued*

**35950302T2. Keystone Pocono Block & Supply Co., Inc.** (750 West Linden Street, Scranton, PA 18503), commencement, operation and restoration of a quarry operation in the City of Scranton, **Lackawanna County** affecting 8.0 acres, receiving stream—none. Transfer issued May 8, 1998.

*Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.*

#### *Small Industrial Mineral Authorizations Granted*

**41970801. Donald L. Steinbacher** (R. R. 3, Box 424, Williamsport, PA 17701), commencement, operation and restoration of a small industrial mineral (shale) permit in Limestone Township, **Lycoming County** affecting 3 acres, receiving streams: unnamed tributary, tributary to Nigart Run. Application received August 22, 1997. Authorization granted April 30, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

#### *General Small Noncoal Authorizations Granted*

**60980801. Michael Krushinski, Jr.** (R. R. 2, Box 263, Mifflinburg, PA 17844), commencement, operation and restoration of a small quarry operation in Buffalo Township, **Union County** affecting 4.0 acres, receiving stream—none. Authorization granted May 6, 1998.

## **ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT**

### **ENCROACHMENTS**

The Department of Environmental Protection (Department) has taken the following actions on previously received Dam Safety and Encroachment permit applica-

tions, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, 400 Market Street, Floor 2, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 1 (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of the written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)). (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description).**

*Northcentral Region: Water Management, Soils and Waterways, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.*

**E08-333.** Encroachment. **Frank Brockway**, R. R. 1, Box 1322, Gillett, PA 16925-1322. To maintain a double-wide mobile home with two decks and a 10 foot by 12 foot storage shed in the floodway of South Creek. The project is located on the east side of Rt. 14 at the intersection of Mott Town Road with Rt. 14 (Gillett, PA Quadrangle N: 10.7 inches; W: 6.6 inches) in South Creek Township, **Bradford County**. This permit was issued under section 105.13(e) Small Projects.

**E19-174.** Encroachment. **Drue S. Heckman**, R. R. 4, Box 4875, Berwick, PA 18603. To repair, operate and maintain a single span bridge across Glen Brook to provide access to a private, single residence. The repair work shall consist of removing the existing steel beams and deck and constructing a new superstructure with steel I-beams and wooden decking. The project is located along the western right-of-way of SR 1025 approximately 500 feet south of the intersection of SR 1014 and SR 1025 (Berwick, PA Quadrangle N: 14.0 inches; W: 15.4 inches) in Briar Creek Township, **Columbia County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E41-421.** Encroachment. **Kirkwood and Pauline Personius**, 26 Commodore Pkwy., Rochester, NY 14625. To construct and maintain a two-story 40 foot by 40 foot seasonal residence with a subfloor elevation of 576.0 feet supported on a concrete block wall enclosed storage area equipped with two 2 foot by 3 foot flotation doors and 13 reinforced concrete block pillars in the floodway of Pine Creek located approximately 0.5 mile south of the confluence of Gamble Run and Pine Creek (Jersey Shore, PA Quadrangle N: 20.15 inches; W: 11.75 inches) in Watson



Township, **Lycoming County**. This permit was issued under section 105.13(e) Small Projects.

**E59-356.** Encroachment. **Greg C. Grego**, P. O. Box 8, Morris, PA 16938. To construct and maintain an electrical service transmission line and an aerial cable car system over Babbs Creek approximately 4 miles southwest of Blackwell at the intersection of Wilson Hill Road with Rt. 414 (Morris, PA Quadrangle N: 11.00 inches; W: 16.1 inches) in Morris Township, **Tioga County**. This permit was issued under section 105.13(e) Small Projects.

**E59-357.** Encroachment. **Delmar Township Supervisors**, R. R. 5, Box 70A, Wellsboro, PA 16901. Remove an existing structure and to 1) construct, operate and maintain a single cell aluminized steel arch culvert to carry T-468 across Dantz Run; 2) and to realign 275.0 linear feet of Dantz Run to protect T-468 from flooding. The steel arch culvert shall be constructed with a span of 13 feet, rise of 8.3 feet and length of 48 feet: the realigned reach of the channel shall be constructed with channel bottom width of 15 feet and minimum side slopes 1 foot vertical to 3 feet horizontal. The project is located along the southern right-of-way of SR 0006 approximately 2 miles south of the intersection of T-468 and SR 0006 (Tiadaghton, PA Quadrangle N: 22.5 inches; W: 1.1 inches) in Delmar Township, **Tioga County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

*Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E15-553.** Encroachment Permit. **University of Pennsylvania-New Bolton Center**, 382 West Street Road, Kennett Square, PA 19348-1692. To enlarge and maintain an existing 1.3 acre farm pond along an unnamed tributary of South Brook (TSF) to provide stormwater management for the New Bolton Center of the University of Pennsylvania, to relocate approximately 150 linear feet of stream channel by constructing 225 linear feet of relocated channel and to construct and maintain approximately 205 linear feet of a temporary diversion channel to convey a separate unnamed tributary of South Brook during modification of the pond. This permit also approves an Environmental Assessment authorization to construct a nonjurisdictional dam upstream of the existing pond to serve as a sediment forbay. The site is located approximately 1,700 feet east of the intersection of Street Road (S. R. 0926) and Byrd Road (West Grove, PA USGS Quadrangle N: 21.6 inches; W: 0.25 inch) in East Marlborough Township, **Chester County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E15-563.** Encroachment Permit. **B. J. Drueding Builders, Inc.**, 150 Strafford Avenue, Suite 350, Wayne, PA 19087-3144. To construct and maintain a twin 10.0 foot wide by 4.0 foot high by 63.0 foot long box culvert in and along an unnamed tributary to Valley Creek (EV) to provide access to Minden Lane Residential Subdivision. The site is located approximately 3,600 feet north of the intersection of Swedesford Road and North Valley Road (Valley Forge, PA Quadrangle N: 12.9 inches; W: 16.3 inches) in Tredyffrin Township, **Chester County**.

**E15-560.** Encroachment Permit. **Downingtown Area School District**, 112 Wallace Avenue, Downingtown, PA 19335. To construct and maintain approximately 1,013 linear feet of security chain link fence across three unnamed tributaries to Valley Creek (CWF-MF) and

adjacent wetlands. This work is associated with the construction of the new Middle School East in the Downingtown Area School District located approximately 2,000 feet south of the intersection of S. R. 113, Old Village Avenue and Whitford Road (Downingtown, PA USGS Quadrangle N: 8.7 inches, W: 4.7 inches) in Uwchlan Township, **Chester County**.

*Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1214.** Encroachment. **County of Allegheny**, 501 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219-2747. To rehabilitate and maintain the Homestead Hi-Level Bridge having a total span of approximately 3,321.0 feet with a minimum underclearance of approximately 80.0 feet across the Monongahela River (WWF), consisting of widening the roadway, bridge painting, the replacement of span number 5 and minor structure repairs. The bridge is located just northwest of the intersection of West Street and W. 8th Avenue (S. R. 837) (Pittsburgh East, PA Quadrangle N: 6.5 inches; W: 6.1 inches) in Homestead Borough and the City of Pittsburgh, **Allegheny County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E02-1215.** Encroachment. **Municipal Authority of Westmoreland County**, SW Corner of U. S. Route 30, West and Greengate Road, Greensburg, PA 15601. To construct and maintain an intake structure, a footbridge and to place and maintain fill in the channel of and along the right bank of the Youghiogheny River (WWF) for the purpose of replacing the existing intake structure. The project is located at the McKeesport Water Treatment Plant just upstream from the 15th Street Bridge (McKeesport, PA Quadrangle N: 16.2 inches; W: 15.35 inches) in the City of McKeesport, **Allegheny County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

**E11-260.** Encroachment. **Ebensburg Properties, LP**, 564 Forbes Avenue, Suite 700, Pittsburgh, PA 15219. To place and maintain fill in 1.23 acres of palustrine emergent wetlands for the purpose of constructing a commercial development. The project is located in the watershed of an unnamed tributary to South Branch Blacklick Creek (CWF) and along U. S. 22 approximately 4,000 feet east of its interchange with U. S. 219 (Nanty Glo, PA Quadrangle N: 18.3 inches; W: 0.1 inch) in Cambria Township, **Cambria County**. The applicant will compensate for wetland loss by creating 1.40 acres of palustrine emergent and scrub-shrub wetlands on an adjacent area.

*Central Office: Bureau of Water Quality Protection, Division of Waterways, Wetlands and Erosion Control, 400 Market Street, 10th Floor, P. O. Box 8775, Harrisburg, PA 17105-8775, (717) 787-6827.*

**Permit No. E11-18A.** Encroachment. Permit Amendment. **GPU Energy**, 2800 Pottsville Pike, Post Office Box 16001, Reading, PA 19640-0001. GPU Energy is authorized to construct, modify, abandon or remove overhead and underground electric facilities in or across the 100-year floodplain in municipalities and counties within GPU's service area. This permit does not authorize activities in wetlands, and the permit is conditioned accordingly. This service area includes the service territory of the former Pennsylvania Electric Company (Penelec) which includes all or part of **Armstrong, Bedford, Blair, Bradford, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford,**

**Cumberland, Elk, Erie, Forest, Franklin, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lycoming, McKean, Mifflin, Perry, Potter, Somerset, Sullivan, Susquehanna, Tioga, Venango, Warren, Wayne, Westmoreland and Wyoming counties;** and the service territory of the former Metropolitan Edison County (Met-Ed) which includes all or part of **Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Perry, Pike and York counties.**

## WATER ALLOCATIONS

**Actions taken on applications filed under the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.**

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

*Permits issued on April 21, 1998.*

**WA-84A.** Water Allocation. **Saltsburg Borough Water Authority, Indiana County, PA.** Modification Order granting the Municipal Authority of Westmoreland County the right to purchase up to 140,000 gallons per day from Saltsburg Borough.

**WA3-842C.** Water Allocation. **Kittanning Suburban Joint Water Authority, Armstrong County, PA.** Modification Order granting the Worthington Municipal Authority the right to purchase up to 100,000 gallons per day from Kittanning Suburban.

**WA3-1005.** Water Allocation. **Worthington Borough Municipal Authority, Armstrong County, PA.** The right to purchase 100,000 gallons per day of water, as a 30 day average, from the Kittanning Suburban Joint Water Authority, Armstrong County.

## SPECIAL NOTICES

### Notice of Intent to Issue Synthetic Minor Operating Permit Permit No. S95-054

#### Philadelphia County

City of Philadelphia Air Management Services (AMS) intends to issue a Synthetic Minor Operating Permit (Permit No. S95-054) to Amerada Hess Corporation for the gasoline terminal located at 1630 South 51st Street, Philadelphia, PA 19143.

The facility is a bulk gasoline terminal subject to the operating permit requirements under 25 Pa. Code Chapter 127, Subchapter F (relating to operating permit requirements). It applied for a synthetic minor operating permit and accepted emission limitations in order to avoid being a major facility subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapter G (relating to Title V operating permits). Its major sources of emissions include three gasoline storage tanks, and a gasoline loading rack which without emission limitations would have the potential to emit major source levels of volatile organic compounds (VOCs) and hazardous air pollutants (HAPs).

Copies of the Synthetic Minor application, proposed permit and other relevant information are available for public inspection at Air Management Services, Spelman Building, 321 University Avenue—2nd Floor, Philadel-

phia, PA 19104. An appointment to review the documents may be scheduled by contacting Brenda Bonner at (215) 685-7572 between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Interested persons may submit written comments, suggestions or objections concerning the proposed Synthetic Minor permit to Thomas Huynh, Chief of Source Registration, Air Management Services, 321 University Avenue, Philadelphia, PA 19104 within 30 days of publication of this notice. Written comments submitted to AMS during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments.

AMS reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearing at least 30 days in advance of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

[Pa.B. Doc. No. 98-819. Filed for public inspection May 22, 1998, 9:00 a.m.]

## Adoption and Implementation of the Section 112(g)(2)(B) Program

Effective June 29, 1998, the Department of Environmental Protection (Department) will implement and enforce the maximum achievable control technology (MACT) requirements for certain major sources of hazardous air pollutants (HAPs), on a case-by-case basis, as required under Section 112(g)(2)(B) of the Federal Clean Air Act. State and local permitting authorities with delegated Title V Operating Permit Programs must set HAP emission limits, based on case-by-case determinations, at the same level that will be established by the final MACT standard adopted by the United States Environmental Protection Agency (EPA) for a respective source category.

Adoption of the Section 112(g) program implements the "Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources" promulgated by EPA on December 27, 1996 (61 FR 68384). These regulations, codified at 40 CFR 63.40—63.44, must be implemented no later than 18 months from the date of publication of the provisions in the *Federal Register*. The Section 112(g)(2)(B) program requirements apply to the construction of new major facilities (that is, greenfield facilities) and the reconstruction of major sources of HAP at existing facilities with potential HAP emissions equal to or greater than 10 tons per year for a single HAP or 25 tons per year or more of any combination of HAPs. The Section 112(g) program requirements do not apply to the following:

1. Research and development activities as defined in 40 CFR 63.41
2. Stationary sources that are within a source category that has been deleted from the source category list pursuant to Section 112(c)(9) of the Clean Air Act
3. Electric utility steam generating units unless and until those units are added to the source category list established under Section 112(c)(5) of the Clean Air Act

Section 6.6(b) of the Air Pollution Control Act authorizes the Department to establish performance or emission standards on a case-by-case basis for individual

sources or a category of sources if EPA has not developed a standard to control HAP emissions under Section 112(c) of the Clean Air Act. The Department's implementing regulations in 25 Pa. Code § 127.35 (relating to maximum achievable control technology standards for hazardous air pollutants), establishes the process that the Department will use to create case-by-case MACT determinations in Federally enforceable plan approvals.

The Department will submit copies of this notice and a Section 112(g)(2)(B) program description to EPA, no later than May 29, 1998. The section 112(g) program submittal will also include a certification that Pennsylvania's plan approval program (preconstruction review) meets the requirements of 40 CFR 63.40—63.44.

Copies of the Section 112(g) program description and certification may be obtained by contacting Krishnan Ramamurthy, Chief, Technical Support Section, Bureau of Air Quality at (717) 787-9256 (or by E-mail: ramamurthy.krishnan@a1.dep.state.pa.us). The documents are also available on the DEP Web site at <http://www.dep.state.pa.us>.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-820. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Final Section 111(d)/129 State Plan for Large Municipal Waste Combustors

On December 19, 1995, the United States Environmental Protection Agency (EPA) promulgated performance standards for new municipal waste combustors (MWCs) and emission guidelines (EG) for existing MWCs under sections 111 and 129 of the Federal Clean Air Act (CAA). The standards of performance for new stationary sources (NSPS) and the emission guidelines for existing large MWCs are codified at 40 CFR Part 60, Subpart Eb and Subpart Cb, respectively (60 FR 65382). The Emission Guidelines were amended on August 25, 1997, to apply solely to existing MWCs constructed, modified or reconstructed on or before September 20, 1994, with a combustion capacity of 250 tons per day of municipal solid waste. (62 FR 4511).

According to 40 CFR Part 60, Subparts B and Cb, states are required to prepare and submit a State Plan to the EPA to implement the Emission Guidelines for Municipal Waste Combustors (MWCs). The State Plans for MWCs should have been submitted to the EPA for approval by December 19, 1996. However, on December 6, 1996, the Court of Appeals for the District of Columbia Circuit vacated the 1995 standards and guidelines because the standards failed to require an evaluation of individual MWC units on a unit-by unit basis. On March 21, 1997, the Court granted the EPA's petition for rehearing and amended its opinion and vacated the standards only as they apply to small MWC units and cement kilns. *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F. 3d 1395 (D. C. Cir. 1996), amended, 108 F. 3d 1454 (D. C. Cir. 1997).

The Department of Environmental Protection (Department) has developed a Section 111(d)/129 State Plan for large existing designated MWCs in accordance with 40 CFR Part 60 Subparts B and Cb. On December 6, 1997, the Department published a notice of public hearings on the State Plan and provided a 30-day public comment

period. The hearings were held in Conshohocken, PA on January 7, 1998, and Harrisburg, PA on January 8, 1998 (27 Pa.B. 6373).

The Final Section 111(d)/129 State Plan was submitted to the EPA for approval on May 1, 1998. New or revised Federally enforceable state operating permits (FESOPs) will be issued to designated MWC facilities, incorporating the applicable requirements in 40 CFR Part 60, Subparts A, B, Cb, and Eb. The Department will submit FESOPs to EPA no later than June 30, 1998.

The following designated large MWCs must comply with the 1995 emission standards by December 19, 2000: Wheelabrator Falls, American Ref-Fuel, Harrisburg Materials, Energy, Resource and Recovery Facility, Lancaster Resource Energy, Montenay Energy Resource of Montgomery and York County Solid Waste and Refuse Authority. The MWC units must also achieve compliance with the supplemental emission limits for lead, sulfur dioxide and hydrogen chloride no later than August 26, 2002, or 3 years after EPA approval of the State Plan, whichever is first.

To obtain a copy of the State Plan including comment/response document, contact Kimberly Maneval, Bureau of Air Quality, Division of Permits, P. O. Box 8468, Harrisburg, PA 17105, (717) 787-4325 or by e-mail at [maneval.kimberly@a1.dep.state.pa.us](mailto:maneval.kimberly@a1.dep.state.pa.us).

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-821. Filed for public inspection May 22, 1998, 9:00 a.m.]

### General Permit for Short-Term Construction Projects; BMR-GP-103

In accordance with the provisions of section 26(b) of the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal SMCRA) (52 P. S. § 3326(b)) and 25 Pa. Code §§ 77.801—77.807, the Department of Environmental Protection (Department) by this notice issues a general permit for Short-Term Construction Projects (BMR-GP-103). The general permit is effective 30 days from the date of publication of its final form in the *Pennsylvania Bulletin*.

