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PENNSYLVANIA BULLETIN

Volume 41

Number 22

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Pages 2675—2828

See Part II page 2795
for Proposed Rescission of Rules of
Evidence 101—1008 and Comments
and Promulgation of Restyled Rules of
Evidence 101—1008 and Comments

Agencies in this issue

The Courts
Department of Agriculture
Department of Banking
Department of Environmental Protection
Department of Health
Department of Labor and Industry
Department of Public Welfare
Department of Revenue
Department of Transportation
Environmental Quality Board
Game Commission
Housing Finance Agency
Insurance Department
Joint Committee on Documents
Liquor Control Board
Milk Marketing Board
Pennsylvania Council on Aging
Pennsylvania Higher Education Assistance
Agency
Pennsylvania Public Utility Commission
Detailed list of contents appears inside.



**Latest Pennsylvania Code Reporters
(Master Transmittal Sheets):**

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CONTENTS

THE COURTS

JUVENILE RULES

Order amending rules 151, 362, and 512 of the rules of juvenile court procedure; no. 531 Supreme Court rules doc. 2684

RULES OF EVIDENCE

Proposed rescission of rules of evidence 101—1008 and comments and promulgation of restyled rules of evidence 101—1008 and comments 2795

EXECUTIVE AGENCIES

DEPARTMENT OF AGRICULTURE

Notices

Pennsylvania Potato Research Program 2703

DEPARTMENT OF BANKING

Notices

Actions on applications 2703

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices

Alternative Fuels Incentive Grant Program; solicitation clarification 2761
Applications, actions and special notices 2704
Proposed water quality certification under section 401 of the Federal Clean Water Act and Federal Consistency Review under the Coastal Zone Management Act of 1972 for the Army Corps of Engineers Pennsylvania State Programmatic General Permit (PASP-GP-4) 2762

DEPARTMENT OF HEALTH

Notices

Applications for exception:
Altoona Regional Health System 2763
Comprehensive Pain Centers 2763
Easton Hospital 2764
Hospital of the University of Pennsylvania—Penn Medicine Radnor 2764
Jefferson Regional Medical Center—Bethel Park Imaging Center 2765
Jefferson Regional Medical Center—Brentwood Imaging Center 2765
Jefferson Regional Medical Center—Charleroi Imaging Center 2765
Jefferson Regional Medical Center—Jefferson MRI 2766
Lancaster General Health 2766
Regional Hospital Surgery Center 2766
St. Luke's Riverside Hospital (2 documents) 2767
28 Pa. Code 29.33(6) 2764
28 Pa. Code 123.25(2) 2764
The Western Pennsylvania Hospital 2767
York Hospital 2767
Long-term care nursing facilities; requests for exception 2768
Newborn Screening and Follow-Up Program Technical Advisory Committee meeting 2768

DEPARTMENT OF LABOR AND INDUSTRY

Notices

Current prevailing wage act debarments 2768

DEPARTMENT OF PUBLIC WELFARE

Notices

Additional class of disproportionate share payments 2769
Additional class of disproportionate share payments for critical access hospitals and qualifying rural hospitals 2769
Additional class of payments to qualifying acute care general hospitals for obstetrical and neonatal intensive care services 2769
Medical Assistance Program fee schedule revisions 2770
Pharmacy prior authorization; duplicate therapy 2778

DEPARTMENT OF REVENUE

Notices

Mega Millions® terminal-based lottery game 2778
Pennsylvania Diamond Millionaire instant lottery game 2779
Pennsylvania Gold Class instant lottery game 2783
Pennsylvania Mustang instant lottery game 2784
Powerball 2787
Quinto terminal-based lottery game 2788

DEPARTMENT OF TRANSPORTATION

Notices

Finding 2788
Invitation to submit applications under the Automated Red Light Enforcement Transportation Enhancement Grants Program 2789

ENVIRONMENTAL QUALITY BOARD

Proposed Rulemaking

Acceptance of rulemaking petition for study 2701

GAME COMMISSION

Rules and Regulations

Hunting and furtaker licenses; bear licenses 2700
Hunting and trapping; big game 2698
Hunting and trapping; furbearers 2699
Hunting and trapping; hunting hours 2695
Hunting and trapping; protective material 2696
Hunting and trapping; special regulations areas 2694
Hunting and trapping; wild pheasant recovery areas 2697
Preliminary provisions 2687
Season and bag limits 2688

Proposed Rulemaking

Special permits; Mentored Youth Hunting Program permit 2701

HOUSING FINANCE AGENCY

Notices

Homeowner's Emergency Mortgage Assistance Program; unavailability of funds 2789

INSURANCE DEPARTMENT

Notices

Application for the merger of Atlantic Employers Insurance Company with and into ACE American Insurance Company 2789

Now Available Online at <http://www.pabulletin.com>

Review procedure hearings; cancellation or refusal
of insurance 2790

JOINT COMMITTEE ON DOCUMENTS

Rules and Regulations

Preliminary provisions; definitions 2686

LIQUOR CONTROL BOARD

Notices

Expiration of leases 2790

MILK MARKETING BOARD

Notices

Sunshine meeting calendar for fiscal year 2011-
2012 2791

PENNSYLVANIA COUNCIL ON AGING

Notices

Meeting change..... 2791

**PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY**

Notices

Request for proposal 2791

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Notices

Telecommunications..... 2792

Telecommunications services..... 2792

Transfer of control and assets 2792

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.

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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*.

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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.

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

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

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The 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 2011.

| | | | |
|--|----------------|-------------------------------------|--|
| 1 Pa. Code (General Provisions) | | 1013 | 435 |
| Adopted Rules | | 1015 | 435 |
| 1 | 2686 | 1017 | 435 |
| | | 1019 | 435 |
| 4 Pa. Code (Administration) | | 1021 | 435 |
| Adopted Rules | | 1023 | 435 |
| 6 | 1754 | 1025 | 435 |
| | | 1027 | 435 |
| Statements of Policy | | 1029 | 435 |
| 9 | 522, 614, 1784 | 1051 | 435 |
| | | 1053 | 435 |
| 7 Pa. Code (Agriculture) | | 1055 | 435 |
| Adopted Rules | | 1057 | 435 |
| 59 | 2540 | 1059 | 435 |
| 59a | 2540 | 1061 | 435 |
| | | 1063 | 435 |
| Proposed Rules | | 1065 | 435 |
| 144 | 2123 | | |
| | | 55 Pa. Code (Public Welfare) | |
| Statements of Policy | | Statements of Policy | |
| 28c | 351 | 6000 | 352 |
| | | | |
| 25 Pa. Code (Environmental Protection) | | 58 Pa. Code (Recreation) | |
| Adopted Rules | | Adopted Rules | |
| 78 | 805 | 51 | 2437 |
| 93 | 1335 | 53 | 2438 |
| 105 | 219 | 95 | 2438 |
| 129 | 229 | 111 | 2438 |
| 250 | 230, 840, 1458 | 131 | 2687 |
| | | 135 | 1621, 1764 |
| Proposed Rules | | 139 | 2688 |
| 901 | 1173 | 141 | 1622, 1623, 1765, 2694, 2695, 2696, 2697, 2698, 2699 |
| | | | 2700 |
| 31 Pa. Code (Insurance) | | 143 | 2700 |
| Adopted Rules | | 147 | 1624, 1764, 1766, 1767 |
| 39 | 592 | 401a | 2439 |
| 39a | 592 | 421a | 2439 |
| 84b | 599 | 439a | 2439 |
| 84c | 600 | 440a | 2439 |
| 84d | 601 | 441a | 2439 |
| 118a | 602 | 451a | 2439 |
| | | 465a | 2439 |
| 34 Pa. Code (Labor and Industry) | | 481a | 2439 |
| Adopted Rules | | 501a | 2439 |
| 61 | 844 | 503a | 2439 |
| 65 | 848 | 521 | 234 |
| | | 525 | 234, 1897, 2329 |
| 49 Pa. Code (Professional and Vocational Standards) | | 531 | 1897 |
| Adopted Rules | | 535 | 234, 1897, 2329 |
| 20 | 16 | 539 | 1897 |
| | | 537 | 234 |
| Proposed Rules | | 541 | 234 |
| 27 | 1337 | 543 | 234, 2329 |
| 42 | 1909 | 545 | 234 |
| | | 549 | 234, 1897, 2329 |
| 52 Pa. Code (Public Utilities) | | 553 | 2329 |
| Adopted Rules | | 561 | 1897 |
| 62 | 30 | 563 | 1897 |
| | | 565 | 234, 2329 |
| Proposed Rules | | 569 | 234 |
| 59 | 1020 | | |
| 1001 | 435 | Proposed Rules | |
| 1003 | 435 | 61 | 2444 |
| 1005 | 435 | 63 | 2444 |
| 1011 | 435 | | |

65 2447
 131 1633
 139 1634
 141 1625, 1626, 1627, 1629, 1631
 143 1625
 147 2701
 401a 1018, 2581
 405a 1018
 423a 1903
 433a 1903
 435a 1903
 436a 1903
 461a 2581
 465a 2581
 467a 2581
 513a 1903
 521 1769, 2581
 523 238
 524 605
 525 2581
 526 1769
 527 1769
 528 605
 529 605
 601a 1769
 603a 238
 605a 605
 609a 1769
 611a 1769
 613a 605
 615a 605

61 Pa. Code (Revenue)

Adopted Rules

1001 41

67 Pa. Code (Transportation)

Adopted Rules

83 46

204 Pa. Code (Judicial System General Provisions)

Adopted Rules

29 1894
 71 1895
 83 331, 2119
 85 1757
 211 1894

Proposed Rules

83 2517

207 Pa. Code (Judicial Conduct)

Adopted Rules

51 332

Proposed Rules

115 1332

210 Pa. Code (Appellate Procedure)

Adopted Rules

11 923
 15 1999
 63 923
 67 1456, 2413

Proposed Rules

1 2212
 9 2212
 19 2212
 27 2212

225 Pa. Code (Rules of Evidence)

Proposed Rules

101 2795
 102 2795
 103 2795
 104 2795
 105 2795
 106 2795
 201 2795
 301 2795
 401 2795
 402 2795
 403 2795
 404 2795
 405 2795
 406 2795
 407 2795
 408 2795
 409 2795
 410 2795
 411 2795
 412 2795
 501 2795
 601 2795
 602 2795
 603 2795
 604 2795
 605 2795
 606 2795
 607 2795
 609 2795
 610 2795
 611 2795
 612 2795
 613 2795
 614 2795
 615 2795
 701 2795
 702 2795
 703 2795
 704 2795
 705 2795
 706 2795
 801 2795
 802 2795
 803 2795
 803(2) 2795
 803(3) 2795
 803(4) 2795
 803(5) 2795
 803(6) 2795
 803(7) 2795
 803(8) 2795
 803(9) 2795
 803(10) 2795
 803(11) 2795
 803(12) 2795
 803(13) 2795
 803(14) 2795
 803(15) 2795
 803(16) 2795
 803(17) 2795
 803(18) 2795
 803(19) 2795
 803(20) 2795
 803(21) 2795
 803(22) 2795
 803(23) 2795
 803(24) 2795
 803(25) 2795

803.1 2795
 803.1(2) 2795
 803.1(3) 2795
 804 2795
 804(b) 2795
 804(b)(2) 2795
 804(b)(3) 2795
 804(b)(4) 2795
 804(b)(5) 2795
 804(b)(6) 2795
 805 2795
 806 2795
 807 2795
 901 2795
 902 2795
 903 2795
 1001 2795
 1002 2795
 1003 2795
 1004 2795
 1005 2795
 1006 2795
 1007 2795
 1008 2795

231 Pa. Code (Rules of Civil Procedure)

Adopted Rules
 200 7, 214, 215, 333
 1920 1758
 3000 333
 4000 334
 Part II 336

Proposed Rules

200 2314
 1000 2315
 1300 2316
 1910 1617, 1618, 1619

234 Pa. Code (Rules of Criminal Procedure)

Adopted Rules
 1 1999
 3 1759
 4 1167

5 834
 9 1999
 10 216, 834

Proposed Rules

1 1008, 2214
 6 2318
 7 1011
 9 2214

237 Pa. Code (Juvenile Rules)

Adopted Rules

1 2319, 2413, 2429, 2684
 2 2319, 2413
 3 2319, 2684
 4 2319, 2413
 5 2319, 2413, 2684
 6 2319, 2413
 8 2319
 11 2319, 2413, 2430
 12 2319, 2413
 14 2319, 2413
 15 2319, 2413
 16 2319, 2413, 2430, 2434
 18 2413, 2430, 2434

Proposed Rules

1 8, 1013
 4 2522
 8 8
 11 8
 12 8
 18 8

249 Pa. Code (Philadelphia Rules)

Unclassified 1760

255 Pa. Code (Local Court Rules)

Unclassified .. 14, 218, 344, 346, 521, 588, 589, 590, 724,
 837, 838, 839, 924, 1016, 1017, 1168, 1169,
 1332, 1456, 1620, 1763, 1896, 2001, 2002,
 2221, 2224, 2225, 2525, 2532, 2537

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 3 AND 5]

Order Amending Rules 151, 362, and 512 of the Rules of Juvenile Court Procedure; No. 531 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 16th day of May, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 7038 (December 11, 2010), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 7, No. 2, December 24, 2010), and on the Supreme Court's web-page, and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 151, 362, and 512 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2011.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(2). COUNSEL

Rule 151. Assignment of Counsel.