#### *Description*

This general permit is for use by eligible persons for the extraction of noncoal minerals to supply fill material for a specific construction project. The noncoal minerals extracted under this general permit must be used solely on the construction project identified in the registration application and cannot be used or sold for any other purpose. The duration of the mineral extraction may not exceed 1 year unless a 3-month extension can be justified and is approved by the Department. The maximum area that a project may affect under this general permit is 5 acres (2.02 hectares).

This general permit is only valid for licensed mine operators who have submitted an administratively complete and acceptable registration application that has been approved in writing by the Department.

Persons conducting noncoal mining activities under this general permit shall implement erosion and sedimentation controls in accordance with the requirements of 25 Pa. Code Chapter 102 and shall implement the reclama-

tion and revegetation requirements of this general permit. A bond will be required at the rate of \$1,000 per acre.

The Department may amend, deny, revoke or suspend an authorization to use this general permit for any project which the Department determines is likely to have an adverse effect on public health, safety, welfare or the environment, or otherwise would not be adequately regulated by the provisions of this general permit.

#### *Registration to Use the General Permit*

Persons seeking authorization to operate under this general permit must file a registration application. The Department will provide the applicant with written notification within 30 days of receipt of an application of approval/disapproval, a request for additional information or a bond request. No person can operate under this general permit until they have received the Department's written approval of their registration application. When the registration application is submitted to the Department, the applicant shall notify the municipality in which the activities will be located by registered mail that they intend to conduct activities under the general permit. The Department will notify the municipality and the county conservation district of its decision to approve or disapprove a registration application. The Department will also publish a notice in the *Pennsylvania Bulletin* of its decision to approve a registration application.

#### *Revisions to the Proposed General Permit*

The Department published a notice of the proposed General Permit for Short Term Construction Projects; BMR-GP-103 in 28 Pa.B. 563 (January 31, 1998). There was a 60-day public comment period. The Department received comments from three individuals representing the building industry, county conservation districts and municipal government. The following is a summary of the changes made to the proposed general permit based upon those comments and further review by the Department:

- The authorization section has been revised to require that mining activities conducted under this general permit do not adversely affect public or private water supplies, public utilities, other infrastructure or encounter the regional groundwater table.
- The public notice section has been revised to require that the notification to the municipality by the applicant must be mailed at the time of the submission of a registration application.
- The notification by the Department to the municipality of its decision to approve or disapprove a registration application has been revised to include notice to the county conservation district and to provide notice of the decision in the *Pennsylvania Bulletin*.
- The erosion and sedimentation control section has been revised to require that the operator implement erosion and sedimentation controls in accordance with 25 Pa. Code Chapter 102 and to require the registration to include the erosion and sediment control plan.
- The reclamation section has been revised to require that the top 12 inches (0.30 meter) of soil material be saved and redistributed evenly across the site.
- The reclamation section has been revised to require that the operator monitor vegetation growth during reclamation.
- The limitations section has been revised to allow waivers to the distance limitations of 25 Pa. Code

§ 77.504 only where the owner of a building grants a waiver and to waivers on haul roads to prevent a site from becoming landlocked.

The Department has prepared a comment and response document for the comments received during the public comment period. Persons who wish to obtain a copy of this general permit or a copy of the comment and response document should request them from the Department's Bureau of Mining and Reclamation, Permits Division, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 783-8845. These documents are also available on the Department's Website at <http://www.dep.state.pa.us>. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

1. *Authorization*—The Department of Environmental Protection hereby authorizes, by general permit, subject to the terms, conditions and criteria set forth as follows, the extraction of noncoal minerals from a site to supply fill material for a construction project. The material must be used solely on the construction project specified during the registration, and cannot be sold or otherwise used on areas not associated with the specified construction project. The total area to be affected by the noncoal mining activities, excluding haul roads, cannot exceed 5 acres (2.02 hectares). The duration of the mineral extraction cannot exceed 1 year. No blasting activities may take place on the permit. No mining activity conducted under this general permit may adversely affect public or private water supplies, public utilities, other infrastructure or encounter the regional groundwater table.

2. *Standards*—This General Permit sets forth the standards to comply with Subchapters C, D, G, H and I of 25 Pa. Code Chapter 77. To the extent that the provisions of these subchapters are not addressed in this General Permit, the requirements of the Noncoal Surface Mining Conservation and Reclamation Act and 25 Pa. Code Chapter 77 apply.

3. *Effective Time Period*—The authorization to use this general permit for the extraction of noncoal minerals from a site to supply fill material for a construction project shall expire 1 year after the surface mining activities have commenced. The time period can be extended up to 3 months if the operator can demonstrate that the additional mining is necessary to complete the construction project and it is not likely that the mining activity will adversely affect public or private water supplies or encounter the regional groundwater table. Even if 1 year has not elapsed, the authorization to mine material under this general permit will terminate once the construction project identified in the registration form reaches a stage where it no longer requires fill from the mining activity.

4. *Fees*—There is no fee required for obtaining authorization under this general permit.

5. *Registration to Use General Permit*—Prior to beginning surface mining activities under this general permit, the operator shall submit a registration application along with the required documentation to the appropriate District Mining Office. The applicant must demonstrate in the registration application that the activities conducted under this general permit will comply with the general permit and the applicable provisions of the Noncoal Surface Mining Conservation and Reclamation Act and the applicable Department regulations. No person is authorized to operate under this general permit until they have received the Department's written approval of their registration application.

6. *Public Notice*—The requirements under 25 Pa. Code § 77.121 (relating to public notices of filing permit appli-

cations) are waived for sites operating under this general permit. At the time of application for registration, the operator shall notify, by registered mail, the city, borough, incorporated town or township in which the activities are located that they intend to register the site under this general permit. The Department will notify the city, borough, incorporated town or township and the county conservation district of its decision to approve or disapprove the registration application. The notification shall include a copy of the appropriate part of the U.S.G.S. topographic map identifying the location of the mine site. The Department will also publish a notice in the *Pennsylvania Bulletin* of its decision to approve a registration application.

7. *Documentation of Use*—The registration application must contain documentation that the noncoal minerals extracted under this general permit will be used on a construction site. This documentation can take the form either of a bid form or a copy of the executed contract. Where a bid form is submitted as part of the registration application and the registration application is otherwise approvable, the Department shall approve the registration conditioned upon the operator submitting a copy of the executed contract prior to the initiation of surface mining activities.

8. *Limitations*—The material removed under this general permit can only be used at the construction project identified on the registration application and for which the authorization was approved. The material cannot be used at any other construction project, or be taken to a processing or storage area to be used on any other project. The removal of material shall cease once the designated construction project no longer requires fill or on the expiration date of the authorization, whichever is the earlier date. The distance limitations of 25 Pa. Code § 77.504 (relating to distance limitations) apply to activities conducted under this general permit. Waivers to the distance limitations on this general permit will be limited to situations where waivers are granted by building owners or waivers on haul roads to prevent a site from becoming landlocked.

9. *Contract Miners*—A person other than the applicant, including an independent subcontractor, may operate on the site provided they comply with the approved general permit authorization and are approved by the Department prior to engaging in surface mining operations. The contract miner will be approved if they have demonstrated compliance with 25 Pa. Code § 77.126(6)—(9) (relating to criteria for permit approval or denial). The person is jointly and severally liable with the permittee for any violations of the act that the permittee is charged with and in which the person participates.

10. *Enforcement*—The permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding noncoal surface mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification. Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under the Acts under which this permit is issued or any other applicable provisions of law. When an operator is having difficulty complying with the general permit, the Department may suspend the authorization to operate and require the operator to obtain an individual permit.

11. *Bonding Requirements*—The amount of the bond shall be \$1,000 per acre to be affected, with a \$1,000 minimum bond to be posted on a site. The bond must be submitted to the Department and approved prior to the approval to conduct mining activities under this general permit.

12. *Erosion and Sedimentation Controls*—The activities conducted under this general permit must comply with 25 Pa. Code Chapter 102. An erosion and sedimentation control plan must be submitted as part of the registration.

13. *Processing of Material*—The only processing allowed on sites covered by this general permit will be wet sand and gravel screening operations and dry sand and gravel operations processing of less than 150 tons per hour (136.05 metric tons/hour) of unconsolidated materials. The processing of material must be approved as a part of the registration.

14. *Reclamation*—In general, the requirements of 25 Pa. Code § 77.595 (relating to concurrent reclamation) are not applicable to operations authorized by this general permit. The Department reserves the right to require concurrent reclamation as provided for in § 77.595 (relating to concurrent reclamation) at a particular operation authorized under this general permit. If the applicant intends to use the reclamation plan described below and one of the seed mixtures specified in the registration form, a separate reclamation plan is not required. If the applicant intends to use alternative reclamation procedures or seed mixtures, the registration application must contain a reclamation and/or revegetation plan.

Sites must be reclaimed so that no slopes will exceed 35 degrees and the site will have positive drainage and will not pond water. No excavation of material can occur within 25 feet (7.62 meters) of the property line unless approved by the Department. The top 12 inches (0.30 meter) of soil material shall be saved and redistributed evenly across the site as required under 25 Pa. Code §§ 77.512—514 (relating to removal, storage, and redistribution). Lime and fertilizer will be applied in accordance with a soil test. The site will be seeded and mulch (hay or straw) will be applied at a minimum rate of 2.5 to 3 tons/acre (0.92—1.10 metric tons/hectare). Revegetation shall be completed no later than the end of the first growing season, as defined under 25 Pa. Code § 77.612 (relating to timing), after the mineral extraction and regrading is completed.

15. *Bond Release*—The operator will notify the affected landowner of the request for bond release by certified letter. A copy of the certified letter and return receipt must be included with the request for bond release. The affected landowner will have 30 days to notify the Department of any concerns they have about the reclamation.

Sites revegetated with grasses will be monitored by the operator for at least 1 year from the date of initial planting. Sites revegetated with trees will be monitored by the operator for two growing seasons (Spring and Fall). The bond posted for the site will be released after the monitoring period has elapsed and the revegetation has met the requirements of 25 Pa. Code § 77.618 (relating to standards for successful revegetation).

16. No condition of this general permit shall release the permittee from any responsibility or requirement under other applicable Federal or Pennsylvania statutes or regulations or local ordinances.

17. *Conditions for Operating Under the General Permit—*

a. Any modifications to erosion and sedimentation control facilities necessary to meet the terms and conditions of this permit require prior written approval.

b. The permittee shall conduct all surface mining activities as described in the approved registration of the mining activities under the general permit and all supporting documents which are incorporated herein by reference. Where there is a conflict between the application and the supporting documentation and the terms and conditions of this permit, the terms and conditions of this permit shall supersede any conflicting provisions of the application and supporting documents or revisions to the application.

c. As a condition of this permit and of the permittee's authority to conduct the activities authorized by this permit, the permittee hereby authorizes and consents to allow authorized employees or agents of the Department, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access and to inspect all areas on which surface mining activities are being or will be conducted. The authorization and consent shall include consent to collect samples, to take photographs, to perform measurements, surveys and other tests, to inspect any monitoring equipment, to inspect the methods of operation and to inspect and/or copy documents required by the Department to be maintained.

d. The issuance of this authorization to conduct surface mining activities under a general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

JAMES M. SEIF,  
Secretary

[Pa.B. Doc. No. 98-822. Filed for public inspection May 22, 1998, 9:00 a.m.]

**Proposed Revisions to General Plan Approval and General Operating Permits for Portable Nonmetallic Mineral Processing Plants; BAQ-PGPA/GP-3**

The Department of Environmental Protection (Department) proposes to revise the general plan approval and operating permit for Portable Nonmetallic Mineral Processing Plants, BAQ-PGPA/GP-3.

As originally issued, the general permit did not address the operation of engines used to power many nonmetallic mineral processing plants. Nonmetallic mineral processing plants may either be run by electric motors or diesel engines. The Department has determined that the majority of these plants use diesel engines. Nitrogen oxide emissions from the engines are large enough to in certain instances to trigger major new source review requirements. General permits cannot be used to cover major new source review requirements.

Proposed revisions to the Portable Nonmetallic Mineral Processing Plants general permit include the following:

Condition 2 has been revised to clarify and highlight the coverage of the engines. Proposed additions to the permit are italicized and proposed deletions are enclosed in square brackets.

**2. Applicability/Source Coverage Limitations—**Approval herein granted under this Portable Nonmetallic Mineral Processing General Permit is limited to the erection, operation, and modification of portable nonmetallic mineral processing plants: a) *which are temporarily (no longer than 24 months) located at construction sites; or; b) which are located at sites for which [the applicant is in possession of] a valid mining permit has been issued or an air quality permit has been previously granted for the operation of a nonmetallic mineral processing plant; and [or, c) which are to be located at these previously permitted sites for periods less than 5 years [at sites previously granted air quality permits for the operation of a nonmetallic mineral processing plant].* Nonmetallic mineral processing plants, as defined in 40 CFR 60.670 and 60.671, are designed to process nonmetallic minerals, and consist of affected units like crushers, grinders, screening operations, belt conveyors, bucket elevators, storage bins, bagging operations, and enclosed truck and rail car loading stations. *Nonmetallic mineral processing plants also include any engines provided to operate this equipment.\*\*\**

Condition 5 of the general permit is being revised to clarify the circumstances. If, after the development of a general permit the Department determines that the subject source cannot be adequately regulated by a general permit the Department could either modify, suspend or revoke the permit and possibly make it unavailable for further use. In other situations the Department may determine that an individual permittee is not complying with applicable terms and conditions of a general permit, in which case the Department could withdraw its authorization to operate under the general permit. As currently drafted the first paragraph of Condition 5 appears as a single sentence. The following revisions specify the circumstances under which the Portable Nonmetallic Mineral Processing Plants general permit is subject to revision, suspension or revocation. This condition also provides that a Permittee's authorization to operate under the general permit may be suspended or revoked.

**5. Permit Modification, Suspension and Revocation—**This Portable Nonmetallic Mineral Processing Plant General Permit may be modified, suspended, or revoked if the Department determines that affected nonmetallic mineral processing plants cannot be regulated under this general permit.[, or the]

*The Department may suspend or revoke the authorization to operate under this Portable Nonmetallic Mineral Processing Plant General Permit if a permittee fails to comply with applicable terms and conditions of the Portable Nonmetallic Mineral Processing Plant General Permit.*

The following recordkeeping requirements have been added to Condition 8:

**8. Monitoring, Recordkeeping and Reporting—**The permittee shall comply with applicable monitoring, recordkeeping and reporting requirements set forth in 25 Pa. Code Chapter 139 (relating to sampling and testing, the Air Pollution Control Act, the Clean Air Act, or the regulations thereunder applicable to the source) and 40 CFR 60.674 and 60.676.

Records *maintained* under this general permit shall be kept for a period of 5 years and shall be made available to the Department upon its request. *In addition to the recordkeeping requirements in Condition 24, the permittee*

shall maintain records to demonstrate compliance with this Permit. At a minimum the records shall include the following for each engine:

- a. The number of hours the engine is operated per month.
- b. The amount of fuel used per month.
- c. The degree of ignition retardation for spark ignition engine or injection retardation for compression ignition engine.

The Department proposes to modify Condition 13 of the general permit concerning prohibited uses. The use of this general permit is limited to the installation of nonmajor sources at minor facilities. Permitting regulations for major sources and facilities must be applied on a case-by-case basis.

**13. Prohibited Use**—Any stationary air contamination source that is subject to the requirements of 25 Pa. Code Chapter 127, Subchapter D (relating to prevention of significant deterioration), 25 Pa. Code Chapter 127, Subchapter E (relating to new source review), and 25 Pa. Code Chapter 127, Subchapter G (relating to Title V operating permits), may not operate or install portable nonmetallic mineral processing plant under this Portable Nonmetallic Mineral Processing Plant General Permit.

The final change is the addition of NOx emission limitations that would apply to the operation of the engines. Subparagraph d has been added to Condition 16 as follows:

**16. Limitations**—The operation of a portable nonmetallic mineral processing plant shall not at any time result in the emission of:

\* \* \* \* \*

d. Oxides of nitrogen (NOx), expressed as NO<sub>2</sub>, in excess of 25 tons per year, if located in the Southeast Pennsylvania air basin, or 100 tons per year, if located in areas outside of the Southeast Pennsylvania air basin, but is not subject to 25 Pa. Code Chapter 127, Subchapter E (relating to new source review):

i. At a minimum engines shall be set and maintained at the maximum possible ignition/injection timing retardation, but not less than 4 degree retardation relative to standard timing.

ii. In the absence of site specific stack test results, the NOx emissions may be calculated using:

A. Emission factors from the Environmental Protection Agency's publication AP-42, *Compilation of Air Pollution Emission Factors*; or;

B. Other emission estimates approved by the Department.

The Department requests written comments on the proposed revisions to the Portable Nonmetallic Mineral Processing Plant General Permit. Notice and opportunity for comment will also be provided to the United States Environmental Protection Agency and the States of Delaware, Maryland, New Jersey, New York, Ohio, Virginia and West Virginia. Interested persons may submit written comments, suggestions or objections to Douglas L. Leshner, Chief, Title V/NSR Section, Division of Permits, Bureau of Air Quality, 12th Floor Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325. The Department will also consider written requests that a public hearing be held concerning this proposed general plan approval and operating permit. Public comments must be submitted to the Department within 45 days of the dates of this notice in the *Pennsylvania Bulletin*. Comments received by facsimile will not be accepted.

Copies of the proposed revisions to the general permits as now written may be obtained by contacting Kimberly Maneval, Division of Permits, Bureau of Air Quality, 12th Floor Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, telephone (717) 787-4325. TDD users may telephone the Department through the AT&T Relay Service, (800) 654-5984. Internet users can access a copy of the general permit at <http://www.dep.state.pa.us>.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-823. Filed for public inspection May 22, 1998, 9:00 a.m.]

**Storage Tank Advisory Committee; Cancellation of Meeting**

Due to a lack of agenda items, the Storage Tank Advisory Committee's June 2, 1998, meeting has been canceled. An August meeting may be scheduled if there are enough agenda items. The Committee's fall meeting will be held on October 6, 1998.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-824. Filed for public inspection May 22, 1998, 9:00 a.m.]