[*A. General.* If] All juveniles are presumed indigent. If a juvenile appears at any hearing without counsel [does not enter an appearance for the juvenile], the court shall [inform the juvenile of the right to] appoint counsel for the juvenile prior to [any proceeding. In any case, the court shall assign counsel for the juvenile if the juvenile is without financial resources or otherwise unable to employ counsel] the commencement of the hearing.

[*B. Time.*

1) If the juvenile is detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the detention hearing.

2) If the juvenile is not detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the adjudicatory hearing.]

Comment

Although this rule contemplates a presumption of indigency which may be rebutted, the guardian's income and resources are not to be utilized. There is an inherent risk that the legal protections afforded juveniles could be eroded by making legal representation dependent upon the limited finan-

cial resources of their guardians, particularly where guardians have an income just above the poverty guidelines. Additionally, the unwillingness of guardians to expend their resources should not determine the juvenile's opportunity to have counsel. There is also a risk that the attorneys hired by guardians might rely upon the guardians for decision making in a case rather than upon the juvenile as the law requires. The juvenile is the client.

Generally pursuant to this rule, the court is to assign counsel in every case in which the juvenile has appeared without counsel. However, the court may give the juvenile a reasonable opportunity to retain a private attorney of the juvenile's choosing if the juvenile so desires.

Counsel may be present at an intake [hearing] conference or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337 and *In re A.M.*, 766 A.2d 1263 (Pa. Super. Ct. 2001).

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 *et seq.*, was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed to juveniles when there is a conflict of interest. See Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 151 adopted April 1, 2005, effective October 1, 2005. Amended May 16, 2011, effective July 1, 2011.

Committee Explanatory Reports:

* * * * *

Final Report explaining the amendments to Rule 151 published with the Court's Order at 41 Pa.B. 2685 (May 28, 2011).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART D(2). ADJUDICATORY SUMMONS AND NOTICE PROCEDURES

Rule 362. Requirements of the Summons.

The summons shall:

* * * * *

3) instruct the juvenile [about] of the juvenile's right to retain private counsel or be appointed counsel[, and if the juvenile is without financial resources or otherwise unable to employ counsel, the right to assigned counsel];

* * * * *

Official Note: Rule 362 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 16, 2011, effective July 1, 2011.

Committee Explanatory Reports:

* * * * *

Final Report explaining the amendments to Rule 362 published with the Court's Order at 41 Pa.B. 2685 (May 28, 2011).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

* * * * *

Comment

* * * * *

Pursuant to paragraph (C), the court is to advise the juvenile of his or her appellate rights orally in the courtroom on the record. The court is to explain the right to **retain private counsel or be appointed counsel for an appeal if a juvenile is without counsel [, and without the financial resources or otherwise unable to employ counsel]**. See 42 Pa.C.S. § 6337; see also Rule 150(B) for duration of counsel and Rule 151 for assignment of counsel.

* * * * *

Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. **Amended May 16, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2685 (May 28, 2011).

EXPLANATORY REPORT

May 2011

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 151, 362, and 512 with this Recommendation. The changes are effective July 1, 2011.

Background

The intent of this rule, as originally drafted, was that the court must appoint counsel for all juveniles who appeared without counsel.

The Committee originally decided to incorporate the language of the Juvenile Act which states that the court is to appoint counsel if “the juvenile is without financial resources or otherwise unable to employ counsel.” 42

Pa.C.S. § 6337. The Committee interpreted the “otherwise unable to employ counsel” to include situations when a juvenile did not have counsel.

In some counties, the court is not appointing counsel as anticipated. The practice in these counties is to offer representation to a juvenile only when: 1) there is an application for services; and 2) the Poverty Guidelines are met based on the parent’s income and resources.

To eliminate any confusion and clarify the rule’s intent, modifications to Rules 151, 362, and 512 have been made.

Rule 151

The primary change to Rule 151 is the juvenile’s presumed indigence. As noted in the Comment, this is a rebuttable presumption.

The Public Defender is to consider the juvenile’s income, not the guardian’s income and resources. The juvenile is the client and needs legal representation in these cases. Because it is believed that the majority of juveniles will qualify, the rule provides for the presumption of indigency.

In the Interbranch Commission on Juvenile Justice (ICJJ) Report, the ICJJ noted there is an inherent risk that the legal protections afforded juveniles could be eroded by making that legal representation dependent on the limited financial resources of their parents, particularly when parents have an income just above the poverty guidelines. Additionally, the unwillingness of parents to expend their resources should not determine the juvenile’s opportunity to have counsel.¹

The Committee believes that a conflict of interest may result from using the parents’ income and resources to determine whether the juvenile will be eligible for a court-appointed attorney.

There are also situations in which the juvenile may wish to obtain private counsel. The court may give the juvenile a reasonable opportunity to obtain such counsel.

Rules 362 and 512

In light of the proposed changes to Rule 151, Rules 362 and 512 have been modified to delete “if the juvenile is without financial resources or otherwise unable to employ counsel.”

[Pa.B. Doc. No. 11-870. Filed for public inspection May 27, 2011, 9:00 a.m.]

¹ Interbranch Commission on Juvenile Justice, Report, May 2010, at page 50.

RULES AND REGULATIONS

Title 1—GENERAL PROVISIONS

JOINT COMMITTEE ON DOCUMENTS

[1 PA. CODE CH. 1]

Preliminary Provisions; Definitions

The Joint Committee on Documents (JCD) amends § 1.4 (relating to definitions) to read as set forth at 40 Pa.B. 4392 (August 7, 2010).

Statutory Authority

Section 1.4 is amended under 45 Pa.C.S. § 503 (relating to general administration of part) and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Background of the Final-Form Rulemaking

The Legislative Reference Bureau (LRB) purchases paper copies of the *Pennsylvania Bulletin* (*Bulletin*) and *Pennsylvania Code* (*Code*) for a variety of government entities enumerated in Chapter 15 (relating to distribution of publications). This has been the policy of the JCD since the inception of the *Bulletin* in 1970. Under 45 Pa.C.S. § 503, the JCD is required to encourage “the widest possible dissemination” of documents appearing in the *Code* and *Bulletin*.

The *Code* and *Bulletin* have been available at no charge on the Internet since 1996. The web sites receive approximately 500,000 visits each month. Subscribers to the print versions have steadily declined as a result of free electronic access.

This final-form rulemaking amends § 1.4 to define a “copy” to include a printed or electronic version. As a result, most entities listed in Chapter 15 will no longer receive paper copies of the *Code* and *Bulletin* paid for by the LRB. Budgetary constraints require that the LRB cease these payments. Informal surveys conducted by the staff of the JCD indicate that most of the Chapter 15 entities use the electronic versions of the *Code* and *Bulletin*.

Summary of Comments

The JCD received two public comments from librarians, one of which arrived after the close of the comment period. The Independent Regulatory Review Commission (IRRC) also commented on the proposed rulemaking.

The comments from the librarians opposed the elimination of the paper copy based on the public need to access these materials in paper as well as electronically. In addition, the librarians were concerned with the official printed version being different from the online version.

The JCD is not eliminating the paper copies of either publication. All Chapter 15 subscribers are free to purchase the paper version of the *Code* and *Bulletin*. The subscriptions for State entities will no longer be paid for by the LRB. Libraries, judges and the public may still purchase paper versions. The JCD regrets having to eliminate these subscriptions, but the budget appropriation will simply not cover the printing and the “free” copies. The printed version is still the “official” version and the LRB routinely certifies documents under § 17.34 (relating to reproductions and certified copies of documents).

IRRC questioned how the JCD intends to comply with the existing distribution requirements in light of Chapter 15. The JCD has amended its definition of “copy” to include the electronic version. Chapter 15 entities may still choose to purchase paper copies. There is simply no money in the budget for the LRB to continue to purchase the paper subscriptions.

Effective Date

The final-form rulemaking is effective on July 1, 2011.

Fiscal Impact

There will not be fiscal impact on the general public as a result of this final-form rulemaking. Political subdivisions may be slightly impacted if magisterial district judges choose to continue paper subscriptions. The LRB paid \$458,982 for Chapter 15 subscriptions in 2010. The Commonwealth will realize a savings but it is difficult to predict how many State entities will choose to purchase the print versions. It is anticipated that most will rely on the web sites, so substantial savings should result.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 27, 2010, the JCD submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 4392, to IRRC and the Chairpersons of the House State Government Committee and Senate Rules and Executive Nominations Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the JCD has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 27, 2011, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 28, 2011, and approved the final-form rulemaking.

Contact Person

Questions regarding this final-form rulemaking may be referred to Mary Jane Phelps, Director of the *Code* and *Bulletin* and Secretary to the JCD, Legislative Reference Bureau, 647 Main Capitol Building, Harrisburg, PA 17120, (717) 783-1530.

Findings

The JCD finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This regulation does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 4392.

(4) This regulation is necessary and appropriate for administration and enforcement of the authorizing acts.

Order

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

(a) The regulations of the JCD, 1 Pa. Code Chapter 1, are amended by amending § 1.4 to read as set forth at 40 Pa.B. 4392.

(b) The Secretary of the JCD shall submit this order and 40 Pa.B. 4392 to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Secretary of the JCD shall submit this order and 40 Pa.B. 4392 to IRRC and the Senate Rules and Executive Nominations and the House State Government Committees as required under the Regulatory Review Act.

(d) The Secretary of the JCD shall certify this order and 40 Pa.B. 4392 and deposit them with the LRB as required by law.

(e) This order shall take effect July 1, 2011.

MARY JANE PHELPS,
Secretary

(Editor's Note: See 41 Pa.B. 2669 (May 21, 2011) for a notice relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 2502 (May 14, 2011).)

Fiscal Note: Fiscal Note 53-9 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-871. Filed for public inspection May 27, 2011, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION [58 PA. CODE CH. 131] Preliminary Provisions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 131.2 (relating to definitions) by adding, amending and deleting certain definitions.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1633 (March 26, 2011).

1. Purpose and Authority

The Commission amends § 131.2 by adding, amending and deleting certain definitions. The first amendment involves a reduction in the number of points required for a deer to meet the definition of an “antlered deer” in Wildlife Management Units (WMU) 1A, 1B, 2A, 2B and 2D. This reduction from four to three points is also accompanied by the elimination of consideration of brow tines as points. Commission staff has determined that this amendment will make it easier for hunters to determine the legal status of an antlered deer without having substantial impacts on the age structure of antlered deer populations in the affected WMUs. The re-

maining amendments involve the deletion of three redundant and outdated definitions as well as the addition of two definitions to aid in the implementation of the code.

Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 131.2 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 131.2 by adding, amending and deleting certain definitions.

3. Persons Affected

Persons wishing to hunt or trap game or wildlife in this Commonwealth will be affected by the final-form rulemaking.

4. Comment and Response Summary

The Commission received a total of 22 official comments concerning the final-form rulemaking. Of this total, 15 supported the “three-up” rule in the four-point area, 5 were confused by the “three-up” rule and 2 felt that the elimination of the brow tine as a “point” rule should also apply to the three-point area.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 131, are amended by amending § 131.2 to read as set forth at 41 Pa.B. 1633.

(b) The Executive Director of the Commission shall certify this order and 41 Pa.B. 1633 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-322 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-872. Filed for public inspection May 27, 2011, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 139]
Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 139.4 (relating to seasons and bag limits for the license year) to provide updated seasons and bag limits for the 2011-2012 hunting license year.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1634 (March 26, 2011).

1. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although the 2011-2012 seasons and daily season and possession limits are similar to those set forth in 2010-2011, the 2011-2012 seasons and bag limits have been amended to reflect current available scientific data, population and harvest records, field surveys and professional staff observations, as well as recommendations received from staff, organized sporting groups, members of the agricultural community and others interested in the wildlife resources of this Commonwealth.

Section 322(c)(1) of the code (relating to powers and duties of commission) specifically empowers the Commission to “fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife.” Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to “promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof, the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices.” The amendments to § 139.4 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 139.4 by establishing when and where it is lawful to hunt and trap various game species and also place limits on the numbers that can be legally taken during the 2011-2012 license year.

3. Persons Affected

Persons wishing to hunt or trap game or wildlife in this Commonwealth during the 2011-2012 license year may be affected by the final-form rulemaking.

4. Comment and Response Summary

The Commission received a total of 159 official comments concerning this final-form rulemaking. The comments received concerned the following subtopics:

Deer seasons—Out of a total of 114 comments received concerning this subtopic, 1 requested that the late deer seasons be kept at 3 weeks, 6 supported a deer management program focused on habitat/herd health, 1 requested the closure of doe seasons in western Pennsylvania for a few years, 2 requested a reduction in doe allocations Statewide, 1 requested a reduction in doe licenses in western Pennsylvania, 1 requested a reduction in antlerless deer seasons, 1 requested that all October antlerless deer seasons be closed, 1 requested that doe seasons be closed for 2 years, 4 supported the split season format, 57 supported a 2-week concurrent season format, 2 requested that the split season format be applied Statewide, 4 requested to go back to a 2-week buck/3-day doe format, 1 requested a split season in Wildlife Management Unit (WMU) 1A, 4 requested a split season in WMU 3A, 1 requested a split season in WMU 3D, 1 requested a split season in WMU 4C, 1 supported a split season in WMU 2A, 13 opposed a split season in WMU 2A, 1 supported a split season in WMU 2C, 1 supported a split season in WMU 2D, 1 requested 2-week concurrent season in WMU 3B, 1 supported a split season in WMU 3B, 1 opposed a split season in WMU 4B, 1 opposed a split season in WMU 4D, 1 requested that crossbow hunters be restricted to buck only during early archery season, 1 requested the creation of a fall flintlock season to mirror early archery season dates, 1 supported the extra day of late flintlock muzzleloader season, 1 requested the creation of an antlered deer flintlock season for early November, 1 requested extending late flintlock season and 1 requested the elimination of the October muzzleloading season.

Bear seasons—Out of a total of seven comments received concerning this subtopic, one supported the proposed changes for the 2011-2012 bear seasons, one supported the Saturday opening day for firearms bear season, one opposed the Saturday opening day for firearms bear season, one opposed the 4-day Statewide bear season, two opposed the concurrent deer/bear seasons and one requested that bear season be extended to a full week.

Turkey seasons—Out of a total of eight comments received concerning this subtopic, one opposed closing fall turkey season during the overlap with bear season in WMU 2B, four supported the changes to fall turkey seasons for the 2011-2012 hunting license year, one requested opening the spring gobbler season earlier, one requested making the junior spring gobbler season an all day season and one requested the expansion of the daily bag limit for spring gobbler season be increased to two birds.

Small game seasons—Out of a total of 27 comments received concerning this subtopic, 1 requested the creation of a grouse only season in February, 1 requested the extension of grouse season to the end of February, 24 opposed the opening of a porcupine season and 1 requested that squirrel season be extended.

Furbearer hunting/trapping seasons—Out of a total of three comments received concerning this subtopic, one

requested the creation of a trapping season for ground-hogs, one requested the closure of fox season in southern WMUs on January 31st and one requested moving bobcat season to December 24—January 14 or December 10—December 31.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective from July 1, 2011, to June 30, 2012.

7. *Contact Person*

For further information regarding the final-form rule-making, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 139, are amended by amending § 139.4 to read as set forth in Annex A.

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

(c) This order will be effective from July 1, 2011, to June 30, 2012.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-321 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.4. Seasons and bag limits for the license year.

(SEASONS AND BAG LIMITS TABLE)

2011-2012 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

| <i>Species</i> | <i>First Day</i> | | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|---|------------------|-----|-----------------|--------------------|---|
| Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law | Oct. 8 | | Oct. 14 | 6 | 12 |
| Squirrels—(Combined species) | Oct. 15 | and | Nov. 26 | 6 | 12 |
| | Dec. 12 | and | Dec. 23 | | |
| | Dec. 26 | | Feb. 25, 2012 | | |
| Ruffed Grouse | Oct. 15 | and | Nov. 26 | 2 | 4 |
| | Dec. 12 | and | Dec. 23 | | |
| | Dec. 26 | | Jan. 28, 2012 | | |
| Rabbits, Cottontail Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law | Oct. 8 | | Oct. 15 | 4 | 8 |
| Rabbits, Cottontail | Oct. 22 | and | Nov. 26 | 4 | 8 |
| | Dec. 12 | and | Dec. 23 | | |
| | Dec. 26 | | Feb. 25, 2012 | | |

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|--|--|---|--------------------|---|
| Ring-necked Pheasant—There is no open season for the taking of pheasants in any area designated as a wild pheasant recovery area within any wildlife management unit. | | | | |
| Ring-necked Pheasant—Male only in WMUs 2A, 2B, 2C, 4C, 4E, 5A and 5B Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law | Oct. 8 | Oct. 15 | 2 | 4 |
| Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4D, 5C and 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law | Oct. 8 | Oct. 15 | 2 | 4 |
| Ring-necked Pheasant—Male only in WMUs 2A, 2B, 2C, 4C, 4E, 5A and 5B | Oct. 22 | Nov. 26 | 2 | 4 |
| Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4D, 5C and 5D | Oct. 22 Dec. 12 Dec. 26 | and and and Nov. 26 Dec. 23 Feb. 4, 2012 | 2 | 4 |
| Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all WMUs except in WMUs 4A, 4B, 5A, 5B, 5C and 5D where the season is closed. | Oct. 22 | Nov. 26 | 4 | 8 |
| Hares (Snowshoe Rabbits) or Varying Hares | Dec. 26 | Dec. 31 | 1 | 2 |
| Woodchucks (Groundhog) | No closed season except during the regular firearms deer seasons. | | Unlimited | |
| Porcupines | Sept. 1 | Mar. 31, 2012 | 6 | 12 |
| | Season closed during the overlap with the regular firearms deer seasons. | | | |
| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
| Turkey—Male or Female | | | 1 | 1 |
| WMUs 1A, 1B and 2A (Shotgun, Bow and Arrow only) | Oct. 29 | Nov. 12 | | |
| | | and | | |
| | Nov. 24 | Nov. 26 | | |
| WMU 2B (Shotgun, Bow and Arrow only) | Oct. 29 | Nov. 18 | | |
| | | and | | |
| | Nov. 24 | Nov. 26 | | |
| WMUs 2C, 2D, 2E, 4A, 4B and 4D | Oct. 29 | Nov. 12 | | |
| | | and | | |
| | Nov. 24 | Nov. 26 | | |
| WMUs 2F, 2G, 3A, 3B, 3C, 3D, 4C and 4E | Oct. 29 | Nov. 18 | | |
| | | and | | |
| | Nov. 24 | Nov. 26 | | |
| WMUs 5A | Nov. 1 | Nov. 3 | | |
| WMUs 5B, 5C and 5D | Closed to fall turkey hunting | | | |

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|---|--------------------------------------|----------------------------------|---|---------------------|
| Turkey (Spring Gobbler) Statewide ¹ Bearded Bird only | Apr. 28, 2012 and May 14, 2012 | May 12, 2012 May 31, 2012 | 1 May be hunted 1/2 hour before sunrise to 12 noon May be hunted 1/2 hour before sunrise to 1/2 hour after sunset | 2 |
| Turkey (Spring Gobbler) Statewide Youth Hunt ¹ Bearded Bird only Eligible junior hunters only with the required license and when properly accompanied as required by law | April 21, 2012 | April 21, 2012 | 1 | 1 |

MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the *Federal Register* on or about August 27 and September 28 of each year.

Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day Limit</i> |
|--|---|-----------------|--------------------|---|
| Crows (Hunting permitted on Friday, Saturday and Sunday only) | July 1 | April 8, 2012 | Unlimited | |
| Starlings and English Sparrows | No closed season except during the regular firearms deer seasons. | | Unlimited | |

FALCONRY

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|---|------------------|-----------------|--------------------|---|
| Squirrels—(Combined species) | Sept. 1 | Mar. 31, 2012 | 6 | 12 |
| Quail | Sept. 1 | Mar. 31, 2012 | 4 | 8 |
| Ruffed Grouse | Sept. 1 | Mar. 31, 2012 | 2 | 4 |
| Cottontail Rabbits | Sept. 1 | Mar. 31, 2012 | 4 | 8 |
| Snowshoe or Varying Hare | Sept. 1 | Mar. 31, 2012 | 1 | 2 |
| Ring-necked Pheasant—Male and Female—(Combined) | Sept. 1 | Mar. 31, 2012 | 2 | 4 |

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

WHITE-TAILED DEER

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Season Limit</i> |
|---|---------------------------|------------------------------|--|
| Deer, Archery (Antlered and Antlerless) ² (Statewide) | Oct. 1 and Dec. 26 | Nov. 12 Jan. 16, 2012 | One antlered and an antlerless deer with each required antlerless license. |
| Deer, Archery (Antlerless only) WMUs 2B, 5C and 5D | Sep. 17 and Nov. 14 | Sep. 30 Nov. 26 | An antlerless deer with each required antlerless license. |

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Season Limit</i> |
|---|---|--------------------------|---|
| Deer, Archery (Antlered and Antlerless) ² WMUs 2B, 5C and 5D | Oct. 1 and Dec. 26 | Nov. 12 Jan. 28, 2012 | One antlered and an antlerless deer with each required antlerless license. |
| Deer, Regular firearms (Antlered and Antlerless) ² WMUs 1A, 1B, 2B, 3A, 3D, 4A, 4C, 5A, 5B, 5C and 5D | Nov. 28 | Dec. 10 | One antlered, and an antlerless deer with each required antlerless license. |
| Deer, Regular firearms (Antlered only) ² WMUs 2A, 2C, 2D, 2E, 2F, 2G, 3B, 3C, 4B, 4D and 4E | Nov. 28 | Dec. 2 | One antlered deer. |
| Deer, Regular firearms (Antlered and Antlerless) ² WMUs 2A, 2C, 2D, 2E, 2F, 2G, 3B, 3C, 4B, 4D and 4E | Dec. 3 | Dec. 10 | One antlered, and an antlerless deer with each required antlerless license. |
| Deer, Special firearms (Antlerless only) (Statewide) Only Junior and Senior License Holders, ³ Commission Disabled Person Permit Holders (to use a vehicle as a blind), and Residents serving on active duty in the United States Armed Forces, or in the United States Coast Guard, with required antlerless license | Oct. 20 | Oct. 22 | An antlerless deer with each required antlerless license. |
| Deer, Muzzleloading (Antlerless only) (Statewide) | Oct. 15 | Oct. 22 | An antlerless deer with each required antlerless license. |
| Deer, Flintlock (Antlered or Antlerless) ² (Statewide) | Dec. 26 | Jan. 16, 2012 | One antlered, or one antlerless-plus an additional antlerless deer with each required antlerless license. |
| Deer, Flintlock (Antlered or Antlerless) ² WMUs 2B, 5C and 5D | Dec. 26 | Jan. 28, 2012 | An antlerless deer with each required antlerless license. |
| Deer, Extended Regular firearms (Antlerless) WMUs 2B, 5C and 5D | Dec. 26 | Jan. 28, 2012 | An antlerless deer with each required antlerless license. |
| Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County) | Hunting is permitted on days established by the United States Department of the Army. | | An antlerless deer with each required antlerless license. |

BLACK BEAR

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|--|------------------|-----------------|--------------------|---------------------|
| Bear, Archery ⁴ (Statewide) | Nov. 14 | Nov. 18 | 1 | 1 |
| Bear, Regular firearms ⁴ (Statewide) | Nov. 19 | Nov. 23 | 1 | 1 |
| Bear, Extended firearms ⁴ WMUs 3A, 3C, and | Nov. 28 | Dec. 3 | 1 | 1 |
| Portions of WMU 3B, East of Rt. 14 from Troy to Canton, East of Rt. 154 from Canton to Rt. 220 at Laporte and East of Rt. 42 from Laporte to Rt. 118 and that portion of 4E, East of Rt. 42. | | | | |

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|--|------------------|-----------------|--------------------|---------------------|
| Portions of WMUs 2G in Lycoming and Clinton Counties and 3B in Lycoming County that lie North of the West Branch of the Susquehanna River from the Rt. 405 Bridge, West to Rt. 15 at Williamsport, Rt. 15 to Rt. 220, and North of Rt. 220 to the Mill Hall exit, North of SR 2015 to Rt. 150; East of Rt. 150 to Lusk Run Rd. and South of Lusk Run Rd. to Rt. 120, Rt. 120 to Veterans Street Bridge to SR 1001; East of SR 1001 to Croak Hollow Rd., South of Croak Hollow Rd. to Rt. 664 (at Swisssdale), South of Rt. 664 to Little Plum Rd. (the intersection of SR 1003), South of SR 1003 to SR 1006, South of SR 1006 to Sulphur Run Rd., South of Sulphur Run Rd. to Rt. 44, East of Rt. 44 to Rt. 973, South of Rt. 973 to Rt. 87, West of Rt. 87 to Rt. 864, South of Rt. 864 to Rt. 220 and West of Rt. 220 to Rt. 405 and West of Rt. 405 to the West Branch of the Susquehanna River. | | | | |
| Bear, Extended firearms ⁴ WMUs 3D, 4C, 4D, 4E, 5B and 5C | Nov. 30 | Dec. 3 | 1 | 1 |