**DEPARTMENT OF PUBLIC WELFARE**

**1997 Group Two Exception Requests; MA/LTC Participation Review; Corrective Amendment**

The Department of Public Welfare (Department) has discovered two errors in the notice entitled 1997 Group Two Exception Requests; MA/LTC Participation Review, published at 28 Pa.B. 1594—1595 on March 28, 1998.

Therefore, the Department is submitting the following correction statement to the Legislative Reference Bureau.

Expansion Projects—Add

Number	Name	Address	County	Beds
JD97058	Nipple Convalescent Home	100 S. Front Street, Liverpool	Perry	24

This facility listing was inadvertently missed but meets the qualifications to be considered for response under the provisions of the March 28, 1998 notice.

## Expansion Projects—Delete

<i>Number</i>	<i>Name</i>	<i>Address</i>	<i>County</i>	<i>Beds</i>
JD97022	Hospitality Care Center of Hermitage	3726 E. State Street, Harrisburg	Mercer	3

This facility listing should be deleted from the original published listing as a decision was rendered under the provisions of the 10/10 substantial implementation.

Copies of the above listed exception request is available for review by the public during regular business hours. To schedule an appointment to review this request, please call (717) 787-1171.

The Department will accept written comments related to the requests for a 30 day period following the date of this publication. Written comments may be submitted to: Department of Public Welfare, Bureau of LTC Programs, Attention: Policy Section, P. O. Box 8025, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). Persons who require another alternative format should contact Thomas Vracarich at (717) 783-2209.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-NOT-168. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 98-825. Filed for public inspection May 22, 1998, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Retention of Engineering Firms

#### Bucks and Montgomery Counties Project Reference No. 08430AG2198

The Department of Transportation will retain an engineering firm to perform environmental mitigation design, final design, and construction consultation for S. R. 0202, Section 711, U. S. 202 Relocation in Montgomery Township, Montgomery County, and Warrington Township, Bucks County. The project involves a portion of the New Alignment Alternative for U. S. 202 between Montgomeryville, Montgomery County and Doylestown, Bucks County as outlined in the U. S. 202, Section 700, Final Environmental Impact Statement (October, 1997). The project also includes improvements to the following intersection: U. S. 202, PA 309, and PA 463 (Five Points) in Montgomery Township, Montgomery County and Limekiln Pike and Upper State Road in Warrington and Upper State Road in Warrington and New Britain Townships, Bucks County.

The limits of the design project are U. S. 202 at a point just south of Horsham Road in Montgomery Township, Montgomery County and Pickertown Road in Warrington Township, Bucks County a distance of approximately 4 miles. The estimated construction cost of this portion is \$80.0 million.

The selected firm will be required to provide the following engineering and design services: surveys; roadway design; pavement design; preparation of cross sections; soils and geological investigations; erosion and sedimentation control design; highway lighting design; right-of-way investigation and plan preparation; structure design; hydrologic and hydraulic analysis; preparation of traffic control, pavement marking and signing plans; traffic signal design; sign lighting plans; utility coordination and design; highway lighting; coordination with PUC, PennDEP, U. S. Army Corps of Engineers, municipal officials, and the public; preparation of final plans, specifications and estimates; shops drawing reviews; alternate design review; and construction consultation.

The selected firm will also be required to provide environmental mitigation services to complete the follow-

ing: groundwater protection; noise abatement; and hazardous waste contamination remediation. These services will be conducted to complete the design and construction proposals. The selected firm will be required to provide all necessary environmental services, material and equipment necessary to collect, analyze and organize data, assess impacts, conduct agency and public involvement activities, and prepare reports and plans. The reports and other written graphic material to be prepared may include, but are not limited to, meeting minutes; and coordinating the development of the design with various agencies and special interest groups.

Firms that are currently serving, or are being considered for selection as municipal engineer in the municipalities listed in the project description will not be considered for this assignment.

Also, firms that are under contract, or are being considered, to provide engineering services to a land developer for a site located along the project will likewise not be considered for this assignment. Firms should state in the letter of interest that they are not serving in either capacity as a municipal engineer or as a representative of a site developer. Any questions concerning this requirement should be directed to Mr. Tim O'Brien, at the telephone number listed below.

The consultant selection meeting will be held in the District 6-0 Engineering Office, large conference room, 200 Radnor-Chester Road, St. Davis, PA on June 26, 1998 at 10 a.m.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be fifteen (15%) percent of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised project(s).

The District's copy of the Letter of Interest and required forms (see general requirements and information section) shall be sent to: Mr. Andrew Warren, District Administrator, Engineering District 6-0, 200 Radnor-Chester Road, St. Davids, PA 19087.

Any technical questions concerning the requirements for this project should be directed to: Mr. Tim O'Brien, P.E., District 6-0, at (610) 964-6526, or Mr. Randy Wanger, P.E., District 6-0, at (610) 964-6548.



Any questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

**Indiana and Cambria Counties  
Project Reference No. 08430AG2199**

The Department of Transportation will retain a firm specializing in Right-of-Way acquisition to perform Right-of-Way Acquisition Assistance Services for a nine (9) mile section of Route 22, Section 495 in Indiana and Cambria Counties. The western terminus of this project is near the S. R. 0403 interchange in East Wheatfield Township, Indiana County, and the eastern terminus is near the S. R. 0271 Interchange in Jackson Township, Cambria County. These services include, but are not limited to, relocation assistance planning, appraisal planning, negotiations, title and settlement services, property management, and assistance during construction. It is anticipated that approximately one hundred fifty-five (155) parcels will be affected with approximately thirty-three (33) displacements. Relocation will involve both residential and commercial properties. Appraisal services will not be part of this agreement.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an engineering agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Engineering District 9-0 Office during the evaluation of the firms submitting letters of interest:

- a. Ability to package and present the letter of interest in accordance with the "General Requirements and Information" section.
- b. Specialized experience and technical competence of the individuals committed to this assignment.
- c. Workload and available staff.
- d. Past records of performance with respect to technical competence, cost control, work quality and ability to meet or exceed schedules.
- e. Internal procedures of Quality Assurance/Quality Control.
- f. Location of office to perform work.

Administration of the Agreement will be provided by Engineering District 10-0 Office.

The District's copy of the Letter of Interest and required forms (see general requirements and information section) shall be sent to: Mr. Earl Neiderhiser, P.E., District Engineer, Engineering District 9-0, 1620 North Juniata Street, Hollidaysburg, PA 16648, Attn. Mr. David L. Sherman, P.E.

Any technical questions concerning the requirements for this project should be directed to: Mr. David L. Sherman, P.E., at (814) 696-7172.

Any questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

**General Requirements and Information**

Firms interested in providing the above work and services are invited to submit two copies of a Letter of

Interest are required information for each Project Reference Number for which the applicant wishes to be considered.

The first copy of the Letter of Interest and required information must be submitted to:

Mr. Charles W. Allwein, P.E., Chief  
Consultant Selection Committee  
7th Floor, Forum Place  
555 Walnut Street  
P. O. Box 3060  
Harrisburg, Pennsylvania 17105-3060

Note: The Zip Code for express Mailing is 17101-1900

The Letter of Interest and required information must be received within twenty (20) calendar days of this Notice. The Deadline for receipt of a Letter of Interest at the above address is 4:30 P.M. prevailing time of the twentieth day.

The second copy of the letter of interest and required information must be submitted to the appropriate District Engineer/Administrator or the Bureau Director as indicated in the individual advertisement. This copy must be postmarked or delivered on or before the deadline indicated above.

If an individual, firm, or corporation not authorized to engage in the practice of engineering desires to submit a Letter of Interest, said individual, firm, or corporation may do so as part of a Joint Venture with an individual, firm, or corporate which is permitted under the state law to engage in the practice of engineering.

If a Joint Venture responds to a project advertisement, the Department of Transportation will not accept separate Letters of Interest from the Joint Venture constituents. A firm will not be permitted to submit on more than one (1) Joint Venture for the same Project Reference Number. Also a firm that responds to a project as a prime may not be included as a designated subcontractor to another firm that responds as a prime to the project. Multiple responses under any of the foregoing situations will cause the rejection of all responses of the firm or firms involved. The above does not preclude a firm from being set forth as a designated subcontractor to more than one (1) prime responding to the project advertisement.

If a goal for Disadvantaged Business Enterprise (DBE) participation is established for an advertised project, firms expressing interest in the project must agree to ensure that Disadvantaged Business Enterprise (DBE) firms as defined in the Intermodal Surface Transportation Efficiency Act of 1991 and currently certified by the Department of Transportation shall have the maximum opportunity to participate in any subcontracting or furnishing supplies or services approved under Form 442, Section 1.10(a). The Act requires that firms owned and controlled by women (WBEs) be included, as a presumptive group, within the definition of Disadvantaged Business Enterprise (DBE). The goal for DBE participation shall be as stated in the individual project advertisement. Responding firms shall make good faith efforts to meet the DBE goal using DBEs (as they were defined prior to the act, WBEs or combinations thereof).

Proposing DBE firms must be certified at the time of submission of the Letter of Interest. If the selected firm fails to meet the established DBE participation goal, it shall be required to demonstrate its good faith efforts to attain the goal.

Responses are encouraged by small firms, Disadvantaged Business Enterprise (DBE) firms, and other firms who have not previously performed work for the Department of Transportation.

Each Letter of Interest must include the following information and the information must be packaged and presented in the following order:

1. Transmittal Letter (Maximum of two (2) 8 1/2" x 11" typed pages, one side)

The subject heading of the transmittal letter must include the project reference number for which the applicant wishes to be considered, the firm's legal name, fictitious name (if applicable), and the firm's federal identification number. If the project advertisement indicated the Department will retain an engineering firm for the project, the applicant must indicate in the body of their transmittal letter the names and Professional Engineer License Number of individuals who are directing heads or employees of the firm who have responsible charge of the firm's engineering activities, and whose names and seals shall be stamped on all plans, specifications, plats, and reports issued by the firm.

2. Project Organizational Chart (one page, one side, maximum size 11" x 17")

This Chart must show key staff from the prime and each subconsultant and their area of responsibility.

3. Standard Form 255, "Architect-Engineer and Related Services Questionnaire for Specific Project" (one Form 255 for the project team)

The Standard Form 255 must be signed, dated, and filled out in its entirety, including Item No. 6 listing the proposed subconsultants and the type of work or service they will perform on the project.

Under Item 4 of this form, Column A must specify only the number of subconsultant personnel and Column B must specify only the number of prime consultant personnel to be assigned to work on this project reference number. Do not include the total personnel for either the subconsultant or prime consultant under Item 4 unless the total personnel are necessary to provide the required work and services.

The prime and each subconsultant may include no more than one page each for Items 10 and 11.

If a Disadvantaged Business Enterprise (DBE) goal is specified for the project, the DBE must be currently certified by the Department of Transportation, and the name of the DBE and the work to be performed must be indicated in Item No. 6. If a Woman Business Enterprise (WBE) firm is substituted for the DBE, the WBE firm must also be presently certified by the Department of Transportation and indicated in Item 6.

4. Standard Form 254, "Architect-Engineer for Related Services Questionnaire"

A Standard Form 254, not more than one (1) year old as of the date of this advertisement, must accompany each Letter of Interest for the firm, each party to a Joint Venture, and for each subconsultant the firm or Joint Venture is proposing to use for the performance of professional services regardless of whether the subconsultant is an individual, a college professor, or a Company, unless an acceptable Standard Form 254 for the prime and each subconsultant/subcontractor is on file in both the Bureau of Design and the Engineering District Office or Central Office Bureau identified in the individual project advertisement.

If the Standard Form 254 is not submitted with the Letter of Interest, the transmittal letter shall indicate the dates that the Standard Forms 254 were submitted to the Bureau of Design and appropriate Engineering District/Central Office Bureau.

These Forms must be assembled with the prime's form first, followed by the form for each subconsultant in the same order as the subconsultants appear in Item 6 of Form 255.

5. Workload Projection Graph (Not required for Construction Inspection Services)

Separate Workload Projection Graphs for the prime and each subconsultant shown in Item 6 of the Form 255 must be included and must indicate the firm's current and anticipated workload compared to the anticipated capacity available for the next two-year time frame. The Workload Projection Graphs must be submitted for the office(s) where the work would be performed and must only include the personnel classifications required for providing the advertised services and work.

6. Authorization Letters (For Construction Inspections Services, if required)

If the advertisement requires a letter signed by individuals giving their approval to use their name in the Letter of Interest, the letters from proposed prime employees must be first, followed by subconsultant employees, in the same order as shown in Item 6 of Form 255.

7. Registration To Do Business

Firms with out-of-state headquarters or corporations not incorporated in Pennsylvania must include, with each Letter of Interest, a copy of their registration to do business in the Commonwealth as provided by the Department of State. Firms who are not registered to do business in Pennsylvania at the time of this advertisement must document that they have applied for registration to the Department of State, Corporation Bureau. The telephone number for the Corporation Bureau is (717) 787-1057 or (717) 787-2004.

8. Overhead Rates (one page)

A single page summary must indicate the latest audited overhead rate developed in accordance with Federal Acquisition Regulations (FAR) for the prime consultant and each subconsultant. If a FAR rate is not available, the latest rate available from a Certified Public Accountant must be indicated. New firms should indicate how long the firm has been in existence and when an audited overhead rate would be available.

9. Additional Information

Additional information, not to exceed ten (10) one sided 8 1/2" x 11" pages or five (5) double sided 8 1/2" x 11" pages may be included at the discretion of the submitting firm.

The assignment of the agreement/contract for the above advertisement(s) will be made to one of the firms who submitted an acceptable Letter of Interest in response to the project advertisement. The assignment will be made based on the Department's evaluation of the firm's qualification and capabilities. The Department reserves the

right to reject all letters submitted, to cancel the solicitations requested under this Notice, and/or to readvertise solicitation for the work and services.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 98-826. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Retention of Engineering Firms

#### Lackawanna, Luzerne, Pike, Susquehanna, Wayne and Wyoming Counties Project Reference No. 08430AG2190

This project advertisement appeared in the May 16, 1998, issue of the *Pennsylvania Bulletin*. Letters of Interest are due in the Department by close of business on June 5, 1998. The following four paragraphs were omitted from the May 16, 1998, *Pennsylvania Bulletin*:

The engineering services and environmental studies identified above are the general work activities that can be expected under this Open-End Contract. A more specific and project-related Scope of Work will be outlined for each individual Work Order developed under this Open-End Contract.

The second copy of the letter of interest and required forms (see "General Requirements and Information" section) shall be sent to: Charles Mattei, P.E., District Engineer, District 4-0, P. O. Box 111, Scranton, PA 18501.

Any technical questions concerning the requirements for this project should be directed to: Robert J. Horutz, P.E. District 4-0, at (717) 963-4064.

Any questions concerning the submittal of the letter of interest for this Open-End Contract can be directed to the Consultant Agreement Division at (717) 783-9309.

BRADLEY L. MALLORY  
*Secretary*

[Pa.B. Doc. No. 98-827. Filed for public inspection May 22, 1998, 9:00 a.m.]

## HEALTH CARE COST CONTAINMENT COUNCIL

### Mandated Benefits

Section 9 of Act 34 of 1993 requires that the Health Care Cost Containment Council (Council) review existing or proposed mandated health benefits on request of the executive and legislative branches of government. The Council has been requested by Senator Edwin G. Holl, Chairperson of the Senate Banking and Insurance Committee, to review Senate Bill 1198, Printers Number 1487 (Afflerbach), providing for reimbursement for routine patient care costs when an insured, enrollee, or subscriber participates in approved cancer clinical trials.

The Council is requesting that anyone supporting or opposing these mandated insurance benefits provide six copies of the documentation to the Council no later than July 23, 1998. The documentation should be mailed to Flossie Wolf, PA Health Care Cost Containment Council, 225 Market Street, Suite 400, Harrisburg, PA 17101.

Documentation submitted should be in accordance with any or all of the following information categories described in Section 9 of Act 34:

(i) The extent to which the proposed benefit and the services it would provide are needed by, available to and utilized by the population of the Commonwealth.

(ii) The extent to which insurance coverage for the proposed benefit already exists, or if no such coverage exists, the extent to which this lack of coverage results in inadequate health care or financial hardship for the population of the Commonwealth.

(iii) The demand for the proposed benefit from the public and the source and extent of opposition to mandating the benefit.

(iv) All relevant findings bearing on the social impact of the lack of the proposed benefit.

(v) Where the proposed benefit would mandate coverage of a particular therapy, the results of at least one professionally accepted, controlled trial comparing the medical consequences of the proposed therapy, alternative therapies and no therapy.

(vi) Where the proposed benefit would mandate coverage of an additional class of practitioners, the result of at least one professionally accepted, controlled trial comparing the medical results achieved by the additional class of practitioners and those practitioners already covered by benefits.

(vii) The results of any other relevant research.

(viii) Evidence of the financial impact of the proposed legislation, including at least:

(A) The extent to which the proposed benefit would increase or decrease cost for treatment or service.

(B) The extent to which similar mandated benefits in other states have affected charges, costs and payments for services.

(C) The extent to which the proposed benefit would increase the appropriate use of the treatment or service.

(D) The impact of the proposed benefit on administrative expenses of health care insurers.

(E) The impact of the proposed benefits on benefits costs of purchasers.

(F) The impact of the proposed benefits on the total cost of health care within the Commonwealth.

CLIFFORD L. JONES,  
*Executive Director*

[Pa.B. Doc. No. 98-828. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Solicitation of Bids

The Health Care Cost Containment Council (Council) is soliciting bids from qualified vendors to conduct advanced statistical and consultative services for the agency, under the direction of the Research Department. Interested parties are requested to contact the Council office by writing to 225 Market Street, Suite 400, Harrisburg, PA 17101, or by calling (717) 232-6787 for copies of the Request for Proposal. Bids are due to the Council Office no later than 5 p.m. on June 26, 1998. A preproposal conference will be held at the above address on June 1,

1998, at 10 a.m. Potential bidders are invited to submit questions in advance of the preproposal conference.