ELK

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|--|------------------|-----------------|--------------------|-------------------------------|
| Elk, Regular firearms ⁵ (Antlered and Antlerless) | Oct. 31 | Nov. 5 | 1 | One elk with required license |
| Elk, Special Conservation (Antlered and Antlerless) | Sep. 1 | Nov. 5 | 1 | One elk with required license |
| Elk, Extended firearms ⁵ (Antlered and Antlerless) | Nov. 7 | Nov. 12 | 1 | One elk with required license |

FURTAKING—TRAPPING

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|--|------------------|-----------------|--------------------|---------------------|
| Minks and Muskrats (Statewide) | Nov. 19 | Jan. 8, 2012 | | Unlimited |
| Beaver (Statewide) | Dec. 26 | Mar. 31, 2012 | | |
| WMUs 1A, 1B, 3A and 3C (Combined) | | | 20 | 40 |
| WMUs 2A, 2B, 2D, 2E, 2F, 3B and 3D (Combined) | | | 20 | 20 |
| WMUs 2C, 2G, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C and 5D (Combined) | | | 5 | 5 |
| Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide) | Oct. 23 | Feb. 19, 2012 | | Unlimited |
| Coyotes and Foxes—(Statewide) (Cable restraint devices may be used) | Dec. 26 | Feb. 19, 2012 | | Unlimited |
| Bobcat (with appropriate permit) WMUs 2A, 2C, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4D and 4E | Dec. 17 | Jan. 8, 2012 | 1 | 1 |
| Fisher (with appropriate permit) WMUs 2C, 2D, 2E and 2F | Dec. 17 | Dec. 22 | 1 | 1 |

FURTAKING—HUNTING

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|--|------------------|-----------------|--------------------|--|
| Coyotes—(Statewide) | | | | Unlimited |
| Coyotes—(During any big game season) | | | | May be taken while lawfully hunting big game or with a furtaker's license. |
| Opossums, Skunks, Weasels (Statewide) | | | | No closed season. |

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|--|------------------|-----------------|--------------------|---------------------|
| Raccoons and Foxes—(Statewide) | Oct. 22 | Feb. 18, 2012 | | Unlimited |
| Bobcat (with appropriate permit) | | | | |
| WMUs 2A, 2C, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4D and 4E | Jan. 17, 2012 | Feb. 7, 2012 | 1 | 1 |

No open seasons on other wild birds or wild mammals.

¹ Only persons who possess a special wild turkey license as provided for in section 2709 of the act (relating to license costs and fees) may take a second spring gobbler during the hunting license year; all other persons, including mentored youth hunters, may take only one spring gobbler. A maximum of two gobblers per license year may be taken by any combination of licenses or exceptions for mentored youth.

² Only one antlered deer (buck) may be taken during the hunting license year.

³ Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

⁴ Only one bear may be taken during the hunting license year.

⁵ Only one elk may be taken during the hunting license year.

[Pa.B. Doc. No. 11-873. Filed for public inspection May 27, 2011, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 141]

Hunting and Trapping; Special Regulations Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 141.1 (relating to special regulations areas) to expand the shotgun/muzzleloader single projectile exception to bear hunters and also to delete the defunct baiting provisions.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1631 (March 26, 2011).

1. *Purpose and Authority*

Current special regulations areas requirements generally prohibit the use of single projectile ammunition for big game hunting in the special regulations areas. One prominent exception to this rule allows the use of muzzleloading long guns or shotguns that fire single projectiles in majority of the special regulations areas. However, this exception formerly only extended to deer hunters. The Commission amends § 141.1 to expand this exception to also extend to bear hunters. The Commission has determined that this expansion will increase hunting opportunity and success for many bear hunters in these areas without sacrificing safety. The Commission also amends § 141.1 by deleting the defunct baiting provisions that expired on March 31, 2010.

Section 2102(d) of the code (relating to regulations) provides "The commission to promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or

furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.1 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 141.1 by expanding the shotgun/muzzleloader single projectile exception to bear hunters and also by deleting the defunct baiting provisions.

3. *Persons Affected*

Persons wishing to hunt bear through the use of a shotgun or muzzleloader firing a single projectile in the special regulations areas may be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received concerning the final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.1 to read as set forth at 41 Pa.B. 1631.

(b) The Executive Director of the Commission shall certify this order and 41 Pa.B. 1631 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-323 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-874. Filed for public inspection May 27, 2011, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]
Hunting and Trapping; Hunting Hours

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 141.4 (relating to hunting hours) by removing the limitations prohibiting the hunting of woodchuck, opossum, skunk and weasel during legal hunting hours of the spring gobbler season and to amend Chapter 141, Appendix G (relating to hunting hours) by updating the current hunting hours table and migratory bird hunting hours table to accurately reflect the dates and hours of legal hunting for the 2011-2012 hunting license year.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1627 (March 26, 2011).

1. *Purpose and Authority*

Each year there is a shift in calendar days for each month. As a result of this occurrence, the tables of hunting hours in Appendix G are amended and updated each year to reflect the current year's hunting dates and corresponding legal hunting hours. The Commission amends Appendix G to update the tables of hunting hours for the 2011-2012 hunting year to reflect the annual change in days and subsequent hunting times. The Commission also amends § 141.4 to remove the limitations prohibiting the hunting of woodchuck, opossum, skunk and weasel during legal hunting hours of the spring gobbler season. The Commission has determined that this amendment will increase hunting opportunities

for hunters pursuing these species without creating unacceptable conflicts with hunters pursuing turkeys during gobbler season.

Section 322(c)(1) of the code (relating to powers and duties of commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.4 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends Appendix G to update the tables of hunting hours for the 2011-2012 hunting year to reflect the annual change in days and subsequent hunting times. The final-form rulemaking also amends § 141.4 by removing the limitations prohibiting the hunting of woodchuck, opossum, skunk and weasel during legal hunting hours of the spring gobbler season.

3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth during the 2011-2012 hunting year will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received concerning the final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.4 and Appendix G to read as set forth at 41 Pa.B. 1627.

(b) The Executive Director of the Commission shall certify this order and 41 Pa.B. 1627 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-324 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 11-875. Filed for public inspection May 27, 2011, 9:00 a.m.]

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GAME COMMISSION
[58 PA. CODE CH. 141]
Hunting and Trapping; Protective Material

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 141.20 (relating to protective material required) to restructure the various fluorescent orange requirements into a more comprehensible set of requirements without altering their substantive standards.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1629 (March 26, 2011).

1. Purpose and Authority

Section 141.20 has been the subject of many regulatory amendments over the years both to create more stringent protective material requirements where greater safety was deemed warranted as well as to eliminate protective material where they were deemed no longer necessary. By and large these amendments have achieved their intended results. However, the repeated piece meal amendments completed over the years have created confusing and sometimes inconsistent language in this section. The Commission amends § 141.20 to rectify these problems and achieve a more comprehensible set of requirements. Substantive changes have not been made to the requirements of any hunting seasons.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in

this Commonwealth." The amendments to § 141.20 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 141.20 by restructuring the various fluorescent orange requirements into a more comprehensible set of requirements without altering their substantive standards.

3. Persons Affected

Persons wishing to hunt or trap game or wildlife within this Commonwealth will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received concerning the final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.20 to read as set forth at 41 Pa.B. 1629.

(b) The Executive Director of the Commission shall certify this order and 41 Pa.B. 1629 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-325 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-876. Filed for public inspection May 27, 2011, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]

Hunting and Trapping; Wild Pheasant Recovery Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 141.28 (relating to wild pheasant recovery areas) to create and define the geographic location of the Franklin County Wild Pheasant Recovery Area (WPRAs).

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1631 (March 26, 2011).

1. Purpose and Authority

The Ring-necked Pheasant Management Plan calls for restoring self-sustaining and huntable ring-necked pheasant populations in suitable habitats in this Commonwealth by establishing at least four WPRAs by 2015. Wild-trapped pheasants are being released in existing WPRAs in an effort to establish populations of at least ten hens per square mile in the spring. WPRAs have been closed to game farm pheasant stocking and pheasant hunting. Dog training and small game hunting are also restricted in WPRAs to periods outside the population establishment phase. Three WPRAs were established in 2009 and one in 2010. The Commission amends § 141.28 to create and define the geographic location of the Franklin County WPRAs. The Commission anticipates wild-trapped pheasant releases in this area sometime in 2012. The Commission also amends § 141.28 to permit the hunting of waterfowl and woodchucks (groundhogs) in areas designated as WPRAs.

Section 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "Define geographic limitations or restrictions." Section 2102(c) of the code (relating to regulations) directs that "The commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.28 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 141.28 to create and define the geographic location of the Franklin County WPRAs.

3. Persons Affected

Persons wishing to hunt wild pheasants, release propagated pheasants, train dogs or hunt small game within

the area designated as the Franklin County WPRAs may be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received concerning the final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.28 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-320 remains valid for the final adoption of the subject regulation.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter B. SMALL GAME

§ 141.28. Wild pheasant recovery areas.

(a) *Definition.* For the purpose of this section, the phrase "wild pheasant recovery area" (WPRAs) includes and is limited to the following geographic locations.

* * * * *

(5) *Franklin County WPRAs.* That portion of WMUs 4A and 5A in Franklin County from PA Rt. 30 on the northern border to the Pennsylvania/Maryland state border on the southern border, and from Cove Mountain on

the western border to the towns of Laurich and Williamson and the Conococheague Creek on the eastern border. The WPRRA is bounded on the north by PA Rt. 30 (Lincoln Highway). Beginning at the town of Fort Loudon at the intersection of PA Rt. 30 (Lincoln Highway) and PA Rt. 75, proceed east on PA Rt. 30 (Lincoln Highway), through St. Thomas and continue east to Laurich. Just east of Laurich, proceed south along Back Creek to SR 3012 (Jack Road). Proceed west along SR 3012 (Jack Road), then south along Weber Road. Continue south and southwest along Weber Road to the intersection of Weber, Grapevine and Jacks Mill Roads. Proceed southwest along Grapevine Road and then northwest to intersection with SR 3013. Turn south onto SR 3013 (St Thomas Williamson Road) and then west onto State Rt. 995. Proceed west and then south on State Rt. 995 through Williamson to the West Branch of the Conococheague Creek (north-east of Welsh Run). Proceed along the West Branch of the Conococheague Creek to the confluence with Conococheague Creek. Follow the Conococheague Creek south to the Pennsylvania/Maryland state border. Proceed west along the Pennsylvania/Maryland state border to State Rt. 456. Proceed northeast along State Rt. 456 to State Rt. 16. Proceed east on State Rt. 16 to Mountain Road. Proceed northeast on Mountain Road to State Rt. 75. Proceed northwest on State Rt. 75 to the intersection of State Rt. 75 and State Rt. 30 at Fort Loudon.

(b) *Prohibitions.* It is unlawful to:

(1) Release artificially propagated pheasants any time within any area designated as a wild pheasant recovery area.

(2) Train dogs in any manner or hunt small game except woodchucks and waterfowl from the first Sunday in February through July 31 within any area designated as a WPRRA.

[Pa.B. Doc. No. 11-877. Filed for public inspection May 27, 2011, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]
Hunting and Trapping; Big Game

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 141.41 (relating to general) to remove redundant and inconsistent language concerning mistake kills.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1625 (March 26, 2011).

1. Purpose and Authority

On September 7, 2010, section 3 of the act of July 9, 2010 (P. L. 387, No. 54) (Act 54) became effective. While Act 54 primarily focused on increasing penalties for poaching offenses and habitual offenders, it also incorporated various procedural requirements regarding mistake kills into section 2306 of the code (relating to killing game or wildlife by mistake) that had previously been administered through § 141.41. Furthermore, portions of the new statutory text increased reporting periods thus rendering

portions of the regulatory text as inconsistent. The Commission amends § 141.41 to remove the redundant and inconsistent language.

Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 141.41 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 141.1 by deleting redundant and inconsistent language concerning mistake kills.

3. Persons Affected

Persons wishing to hunt or trap game or wildlife within this Commonwealth will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received concerning the final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.41 to read as set forth at 41 Pa.B. 1625.

(b) The Executive Director of the Commission shall certify this order and 41 Pa.B. 1625 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-326 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-878. Filed for public inspection May 27, 2011, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]
Hunting and Trapping; Furbearers

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended §§ 141.62 and 141.63 (relating to beaver trapping; and definitions) and added § 141.69 (relating to artificial cubbies) to define and clarify the standards regarding certain trapping activities.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1626 (March 26, 2011).

1. *Purpose and Authority*

The Commission adopted a variety of amendments to define and clarify the standards regarding certain trapping activities. First, the Commission amends § 141.62 to clarify that the 20 trap or snare limitation is a Statewide total, not a wildlife management unit, watercourse or waterway limitation. The Commission also amends § 141.63 to provide definitions for the terms “artificial cubby” and “foot encapsulating trap.” Lastly, the Commission adds § 141.69 to authorize and set the conditions attendant to the use of artificial cubbies in trapping activities.

Section 2102(d) of the code (relating to regulations) provides “The commission to promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used.” Section 2102(a) of the code provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to §§ 141.62 and 141.63 and the addition of § 141.69 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends §§ 141.62 and 141.63 and adds § 141.69 to define and clarify the standards regarding certain trapping activities.

3. *Persons Affected*

Persons wishing to trap furbearers within this Commonwealth will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received concerning the final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.62 and 141.63 to read as set forth at 41 Pa.B. 1626 and by adding § 141.69 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 41 Pa.B. 1626 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-327 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter D. FURBEARERS

§ 141.69. Artificial cubbies.

(a) *General rule.* Furtakers are permitted to trap furbearers through the use of body-gripping traps set in artificial cubbies when the following conditions are met:

(1) The artificial cubby is placed within an established watercourse, waterway, marsh, pond or dam.

(2) The entrance to the artificial cubby does not exceed 50 square inches.

(3) The triggering mechanism of the trap is recessed within the artificial cubby at least 7 inches from the entrance.

(4) The artificial cubby is anchored in a manner so that it cannot be moved or rolled.

(b) *Exception.* Subsection (a)(2)—(4) does not apply to body-gripping traps that are 5 1/2 inches or less and set in artificial cubbies to target mink or muskrat.

[Pa.B. Doc. No. 11-879. Filed for public inspection May 27, 2011, 9:00 a.m.]

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GAME COMMISSION
[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses; Bear Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 12, 2011, meeting, amended § 143.67 (relating to application) to grant the Director the authority to establish the application deadlines for bear licenses at periods as the Director determines.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 41 Pa.B. 1625 (March 26, 2011).

1. *Purpose and Authority*

Prior to 2005, a hunter could purchase a bear license at the time he purchased a license or at any time up to the close of the established bear seasons. Certain individuals took advantage of this expansive purchasing period by harvesting bears during the concurrent regular firearms bear and deer seasons without the required bear license. It was only after these individuals successfully harvested a bear that they would then purchase a bear license to generate the appearance that they had lawfully harvested the bear. On April 26, 2005, the Commission amended § 143.67 to establish an earlier deadline for purchasing bear licenses, specifically prior to the opening of regular firearms deer season. See 35 Pa.B. 3934 (July 16, 2005). While this earlier deadline proved to remedy a portion of the problem, the Commission has since observed evidence that this same unscrupulous practice is being utilized by hunters to abuse the bear license requirement during the regular firearms bear season. The Commission amends § 143.67 to grant the Director the authority to establish the application deadlines for bear licenses at earlier periods as the Director determines in a further effort to curb these fraudulent license purchases.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and perfor-

mance of license issuing activities. The amendments to § 143.67 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 143.67 to grant the Director the authority to establish the application deadlines for bear licenses at periods as the Director determines.

3. *Persons Affected*

Persons wishing to hunt bears within this Commonwealth will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received concerning the final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted 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 the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.67 to read as set forth at 41 Pa.B. 1625.

(b) The Executive Director of the Commission shall certify this order and 41 Pa.B. 1625 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-328 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-880. Filed for public inspection May 27, 2011, 9:00 a.m.]

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PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

Acceptance of Rulemaking Petition for Study

On May 18, 2011, the Environmental Quality Board accepted a rulemaking petition for study under 25 Pa. Code Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy). The petition, submitted by the Delaware Riverkeeper Network, requests the amendment of 25 Pa. Code § 93.9f (relating to drainage list F) to redesignate an unnamed tributary to Schuylkill River 01714, known locally as Mill Creek, in Berks County from Warm Water Fishes, Migratory Fishes to Exceptional Value. Copetitioners include the Berks County Conservation District, Township of Union Environmental Advisory Council, Department of Conservation and Natural Resources, Berks Conservancy and 65 watershed residents.

Under 25 Pa. Code § 93.4d(a) (relating to processing petitions, evaluations and assessments to change a designated use), the Department of Environmental Protection (Department) is required to publish a notice of intent to assess candidate waters. The Department's assessment notice for this rulemaking petition will appear in a future issue of the *Pennsylvania Bulletin*.

The previously-referenced petition is available to the public by contacting the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, and is accessible on the Department's web site at http://www.portal.state.pa.us/portal/server.pt/community/environmental_quality_board/14005/eqb_meeting_schedule_2011/815592 (see May 18, 2011, meeting).

MICHAEL L. KRANCER,
Chairperson

[Pa.B. Doc. No. 11-881. Filed for public inspection May 27, 2011, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Mentored Youth Hunting Program Permit

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its April 12, 2011, meeting, to amend § 147.804 (relating to general) to allow a mentor to transfer a valid antlerless license issued to him to an eligible mentored youth upon the harvest of an antlerless deer.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 12, 2011, meeting of the Commission. Comments can be sent until June 24, 2011, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

Since the successful implementation of the Mentored Youth Hunting Program (MYHP) in fall 2006, the Commission has been striving to find ways to improve this innovative program. The Commission reviewed comments from hunters and sporting organizations across this Commonwealth supporting an expansion of the MYHP to allow for limited antlerless deer hunting by mentored youth. The Commission recently determined that the appropriate resources are now available and this initiative can finally move forward. The Commission is proposing to amend § 147.804 to allow a mentor to transfer a valid antlerless license issued to him to an eligible mentored youth upon the harvest of an antlerless deer. A mentored youth will be eligible to receive a maximum of one antlerless deer license each license year.

Section 2701(a) of the code (relating to license requirements) states that "Except in defense of person or property or pursuant to exemptions authorized ... by the commission for implementing a MYHP, every person, prior to engaging in any of the privileges granted by this title, shall first obtain the applicable license subject to any conditions or other requirements imposed by this title." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 147.804 are proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 147.804 by adding language to allow a mentor to transfer a valid antlerless license issued to the mentor to an eligible mentored youth upon the harvest of an antlerless deer.

3. Persons Affected

Persons wishing to hunt antlerless deer within this Commonwealth under the MYHP will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking may result in some additional cost and paperwork associated with the affects of transferring tags on the Pennsylvania Automated License System. However, the Commission has determined that if there is additional expense associated with this effort, it will not be substantial and would be absorbed by the current budget.

5. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rule-making, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-329. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter X. MENTORED YOUTH HUNTING PROGRAM PERMIT

§ 147.804. General.

* * * * *

(c) A mentored youth's hunting eligibility is restricted to the following species: squirrel, woodchuck, coyote, deer and wild turkey, **spring gobbler season only**. [A mentored youth's hunting eligibility is further limited to:

- (i) **Spring gobbler season only for turkey.**
- (ii) **Antlered deer only during any applicable deer seasons. However, mentored youth hunters are**

subject to the same antler restrictions that apply to junior license holders as provided in the definition of antlered deer in § 131.2 (relating to definitions).]

* * * * *

(e) A mentored youth is eligible to hunt during any special youth hunting seasons that apply to any species specified in subsection (c) **and are subject to the same antler restrictions that apply to junior license holders in § 131.2 (relating to definitions).**

* * * * *

(g) **Notwithstanding the prohibitions in section 2711(3) and (5) of the act (relating to unlawful acts concerning licenses), a mentor is authorized to transfer an antlerless license issued to him to an eligible mentored youth. The antlerless license shall be valid and in the possession of the mentor at all times while hunting antlerless deer. The transfer of the antlerless license may not occur until after the mentored youth has harvested the antlerless deer, but before tagging the carcass. A mentored youth may receive by transfer no more than one antlerless deer license each license year. A mentored youth is ineligible to make direct application for an antlerless license.**

[Pa.B. Doc. No. 11-882. Filed for public inspection May 27, 2011, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Pennsylvania Potato Research Program

Under the applicable provisions of 3 Pa.C.S. Chapter 45 (relating to Agricultural Commodities Marketing Act), a review referendum was held from April 4 to April 18, 2011, to determine if the producers affected by the Pennsylvania Potato Research Program (Program) desired to continue the Program for an additional 5 years. To pass, a majority of eligible producers voting had to vote in favor of the Program's continuation. An impartial Teller Committee met on April 29, 2011, to count the ballots. The following results were submitted by the Teller Com-

mittee: a total of 35 eligible votes were cast with 28 producers voting in favor of and 7 voting against the continuation of the Program. An additional three ballots were invalid because they were either incomplete or ineligible due to the acreage requirement. Votes favoring continuation of the Program by number of producers represented 80% of eligible votes and votes against continuation of the Program represented 20% of eligible votes. Because a majority of the votes were cast in favor of the Program, it shall continue for 5 years, effective immediately.

GEORGE D. GREIG,
Secretary

[Pa.B. Doc. No. 11-883. Filed for public inspection May 27, 2011, 9:00 a.m.]

DEPARTMENT OF BANKING

Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 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 10, 2011.

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

BANKING INSTITUTIONS

Section 112 Acquisitions

| <i>Date</i> | <i>Name and Location of Applicant</i> | <i>Action</i> |
|-------------|--|---------------|
| 5/10/2011 | Edward S. Crooks and Brian D. Selby Application for approval to collectively acquire up to 84.0% of the voting shares of Counsel Trust Company, York. | Approved |

Holding Company Acquisitions

| <i>Date</i> | <i>Name and Location of Applicant</i> | <i>Action</i> |
|-------------|---|---------------|
| 5-4-2011 | Donegal Financial Services Corporation Marietta Lancaster County Application for approval to acquire 100% of Union National Financial Corporation, Lancaster, and thereby indirectly acquire 100% of Union National Community Bank, Lancaster. | Approved |

Branch Applications

De Novo Branches

| <i>Date</i> | <i>Name and Location of Applicant</i> | <i>Location of Branch</i> | <i>Action</i> |
|-------------|--|--|---------------|
| 4-27-2011 | Orrstown Bank Shippensburg Cumberland County | Carlisle Fairgrounds T Building 1000 Bryn Mawr Road Carlisle Cumberland County (Limited Service Facility) | Opened |

Branch Discontinuances

| <i>Date</i> | <i>Name and Location of Applicant</i> | <i>Location of Branch</i> | <i>Action</i> |
|-------------|---|--|---------------|
| 5-4-2011 | Beneficial Mutual Savings Bank Philadelphia Philadelphia County | 6244 Bustleton Avenue Philadelphia Philadelphia County | Approved |
| 5-4-2011 | Beneficial Mutual Savings Bank Philadelphia Philadelphia County | 7124 Ridge Avenue Philadelphia Philadelphia County | Approved |
| 5-4-2011 | Beneficial Mutual Savings Bank Philadelphia Philadelphia County | 352 High Street Burlington Burlington County, NJ | Approved |
| 5-4-2011 | Beneficial Mutual Savings Bank Philadelphia Philadelphia County | 1703 Highland Avenue Cinnaminson Burlington County, NJ | Approved |
| 5-4-2011 | Beneficial Mutual Savings Bank Philadelphia Philadelphia County | 801 Burlington Avenue Delanco Burlington County, NJ | Approved |
| 5-4-2011 | Elderton State Bank Elderton Armstrong County | 121 North McKean Street Kittanning Armstrong County | Approved |

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

The Department's web site at www.banking.state.pa.us includes public notices for more recently filed applications.

GLENN E. MOYER,
Secretary

[Pa.B. Doc. No. 11-884. Filed for public inspection May 27, 2011, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

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

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications concern, but are not limited to, discharges regarding industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFO). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

| <i>Location</i> | <i>Permit Authority</i> | <i>Application Type or Category</i> |
|-----------------|-------------------------|--|
| Section I | NPDES | Renewals |
| Section II | NPDES | New or Amendment |
| Section III | WQM | Industrial, Sewage or Animal Waste; Discharge into Groundwater |
| Section IV | NPDES | MS4 Individual Permit |
| Section V | NPDES | MS4 Permit Waiver |
| Section VI | NPDES | Individual Permit Stormwater Construction |
| Section VII | NPDES | NOI for Coverage under NPDES General Permits |

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

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

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

Persons wishing to comment on NPDES applications are invited to submit statements to the contact office noted before the application within 30 days from the date of this public notice. Persons wishing to comment on WQM permit applications are invited to submit statements to the office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. A comment submittal should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for public hearings on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

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

I. NPDES Renewal Applications

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Applications

Southeast Regional Office: Regional Water Management Program Manager, 2 E Main Street, Norristown, PA 19401, Telephone: 484.250.5970.