CLIFFORD L. JONES,  
*Executive Director*

[Pa.B. Doc. No. 98-829. Filed for public inspection May 22, 1998, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 11:30 a.m., Thursday, May 7, 1998, and took the following actions:

#### *Regulations Approved:*

Department of Banking #3-36: Consumer Discount Companies (amends 10 Pa. Code Chapter 41)

Pennsylvania Public Utility Commission #57-164: Obsolete Regulations (amends 52 Pa. Code Chapter 59)

Board of Pardons #56-2: Recommendation (amends 37 Pa. Code § 81.301(a))

State Board of Optometry #16A-525: Therapeutic Drugs (amends 49 Pa. Code §§ 23.1, 23.82, 23.201 and 23.202).

State Board of Psychology #16A-634: Repeals and Editorial Changes (amends 49 Pa. Code Chapter 41)

Public School Employes' Retirement System #43-6: Change in Benefit Payment Plan (amends 22 Pa. Code Chapter 213)

#### *Regulations Disapproved:*

State Board of Pharmacy #16A-542 General Revisions (amends 49 Pa. Code Chapter 27)

*Regulations Deemed Approved Under Section 5(g) of the Regulatory Review Act—Effective May 5, 1998*

State Board of Dentistry #16A-463: Fees (amends 49 Pa. Code Chapter 33)

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

*Department of Banking—Consumer Discount Companies; Regulation No. 3-36*

### Order

On December 19, 1997, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Banking (Department). This rulemaking amends 10 Pa. Code Chapter 41. The authority for this regulation is contained in section 12 of the Consumer Discount Company Act (7 P. S. § 6212). The proposed regulation was published in the January 3, 1998 edition of the *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on April 14, 1998.

The Department is amending its regulations for consumer discount companies. The amendments implement provisions of Act 180 of 1996, which increased the ceiling on consumer discount company loans from \$15,000 to \$25,000. The Act also allows consumer discount companies to use fictitious names as a substitute or in addition to their corporate names. These legislative changes are reflected in this rulemaking.

We have reviewed this regulation and find it to be in the public interest. The regulation is necessary to update the Department's regulation to make them consistent with recent legislative amendments to the Consumer Discount Company Act.

*Therefore, It Is Ordered That:*

1. Regulation No. 3-36 from the Department of Banking, as submitted to the Commission on April 14, 1998, is approved; and

2. The Commission will transmit a copy of this Order to the Legislative Reference Bureau.

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

*Pennsylvania Public Utility Commission—Obsolete Regulations; Regulation No. 57-164*

### Order

On March 15, 1996, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania Public Utility Commission (PUC). This rulemaking amends 52 Pa. Code Chapter 59. The authority for this regulation is found in sections 501, 504—506, 1301 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501, 504—506, 1301 and 1501). The proposed regulation was published in the March 30, 1996 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was initially submitted to the Commission on October 10, 1997. The regulation was withdrawn on October 24, 1997. A revised final-form regulation was submitted on April 7, 1998.

The PUC is revising and rescinding obsolete and excessive gas service regulations. The rulemaking is intended to clarify and simplify existing regulations and to remove excessive and burdensome requirements.

We have reviewed this regulation and find it to be in the public interest. The elimination of burdensome and obsolete requirements will enable the natural gas industry to provide more efficient service to consumers.

*Therefore, It Is Ordered That:*

1. Regulation No. 57-164 from the Pennsylvania Public Utility Commission, as submitted to the Commission on April 7, 1998, is approved; and

2. The Commission will transmit a copy of this Order to the Legislative Reference Bureau.

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

*Board of Pardons—Recommendation; Regulation No. 56-2*

#### Order

On April 13, 1998, the Independent Regulatory Review Commission (Commission) received this regulation from the Board of Pardons (Board). This rulemaking amends 37 Pa. Code § 81.301(a). The authority for this rulemaking is found in Article 4, Section 9 of the Pennsylvania Constitution and in section 299(c) of The Administrative Code of 1929 (71 P. S. § 299(c)). Notice of proposed rulemaking was omitted for this regulation; it will become effective upon publication in the *Pennsylvania Bulletin*.

As amended, section 81.301(a) requires a unanimous vote (instead of a majority vote) of the five-member Board in order to send a recommendation for clemency to the Governor in cases where the person is under a sentence of death or life imprisonment. The change will conform the Board's regulation to the amendment to Article IV, Section 9 of the Pennsylvania Constitution approved by more than a majority of electors in the general election held on November 4, 1997.

We have reviewed this regulation and find it to be in the public interest. The Board is meeting its responsibility to bring the provisions of § 81.301(a) into conformity with Article IV, Section 9 of the Pennsylvania Constitution.

*Therefore, It Is Ordered That:*

1. Regulation No. 56-2 from the Board of Pardons, as submitted to the Commission on April 13, 1998, is approved; and
2. The Commission will transmit a copy of this Order to the Legislative Reference Bureau.

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

*State Board of Optometry—Therapeutic Drugs; Regulation No. 16A-525*

#### Order

On August 14, 1997, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Optometry (Board). This rulemaking amends 49 Pa. Code §§ 23.1, 23.82, 23.201 and 23.202. The authority for this regulation is sections 3(b)(14) and 4.1 of the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.3(b)(14) and 244.4a). The proposed regulation was published in the August 30, 1997 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on April 6, 1998.

This regulation implements portions of 1996 amendments to the act. It establishes education and examination requirements for certification of optometrists to write prescriptions for and administer pharmaceutical agents for therapeutic purposes. It also increases the minimum requirement for continuing education from 24 to 30 hours for biennial renewal of optometric licenses.

On April 22, 1998, the House Professional Licensure Committee voted to approve this regulation.

We have reviewed this regulation and find it to be in the public interest. This regulation implements portions of the act which allow optometrists in Pennsylvania to perform many of the same types of health care services that optometrists already provide in at least 40 other states.

*Therefore, It Is Ordered That:*

1. Regulation No. 16A-525 from the State Board of Optometry, as submitted to the Commission on April 6, 1998, is approved; and
2. The Commission will transmit a copy of this Order to the Legislative Reference Bureau.

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

*State Board of Psychology—Repeals and Editorial Changes; Regulation No. 16A-634*

#### Order

On April 13, 1998, the Independent Regulatory Review Commission (Commission) received this regulation from the State Board of Psychology (Board). This rulemaking amends 49 Pa. Code Chapter 41. The authority for this regulation is section 3.2(2) of the Professional Psychologists Practice Act (63 P. S. § 1203.2(2)). Notice of proposed rulemaking was omitted for this regulation; it will become effective upon publication in the *Pennsylvania Bulletin*.

The Board is repealing an obsolete provision for licensure. The Board's statutory authority to license master's degree candidates expired December 31, 1995. Further, the Board is amending its regulation to reflect the new names of two accrediting bodies: the Council on Postsecondary Accreditation and the American Association of State Psychology Boards. Respectively, the replacement names are: the Commission on Recognition of Postsecondary Accreditation and the Association of State and Provincial Psychology Boards.

We have reviewed this regulation and find it to be in the public interest. This rulemaking eliminates obsolete provisions and ensures that the Board's regulations reflect the correct names of the accrediting bodies.

*Therefore, It Is Ordered That:*

1. Regulation No. 16A-634 from the State Board of Psychology, as submitted to the Commission on April 13, 1998, is approved; and
2. The Commission will transmit a copy of this Order to the Legislative Reference Bureau.

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

*Public School Employes' Retirement System—Change in Benefit Payment Plan; Regulation No. 43-6*

### Order

On January 2, 1996, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Public School Employees' Retirement System (PSERS) which amends 22 Pa. Code Chapter 213. The authority for this regulation is section 8502(h) of the Public School Employees' Retirement Code (act). The proposed regulation was published in the January 20, 1996 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on February 19, 1998. At our public meeting on March 12, 1998, the Commission voted to disapprove the final-form regulation. On March 18, 1998, PSERS notified the Commission of its intent to revise and resubmit the regulation. On April 21, 1998, the revised final-form regulation was submitted to the Commission.

The purpose of this rulemaking is to enable PSERS to permit a member to change the terms of the retirement contract within clearly established limits and reasonable timetables.

We have reviewed the resubmitted regulation and find it to be in the public interest. The Commission's disapproval of the final-form regulation was based on the submittal's lack of reasonableness and clarity. The amended final-form regulation incorporates corrections recommended in our disapproval Order. Specifically, the revised final-form regulation gives members 30 days, instead of the 15 days proposed in the original regulation, to elect to change an option after receipt of the initial benefit letter. PSERS also added a statement clarifying that receipt of the initial benefit letter and final statement are presumed to have occurred 3 business days after mailing. In addition, PSERS replaced the term "scrivener's" with "written" to clarify the type of error that satisfies a condition to change the terms of the retirement contract.

*Therefore, It Is Ordered That:*

1. Regulation No. 43-6 from the Public School Employees' Retirement System, as resubmitted to the Commission on April 21, 1998, is approved;
2. The Commission's bar to final publication of Regulation No. 43-6 issued under section 6(b) of the Regulatory Review Act (71 P. S. § 745.6(b)) is hereby rescinded; and
3. The Commission will transmit a copy of this Order to the Legislative Reference Bureau.

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

*State Board of Pharmacy—General Revisions; Regulation No. 16A-542*

### Order

On February 28, 1996, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Pharmacy (Board). This rulemaking amends 49 Pa. Code §§ 27.1, 27.11, 27.12, 27.14—27.16, 27.18, 27.21, 27.23, 27.24 and 27.26. The proposed regulation also adds § 27.25 (relating to licensure by reciprocity) and deletes § 27.25 (relating to failure to appear for examination). The authority for this regulation is 63 P. S. §§ 390-3(f), 4(j), and 6(k)(1) and (9). The proposed regulation was published in the March 9,

1996 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on April 6, 1998.

The Board submitted this proposed regulation to generally revise, clarify and update existing regulations in 49 Pa. Code, which cover a broad range of pharmacy operations, including standards of practice, permits, equipment requirements, pharmacy technicians and pharmacy internships. The Board made many modifications to the regulation in response to the commentators' and Commission's comments. However, the Commission continues to have concerns with § 27.26(h) of the regulation regarding requirements for registration as a pharmacist preceptor.

Existing § 27.26(h)(1) states a pharmacist preceptor may not have been convicted of an offense relating to the practice of pharmacy. In the proposed rulemaking, the Board proposed adding a sentence to this provision to allow a pharmacist to apply for a waiver of this provision. The House Professional Licensure Committee formally requested an explanation for this proposed amendment questioning what kind of practice-related violations would be acceptable. In our comments, we recommended that the Board explain why the waiver provision is needed and give examples of what degree of infractions would qualify for granting of a waiver.

The Board responded in the final-form rulemaking by deleting § 27.26(h)(1) in its entirety, including both existing and proposed language. The Board believed the remaining provisions of § 27.26(h) are sufficient because they require a pharmacist preceptor to have a license in good standing and to be working on a full-time basis.

The House Professional Licensure Committee has expressed concerns with deletion of § 27.26(h)(1). As a result, the Board has requested that the Commission disapprove the final-form regulation to allow them to make revisions suggested by the House Professional Licensure Committee related to requirements for registration as a pharmacist preceptor. The House Professional Licensure Committee submitted a letter to the Commission in support of a disapproval of the final-form regulation so that the Board can make amendments and resubmit the regulation. The regulation violates the criteria of clarity and protection of the public safety because § 27.26(h) does not specify whether or not a pharmacist who has been convicted of a criminal offense related to the practice of pharmacy can be registered as a pharmacist preceptor.

A second concern is the definition of "satellite pharmacy" in § 27.1. This definition states a satellite pharmacy is not "a pharmacy located off premises from the centrally located pharmacy of the institution regardless of whether the pharmacy is owned by the same person or entity which owns the institution." Commentators representing health systems believe the definition of "satellite pharmacy" will unnecessarily inhibit efficiencies they are developing in their delivery of care. We question the need to require licenses for pharmacies located off premises, as described by the commentators. The Board needs to justify the need to require a separate permit for pharmacies "off premises" in light of the cost savings that would not be realized through the efficiencies the health system providers are developing. The language of the regulation needs to be clearer regarding when a pharmacy is considered to be "off premises." The definition of "satellite pharmacy" violates our criteria of need, economic impact and clarity.

We have reviewed this regulation and find it not to be in the public interest.

Therefore, It Is Ordered That:

1. Regulation No. 16A-542 from the State Board of Pharmacy, as submitted to the Commission on April 6, 1998, is disapproved;

2. The State Board of Pharmacy, within 7 days of receipt of this Order, notify the Governor, the designated Standing Committees of the House of Representatives and the Senate, and the Commission of its intention to either proceed with the promulgation of the regulation without revisions, to revise the regulation or to withdraw the regulation. Failure to submit notification within the 7-day period shall constitute withdrawal of the regulation;

3. The Commission will transmit a copy of this Order to the Legislative Reference Bureau; and

4. This Order constitutes a bar to final publication of Regulation No. 16A-542 under section 6(b) of the Regulatory Review Act.

Commissioners Present: John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
May 7, 1998

State Board of Dentistry—Fees; Regulation No. 16A-463

### Order

On March 13, 1997, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Dentistry. This rule-making amends 49 Pa. Code Chapter 33. The authority for this regulation is sections 4(a) and 11.7 of the Dental Law (63 P.S. §§ 123(a) and 130h(b)). The proposed regulation was published in the March 29, 1997 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on April 13, 1998.

The final-form regulation contains no changes from the proposed regulation. We did not file any comments on the proposed regulation. Furthermore, we did not receive any negative recommendations on the final-form regulation from the Senate Committee on Consumer Protection and Professional Licensure and the final-form regulation was approved on April 22, 1998, by the House Committee on Professional Licensure.

Therefore:

The Commission will notify the Legislative Reference Bureau that Regulation No. 16A-463 from the State Board of Dentistry, as submitted to the Commission on April 13, 1998, was deemed approved under section 5(g) of the Regulatory Review Act on May 5, 1998.

JOHN R. MCGINLEY, Jr.,  
Chairperson

[Pa.B. Doc. No. 98-830. Filed for public inspection May 22, 1998, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Appeal of Jason Kotofsky Under Assigned Risk Plan; Flagship City Insurance Co.; Doc. No. P98-05-008

Under the Pennsylvania Assigned Risk Plan, section 19, that was adopted by the Insurance Commissioner under 75 Pa.C.S. § 1741, notice is hereby given that Christine Bronson has requested a hearing on the determination by the Pennsylvania Assigned Risk Plan Governing Committee concerning premium payments.

The hearing will be held at the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102, on June 17, 1998, at 1 p.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) section 8 of the Unfair Insurance Practices Act (40 P.S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e). Under 31 Pa. Code § 59.7(e), procedural matters will be in conformance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1—35.193, 35.225—35.251, unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing, and require an auxiliary aid service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 98-831. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Appeal of Ourstaff, Inc.; Pennsylvania Compensation Rating Bureau; Doc. No. R95-05-041

A prehearing conference shall occur on July 14, 1998 at 11 a.m., in Room 200, Administrative Hearing Office, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. The parties shall have exchanged and filed prior to July 10, 1998 all exhibits intended for use at the hearing, a witness list identifying the names, addresses and telephone numbers for the proposed witnesses, the identity of all experts along with their curriculum vitae and proposed testimony, an estimate of time for the respective party's case-in-chief, a listing of all legal issues and the supportive citation for the respective party's position pertaining to the legal issues and all joint factual stipulations.

The hearing shall occur on July 28, 1998 at 10 a.m. in Room 200, Administrative Hearing Office, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-832. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Appeal of Edward Lee under Assigned Risk Plan; Flagship Insurance Co.; Doc. No. PH98-05-002

Under the Pennsylvania Assigned Risk Plan, Section 19, that was adopted by the Insurance Commissioner under 75 Pa.C.S. § 1741, notice is hereby given that Christine Bronson has requested a hearing on the determination by the Pennsylvania Assigned Risk Plan Governing Committee concerning premium payments.

The hearing will be held as follows:

*Location:* Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

*Date:* June 16, 1998

*Time:* 1 p.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); Section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8); and the regulations set forth at 31 Pa. Code § 59.7(e). Under 31 Pa. Code § 59.7(e), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing, and require an auxiliary aid service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-833. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Insurance Coverages or Risks Eligible for Export by Insurance Commissioner

Under section 1604(2)(ii) of The Insurance Company Law of 1921 (40 P. S. § 991.1604(2)(ii)), the Insurance Commissioner hereby declares the following insurance coverages to be generally unavailable in the authorized market at the present, and thus exportable, and hereby adopts the following export list. Accordingly, for those insurance coverages which are included on the export list, a diligent search among insurers admitted to do business in this Commonwealth is not required before placement of the coverages in the surplus lines market.

#### Export List

##### Amusements

- Carnival ride owners/operators
- Amusement parks and their devices
- Auto racing and automobile race tracks
- Golf courses and driving ranges
- Midget autos and go-karts
- Animal rides
- Rodeos and horse shows
- Balloon rides—hot air/gas
- Recreational and sporting events
- Guide, lodge or outfitters
- Horseback/pony riding establishments
- Hunting clubs
- Special short term events
- Skating rinks (roller and ice) and skate board parks
- Ski resorts owners/operators liability
- Theatrical presentations

##### Armored cars

- Asbestos abatement contractors liability and cleanup coverage

##### Aviation

- Cargo
- Vehicles maintaining or servicing aircraft
- Fixed base operations
- Nonownership liability
- Hull
- Chartered
- Excess passenger liability
- Antique aircraft
- Airport liability
- Hangarkeeper's liability
- Helicopters

- Blood banks, blood and organ facilities

##### Boat rentals

- Chemical spray and/or drift

- Day care centers liability, including sexual abuse coverage\*

- Demolition contractors liability

##### Earthquake

- Explosive hauling

- Explosives, munitions or fireworks manufacturing/storage/sales

- Flood insurance not provided under Federal flood insurance

- Ground applicators—chemical

- Hazardous waste site mitigation contractors liability

- Hazardous waste disposal site liability and cleanup coverage

- House movers

- Kidnapping, ransom and extortion insurance

- Lead liability

- Lead abatement contractors liability

- Liability for employment related practices



Liquor liability—monoline  
 Nuclear energy general liability  
 Ocean marine  
 Physical damage coverage for private passenger, classic, antique or commercial vehicles with an original new cost or market value of \$60,000 or greater  
 Products recall coverage\*  
 Railroad liability  
 Security/Detective/Patrol agencies

\*denotes a new or amended coverage from the Export List published at 27 Pa.B. 2795 (June 7, 1997)

This list supersedes the list published at 27 Pa.B. 2795 (June 7, 1997), and shall remain in effect until superseded by a subsequent list as published in the *Pennsylvania Bulletin*.