PA0052566, SIC Code 4952, **Christopher Hopkins**, 2015 Valley Road, Newtown Square, PA 19073-2722. Facility Name: Hopkins SRSTP. This existing facility is located in Edgmont Township, **Delaware County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Unnamed Tributary to Ridley Creek, is located in State Water Plan watershed 3G and is classified for High Quality Waters - Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

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

| Parameters | Mass (lb/day) | | | Concentration (mg/l) | | |
|-----------------------------|--------------------|-----|---------------------|----------------------|-----|---------------------|
| | Average Monthly | XXX | Instant. Minimum | Average Monthly | XXX | Instant. Maximum |
| Flow (GPD) | Report | XXX | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Dissolved Oxygen | XXX | XXX | 2.0 | XXX | XXX | XXX |
| Total Residual Chlorine | XXX | XXX | XXX | 0.5 | XXX | 1.2 |
| CBOD ₅ | | | | | | |
| May 1 - Oct 31 | XXX | XXX | XXX | 15 | XXX | 30 |
| Nov 1 - Apr 30 | XXX | XXX | XXX | 30 | XXX | 60 |
| Total Suspended Solids | XXX | XXX | XXX | 10 | XXX | 20 |
| Fecal Coliform (CFU/100 ml) | | | | 200 | | |
| | XXX | XXX | XXX | Geo Mean | XXX | XXX |

In addition, the permit contains the following major special conditions:

1. AMR to DEP
2. Abandon STP When Municipal Sewers Available
3. Remedial Measures
4. No Stormwater
5. Property Rights
6. Change of Ownership
7. Proper Sludge Disposal
8. Laboratory Certification

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is in effect.

PA0021172, Sewage, **Bucks County Water and Sewer Authority**, 1275 Almshouse Road, Warrington, PA 18976. This facility is located in Doylestown Township, **Bucks County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sewage from Kings Plaza STP, located on Almshouse Road east of Easton Road.

The receiving stream, Neshaminy Creek, is in the State Water Plan watershed 2F and is classified for: TSF, MF, aquatic life, water supply, and recreation. The nearest downstream public water supply intake for the Aqua Pennsylvania Neshaminy Plant is located on Neshaminy Creek.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.425 MGD.

| <i>Parameters</i> | <i>Average Monthly (mg/l)</i> | <i>Average Weekly (mg/l)</i> | <i>Maximum Daily (mg/l)</i> | <i>Instantaneous maximum (mg/l)</i> |
|---------------------------------------|---|--------------------------------------|-------------------------------------|---|
| CBOD ₅ | | | | |
| (05-01 to 10-31) | 15 | 23 | | 30 |
| (11-01 to 04-30) | 25 | 40 | | 50 |
| Suspended Solids | 30 | 45 | | 60 |
| Ammonia (as N) | | | | |
| (05-01 to 10-31) | 2.0 | | | 4.0 |
| (11-01 to 04-30) | 6.0 | | | 12.0 |
| NO ₂ +NO ₃ as N | | | | |
| (07-01 to 10-31) | 9.0 | | | |
| (11-01 to 06-30) | Monitor/Report | | | |
| Total Kjeldahl Nitrogen | Monitor/Report | | | |
| Phosphorous (as P) | | | | |
| first 12 months | | | | |
| (04-01 to 10-31) | 1.0 | | | 2.0 |
| (11-01 to 03-31) | Monitor/Report | | | |
| after 12 months | | | | |
| (04-01 to 10-31) | 0.8 | | | 1.6 |
| (11-01 to 03-31) | 1.6 | | | 3.2 |
| Fecal Coliform | 200 #/100 ml as a geometric mean, nor greater than 1,000 #/100 ml | | | |
| Dissolved Oxygen | Minimum of 5.0 mg/l at all times | | | |
| pH | Within limits of 6.0—9.0 Standard Units at all times | | | |
| Total Residual Chlorine | 0.5 | | | 1.6 |

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

1. Designation of Responsible Operator
2. Remedial Measures if Public Nuisance
3. No Stormwater to Sewers
4. Necessary Property Rights
5. Small Stream Discharge
6. Change in Ownership
7. Proper Sludge Disposal
8. TMDL/WLA Analysis
9. Operator Training
10. Laboratory Certification

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

PA0088188, Sewage, SIC Code 4952, **Gratz Borough Municipal Authority Dauphin County**, 125 N Center Street, Gratz, PA 17030. Facility Name: Gratz Borough STP. This existing facility is located in Gratz Borough, **Dauphin County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Unnamed Tributary of Wiconisco Creek, is located in State Water Plan watershed 6-C and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.12 MGD.

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | <i>Instant. Maximum</i> |
|-----------------------------|------------------------|----------------------|----------------|-----------------------------|-----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Weekly Average</i> | |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Dissolved Oxygen | XXX | XXX | 5.0 | XXX | XXX | XXX |
| CBOD ₅ | 25 | 40 | Wkly Avg | 25 | 40 | 50 |
| BOD ₅ | | | | | | |
| Raw Sewage Influent | Report | Report | XXX | Report | XXX | XXX |
| Total Suspended Solids | | | | | | |
| Raw Sewage Influent | Report | Report | XXX | Report | XXX | XXX |
| Total Suspended Solids | 30 | 45 | Wkly Avg | 30 | 45 | 60 |
| Fecal Coliform (CFU/100 ml) | | | | | | |
| May 1 - Sep 30 | XXX | XXX | XXX | 200 Geo Mean | XXX | 1,000 |
| Oct 1 - Apr 30 | XXX | XXX | XXX | 2000 Geo Mean | XXX | 10,000 |
| Ammonia-Nitrogen | | | | | | |
| May 1 - Oct 31 | 3.5 | XXX | XXX | 3.5 | XXX | 7.0 |
| Nov 1 - Apr 30 | 10.5 | XXX | XXX | 10.5 | XXX | 10.5 |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

| <i>Parameters</i> | <i>Mass (lbs)</i> | | | <i>Concentration (mg/l)</i> | |
|----------------------|-------------------|---------------|----------------|-----------------------------|----------------|
| | <i>Monthly</i> | <i>Annual</i> | <i>Minimum</i> | <i>Monthly Average</i> | <i>Maximum</i> |
| Ammonia—N | Report | Report | XXX | Report | XXX |
| Kjeldahl—N | Report | XXX | XXX | Report | XXX |
| Nitrate-Nitrite as N | Report | XXX | XXX | Report | XXX |
| Total Nitrogen | Report | Report | XXX | Report | XXX |
| Total Phosphorus | Report | Report | XXX | Report | XXX |

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

PA0261645, Sewage, SIC Code 7011, **Officers Christian Fellowship**, 4499 Milligans Cove Road, Manns Choice, PA 15550. Facility Name: Heritage House White Sulphur Springs STP. This proposed facility is located in Harrison Township, **Bedford County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated Sewage.

The receiving stream(s), Sulphur Springs Creek, is located in State Water Plan watershed 11-C and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0098 MGD.

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | <i>Instant. Maximum</i> |
|-----------------------------|------------------------|----------------------|----------------|-----------------------------|-----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Weekly Average</i> | |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Dissolved Oxygen | XXX | XXX | 5.0 | XXX | XXX | XXX |
| Total Residual Chlorine | XXX | XXX | XXX | 0.5 | XXX | 1.6 |
| CBOD ₅ | XXX | XXX | XXX | 25 | XXX | 50 |
| Total Suspended Solids | XXX | XXX | XXX | 30 | XXX | 60 |
| Fecal Coliform (CFU/100 ml) | | | | | | |
| May 1 - Sep 30 | XXX | XXX | XXX | 200 Geo Mean | XXX | 1,000 |
| Oct 1 - Apr 30 | XXX | XXX | XXX | 2000 Geo Mean | XXX | 10,000 |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

| <i>Parameters</i> | <i>Mass (lbs)</i> | | <i>Concentration (mg/l)</i> | | |
|----------------------|-------------------|---------------|-----------------------------|------------------------|----------------|
| | <i>Monthly</i> | <i>Annual</i> | <i>Minimum</i> | <i>Monthly Average</i> | <i>Maximum</i> |
| Ammonia—N | Report | Report | XXX | Report | XXX |
| Kjeldahl—N | Report | XXX | XXX | Report | XXX |
| Nitrate-Nitrite as N | Report | XXX | XXX | Report | XXX |
| Total Nitrogen | Report | Report | XXX | Report | XXX |
| Total Phosphorus | Report | Report | XXX | Report | XXX |
| Net Total Nitrogen | Report | 380 | XXX | XXX | XXX |
| Net Total Phosphorus | Report | 0 | XXX | XXX | XXX |

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is not in effect.

PA0081191, Sewage, SIC Code 7033, **MHC PA Dutch Country LP**, 185 Lehman Road, Manheim, PA 17545-8720. Facility Name: PA Dutch Country Campground. This existing facility is located in West Cornwall Township, **Lebanon County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Chickies Creek, is located in State Water Plan watershed 7-G and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.025 MGD.

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | |
|-----------------------------|------------------------|----------------------|----------------|-----------------------------|----------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Maximum</i> | <i>Instant. Maximum</i> |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Dissolved Oxygen | XXX | XXX | 5.0 | XXX | XXX | XXX |
| Total Residual Chlorine | XXX | XXX | XXX | 0.5 | 1.6 | XXX |
| CBOD ₅ | XXX | XXX | XXX | 10 | XXX | 20 |
| Total Suspended Solids | XXX | XXX | XXX | 10 | XXX | 20 |
| Fecal Coliform (CFU/100 ml) | | | | | | |
| May 1 - Sep 30 | | | | 200 | | |
| Oct 1 - Apr 30 | XXX | XXX | XXX | Geo Mean 2000 | XXX | 1,000 |
| Ammonia-Nitrogen | | | | | | |
| May 1 - Oct 31 | XXX | XXX | XXX | 3.0 | XXX | 6.0 |
| Nov 1 - Apr 30 | XXX | XXX | XXX | 9.0 | XXX | 18.0 |
| Total Phosphorus | XXX | XXX | XXX | 2.0 | XXX | 4.0 |

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

PA0083607, Sewage, SIC Code 4952, **Union Township Lebanon County**, 3111 State Route 72, Jonestown, PA 17038. Facility Name: Union Township Lickdale STP. This existing facility is located in Union Township, **Lebanon County**.

Description of Existing Activity: The application is for an amendment of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Forge Creek, is located in State Water Plan watershed 7-D and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.15 MGD.

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | |
|-------------------|------------------------|----------------------|----------------|-----------------------------|-----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Weekly Average</i> | <i>Instant. Maximum</i> |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Dissolved Oxygen | XXX | XXX | 5.0 | XXX | XXX | XXX |

| Parameters | Mass (lb/day) | | Minimum | Concentration (mg/l) | | Instant. Maximum |
|---|-----------------|----------------|---------|----------------------|----------------|------------------|
| | Average Monthly | Daily Maximum | | Average Monthly | Weekly Average | |
| Total Residual Chlorine (Final) | XXX | XXX | XXX | 0.07 | XXX | 0.24 |
| CBOD ₅ (Final) | 13 | 19 Wkly Avg | XXX | 10 | 15 | 20 |
| BOD ₅ Raw Sewage Influent (Final) | Report | Report | XXX | Report | XXX | XXX |
| Raw Sewage Influent (Final) | Report | Report | XXX | Report | XXX | XXX |
| Total Suspended Solids Raw Sewage Influent (Final) | Report | Report | XXX | Report | XXX | XXX |
| Raw Sewage Influent (Final) | Report | Report | XXX | Report | XXX | XXX |
| Total Suspended Solids (Final) | 13 | 19 Wkly Avg | XXX | 10 | 15 | 20 |
| Fecal Coliform (CFU/100 ml) May 1 - Sep 30 (Final) | XXX | XXX | XXX | 200 Geo Mean | XXX | 1,000 |
| Oct 1 - Apr 30 (Final) | XXX | XXX | XXX | 2,000 Geo Mean | XXX | 10,000 |
| Ammonia-Nitrogen May 1 - Oct 31 (Final) | 1.3 | XXX | XXX | 1.0 | XXX | 2.0 |
| Nov 1 - Apr 30 (Final) | 3.8 | XXX | XXX | 3.0 | XXX | 6.0 |
| Total Phosphorus (Final) | 1.3 | XXX | XXX | 1.0 | XXX | 2.5 |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

| Parameters | Mass (lbs) | | Minimum | Concentration (mg/l) | |
|----------------------|------------|--------|---------|----------------------|---------|
| | Monthly | Annual | | Monthly Average | Maximum |
| Ammonia—N | Report | Report | XXX | Report | XXX |
| Kjeldahl—N | Report | XXX | XXX | Report | XXX |
| Nitrate-Nitrite as N | Report | XXX | XXX | Report | XXX |
| Total Nitrogen | Report | Report | XXX | Report | XXX |
| Total Phosphorus | Report | Report | XXX | Report | XXX |
| Net Total Nitrogen | Report | 7,306 | XXX | XXX | XXX |
| Net Total Phosphorus | Report | 974 | XXX | XXX | XXX |

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is not in effect.