Questions regarding the Export List may be directed to Cressinda E. Bybee, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 783-2144, fax (717) 787-8557.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-834. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Rate Filing; Pennsylvania Professional Liability Joint Underwriting Association

On May 1, 1998, the Insurance Department received from the Pennsylvania Professional Liability Joint Underwriting Association (JUA) a filing proposing the following: Adjust rates for some physician specialties and a territorial reallocation; change radiology descriptions; and a 10% increase in rates to reflect the per claim and aggregate limits of insurance which shall become effective January 1, 1999.

Unless formal administrative action is taken prior to June 30, 1998, the subject filing may be deemed approved by operation of law.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to Nabila Audi, Insurance Department, Bureau of Regulation of Rates and Policies, Room 1311, Strawberry Square, Harrisburg, PA 17120, or e-mail at [audin@ins.state.pa.us](mailto:audin@ins.state.pa.us), within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-835. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Utica First Insurance Company; Surcharge Rule for Homeowners' Premium Rates; Doc. No. RT98-05-006

An adjudicatory hearing will be held at the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102 on June 9, 1998, at 11 a.m.

The subject rule filing, if approved, would permit Utica to impose a surcharge on homeowners' premiums, at the time of issuance or renewal of a policy, based on the loss experience of the insured for the immediately preceding 3 years. Based upon that loss experience, a surcharge may be imposed as follows: 15% for two paid losses, 25% for three paid losses, 50% for four paid losses and 75% for five paid losses.

Matters to be considered at the hearing will include the following:

1. Whether the insurer must provide notification of the surcharge provisions to applicants for new policies and to current policyholders at renewal;
2. Whether the surcharge provision may be applied with respect to claims submitted by current policyholders prior to the implementation of the proposed surcharge provision by the insurer.

Persons wishing to intervene must file a petition to intervene with the Administrative Hearings Office under the provisions of 1 Pa. Code §§ 35.27—35.32 within 10 days of the publication of this notice in the *Pennsylvania Bulletin*.

Copies of these filings are available for public inspection during normal work hours at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to "Utica Hearing," Attn: Randy Rohrbaugh, Director, Bureau of Property & Casualty Insurance, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

Persons with a disability who wish to attend the above-referenced adjudicatory hearing, and require an auxiliary aid service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-836. Filed for public inspection May 22, 1998, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The Liquor Control Board seeks the following new site:

Cambria County, Wine & Spirits Shoppe #1102

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Penn-

sylvania Liquor Control Board with approximately 3,900 net useable square feet of new or existing retail commercial space in a shopping center environment in Richland Township.

*Proposals due:* June 12, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate,  
 State Office Building,  
 Room 408, 300 Liberty Avenue,  
 Pittsburgh, PA 15222  
**Contact:** Tom Deal,  
 (412) 565-5130

The following Liquor Control Board lease will expire:

Allegheny County, Wine & Spirits Shoppe #0261, 2629 Brownsville Road, Pittsburgh, PA 15227-2005.

*Lease Expiration Date:* May 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space along Brownsville Road in the Carrick section of the City of Pittsburgh.

*Proposals due:* June 12, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate,  
 State Office Building,  
 Room 408, 300 Liberty Avenue,  
 Pittsburgh, PA 15222  
**Contact:** George Danis,  
 (412) 565-5130

JOHN E. JONES, III,  
 Chairperson

[Pa.B. Doc. No. 98-837. Filed for public inspection May 22, 1998, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Abolition of Office of Prothonotary; Doc. No. M-00960800**

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

Public Meeting held  
 April 30, 1998

### Order

*By the Commission:*

At the public meeting held March 16, 1996, the Commission created the Office of Prothonotary to be a separate unit within the Secretary's Bureau, responsible for the filing, docketing, safekeeping, control, dissemination, record retention and retrieval of all documents filed with this agency, effective April 30, 1996. Notice, 26 Pa.B. 1456 (March 30, 1996). Subsequently, we amended our Rules of Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5 to reflect the Office of Prothonotary and its duties. 27 Pa.B. 414 (January 25, 1997).

The creation of the Office of Prothonotary was intended to focus attention and resources on the handling of

documents filed with the Commission. Based upon the experience gained in that effort and the improvements made in document handling, the Commission has determined that a separate sub-unit within the Secretary's Bureau is no longer necessary. Accordingly, the functions previously assigned to the Office of Prothonotary we will transfer to the Commission's Secretary.

Any document, pleading, or filing of any kind which would be filed with the Prothonotary should now be addressed to the Commission's Secretary, and any item addressed to the Prothonotary will be directed to the Secretary once it is received by the Commission. The regulations appearing at 52 Pa. Code Chapters 1, 3 and 5 will be amended accordingly when they are reviewed and revised for substantive changes, which occurs approximately every 5 years;

*Therefore,*

*It Is Ordered That:*

1. The Office of Prothonotary established by notice published at 26 Pa.B. 1456 (March 30, 1996) is hereby abolished.
2. The duties formerly performed by the Prothonotary are transferred to the Secretary.
3. This order be forwarded to the *Pennsylvania Bulletin* for publication.
4. This order is effective upon its publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
 Secretary

[Pa.B. Doc. No. 98-838. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before June 15, 1998, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

**Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.**

**A-00114930. Lifestat Ambulance Service, Inc.** (301 Salt Street, Saltsburg, Indiana County, PA 15681), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service, between points in the counties of Indiana, Armstrong, Westmoreland and Allegheny, and from points in the said counties, to points in Pennsylvania, and return; subject to the following conditions: that no right, power or privilege is granted to provide service between points in Allegheny County; that service is limited to the use of vehicles modified to handle

wheelchairs; that service is limited to equipment operated only by state certified emergency medical technicians; and that service is limited to the transportation of persons who are non-ambulatory, or persons who, due to physical or mental conditions, require pre-trip preparations such as assistance in being dressed or lifted, or medical monitoring, or the use of medical appliances or equipment, or a medical escort during transit. *Attorney:* William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219-2383.

**Application of the following for the approval of the transfer of stock as described under each application.**

**A-00111913, Folder 5000. Bucks County Services, Inc.** (1167 Newport Mews Drive, Bensalem, Bucks County, PA 19020), a corporation of the Commonwealth of Pennsylvania—for the approval of the transfer of 50 shares of issued and outstanding shares of stock held by Gregory Collings to Joseph McQuillan. *Attorney:* John J. Gallagher, Suite 1100, 1760 Market Street, Philadelphia, PA 19103.

**Applications of the following for approval of the right and privilege to partially discontinue/abandon operating as common carriers by motor vehicle for the transportation of persons as described under each application.**

**A-00106822, F. 2, Am-C. 70-S Transportation, Inc.** (886 Twilight Hollow Road, Charleroi, Washington County, PA 15022), corporation of the Commonwealth of Pennsylvania—discontinuance of service, and cancellation of a certificate, as a common carrier, by motor vehicle, of all the scheduled route authority held at A-00106822, Folder 2, A-00106822, Folder 2, Am-A, and A-00106822, Folder 2, Am-B, which permits the transportation of passengers in the counties of Allegheny, Fayette, Washington and Westmoreland, over routes fully described in the application. A detailed description of the routes to be discontinued may be obtained by written request to the Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

**A-00079466, F. 9, Am-C. H. J. Gongaware Sons, Inc.** (8080 Pennsylvania Avenue, North Huntingdon, Westmoreland County, PA 15642), corporation of the Commonwealth of Pennsylvania—discontinuance of service, and cancellation of certificates, as a common carrier, by motor vehicle, of all the scheduled route authority held at A-00079466, Folder 8, A-00079466, Folder 9, A-00079466 Folder 9, Am-A, A-00079466, Folder 9, Am-B, and A-00079466, F. 10, which permits the transportation of passengers in the counties of Allegheny and Westmoreland, over routes fully described in the application. A detailed description of the routes to be discontinued may be obtained by written request to the Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

**Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under each application.**

**A-00106808, F. 3. Jacobs Limousine, Inc.** (47 Old River Road, Box 1504, Wilkes-Barre, Luzerne County, PA 18702), a corporation of the Commonwealth of Pennsylvania—additional right—persons, in group and party service, from points in the city of Wilkes-Barre, Luzerne County, and within an airline distance of 10 statute miles of the limits of said city, to points in Pennsylvania, and

return; subject to the following condition: that service is limited to the use of vehicles with a seating capacity of not more than 15 passengers, excluding the driver. *Attorney:* Edward J. Geist, 61 Carney Avenue, Wilkes-Barre, PA 18702-2215.

**Motor Carrier Applications—  
Property, Excluding  
Household Goods in Use**

The following applications for the authority to transport property, excluding household goods in use, between points in Pennsylvania, have been filed with the Pennsylvania Public Utility Commission. Public comment to these applications may be filed, in writing with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 on or before June 8, 1998.

- A-00114935 Wilbur C. McQueen, Jr., t/a McQueen Trucking  
241 Park Road, Downingtown, PA 19335
- A-00114934 Glen W. Weaver, t/a G & A Transport  
R. R. 1, Box 247, Millmont, PA 17845
- A-00114933 Jordan Transportation, Inc.  
258 Washington Court, Trappe, PA 19426; Edward J. Clinton, Jr., 737 Fairfax Road, Drexel Hill, PA 19026
- A-00114947 Daniel Mark Latterman, t/a Latterman Trucking  
150 McDowell Drive, Dallastown, PA 17313
- A-00114946 David J. Walsh, t/a Precision Auto Service  
90 Wyoming Avenue, Wyoming, PA 18644
- A-00114944 Joseph N. Russell  
43633 Russell Road, Centerville, PA 16404
- A-00114936 Stein Trucking, Inc.  
581 Pine Road, Mohrsville, PA 19541
- A-00114937 Jeff Podunajec  
R. D. 2, Box 2806, Waymart, PA 18472
- A-00114938 Bull's-Eye Express, Inc.  
5 Willow Springs Circle, York, PA 17402
- A-00114939 Michael Greco  
R. R. 5, Box 5036, Kunkeltown, PA 18058
- A-00114940 Trans-Porte, Inc., t/a U. S. Food Service  
P. O. Box 2661, Columbia, MD 21045
- A-00114941 Reno Nipple, t/a R & F Trucking  
R. R. 2, Box 2305, McAlisterville, PA 17049; David H. Radcliff, 3905 North Front Street, Harrisburg, PA 17110
- A-00114942 Lewis P. Amos  
608 Southern Drive, West Chester, PA 19380
- A-00114943 Murray D. Hall  
8801 Heckman Road, Meadville, PA 16335
- A-00114945 George M. Simcox  
R. D. 1, Box 1, Curwensville, PA 16833;  
Dwight L. Koerber, Jr.,  
P. O. Box 1320, Clearfield, PA 16830
- A-00114948 Lorretta D. Cook, t/a Redhead Express  
4 Fieldcrest Drive, McDonald, PA 15057
- A-00114949 K. W. Reese, Inc.  
P. O. Box 298, Mercersburg, PA 17236;  
Ken Lee, 310 Grant Street, 2nd Floor,  
Pittsburgh, PA 15219

- A-00108065 Sheraden Trucking, Inc.  
1232 Newcomer Street, Pittsburgh, PA  
15204: John A. Pillar, 1106 Frick Building,  
Pittsburgh, PA 15219
- A-00114127 Customized Integrated Systems for Logistics,  
Inc., t/a CISL, Inc.  
2955 East Market Street, York, PA  
17402

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-839. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Transfer by Sale Without Hearing

**A-123100F0023. UGI Utilities, Inc.** Application of UGI Utilities, Inc., for approval of the transfer by sale of an approximately 17 acre parcel of unimproved land located on Leesport Avenue, Ontenlaunee Township, Berks County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before June 8, 1998, under 52 Pa. Code (relating to public utilities).

*Applicant:* UGI Utilities, Inc.

*Through and By Counsel:* Thomas M. Jackal, Esquire, UGI Corporation, P. O. Box 858, Valley Forge, PA 19482

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-840. Filed for public inspection May 22, 1998, 9:00 a.m.]

## PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

### Hearings Scheduled

Hearings have been scheduled, as authorized by 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code), in connection with the Public School Employees' Retirement System's denial of claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg, PA 17101:

- |               |   |           |
|---------------|---|-----------|
| June 22, 1998 | Linda D. Benson<br>(Disability)                   | 1:30 p.m. |
| June 24, 1998 | David H. Spahr<br>(Purchase of Service)           | 1 p.m.    |
|               | Terry B. Hileman<br>(Multiple Service Membership) | 2:30 p.m. |

Persons with a disability who wish to attend the above-listed hearings, and require an auxiliary aid, service or other accommodation to participate in the proceed-

ings, should contact Arthur J. Granito, Assistant Executive Director, at (717) 783-5613 to discuss how the Public School Employees' Retirement System may best accommodate their needs.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 22 Pa. Code § 201.1 (relating to applicability of general rules), procedural matters will be in conformance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II unless specific exemption is granted.

JAMES A. PERRY,  
*Secretary*

[Pa.B. Doc. No. 98-841. Filed for public inspection May 22, 1998, 9:00 a.m.]

## TREASURY DEPARTMENT

### Request for Proposals

The Commonwealth of Pennsylvania, Treasury Department is accepting proposals from interested bidders for auctioneer services in relation to the Bureau of Unclaimed Property. Interested vendors may obtain a copy of the Request for Proposals by contacting Laura Yeiser, Office of the Treasurer, Room 127, Finance Building, Harrisburg, PA 17120, (717) 787-9802. Proposals in response to this request will be accepted no later than noon, Monday, June 22, 1998.

BARBARA HAFER,  
*State Treasurer*

[Pa.B. Doc. No. 98-842. Filed for public inspection May 22, 1998, 9:00 a.m.]

## TURNPIKE COMMISSION

### Request for Bids

The Turnpike Commission is requesting sealed bids for:

1. Liquid De-Icing Tailgate Dispensers and Fill Systems. *Bid Open Date:* June 6, 1998 at 11 a.m.
2. Construction of On-Lot Sewage Disposal System at Beaver Valley Interchange (Beaver County). *Mandatory Site Inspection:* June 6, 1998, 2 p.m. at Beaver Valley Int., No. 2, M. P. 12.8, Route 18, Beaver Falls, Beaver County. *Bid Open Date:* June 6, 1998 at 11 a.m.
3. Plumbing and General Construction Renovations at Harrison City Maintenance Facility, Westmoreland County. *Mandatory Site Inspection:* June 6, 1998, 8 a.m., at Harrison City Maintenance, Milepost 63.24 WB, Westmoreland County. *Bid Open Date:* June 6, 1998 at 11 a.m.

Bids will be received by the Purchasing Manager not later than the time indicated. Bid proposal forms and

conditions may be obtained, free of charge, by communicating with the Bid Clerk, Purchasing Department, (717) 939-9551, Ext. 2830.

JAMES F. MALONE, III,  
*Chairperson*

[Pa.B. Doc. No. 98-843. Filed for public inspection May 22, 1998, 9:00 a.m.]

### Request for Proposals

Sealed Proposals will be received by Jeffrey L. Hess, Purchasing Manager, at the Administration Building, Harrisburg-East Interchange near Highspire, PA (Mailing Address: P. O. Box 67676, Harrisburg, PA 17106-7676) and publicly opened and read at the date and time indicated for the following contract:

**Contract No. 95-020-RJ80-C**—Installation of roadway lighting at the Lebanon-Lancaster Interchange in Lancaster Co., PA

*Bid Opening Date*—June 24, 1998, 11 a.m.

*Bid Surety*—5%

Plans, Specifications and Contract documents will be available and open for public inspection at the Administration Building. Copies may be purchased upon payment of \$25 per set by check or P. O. Money Order (no cash) payable to the Pennsylvania Turnpike Commission: Attention: Secretary-Treasurer's Office, P. O. Box 67676, Harrisburg, PA 17106-7676. No refund for any reason will be made for plans, specifications and contract documents.

A Prequalification Certification and Maximum Capacity Rating assigned by the Prequalification Committee of the Pennsylvania Department of Transportation is a necessary prerequisite for bidding on this project.

Contact the Purchasing Manager for a listing of other locations where plans and specs can be inspected.

JAMES F. MALONE, III,  
*Chairperson*

[Pa.B. Doc. No. 98-844. Filed for public inspection May 22, 1998, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

**EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.**

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employes and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

### Reader's Guide

#### Legal Services & Consultation—26

- ① Service Code Identification Number
- ② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services  
 Location: Harrisburg, Pa.  
 Duration: 12/1/93-12/30/93  
 Contact: Procurement Division  
 787-0000

③ Contract Information

④ Department

⑦

⑤ Location

(For Commodities: Contact:)  
 Vendor Services Section  
 717-787-2199 or 717-787-4705

⑥ Duration

#### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, "Frequently Asked Questions About State Contracts," explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania State Treasury  
 Room G13 Finance Building  
 Harrisburg, PA 17120  
 717-787-2990  
 1-800-252-4700

BARBARA HAFER,  
*State Treasurer*

**Online Subscriptions At <http://www.statecontracts.com> 1-800-334-1429 x340**

### Commodities

- 2089387** Agricultural machinery and supplies—latest model 4 wheel drive ATV; 2 each.  
**Department:** Conservation and Natural Resources  
**Location:** Cressona, Schuylkill County, PA 17929  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2006357** Chemicals and chemical products—helium, ultra-high purity (mg 5.0); nitrogen, zero grade, less than 0.5 ppm thc; argon, pre-purified, 99.98%, 290 cu. ft. cyl; etc.—various amounts.  
**Department:** Environmental Protection  
**Location:** Harrisburg, Dauphin County, PA 17105-1467  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1893317** Communication equipment—provide and install a variety of communications equipment, ie. microphone, mounted lights, amplifier etc.  
**Department:** PA Emergency Management Agency  
**Location:** Harrisburg, Dauphin County, PA 17105-3321  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2011117** Communication equipment—design, furnish and install video surveillance alarm system w/appropriate accessories; various amounts.  
**Department:** Corrections  
**Location:** Bellefonte, Centre County, PA 16823  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2087817** Communication equipment—Sony digital betacam editing recorder/player model: dvw-a500 with bkdw-505 analog composite card and rmm-110us—rack mount kit; 1 each.  
**Department:** Office of Administration  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8141410** Construction and building materials—bituminous wearing course, ID-2 complete in place; 7,150 ton.  
**Department:** Transportation  
**Location:** Warren, Bradford County, PA 16365  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249160** Construction, mining, excavating and highway maintenance equipment—plow, 721; 12 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249170** Construction, mining, excavating and highway maintenance equipment—plow, reverse, 42"; 27 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249180** Construction, mining, excavating and highway maintenance equipment—plow, jump type; 2 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249190** Construction, mining, excavating and highway maintenance equipment—plow, power angle, dual taper (sd), worm; 8 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249200** Construction, mining, excavating and highway maintenance equipment—plow wing, grader patrol—right; 3 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249210** Construction, mining, excavating and highway maintenance equipment—plow wing, patrol—left; 4 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249220** Construction, mining, excavating and highway maintenance equipment—microprocessor control; 13 each.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249230** Construction, mining, excavating and highway maintenance equipment—brine, salt production system; 22 each.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249240** Construction, mining, excavating and highway maintenance equipment—insert, spreader, dump body; 1 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249570** Construction, mining, excavating and highway maintenance equipment—plow, Alaskan; 7 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

- 8249570** Construction, mining, excavating and highway maintenance equipment—plov, Alaskan; 7 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8504520** Construction, mining, excavating and highway maintenance equipment—hydraulic cylinders, double acting, for ram snow plows; 200 each.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17110  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1009158** Electrical equipment and accessories—15 kva medium voltage metal clad switchgear; 1 each; 5 kva medium voltage metal clad switchgear; 1 each.  
**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1013158** Electrical equipment and accessories—lighting system for modular greenhouse cubicles to provide movable lighting to accommodate differing growing and insect rearing conditions; 1 lot.  
**Department:** PA State University  
**Location:** State College, Centre County, PA 16801  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8504480** Engines, turbines and components—hydraulic motor, for stainless and rubber trough spreaders; 250 each.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17110  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1817117** Food preparation and serving equipment—1 each oven/steam combination unit to be Blodget Combi Model COS-20 E No Substitute.  
**Department:** Corrections  
**Location:** Huntingdon, Huntingdon County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1022208** Laboratory instruments and equipment—binoculars, gyro stabilized, 14x magnification, to have day/night vision with gen 3.0 image intensifier tubes; 2 each.  
**Department:** State Police  
**Location:** Hershey, Dauphin County, PA 17033  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2104157** Laboratory instruments and equipment—Leica st 5050 Immunostainer, or equal; 1 each.  
**Department:** Agriculture  
**Location:** Harrisburg, Dauphin County, PA 17110-9449  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2105157** Laboratory instruments and equipment—Dynex Technologies single reagent dispenser with peek (polyetheretherketone) probe—no substitute; 1 each w/accessories.  
**Department:** Agriculture  
**Location:** Harrisburg, Dauphin County, PA 17110-9449  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8122270** Laboratory instruments and equipment—hand held, reflectorless laser rangefinder; 72 each.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17105-8210  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1464155** Maintenance and repair shop equipment—furnish and install car wash; 1 each.  
**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA 17125  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8504500** Maintenance and repair equipment—auger, screw, universal (6" o. d.), for use on tailgate spreaders; 600 each.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17110  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8249250** Mechanical and power equipment—insert, anti-icing/de-icer; 4 each w/option.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8504460** Metal bars, sheets and shapes—open steel bridge flooring type tr-5 inch depth; 960 sq. ft.  
**Department:** Transportation  
**Location:** Hyde, Clearfield County, PA 16843  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1953167** Metal working machinery—A.G.E. 2-1 trakage 2 axis computerized milling machine control unit w/appropriate accessories; 1 each.  
**Department:** Thaddeus Stevens State School  
**Location:** Lancaster, Lancaster County, PA 17602-3198  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8504540** Motor vehicle equipment and supplies—light bar, safety; 250 each.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17110  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 8214730** Paper and printing—1997/98 transportation map print and deliver; 1500 M.  
**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA 17101-1900  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2088817** Photographic equipment—seal image laminator model: 600-s; 1 each.  
**Department:** Office of Administration  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2090157** Photographic equipment—r-3 color reversal print processor hkm-32160-r3 hope color reversal to include: (4) each No. rb10-1 10 gallon replenishment tanks (1) each No. km4ap-f accessory package; 1 each.  
**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA 17125  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1010388** Prefab structures and scaffolding—seamless panel exhibit system by Tigermark Display w/appropriate accessories; 71 each.  
**Department:** Conservation and Natural Resources  
**Location:** Harrisburg, Dauphin County, PA 17105-8551  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 7314040** Promotional and public relations items—gift bags, flat silver, metalized; various sizes and amounts.  
**Department:** Liquor Control Board  
**Location:** Harrisburg, Dauphin County, PA 17124-0001  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1008158** Refrigerator and AC equipment—2,000 ton 2-cell cooling towers—1 project.  
**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA 17120  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1927117** Safety and security equipment—perimeter intrusion detection system; 1 each.  
**Department:** Corrections  
**Location:** Bellefonte, Centre County, PA 16823  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1965117** Safety and security equipment and accessories—narcotics detection system, capable of detecting trace particles of narcotic substances on surfaces. Detection devices should be the Ionscan 400 or the Itemiser 7000c or equivalent technology (specifically, the technology is known as ion mobility spectrometry); 15 each.  
**Department:** Corrections  
**Location:** Camp Hill, Cumberland County, PA 17001-0598  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1985217** Safety and security equipment and accessories—perimeter security system, furnish only; 1 each.  
**Department:** Public Welfare  
**Location:** Loysville, Perry County, PA 17047  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 2012117** Safety and security equipment and accessories—Pelco closed circuit security/surveillance system w/accessories; various amounts.  
**Department:** Corrections  
**Location:** Pittsburgh, Allegheny County, PA 15233  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1647217** Steam plant and drying equipment—furnish and install two (2) Patterson-Kelley compact semi-instantaneous water heaters; 1 project.  
**Department:** Public Welfare  
**Location:** Clarks Summit, Lackawanna County, PA 18411-9505  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199
- 1829117** Steam plant and drying equipment—aERCO SW1B+.05/1.25/S, "No Substitution" hot water heater with self contained pilot operator; 2 each.  
**Department:** Corrections  
**Location:** Graterford, Montgomery County, PA 19426-0246  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199



**1024118** Textiles—flannel width 60", color: snow white; 5,000 yards.  
**Department:** Corrections  
**Location:** Dallas, Luzerne County, PA 18612  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**1030118** Textiles—nylon finished fabric, black/orange 60" raincoating material; 20,000 yards.  
**Department:** Corrections  
**Location:** Huntingdon, Huntingdon County, PA 16654-1112  
**Duration:** FY 97—98  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

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## SERVICES

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### Advertising—01

**RFP 99-07** Kutztown University is interested in receiving proposals from advertising agencies for the preparation and placement of university classified position advertising. The main responsibilities are, but not limited to: work closely with university to develop strategies to reach targeted audiences, reduce the total number of insertions, recommend select publications in specific markets for ad placements, etc. Interested professionals should obtain a Request for Proposal package from Barbara Reitz, Director of Purchasing, Kutztown University, Kutztown, PA 19530, (610) 683-4132, fax (610) 683-4674, e-mail: reitz@kutztown.edu. Request for packages must be made in writing. A pre-proposal meeting is scheduled for June 3, 1998 at 3 p.m. The proposals must be received on or before June 16, 1998 by 2 p.m. Late submissions will be returned unopened.

**Department:** State System of Higher Education  
**Location:** Kutztown University, Kutztown, PA 19530  
**Duration:** 1 year from Notice to Proceed  
**Contact:** Barbara Reitz, (610) 683-4132

**PGC-2578** The equivalent of Game Bird (pheasant) Grower 1 (200 tons) and Grower 2 (40 tons) pellet size 5/32", together with the following additions: medication added to feed as requested by superintendent. Request quotes Amprolium 0.0175% (22.40 lbs.). Bulk delivery; pneumatic blower unloading. Delivery in 8 to 24 ton lots, as requested. Feed and medication quantities are estimates only. The actual amounts ordered may be greater or less than the estimated quantity. Payment will be made only for the amount actually ordered. All feed is to be in strict accordance with attached PA Game Commission formula. (Note: Revised as of 1/94). The Game Commission reserves the right to cancel the purchase order if the vendor fails to comply with specifications. Bids will be opened at 11 a.m., June 15, 1998 at the PA Game Commission, Bureau of Administration, Division of Procurement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

**Department:** Game Commission  
**Location:** Bureau of Wildlife Management, Southwest Game Farm, R. D. 1, Box 51-A, New Bethlehem, PA 16242  
**Duration:** July 15, 1998—December 15, 1998  
**Contact:** Robert Hodge, Superintendent, (814) 275-2509

**PGC-2577** The equivalent of Game Bird (pheasant) Grower 1 (220 tons) and Grower 2 (180 tons) pellet size 5/32", together with the following additions: bulk delivery; pneumatic blower unloading. Delivery in 8 to 24 ton lots, as requested. Feed quantities are estimates only. The actual amounts ordered may be greater or less than the estimated quantity. Payment will be made only for the amount actually ordered. All feed is to be in strict accordance with attached PA Game Commission formula. (Note: Revised as of 1/94). The Game Commission reserves the right to cancel the purchase order if the vendor fails to comply with specifications. Bids will be opened at 11 a.m., June 12, 1998 at the PA Game Commission, Bureau of Administration, Division of Procurement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

**Department:** Game Commission  
**Location:** Bureau of Wildlife Management, Western Game Farm, 25761 Highway 408, Cambridge Springs, PA 16403  
**Duration:** July 1, 1998—January 15, 1999  
**Contact:** Larry Mears, Superintendent, (814) 398-2271

### Agriculture Services—02

**PGC-2579** The equivalent of Game Bird (pheasant) Grower 1 (260 tons) pellet size 5/32, together with the following additions: bulk delivery; pneumatic blower unloading. Delivery in 8 to 24 ton lots, as requested. Feed quantities are estimates only. The actual amounts ordered may be greater or less than the estimated quantity. Payment will be made only for the amount actually ordered. All feed is to be in strict accordance with attached PA Game Commission formula. (Note: Revised as of 1/94). The Game Commission reserves the right to cancel the purchase order if the vendor fails to comply with specifications. Bids will be opened at 11 a.m., June 10, 1998 at the PA Game Commission, Bureau of Administration, Division of Procurement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

**Department:** Game Commission  
**Location:** Bureau of Wildlife Management, Northcentral Game Farm, HC-31, Box 335, Williamsport, PA 17701  
**Duration:** July 1, 1998—November 15, 1998  
**Contact:** Bruce Guinter, Superintendent, (717) 478-2527

**PGC-2580** The equivalent of Game Bird (pheasant) Grower 1 (200 tons) and Grower 2 (160 tons) pellet size 5/32", together with the following additions: bulk delivery; pneumatic blower unloading. Delivery in 8 to 24 ton lots, as requested. Feed quantities are estimates only. The actual amounts may be greater or less than the estimated quantity. Payment will be made only for the amount actually ordered. All feed is to be in strict accordance with attached PA Game Commission formula. (Note: Revised as of 1/94). The Game Commission reserves the right to cancel the purchase order if the vendor fails to comply with specifications. Bids will be opened at 11 a.m., June 8, 1998 at the PA Game Commission, Bureau of Administration, Division of Procurement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

**Department:** Game Commission  
**Location:** Bureau of Wildlife Management, Loyalsock Game Farm, R. D. 2, Box 803, Montoursville, PA 17754  
**Duration:** July 1, 1998—December 31, 1998  
**Contact:** C. Clair Souter, Superintendent, (717) 435-2043

### Audio/Video—04

**RFP 99-08** Kutztown University is interested in receiving proposals from companies able to provide basic cable TV services for residence halls on campus. Scope to include but not be limited to: service for 1,600 rooms, each hall wiring closed to receive fiber optic receiver/broad band amp., and one multi port distribution device for each hall wiring closet. Request for Proposal packages must be made in writing and directed to: Barbara Reitz, Director of Purchasing, Kutztown University, Kutztown, PA 19530, (610) 683-4132, fax (610) 683-4674, e-mail: reitz@kutztown.edu. A pre-proposal meeting is scheduled for June 3, 1998 at 11 a.m. and proposals must be received on or before June 12, 1998 at 2 p.m. Late submissions will be returned unopened.

**Department:** State System of Higher Education  
**Location:** Kutztown University, Kutztown, PA 19530  
**Duration:** Indeterminate 1997—98  
**Contact:** Barbara Reitz, (610) 683-4132

**Barber Services—05**

**113-0505** Contractor shall supply hair styling services to Southwestern Veterans Center. Specifications available upon request.

**Department:** Military and Veterans Affairs  
**Location:** Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206  
**Duration:** September 01, 1998—August 31, 2000  
**Contact:** Ken Wilson, Purchasing Agent, (412) 665-6727

**Computer Related Services—08**

**JC-8-98** Maintenance: Furnish all labor, material and parts to maintain 95 Murata facsimile machines on a Statewide basis. Contractor must be an authorized Murata dealer or carry Murata parts—no substitutes; on-site response time must be within 4 hours from the time the call for repair is made and travel time WILL NOT be paid.

**Department:** Labor and Industry  
**Location:** Job Center Field Operations—Statewide  
**Duration:** October 1, 1998 through September 30, 1999  
**Contact:** Donna A. Sodrosky, Contract Officer, (717) 787-2560

**Construction Maintenance—09**

**DGS A 952-93** Project title: Sidewalk Replacement. Brief description: Demolish and replace sidewalk with handrails and cut-outs for ADA access to the building. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 1 p.m.

**Department:** General Services  
**Location:** Pittston Job Center, Pittston, Luzerne County, PA  
**Duration:** 90 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 960-84** Project title: Boiler Replacement. Brief description: Provide three new 7,600 lb./hr. packaged forced draft fire box steam boilers, combination gas/oil burners, fluevent stacks, fuel oil pump set, exhaust fan, louvers, piping, ductwork, controls, electrical equipment, wiring, insulation, excavation, roofing and masonry. Mechanical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Any and all bulletins issued prior to June 27, 1997 are hereby canceled. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 2 p.m.

**Department:** General Services  
**Location:** Flight Facility Building No. 19-101, Fort Indiantown Gap, Annville, Lebanon County, PA  
**Duration:** 180 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 555-64** Project title: Renovate Restroom and Bathing Area. Brief description: Renovation of toilet and bath areas to meet ADA requirements, including plumbing and electrical. General, plumbing and electrical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Any and all bulletins issued prior to June 27, 1997 are hereby canceled. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 1 p.m.

**Department:** General Services  
**Location:** Dogwood East, Hamburg Center, Hamburg, Berks County, PA  
**Duration:** 200 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 972-5** Project title: Construction of a Regional Storage Facility. Brief description: 19,400 GSF storage facility and 6,640 GSF hands-on-house building. Construction consisting of site improvements, concrete foundations, masonry bearing walls, steel framing, metal roofing, windows and curtain walls, interior partitioning and finishes to include plumbing and electrical systems. General, HVAC, plumbing and electrical construction. Plans deposit: \$132 per set. Payable to: Dagit-Saylor Architects. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. Bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail request to: Dagit-Saylor Architects, 1101 Land Title Building, 100 South Broad Street, Philadelphia, PA 19110-1023, (215) 972-0500. Bid date: Wednesday, June 10, 1998 at 2 p.m.

**Department:** General Services  
**Location:** Landis Valley Museum, Lancaster, Lancaster County, PA  
**Duration:** 240 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 553-81** Project title: Install Air Conditioning in Building 25 (D-4). Brief description: Remove existing HV unit and install a new steam heating/DX cooling air handling unit in the attic space and connect to existing duct system. Provide air-cooled condensing unit on grade, pneumatic temperature controls and install new electrical service from Dietary Building Basement to Building No. 25. Mechanical and electrical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 2 p.m.

**Department:** General Services  
**Location:** Selingsgrove Center, Selingsgrove, Snyder County, PA  
**Duration:** 180 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 553-79** Project title: Replace Windows—Building No. 10 and 12. Brief description: Replace aluminum windows with new aluminum thermal-break insulating windows. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 2 p.m.

**Department:** General Services  
**Location:** Selingsgrove Center, Selingsgrove, Snyder County, PA  
**Duration:** 170 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 501-68** Project title: Replace Underground Storage Tanks with Aboveground Storage Tanks. Brief description: Remove existing 1,000 gallon underground diesel fuel storage tanks at Building No. 26 and No. 31. Provide new 1,000 gallon aboveground fuel oil storage tanks to replace the existing tanks serving the emergency generators, including concrete pads, bollards, leak detection systems, panels, controls and electrical circuits. UST/AST construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 1 p.m.