PA0087041, Sewage, SIC Code 7033, **Klaas Bakker Inc.**, 576 Yellow Hill Road, Narvon, PA 17555-9335. Facility Name: Lake In Woods Campground. This existing facility is located in Brecknock Township, **Lancaster County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Unnamed Tributary of Black Creek, is located in State Water Plan watershed 7-J and is classified for High Quality Waters - Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.015 MGD.

| Parameters | Mass (lb/day) | | Minimum | Concentration (mg/l) | | Instant. Maximum |
|-------------------------|-----------------|---------------|---------|----------------------|---------|------------------|
| | Average Monthly | Daily Maximum | | Average Monthly | Maximum | |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Dissolved Oxygen | XXX | XXX | 5.0 | XXX | XXX | XXX |
| Total Residual Chlorine | XXX | XXX | XXX | 0.5 | 1.6 | XXX |
| CBOD ₅ | XXX | XXX | XXX | 10 | XXX | 20 |

| Parameters | Mass (lb/day) | | | Concentration (mg/l) | | Instant. Maximum |
|-----------------------------|--------------------|------------------|---------|----------------------|------------------|---------------------|
| | Average Monthly | Daily Maximum | Minimum | Average Monthly | Daily Maximum | |
| Total Suspended Solids | XXX | XXX | XXX | 10 | XXX | 20 |
| Fecal Coliform (CFU/100 ml) | | | | 200 | | |
| May 1 - Sep 30 | XXX | XXX | XXX | Geo Mean | XXX | 1,000 |
| Oct 1 - Apr 30 | XXX | XXX | XXX | 2000 Geo Mean | XXX | 10,000 |
| Ammonia-Nitrogen | | | | 1.5 | XXX | 3.0 |
| May 1 - Oct 31 | XXX | XXX | XXX | 4.5 | XXX | 9.0 |
| Nov 1 - Apr 30 | XXX | XXX | XXX | 2.0 | XXX | 4.0 |
| Total Phosphorus | XXX | XXX | XXX | | | |

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

Northcentral Regional Office: Regional Water Management Program Manager, 208 W Third Street Suite 101, Williamsport, PA 17701-6448, Telephone: 570.327.3664.

PA0009024, Industrial Waste, SIC Code 3339, **Global Tungsten & Powders Corp**, Hawes Street, Towanda, PA 18848. Facility Name: Global Tungsten & Powders Corp. This existing facility is located in North Towanda Township, **Bradford County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Unnamed Tributary to Susquehanna River, is located in State Water Plan watershed 4-C and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.894 MGD and are as follows:

| Parameters | Mass (lb/day) | | | Concentration (mg/l) | | Instant. Maximum |
|------------------------|--------------------|------------------|---------|----------------------|------------------|---------------------|
| | Average Monthly | Daily Maximum | Minimum | Average Monthly | Daily Maximum | |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Total Suspended Solids | 285 | 582 | XXX | Report | Report | 99 |
| Total Dissolved Solids | XXX | 135,790 | XXX | Report | Report | XXX |
| Oil and Grease | XXX | XXX | XXX | 15 | XXX | 30 |
| Ammonia-Nitrogen | 3,097 | 1,363 | XXX | Report | Report | 469 |
| Total Arsenic | 5.7 | 14.3 | XXX | Report | Report | 2.5 |
| Total Cadmium | 0.72 | 1.1 | XXX | 0.10 | 0.15 | 0.25 |
| Total Cobalt | 12.5 | 28.4 | XXX | Report | Report | 4.3 |
| Total Copper | 5.0 | 12.9 | XXX | Report | Report | 2.2 |
| Fluoride | 183 | 332 | XXX | Report | Report | 63 |
| Total Lead | 1.1 | 2.6 | XXX | Report | Report | 0.38 |
| Total Molybdenum | 228 | 456 | XXX | Report | Report | 79 |
| Total Nickel | 15.8 | 35.5 | XXX | Report | Report | 5.5 |
| Total Selenium | 2.2 | 5.5 | XXX | Report | Report | 0.8 |
| Total Tantalum | 3.4 | 3.4 | XXX | Report | Report | 1.2 |
| Total Tungsten | 463 | 1,041 | XXX | Report | Report | 161 |
| Total Zinc | 4.4 | 11.1 | XXX | Report | Report | 1.9 |

The proposed effluent limits for Outfall 002 are as follows:

| Parameters | Mass (lb/day) | | | Concentration (mg/l) | | Instant. Maximum |
|------------------------|--------------------|------------------|---------|----------------------|------------------|---------------------|
| | Average Monthly | Daily Maximum | Minimum | Average Monthly | Daily Maximum | |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Total Dissolved Solids | XXX | 12,195 | XXX | Report | Report | XXX |
| Oil and Grease | XXX | XXX | XXX | 15 | XXX | 30 |
| Ammonia-Nitrogen | XXX | Report | XXX | XXX | Report | XXX |
| Total Copper | XXX | Report | XXX | XXX | Report | XXX |
| Dissolved Iron | XXX | XXX | XXX | XXX | XXX | 7.0 |
| Total Molybdenum | XXX | Report | XXX | XXX | Report | XXX |
| Total Nickel | XXX | Report | XXX | XXX | Report | XXX |
| Total Zinc | XXX | Report | XXX | XXX | Report | XXX |

The proposed effluent limits for Outfall 003 are as follows:

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | |
|------------------------|------------------------|----------------------|----------------|-----------------------------|----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Instant. Maximum</i> |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Total Dissolved Solids | XXX | 1,599 | XXX | Report | Report | XXX |
| Oil and Grease | XXX | XXX | XXX | 15 | XXX | 30 |
| Ammonia-Nitrogen | XXX | Report | XXX | XXX | Report | XXX |
| Total Copper | XXX | Report | XXX | XXX | Report | XXX |
| Dissolved Iron | XXX | XXX | XXX | XXX | XXX | 7.0 |
| Total Molybdenum | XXX | Report | XXX | XXX | Report | XXX |
| Total Nickel | XXX | Report | XXX | XXX | Report | XXX |
| Total Zinc | XXX | Report | XXX | XXX | Report | XXX |

The proposed effluent limits for Outfall 004 are as follows:

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | |
|------------------------|------------------------|----------------------|----------------|-----------------------------|----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Instant. Maximum</i> |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Total Dissolved Solids | XXX | 1,921 | XXX | Report | Report | XXX |
| Oil and Grease | XXX | XXX | XXX | 15 | XXX | 30 |
| Ammonia-Nitrogen | XXX | Report | XXX | XXX | Report | XXX |
| Total Copper | XXX | Report | XXX | XXX | Report | XXX |
| Dissolved Iron | XXX | XXX | XXX | XXX | XXX | 7.0 |
| Total Molybdenum | XXX | Report | XXX | XXX | Report | XXX |
| Total Nickel | XXX | Report | XXX | XXX | Report | XXX |
| Total Zinc | XXX | Report | XXX | XXX | Report | XXX |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

| <i>Parameters</i> | <i>Mass (lbs)</i> | | | <i>Concentration (mg/l)</i> | |
|--------------------------------|-------------------|---------------|----------------|-----------------------------|----------------|
| | <i>Monthly</i> | <i>Annual</i> | <i>Minimum</i> | <i>Monthly Average</i> | <i>Maximum</i> |
| Ammonia—N | Report | Report | | Report | |
| Kjeldahl—N | Report | | | Report | |
| Nitrate-Nitrite as N | Report | | | Report | |
| Total Nitrogen | Report | Report | | Report | |
| Total Phosphorus | Report | Report | | Report | |
| Net Total Nitrogen (Interim) | Report | Report | | | |
| Net Total Nitrogen (Final) | Report | 600,515 | | | |
| Net Total Phosphorus (Interim) | Report | Report | | | |
| Net Total Phosphorus (Final) | Report | 1,517 | | | |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 002.

| <i>Parameters</i> | <i>Mass (lbs)</i> | | | <i>Concentration (mg/l)</i> | |
|----------------------|-------------------|---------------|----------------|-----------------------------|----------------|
| | <i>Monthly</i> | <i>Annual</i> | <i>Minimum</i> | <i>Monthly Average</i> | <i>Maximum</i> |
| Ammonia—N | Report | Report | | Report | |
| Kjeldahl—N | Report | | | Report | |
| Nitrate-Nitrite as N | Report | | | Report | |
| Total Nitrogen | Report | Report | | Report | |
| Total Phosphorus | Report | Report | | Report | |
| Net Total Nitrogen | Report | Report | | | |
| Net Total Phosphorus | Report | Report | | | |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 003.

| <i>Parameters</i> | <i>Mass (lbs)</i> | | | <i>Concentration (mg/l)</i> | |
|----------------------|-------------------|---------------|----------------|-----------------------------|----------------|
| | <i>Monthly</i> | <i>Annual</i> | <i>Minimum</i> | <i>Monthly Average</i> | <i>Maximum</i> |
| Ammonia—N | Report | Report | | Report | |
| Kjeldahl—N | Report | | | Report | |
| Nitrate-Nitrite as N | Report | | | Report | |

| <i>Parameters</i> | <i>Mass (lbs)</i> | | <i>Minimum</i> | <i>Concentration (mg/l)</i> | |
|----------------------|-------------------|---------------|----------------|-----------------------------|----------------|
| | <i>Monthly</i> | <i>Annual</i> | | <i>Monthly Average</i> | <i>Maximum</i> |
| Total Nitrogen | Report | Report | | Report | |
| Total Phosphorus | Report | Report | | Report | |
| Net Total Nitrogen | Report | Report | | | |
| Net Total Phosphorus | Report | Report | | | |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 004.

| <i>Parameters</i> | <i>Mass (lbs)</i> | | <i>Minimum</i> | <i>Concentration (mg/l)</i> | |
|----------------------|-------------------|---------------|----------------|-----------------------------|----------------|
| | <i>Monthly</i> | <i>Annual</i> | | <i>Monthly Average</i> | <i>Maximum</i> |
| Ammonia—N | Report | Report | | Report | |
| Kjeldahl—N | Report | | | Report | |
| Nitrate-Nitrite as N | Report | | | Report | |
| Total Nitrogen | Report | Report | | Report | |
| Total Phosphorus | Report | Report | | Report | |
| Net Total Nitrogen | Report | Report | | | |
| Net Total Phosphorus | Report | Report | | | |

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

* The compliance date for Net Total Nitrogen and Net Total Phosphorus will begin on October 1, 2011. Since these reporting requirements are annual loads, the reporting on compliance with the annual limitations will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2012. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2011.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-327-3693.

The EPA Waiver is not in effect.

PA0020273, Sewage, SIC Code 4952, **Milton Regional Sewer Authority**, PO Box 433, Milton, PA 17847. Facility Name: Milton Regional Sewer Authority Wastewater Treatment Facility. This existing facility is located in West Chillisquaque Township, **Northumberland County**.

Description of Existing Activity: Major amendment of an NPDES permit for an existing discharge of treated Sewage.

The permit is being redrafted as set forth in Exhibit A of the April 19, 2011 Stipulation of Settlement between the Commonwealth of Pennsylvania, Department of Environmental Protection and Milton Regional Sewer Authority. The following changes are proposed to NPDES Permit No. PA0020273, renewed on 7/31/2009.

1. Page 1, PO Box changed from "443" to "433" to accurately reflect the facility's address.
2. Page 3, Part A.I.A.3.c, the narrative fecal coliform requirements has been removed. Fecal coliform effluent limitations are already outlined in Part A.I.A.2.
3. Page 4, Monitoring Requirements for Ammonia-N and Total Phosphorous have been changed to 1/week to bring consistency to monitoring frequencies.
4. Page 11, Part B.I.F.2., "bypass unless:" changed to "bypassing unless:"
5. Page 14, Part C.I.A.1., "and Part A.I.C" is a typographical error and has been removed.
6. Page 14, Part C.I.B.6., definition of "Monthly Net Mass Load" has been revised to include delivery ratios.
7. Page 15, Part C.I.B.9., second sentence, "annual submittal" changed to "at least an annual submittal"
8. Page 16, changes to reflect the names of the updated supplemental report forms referenced and attached.
9. Revisions to attachments—DMRs adjusted to proper monitoring frequencies, the latest supplemental forms (Monthly Nitrogen Budget, Monthly Phosphorous Budget, and Annual Nutrient Summary) provided to replace the previous forms.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-327-3693.

The EPA Waiver is not in effect.

PA0228974, CAFO SIC #0213 + #0251, **Scattered Acres Farms**, 213 Richard Road, Elysburg, PA 17824.

This proposed facility is located in Locust & Cleveland Townships, **Columbia County**.

Description of Proposed Activity: Scattered Acres Farms CAFO is a Hog and Chicken operation. There are 4 Broiler barns and 2 Swine barns. The chicken manure is scraped out of the barns and stored on concrete slabs as the houses are

emptied. The manure is land applied on the Scattered Acres Farms. The swine manure is stored in underbarn deep pits and land applied on Scattered Acres Farms in the spring and fall.

Scattered Acres Farms rents 1856.7 acres to spread 1,463,900 gallons of swine manure and 1,427 tons of broiler manure. No manure is exported. There are 580.2 AEU's with the swine and 377.3 AEU's with the broilers, totaling 957.5 AEU's.

The receiving stream, UNT to Roaring Creek, is in the State Water Plan watershed #5E and is classified for: CWF.

The proposed effluent limits for the operation/activity include: Except for the chronic or catastrophic rainfall events defined as over the 25-year/24-hour rain storms, the CAFO permit is a non-discharge NPDES permit. Where applicable, compliance with 40 CFR federal effluent limitation guidelines is required. The permit requires no other numeric effluent limitations and compliance with the Pennsylvania Nutrient Management Act and the Clean Stream Law constitutes compliance with the state narrative water quality standards.