**Department:** General Services  
**Location:** Allentown State Hospital, Allentown, Lehigh County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 1103-13 Phase 6** Project title: Plaza/Garage Roof Replacement. Brief description: Remove existing concrete plaza pavers, all existing roofing, insulations, concrete fill and roof drains. Install new roof drains and built-up roofing and flashing. Reinstall plaza pavers. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 17, 1998 at 11 a.m. A Pre-Bid Conference has been scheduled for Wednesday, June 3, 1998 at 10 a.m. in Forbes Quadrangle Building at the University of Pittsburgh, 230 South Bouquet Street, Pittsburgh, PA. Contact: Richard Vogel, (412) 624-9530. All contractors who have secured contract documents are invited and urged to attend this Pre-Bid Conference.

**Department:** General Services  
**Location:** Forbes Quadrangle, University of Pittsburgh, Pittsburgh, Allegheny County, PA  
**Duration:** 180 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 304-4 (Rebid)** Project title: Roof Gutter Replacement. Brief description: Removal of existing copper gutters and downspouts at rear of building. Install new 5" K-Type gutters and 3" x 4" downspouts. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 2 p.m.

**Department:** General Services  
**Location:** Elizabethtown Training Academy, Elizabethtown, Lancaster County, PA  
**Duration:** 90 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**948-41ST2** Project title: Foundations and Structural Slab. Brief description: The package consists of, but is not limited to, the following work: under slab utilities, cast in place concrete, footings and foundations, structural slab and grade beams, etc. General construction. Plans deposit: \$175 per set. Payable to CRSS Constructors. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check in the amount of \$15 made payable to Reliance Reprographics, Inc. must be submitted to cover the cost of delivery. Additional sets may be purchased. Cost of additional sets are not refundable. Mail requests to: Reliance Reprographics, Inc., 535 W. Hamilton Street, Suite 101, Allentown, PA 18101, Attn: Matthew F. Swartz, (610) 821-5100. Bid date: Tuesday, June 23, 1998 at 2 p.m. A Pre-Bid Conference has been scheduled for Tuesday, June 9, 1998 at 2 p.m. in the Arsenal Building, Corporate Board Room, 18th and Herr Streets, Harrisburg, PA 17125. Contact: Bill Chambers, P.E., or Justin Koenes, (717) 233-7507. All bidders who have secured plans and specifications are invited and urged to attend this pre-bid conference. All questions must be submitted in writing to Boylin Cywinski Jackson/Hayes Large Architects—Joint Venture, 125 S. 9th Street, Philadelphia, PA 19107. Attn: Randy Reid, AIA, (215) 592-0600, fax: (215) 592-9637 by Monday, June 15, 1998.

**Department:** General Services  
**Location:** Keystone Building, Capitol Complex, Harrisburg, Dauphin County, PA  
**Duration:** Proposed date of completion—September 17, 1999  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 948-35 PH. 9, PTA** Project title: Fire Safety Code Improvements. Brief description: Work includes security systems in the Capitol Building, East Wing, Forum, South and North Office Buildings. Electrical—security system construction. Plans deposit: \$350 per set. Payable to: Brinjac Kambic & Associates. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail request to: Brinjac Kambic & Associates, 114 North Second Street, Harrisburg, PA 17101-1401, (717) 233-4502. Bid date: Wednesday, June 24, 1998 at 2 p.m. Pre-bid conference scheduled for Thursday, June 4, 1998 at 10 a.m. Meeting to be held in Corporate Board Room, 18th and Herr Streets, Harrisburg, PA. All contractors who have secured contract documents are invited and urged to attend.

**Department:** General Services  
**Location:** Capitol Complex, Capitol Building, East Wing, Forum, North and South Office Buildings, Harrisburg, Dauphin County, PA  
**Duration:** 360 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 948-35, PH. 6, PTB** Project title: Fire Safety Code Improvements. Brief description: Work includes a sprinkler system, fire alarm system and basic electrical work, including installation and renovation of walls and ceilings, cutting and patching for the 5th floor down through the basement of the Health and Welfare Building. General HVAC and electrical construction. Plans deposit: \$400 per set. Payable to: Brinjac Kambic & Associates. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail request to: Brinjac Kambic & Associates, 114 North Second Street, Harrisburg, PA 17101-1401, (717) 233-4502. Bid date: Wednesday, June 24, 1998 at 2 p.m. Pre-Bid Conference scheduled for Wednesday, June 3, 1998 at 10 a.m. Meeting to be held in Corporate Board Room, 18th and Herr Streets, Harrisburg, PA. All contractors who have secured contract documents are invited and urged to attend.

**Department:** General Services  
**Location:** Capitol Complex, Health and Welfare Building, Harrisburg, Dauphin County, PA  
**Duration:** 540 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**Contract No. FBP-96-5-0021A** Demolition of an existing bridge (steel I-beams, concrete deck and stone masonry abutments), and construct a new bridge utilizing prestressed concrete beams, reinforced concrete abutments and deck. All work is located in Forest District No. 5 between Lewistown and State College.

**Department:** Conservation and Natural Resources  
**Location:** Jackson Township, Huntingdon County, PA  
**Duration:** Complete all work by September 30, 1999  
**Contact:** Construction Management Section, (717) 787-5055

**Contract No. FBP-96-5-0028A** Demolition of existing bridge (single span steel I-beam structure with a timber deck, bituminous concrete wearing surface and stone masonry abutments). Relocate a temporary bridge and fill material; construct a new bridge (prestressed concrete beams, reinforced concrete abutments and deck). Work is located near Whipple Dam State Park.

**Department:** Conservation and Natural Resources  
**Location:** Jackson Township, Huntingdon County, PA  
**Duration:** Complete all work by September 30, 1999  
**Contact:** Construction Management Section, (717) 787-5055

**Contract No. FBP-96-5-0014A** Demolition of existing bridge (steel I Beams, timber deck and stone masonry abutments); and construction of a new bridge (prestressed concrete beams, reinforced concrete abutments, wingwalls and deck, and architectural surface treatment). Work is located approximately 5 miles west of US Route 322 between Lewistown and State College.

**Department:** Conservation and Natural Resources  
**Location:** Jackson Township, Huntingdon County, PA  
**Duration:** Complete all work by September 30, 1999  
**Contact:** Construction Management Section, (717) 787-5055

**0508-JWO** The Department of General Services desires to issue a Service Purchase Contract for a contractor to put in a communications tower base and erect a 380 foot guyed tower in Centre County. A new Rohn Model 90 tower, complete with all hardware and dual tower lighting kit, will be provided at the site. Soil borings and soil analysis will be provided upon request. Copies of the Rohn tower specifications will be provided upon request. Site work will be required to begin within 15 days after contract award.

**Department:** General Services  
**Location:** Purchases, Radio Project Office, Centre County, Tower Site Rattlesnake II, approximately 4 miles west of Unionville adjacent to Highway 504  
**Duration:** July 1, 1998—December 31, 1998  
**Contact:** John W. Obradovich, (717) 772-8031

**CL-464-Construct Recreation Center** Clarion University of Pennsylvania, State System of Higher Education, is soliciting bids for the construction of a 48,000 square foot, two story, Student Recreation Center on its main campus in Clarion, PA. The project shall include site improvements, building construction including complete HVAC, plumbing, electrical and fire protection systems. The lower level of the building shall contain the facility's central activity space with three multi-use athletic courts, a weight room, multipurpose room, shower/locker rooms, mechanical support space and equipment storage. The upper level includes the main entrance to the building where a four lane running track surrounds and looks down into the central activity area of the lower level. The upper area also includes a lobby, reception/admin. areas, juice bar, vending areas and warm-up areas. Plans are available by contacting the architect: Kevin M. Trapper, The Hillier Group, 1212 South Abington Road, Clarks Summit, PA 18411, (717) 586-4000; fax (717) 587-5110. Plans cost: \$250/nonrefundable, by check made payable to The Hillier Group. Prebid conference: 10 a.m., June 9, 1998; Bids due: 2 p.m., June 30, 1998. Contracts to be awarded for general, HVAC, plumbing and electrical construction.

**Department:** State System of Higher Education  
**Location:** Clarion University, Clarion, Clarion County, PA  
**Duration:** 365 days from Notice to Proceed  
**Contact:** Judy McAninch, Contract Manager, (814) 226-2240

**AE-5227** Construction of a bulk material storage building. Fax (717) 783-7971.

**Department:** Transportation  
**Location:** Maintenance District 1-3, West Hickory Stockpile, Forest County, PA  
**Duration:** 90 calendar days—proposed bid June 1998  
**Contact:** Valentina Chubb, (717) 787-7001

**AE-5231** construction of concrete foundation wall for material storage bay(s). Fax (717) 783-7971.

**Department:** Transportation  
**Location:** PennDOT Maintenance District 8-4, Stockpile No. 16, Gatchelville, York County, PA  
**Duration:** 90 calendar days—proposed bid June 1998  
**Contact:** Valentina Chubb, (717) 787-7001

**Court Reporting—10**

**002** Court reporting service: Stenotype and/or capability for real time reporting with Live Note System. Bids must be submitted by June 12, 1998.

**Department:** Board of Claims  
**Location:** Fulton Building, 200 North Third Street, Harrisburg, PA 17101-1501 (Main offices located in Harrisburg, services to be performed anywhere within the Commonwealth)  
**Duration:** July 1, 1998—June 30, 1999  
**Contact:** Connie G. Rode, (717) 787-3325

**Drafting and Design Services—12**

**08430AG2198** To perform environmental mitigation design, final design, shop drawing review and consultation during construction for S. R. 0202, Section 711—U.S. 202 Relocation in Montgomery and Bucks Counties.

**Department:** Transportation  
**Location:** Engineering District 6-0  
**Duration:** Twenty-four (24) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**Engineering Services—14**

**08430AG2199** Retain a firm specializing in Right-of-Way Acquisition to perform Right-of-Way services for a 9 mile section of S. R. 0022, Section 495, in Indiana and Cambria Counties.

**Department:** Transportation  
**Location:** Engineering District 9-0  
**Duration:** Twelve (12) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2186** To correct the State Route designation contained in the *Pennsylvania Bulletin*, May 9, 1998 issue. The correct route should be S. R. 0300-005, PA 283 reconstruction in Londonderry and Conewago Townships, Dauphin County.

**Department:** Transportation  
**Location:** Engineering District 8-0  
**Duration:** Twenty-eight (28) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**Food—19**

**HUN 320** Fresh produce: lettuce, celery, carrots, apples, potatoes, oranges, onions, bananas, cabbage, grapefruit, tomatoes, peppers, cucumbers and other vegetables or fruit as required by the agency. Note: cantaloupe, watermelon and tangerines in season. PA Spec. F-46 for fresh fruit and PA Spec V-14 for fresh vegetables. Monthly bids, weekly deliveries. Group bid awards. Bid proposal on file within the agency.

**Department:** Corrections  
**Location:** State Correctional Institution at Huntingdon, 1100 Pike Street, Huntingdon, PA 16654  
**Duration:** July 1, 1998 to June 30, 1999  
**Contact:** Robert Jessell, Purchasing Agent, (814) 643-2400

**HUN 321** Processed meats and cheese: turkey ham, turkey salami, pork loin, boneless chicken thigh, beef liver, turkey bologna, pork sausage patty, hot Italian sausage, bacon, sandwich steaks, Lebanon bologna, beef franks, cheeses and any other processed meats as may be required by the agency. Monthly bids. Bid proposal on file within the agency.

**Department:** Corrections  
**Location:** State Correctional Institution at Huntingdon, 1100 Pike Street, Huntingdon, PA 16654  
**Duration:** July 1, 1998 to June 30, 1999  
**Contact:** Robert Jessell, Purchasing Agent, (814) 643-2400

**240-0248** Milk and milk products to be delivered to Southwestern Veterans Center. Specifications of contract available upon request.

**Department:** Military and Veteran Affairs  
**Location:** Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206  
**Duration:** July 01, 1998—June 30, 1999  
**Contact:** Ken Wilson, Purchasing Agent, (412) 665-6727

**240-0250** Frozen juice, juice drinks and dairy products to be delivered September, October, and November. For specifications, please contact Facility Purchasing Department, (412) 665-6727.

**Department:** Military and Veteran Affairs  
**Location:** Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206  
**Duration:** September, October, November 1998  
**Contact:** Ken Wilson, Purchasing Agent, (412) 665-6727

**6500-066/Protein Alternatives** Protein alternative products, to include, but not be limited to, soy burgers, grainburgers, garden burgers, black bean burgers, dry soy chili mix, dry soy bar-b-que mix, tofu, etc. Will be bid by institution on an as needed basis.

**Department:** Corrections  
**Location:** State Correctional Institution at Retreat, R. D. 3, Box 500, Hunlock Creek, PA 18621  
**Duration:** July 1, 1998 through June 30, 1999  
**Contact:** Barbara Swiatek, Purchasing Agent, (717) 735-8754

**Hazardous Material Services—21**

**RFP 99-06** Kutztown University is seeking qualified firms for an open-ended requirements contract to perform asbestos abatement as needed in support of on-going construction project at Kutztown University. Plans are available for a non-refundable fee of \$10.00 from: Barbara Barish, Contractors Specialist, Kutztown University, Purchasing Dept., Kutztown, PA., 19530 or phone (610) 683-4602, fax (610) 683-4674 or e-mail: loguebar@kutztown.edu. Bid packages are available May 26, 1998 through pre-bid. A pre-bid meeting has been scheduled for June 4, 1998 at 10 a.m. Bids will be received June 18, 1998 by 2:00 p.m. Non-discrimination and equal opportunity are the policies of the Commonwealth and the State System of Higher Education.

**Department:** State System of Higher Education  
**Location:** Kutztown University  
**Duration:** One (1) year after NTP (3 add'l yr renewal option)  
**Contact:** Barbara Barish, (610) 683-4602

**ACM-001** The Hiram G. Andrews Center is seeking bids for the removal and disposal of asbestos containing material and abatement of a specified ceiling area containing asbestos. A mandatory site visit will be a requirement identified in the bidding documents.

**Department:** Labor and Industry  
**Location:** Hiram G. Andrews Center, 727 Goucher Street, Johnstown, Cambria County, PA 15905  
**Duration:** June 1, 1998 to May 31, 1999 with renewal option not to exceed 1 year period  
**Contact:** Robert D. Robinson, Purchasing Agent II, (814) 255-8210

**121-0198** Contractor to provide removal and disposal of infectious waste. Specifications of contract available upon request.

**Department:** Military and Veterans Affairs  
**Location:** Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206  
**Duration:** July 01, 1998 through June 30, 2001  
**Contact:** Ken Wilson, Purchasing Agent, (412) 665-6727

## HVAC—22

**Project No. 102** Provide emergency and routine repair work for plumbing system. The contractor must respond to the call within two hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid Proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military and Veterans Affairs  
**Location:** Various Buildings, Fort Indiantown Gap, Annville, Lebanon County, PA  
**Duration:** October 1, 1998—September 30, 2001  
**Contact:** Emma Schroff, (717) 861-8518

**Project No. 103** Provide emergency and routine repair work for electrical system. The contractor must respond to the call within two hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid Proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military and Veterans Affairs  
**Location:** Various Buildings, Fort Indiantown Gap, Annville, Lebanon County, PA  
**Duration:** October 1, 1998—September 30, 2001  
**Contact:** Emma Schroff, (717) 861-8518

**250-0228** Contractor shall provide all parts and labor necessary to provide preventive maintenance of facility HVAC equipment. Interested vendors may contact facility for contract specifications.

**Department:** Military and Veterans Affairs  
**Location:** Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206  
**Duration:** October 01, 1998 through June 30, 2001  
**Contact:** Ken Wilson, Purchasing Agent, (412) 665-6727

**Project No. 159-097** Project title: Mechanical Construction. Project description: Install plumbing, heating and electrical systems in existing Building No. SB-722. Plumbing includes water well pump, piping, tank, fixtures and water heater. Heating includes ground source HVAC system and ductwork. Electrical includes wiring, devices and lighting.

**Department:** Game Commission  
**Location:** State Game Lands No. 159, Lebanon Township, Wayne County, PA  
**Duration:** 90 calendar days from contract issuance  
**Contact:** Engineering and Contract Management Division, (717) 787-9620

**WC 675** West Chester University is soliciting sealed bids to supply and install new metal halide luminaires on four existing poles at Farrell Stadium. Work includes replacing two poles and luminaires at 60 yard line and providing wiring, contactors and new panel. Prevailing wages apply. Contract bonds will be required.

**Department:** State System of Higher Education  
**Location:** West Chester University, 210 East Rosedale Avenue, West Chester, PA 19383  
**Duration:** 60 days for completion after Notice to Proceed  
**Contact:** Jacki Marthinsen, Contracts Manager, (610) 436-2705

**WC 681** West Chester University is soliciting sealed bids to provide and install an emergency generator, automatic transfer switch and emergency panels. Work includes wiring to emergency panels throughout the building. Providing emergency power from the panels to the equipment is not in the contract. Generator work associated with the generator will also include exhaust piping to roof, muffler and natural gas piping. Work also includes providing heating, ventilating and air conditioning for the new Athletic Director office on the second floor. Prevailing wages apply. Contract bonds will be required. The bid package will be available from Entech Consulting Engineers, 4 South Fourth Street, Reading, PA 19603 and will cost \$30 if picked up and \$40 if mailed.

**Department:** State System of Higher Education  
**Location:** West Chester University, 210 East Rosedale Avenue, West Chester, PA 19383  
**Duration:** 90 days from Notice to Proceed  
**Contact:** Entech Consulting Engineers, (610) 373-6667

**700000-3500** Perform emergency and routine repair work to heating, plumbing, electrical and air conditioning systems as needed at the Lebanon Driver Exam Site. Requests for a site walk-through call: Kurt Kauffman, (717) 228-0299. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Lebanon Driver Exam Site, 900 East Cumberland Street, Lebanon, PA 17042  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**700001-3500** Perform emergency and routine repair work to heating, plumbing, electrical and air conditioning systems as needed at the Selingsgrove Driver Exam Site. Requests for a site walk-through call: Harold Fultz, (717) 374-8320. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Selingsgrove Driver Exam Site, 1015 Route 522, Selingsgrove, PA 17870  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

## Janitorial Services—23

**304-07437** Contractor to furnish the required labor, materials and equipment to accomplish complete custodial cleaning services as specified in the attached specifications on floors basement through 13 in the Philadelphia State Office Building.

**Department:** General Services  
**Location:** Buildings and Grounds, Philadelphia State Office Building, 1400 West Spring Garden Street, Philadelphia, PA 19130  
**Duration:** July 1, 1998 through June 30, 2001  
**Contact:** William Ivers, (215) 560-2520

**500000-3500** Three times weekly, provide janitorial service including emptying wastebaskets, sweeping, mopping floors, vacuuming, washing walls, dusting, washing windows inside and out, plus semi-annual house cleaning. Requests for a site walk-through call Pete Lucas (814) 269-1405. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Johnstown Driver Exam Site, 563 Walters Avenue, Johnstown, PA 15901  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**500001-3500** Three times weekly, provide janitorial service including emptying wastebaskets, sweeping, mopping floors, vacuuming, washing walls, dusting, washing windows inside and out, plus semi-annual house cleaning. Requests for a site walk-through call Kurt Kauffman (717) 228-0299. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Lebanon Driver Exam Site, 900 East Cumberland Street, Lebanon, PA 17042  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**500002-3500** Three times weekly, provide janitorial service including emptying wastebaskets, sweeping, mopping floors, vacuuming, washing walls, dusting, washing windows inside and out, plus semi-annual house cleaning. Requests for a site walk-through call Tom Chapman (717) 385-5837. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Schuylkill Haven Driver Exam Site, 970 East Main Street, Schuylkill Haven, PA 17972  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**500003-3500** Three times weekly, provide janitorial service including emptying wastebaskets, sweeping, mopping floors, vacuuming, washing walls, dusting, washing windows inside and out, plus semi-annual house cleaning. Requests for a site walk-through call Jim Baker (814) 445-3912. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Somerset Driver Exam Site, 5593 Glades Pike, Somerset, PA 15501  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**500004-3500** Three times weekly, provide janitorial service including emptying wastebaskets, sweeping, mopping floors, vacuuming, washing walls, dusting, washing windows inside and out, plus semi-annual house cleaning. Requests for a site walk-through call Tim Neil, (724) 439-7407. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Uniontown Driver Exam Site, R. D. 1, Box 390A, Uniontown, PA 15401  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**500005-3500** Three times weekly, provide janitorial service including emptying wastebaskets, sweeping, mopping floors, vacuuming, washing walls, dusting, washing windows inside and out, plus semi-annual house cleaning. Requests for a site walk-through call Tim Neil (724) 439-7407. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Waynesburg Driver Exam Site, Arbor Terrace, 164 Willow, Waynesburg, PA 15370  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**JC-7-98** General cleaning work to be performed Monday through Friday after normal working office hours. Work to be accomplished includes sweeping, mopping, dusting, washing, policing exterior of building, gathering and emptying trash, and other duties, as indicated in the Janitorial Specifications. Work will be done daily, weekly and monthly as indicated. Also, the policing of outside of building to be done seasonally as required, picking up trash, cutting down weeds and grass, removing cigarette butts, etc.

**Department:** Labor and Industry  
**Location:** Coatesville Job Center 0104, 250 East Harmony Street, Coatesville, Chester County, PA 19320-5409  
**Duration:** October 1, 1998—September 30, 2002  
**Contact:** Douglas M. Schmidt, Manager, (610) 384-9393

## Laboratory Services—24

**98-CI Testing** Contractor to provide testing of textile materials to ensure that the products received and used in the production of Correctional industries products, conforms to Federal Specification, or the Pennsylvania Commercial Item Description (PCID) that identifies the testing methodology for these textile products. If no reference is made to either of these standards, then the tests to be performed should comply to the Federal Trade Commission's "Rules and Regulations under the Textile Fiber Products Identification Act."

**Department:** Corrections  
**Location:** 2520 Lisburn Road, Camp Hill, PA 17011  
**Duration:** October 1, 1998 to November 30, 1999  
**Contact:** Linda Malinak, (717) 975-4931

## Lodging/Meeting—27

**SP 342681** Provide meeting rooms, lodging and meals for approximately 225 attendees. (100 sleeping rooms). Must be located within a 100-mile radius of Harrisburg, PA.

**Department:** Conservation and Natural Resources  
**Location:** Bureau of Personnel, Must be located within a 100-mile radius of Harrisburg, PA  
**Duration:** February 23—25, 1999 or March 2—4, 1999  
**Contact:** Corey Gaiski, (717) 783-0760

## Medical Services—29

**5199** Contractor shall provide professional reading and interpreting of Electro Cardiograms (EKGs) services. Contractor must be a qualified, professional licensed cardiologist.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** September 1, 1998—June 30, 2002  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**78600035** The Pennsylvania Health Care Cost Containment Council is soliciting bids from qualified vendors to conduct advanced statistical and consultative services for the agency, under the direction of the Research Department. Interested parties are requested to contact the Council Office by writing to 225 Market Street, Suite 400, Harrisburg, PA 17101, or by calling (717) 232-6787 for copies of the Request for Proposal. Bids are due to the Council Office no later than 5 p.m. on June 26, 1998. A pre-proposal conference will be held at the above address on June 1, 1998 at 10 a.m. Potential bidders are invited to submit questions in advance of the pre-proposal conference.

**Department:** PA Health Care Cost Containment Council  
**Location:** 225 Market Street, Suite 400, Harrisburg, PA 17101  
**Duration:** 1 year with option to renew for 2 additional years  
**Contact:** Jayne Jones, (717) 232-6787

**5200** Psychiatrist—professional medical work in the specialized care and treatment of the physically ill and/or mentally disabled. Psychiatric duties include interviewing patients, reviewing patients' records, writing physician's orders, writing progress notes, consulting with other physicians and treatment team staff, holding treatment team meetings, preparing reports and forms in accordance with current regulations and JCAHO standards.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** September 1, 1998—June 30, 2002  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

## Property Maintenance—33

**AE-5122** Window replacement. Fax (717) 783-7971.

**Department:** Transportation  
**Location:** PennDOT Maintenance Building, Ebensburg, Cambria County, PA  
**Duration:** 120 calendar days, proposed bid June, 1998  
**Contact:** Valentina Chubb, (717) 787-7001

**AE-5045** Install new security fence and gate. Fax (717) 783-7971.

**Department:** Transportation  
**Location:** Mill Run, Stockpile No. 24 on State Route 381, Fayette County, PA  
**Duration:** 90 calendar days, proposed bid June, 1998  
**Contact:** Valentina Chubb, (717) 787-7001

**600000-3500** Furnish all labor, materials and equipment to cut, trim and maintain the grass area at the Lewistown Driver Exam Site. Contract is for the months of July, August, September, October, April, May and June each year. Estimated number of cuttings per month will be 3. Requests for a site walk-through call Harold Fultz, (717) 374-8320. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Lewistown Driver Exam Site, 299 Ferguson Valley Road, Yeagertown, PA 17099  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**600003-3500** Furnish all labor, materials and equipment to cut, trim and maintain the grass area at the Selingsgrove Driver Exam Site. Contract is for the months of July, August, September, October, April, May and June each year. Estimated number of cuttings per month will be 3. Requests for a site walk-through call Harold Fultz, (717) 374-8320. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Selingsgrove Driver Exam Site, 1015 Route 522, Selingsgrove, PA 17870  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**600002-3500** Furnish all labor, materials and equipment to cut, trim and maintain the grass area at the Philadelphia (Island Avenue) Exam Site. Contract is for the months of July, August, September, October, April, May and June each year. Estimated number of cuttings per month will be 3. Requests for a site walk-through call George Robinson, (215) 937-1355. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Philadelphia (Island Avenue) Exam Site, 2320 Island Avenue, Philadelphia, PA 19153  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**600001-3500** Furnish all labor, materials and equipment to cut, trim and maintain the grass area at the Norristown Driver Exam Site. Contract is for the months of July, August, September, October, April, May and June each year. Estimated number of cuttings per month will be 3. Requests for a site walk-through call Al Genz, (610) 275-6114. Requests for bid packages should be faxed to (717) 787-0462.

**Department:** Transportation  
**Location:** Norristown Driver Exam Site, 2101 Swede Road, Norristown, PA 19401  
**Duration:** 5 years  
**Contact:** Sue Sobotor, (717) 783-3931

**CL-493** Clarion University is soliciting bids for replacement of a paper insulated rubber roof, approximately 8,650 sq. ft., on Montgomery Hall located on the Venango campus in Oil City, PA. Prebid conference: 11 a.m., June 9. Bids due: 2 p.m., June 23, 1998. Bid package available by mailing \$15, nonrefundable deposit, by check made payable to Clarion University, to 218 Carrier Hall, Clarion University, Clarion, PA 16214.

**Department:** State System of Higher Education  
**Location:** Clarion University, Oil City, Venango County, PA  
**Duration:** 60 days from Notice to Proceed  
**Contact:** Judy McAninch, Contract Manager, (814) 226-2240

**CL-480** Clarion University is soliciting bids for a project to replace concrete walkways and entryway at Montgomery Hall on the Venango campus in Oil City, PA. Prebid conference: 9 a.m., June 9 at the Venango campus. Bids due: 2 p.m., June 19, 1998. Bid package available by mailing \$10, nonrefundable, check made payable to Clarion University, to 218 Carrier Hall, Clarion University, Clarion, PA 16214.

**Department:** State System of Higher Education  
**Location:** Clarion University, Oil City, Venango County, PA  
**Duration:** 30 days from Notice to Proceed  
**Contact:** Judy McAninch, Contract Manager, (814) 226-2240

**Inquiry No. 8998** Repair roof; 12,000 sq. feet, rubberized flat roof.

**Department:** Public Welfare  
**Location:** Selinsgrove Center, Box 500, Route 522, Selinsgrove, PA 17870  
**Duration:** August 1, 1998 to October 30, 1998  
**Contact:** Sandra L. Haladay, Purchasing Agent, (717) 372-5073

**401-BL-573** Haas Auditorium Roof Replacement—Provide all labor and equipment to remove the existing built-up roof and insulation along with the removal of the existing skylights, metal roof edge, roof drains and flashings. New work includes the installation of a built-up roof system (including insulation) along with new metal roof edge, roof drains, flashings and appurtenances. Bid documents can be obtained by submitting a non-refundable \$35 deposit to Robert A. Lack, 230 Market Street, Lewisburg, PA 17837, (717) 524-2300. Bid documents will be released in the latter part of this month, and info on the prebid and bid due dates will be included.

**Department:** State System of Higher Education  
**Location:** Bloomsburg University, Bloomsburg, PA 17815  
**Duration:** 60 days  
**Contact:** Joseph C. Quinn, (717) 389-4311

**024** Contract to dismantle, move and reassemble various brands/configurations of modular furniture. Specifications to be provided upon request. Department of Community and Economic Development, Forum Building, Harrisburg, PA 17120. Contract duration July 1, 1998 to June 30, 2001. Gary L. Box, (717) 720-1450. Spec sheet will be provided to vendors requesting information.

**Department:** Community and Economic Development  
**Location:** Forum Building, Harrisburg, PA 17120  
**Duration:** July 1, 1998 to June 30, 2001  
**Contact:** Gary L. Box, (717) 720-1450

**IN-770.1** Brick Installation Official Residence. Work included under this project consists of brick installation, official residence consisting of installing new brick, limestone sills, mortar, etc. Phone: (724) 357-2289; fax: (724) 357-6480; Internet: <http://www.iup.edu/phyfac>.

**Department:** State System of Higher Education  
**Location:** Indiana University of Pennsylvania, Indiana, PA 15705-1987  
**Duration:** Six (6) months  
**Contact:** Ronald E. Wolf, Procurement Specialist, (724) 357-4851

**FM 077797-05** Renovate restroom facilities—Hilltop East. Site visit required.

**Department:** Public Welfare  
**Location:** Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, Lackawanna County, PA 18411-9505  
**Duration:** June 15, 1998 through June 30, 1999  
**Contact:** Stanley Rygelski, Purchasing Agent, (717) 587-7291

**FM 077797-06** Renovate restroom facilities—Building No. 5. Site visit required.

**Department:** Public Welfare  
**Location:** Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, Lackawanna County, PA 18411-9505  
**Duration:** June 15, 1998 through June 30, 1999  
**Contact:** Stanley Rygelski, Purchasing Agent, (717) 587-7291

## Real Estate Services—35

**67A** Lease Office Space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Department of Corrections with 13,000 useable square feet of new or existing residential/office space, with parking for 20 vehicles, within the corporate city limits of Philadelphia, Philadelphia County, PA. Proposals due: July 13, 1998. Solicitation No.: 92682.

**Department:** General Services  
**Location:** Real Estate, 505 North Office Building, Harrisburg, PA 17105  
**Duration:** Indeterminate 1997—98  
**Contact:** Jennings K. Ward, (717) 787-4394

## Sanitation—36

**Project No. 300** Pump septic tank, 13,500 gallons.

**Department:** Military and Veterans Affairs  
**Location:** AASF, P. O. Box D, Washington, Washington County, PA  
**Duration:** July 1, 1998—June 30, 1999  
**Contact:** Emma Schroff, (717) 861-8518

**9999-4400-000** The contractor shall provide a sewage sludge removal service. Sewage sludge shall be disposed according to all applicable laws.

**Department:** Corrections  
**Location:** State Regional Correctional Facility, 801 Butler Pike, Route 258 South, Mercer, PA 16137  
**Duration:** July 1, 1998 to June 30, 2000  
**Contact:** John Pitonyak, (724) 662-1837, ext. 194

## Security Services—37

**6-98** The Department of Public Welfare has need for a Proposal for Management, Administration, and operation of the Weaversville Intensive Treatment Unit. The objectives of this service are to provide a security program designed to serve adjudicated delinquents between the ages of 15 and 18 years who are serious offenders, extremely aggressive, runaway risks, and who most often have moderate emotional problems. Residents committed to the unit do not cope well in open institutional and/or community settings and require maximum security setting. WITU is a 23 bed secure facility located at Allentown State Hospital Farm Colony at Weaversville, PA.

**Department:** Public Welfare  
**Location:** OCYF, Weaversville Intensive Treatment Unit, 6710 Weaversville Road, Northampton, East Allen Township, PA 18067  
**Duration:** July 1, 1999 through June 30, 2004  
**Contact:** Polly Hahn, (717) 787-7585

**M-SP-97-12-Rebid** The contractor shall provide to the State Correctional Institution at Coal Township testing, maintenance, inspection, repairs, parts and emergency service to the Cerberus-Pyrotechnics MXL fire alarm system. Contractor must be a certified Cerberus-Pyrotechnics MXL distributor.

**Department:** Corrections  
**Location:** State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, Northumberland County, PA 16755  
**Duration:** 3 years  
**Contact:** Nancy A. Lasko, Purchasing Agent, (717) 644-7890, ext. 142

**Vehicle, Heavy Equipment—38**

**12-2-016** Four post—surface mounted, 30,000 lb. capacity heavy vehicle lift—rotary Model SM 300 or equivalent. All requests for bid packages must be received via fax at (724) 627-6708 (Attn: Connie Shoaf).

**Department:** Transportation

**Location:** 195 Jefferson Road, Waynesburg, PA 15370

**Duration:** Indeterminate 1997—98

**Contact:** Dave Shipman, (724) 627-6131

[Pa.B. Doc. No. 98-845. Filed for public inspection May 22, 1998, 9:00 a.m.]

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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,  
*Secretary*

**Contract Awards**

The following awards have been made by the Department of General Services, Bureau of Purchases:

<b>Requisition or Contract #</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
1630117-01	05/12/98	Moyer & Son, Inc.	18,600.00
1631117-01	05/12/98	FMB Laundry, Inc.	8,030.86
1703217-01	05/12/98	Dietary Equipment Co., Inc.	9,718.00
1712117-01	05/12/98	Wesco Distribution, Inc.	16,432.00
1713117-01	05/12/98	Whiteside's of Cambridge, Inc.	25,187.33
1719207-01	05/12/98	Fat Willie's Cycles, Inc.	27,490.00
1733237-01	05/12/98	Cardels	4,167.50
1739217-01	05/12/98	Diversified Corp. Mgmt. Service	43,154.76
1768207-01	05/12/98	Vector Associates, Inc.	28,400.00
1782207-01	05/12/98	Hirtech, Inc.	22,472.50
1789157-01	05/12/98	David L. Pransky & Sons	515.00
1789157-02	05/12/98	Sensitive Measurement, Inc.	11,640.00
1791157-01	05/12/98	Troemner, Inc.	17,259.00
1802117-01	05/12/98	Economy Plbg. and Htg. Supply Co., Inc.	16,999.00
1819117-01	05/12/98	Fox-Rich Textiles, Inc.	12,250.00

<b>Requisition or Contract #</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
1823077-01	05/12/98	Moore USA, Inc. (Bus. Forms and Systems Div.)	32,490.00
1824077-01	05/12/98	Phoenix Data, Inc.	26,160.00
1826117-01	05/12/98	The McGregor Architectural Iron Co., Inc.	9,665.00
1838357-01	05/12/98	Environics, Inc.	13,400.00
1860187-01	05/12/98	Dupli Envelope and Graphics Corporation	1,475.00
1872117-01	05/12/98	Consolidated Electrical Distributors	7,557.20
1872117-02	05/12/98	Graybar Electric Co., Inc.	3,774.00
1907387-01	05/12/98	J. L. Honberger Company, Inc.	10,680.00
8151380-01	05/12/98	Calcium Chloride Sales, Inc.	11,354.00
8209180-01	05/12/98	Reed Systems Ltd.	9,895.00
8234660-01	05/12/98	Lincoln Supply and Equip. Co.	37,356.00

GARY E. CROWELL,  
*Secretary*

[Pa.B. Doc. No. 98-846. Filed for public inspection May 22, 1998, 9:00 a.m.]