In addition to the effluent limits, the permit contains no major special conditions.

PA0027553, Sewage, SIC Code 4952, **Pine Creek Municipal Authority**, P. O. Box 608, Avis, PA 17721. Facility Name: Pine Creek Municipal Authority WWTP. This existing facility is located in Pine Creek Township, **Clinton County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage, with considerations for an upgraded and expanded WWTP.

The receiving stream, Unnamed Tributary to West Branch Susquehanna River, is located in State Water Plan watershed 9-B and is classified for Cold Water Fishes (CWF) and Migratory Fishes (MF), aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on design flows of 1.3 MGD (interim) and 1.6 MGD (final).

| Parameters | Mass (lb/day) | | | Concentration (mg/L) | | |
|---|-----------------|-----------------|---------|----------------------|----------------|------------------|
| | Average Monthly | Daily Maximum | Minimum | Average Monthly | Daily Maximum | Instant. Maximum |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6.0 | XXX | XXX | 9.0 |
| Total Residual Chlorine (Interim) | XXX | XXX | XXX | 0.5 | XXX | 1.6 |
| CBOD ₅ (Interim) | 270 | Wkly Avg 430 | XXX | 25 | Wkly Avg 40 | 50 |
| CBOD ₅ (Final) | 330 | Wkly Avg 485 | XXX | 25 | Wkly Avg 45 | 50 |
| Total Suspended Solids (Interim) | 325 | Wkly Avg 600 | XXX | 30 | Wkly Avg 45 | 60 |
| Total Suspended Solids (Final) | 400 | Wkly Avg | XXX | 30 | Wkly Avg | 60 |
| Fecal Coliform (CFU/100 ml) | | | | 200 | | |
| May 1 - Sep 30 | XXX | XXX | XXX | Geo Mean 2000 | XXX | 1000 |
| Oct 1 - Apr 30 | XXX | XXX | XXX | Geo Mean | XXX | 10000 |
| Total Aluminum | 21.70 | 43.36 | XXX | 2.0 | 4.0 | XXX |
| Total Copper (Interim) | XXX | XXX | XXX | Report | XXX | XXX |
| Total Copper (Final) | 0.82 | 1.28 | XXX | 0.062 | 0.096 | 0.124 |
| Total Iron | 32.55 | 65.0 | XXX | 3.0 | 6.0 | XXX |
| Total Manganese | 21.70 | 43.36 | XXX | 2.0 | 4.0 | XXX |
| UV Dosage (mjoule/cm ²) (Final) | XXX | XXX | Report | XXX | XXX | XXX |

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

| Parameters | Mass (lbs) | | Minimum | Concentration (mg/L) | |
|--------------------------------|------------|--------|---------|----------------------|---------|
| | Monthly | Annual | | Monthly Average | Maximum |
| Ammonia—N | Report | Report | | Report | |
| Kjeldahl—N | Report | | | Report | |
| Nitrate-Nitrite as N | Report | | | Report | |
| Total Nitrogen | Report | Report | | Report | |
| Total Phosphorus | Report | Report | | Report | |
| Net Total Nitrogen (Interim) | Report | Report | | | |
| Net Total Nitrogen (Final) | Report | 23744 | | | |
| Net Total Phosphorus (Interim) | Report | Report | | | |
| Net Total Phosphorus (Final) | Report | 3166 | | | |

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and

Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

* The compliance date for Net Total Nitrogen and Net Total Phosphorus will begin on October 1, 2011. Since these reporting requirements are annual loads, the reporting on compliance with the annual limitations will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2012. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2011.

** Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2012.

In addition, the permit contains the following major special conditions:

- Whole Effluent Toxicity Testing
- Operation & Implementation of Pretreatment Program
- Stormwater Management

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-327-3693.

The EPA Waiver is not in effect.

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

PA0103446, Industrial Waste, SIC Code 4953, **Veolia ES Greentree Landfill LLC**, 635 Toby Road, Kersey, PA 15846-1033. Facility Name: Veolia ES Greentree Landfill. This existing facility is located in Fox Township, **Elk County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste.

The receiving streams, Sawmill Run, Little Toby Creek, an Unnamed Tributary to Bear Run, an Unnamed Tributary to Little Toby Creek, and an Unnamed Tributary to Sawmill Run, are located in State Water Plan watershed 17-A and are classified for Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.25 MGD.

| Parameters | Mass (lb/day) | | | Concentration (mg/l) | | |
|-----------------------------------|-----------------|---------------|---------|----------------------|---------------|--------------------|
| | Average Monthly | Daily Maximum | Minimum | Average Monthly | Daily Maximum | Instant. Maximum |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6 | XXX | XXX | 10 |
| Color (Pt-Co Units) (Interim) | XXX | XXX | XXX | XXX | Report | XXX |
| Color (Pt-Co Units) (Final) | XXX | XXX | XXX | XXX | 386 | XXX |
| CBOD ₅ | 77 | 154 | XXX | 37 | 74 | 92 |
| Total Suspended Solids | Report | Report | XXX | 31 | 60 | 77 |
| Total Dissolved Solids | XXX | 8,937 | XXX | XXX | Report | XXX |
| Osmotic Pressure | XXX | XXX | XXX | 486 | 759 | XXX |
| Oil and Grease | XXX | XXX | XXX | 15 | XXX | 30 |
| Fecal Coliform (CFU/100 ml) | | | | | | |
| May 1 - Sep 30 | | | | 200 | | 1,000 |
| Oct 1 - Apr 30 | XXX | XXX | XXX | Geo Mean 2,000 | XXX | Geo Mean 10,000 |
| Ammonia-Nitrogen | | | | Geo Mean | XXX | Geo Mean |
| May 1 - Oct 31 | 39 | 78 | XXX | 19 | 38 | 47 |
| Nov 1 - Apr 30 | 118 | 236 | XXX | 57 | 114 | 142 |
| Arsenic, Total (Interim) | XX | XX | XXX | 0.104 | 0.162 | 0.260 |
| Arsenic, Total (Final) | 0.106 | 0.212 | XXX | 0.051 | 0.102 | 0.127 |
| Boron, Total (Interim) | Report | Report | XXX | Report | Report | Report |
| Boron, Total (Final) | 32.3 | 64.6 | XXX | 15.5 | 31.0 | 38.7 |
| Cyanide, Free Available (Interim) | Report | Report | XXX | Report | Report | Report |
| Cyanide, Free Available (Final) | 0.10 | 0.20 | XXX | 0.05 | 0.10 | 0.12 |
| Selenium, Total (Interim) | Report | Report | XXX | Report | Report | Report |
| Selenium, Total (Final) | 0.100 | 0.200 | XXX | 0.048 | 0.096 | 0.120 |
| Thallium, Total (Interim) | Report | Report | XXX | Report | Report | Report |
| Thallium, Total (Final) | 0.0025 | 0.0050 | XXX | 0.0012 | 0.0024 | 0.0030 |
| Antimony, Total | 0.058 | 0.116 | XXX | 0.028 | 0.056 | 0.070 |
| Cadmium, Total | 0.014 | 0.028 | XXX | 0.007 | 0.014 | 0.017 |
| Chromium, Total | Report | Report | XXX | 3.07 | 15.5 | 15.5 |

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | |
|-------------------------|------------------------|----------------------|----------------|-----------------------------|----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Instant. Maximum</i> |
| Cobalt, Total | Report | Report | XXX | 0.124 | 0.192 | 0.31 |
| Copper, Total | 0.623 | 1.246 | XXX | 0.299 | 0.598 | 0.747 |
| Lead, Total | 0.381 | 0.762 | XXX | 0.183 | 0.366 | 0.457 |
| Mercury, Total | 0.0004 | 0.0008 | XXX | 0.0002 | 0.0004 | 0.0005 |
| Nickel, Total | 2.25 | 4.5 | XXX | 1.08 | 2.16 | 2.70 |
| Silver, Total | Report | Report | XXX | 0.0351 | 0.120 | 0.120 |
| Tin, Total | Report | Report | XXX | 0.12 | 0.409 | 0.409 |
| Titanium, Total (as Ti) | Report | Report | XXX | 0.0618 | 0.0947 | 0.1545 |
| Vanadium, Total | Report | Report | XXX | 0.0662 | 0.218 | 0.218 |
| Zinc, Total | Report | Report | XXX | 0.42 | 0.497 | 1.05 |
| Acetone | Report | Report | XXX | 7.97 | 30.2 | 30.2 |
| Acetophenone | Report | Report | XXX | 0.0562 | 0.114 | 0.140 |
| 2-Butanone | Report | Report | XXX | 1.85 | 4.81 | 4.81 |
| <i>o</i> -Cresol | Report | Report | XXX | 0.561 | 1.92 | 1.92 |
| <i>p</i> -Cresol | Report | Report | XXX | 0.205 | 0.698 | 0.698 |
| Phenol | Report | Report | XXX | 1.08 | 3.65 | 3.65 |
| Pyridine | Report | Report | XXX | 0.182 | 0.370 | 0.455 |
| 2,4,6-Trichlorophenol | 0.087 | 0.174 | XXX | 0.042 | 0.084 | 0.105 |

The proposed effluent limits for Outfalls 002 through 017 are based on a design flow of N/A MGD.

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | |
|------------------------|------------------------|----------------------|----------------|-----------------------------|----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Daily Maximum</i> | <i>Instant. Maximum</i> |
| pH (S.U.) | XXX | XXX | XXX | XXX | Report | XXX |
| BOD ₅ | XXX | XXX | XXX | XXX | Report | XXX |
| Chemical Oxygen Demand | XXX | XXX | XXX | XXX | Report | XXX |
| Total Suspended Solids | XXX | XXX | XXX | XXX | Report | XXX |
| Total Iron | XXX | XXX | XXX | XXX | Report | XXX |

In addition, the permit contains the following major special conditions:

- Toxics Reduction Evaluation (TRE)
- Requirement to Use eDMR System
- Equivalent Treatment Determination
- Management of Leachate Discharge Rates
- Requirements Applicable to Stormwater Outfalls
- Receipt of Residual Waste
- Future Acceptance of Natural Gas-Related Wastewaters

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is not in effect.

PA0028428, Sewage, SIC Code 4952, **Brockway Area Sewer Authority Jefferson County**, 501 Main Street, Brockway, PA 15824-1240. Facility Name: Brockway Area WWTP. This existing facility is located in Brockway Borough, **Jefferson County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage. This is the third draft for this permit. This draft adds additional parameters of concern due to the acceptance of natural gas-related wastewaters.

The receiving stream, the Little Toby Creek, is located in State Water Plan watershed 17-A, and is classified for Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 1.5 MGD.

| <i>Parameters</i> | <i>Mass (lb/day)</i> | | | <i>Concentration (mg/l)</i> | | |
|---------------------------|------------------------|-----------------------|----------------|-----------------------------|-----------------------|-------------------------|
| | <i>Average Monthly</i> | <i>Weekly Average</i> | <i>Minimum</i> | <i>Average Monthly</i> | <i>Weekly Average</i> | <i>Instant. Maximum</i> |
| Flow (MGD) | Report | Report | XXX | XXX | XXX | XXX |
| pH (S.U.) | XXX | XXX | 6 | XXX | XXX | 9 |
| CBOD ₅ | 237 | 356 | XXX | 19 | 28.5 | 38 |
| Total Suspended Solids | 375 | 562 | XXX | 30 | 45 | 60 |
| Total Dissolved Solids | | 29,143 | | | | |
| | 17,574 | Daily Max. | XXX | Report | XXX | Report |
| Osmotic Pressure (mOs/kg) | XXX | XXX | XXX | 253 | XXX | 506 |

| Parameters | Mass (lb/day) | | Minimum | Concentration (mg/l) | | Instant. Maximum |
|---|--------------------|-------------------|---------|----------------------|-------------------|---------------------|
| | Average Monthly | Weekly Average | | Average Monthly | Weekly Average | |
| Fecal Coliform (CFU/100 ml) | | | | | | |
| May 1 - Sep 30 | | | | 200 | | 1,000 |
| Oct 1 - Apr 30 | XXX | XXX | XXX | Geo Mean 2000 | XXX | Geo Mean 10,000 |
| May 1 - Oct 31 | 81 | 121 | XXX | 6.5 | 9.7 | 13 |
| Nov 1 - Apr 30 | 243 | 364 | XXX | 19.5 | 29.0 | 39 |
| Ammonia-Nitrogen | | | | | | |
| May 1 - Oct 31 | XXX | XXX | XXX | Report | XXX | Report |
| Nov 1 - Apr 30 | Report | XXX | XXX | Report | XXX | Report |
| Alkalinity, Total (as CaCO ₃) | Report | XXX | XXX | Report | XXX | Report |
| Total Barium | Report | XXX | XXX | Report | XXX | Report |
| Total Strontium | Report | XXX | XXX | Report | XXX | Report |
| Sulfate | Report | XXX | XXX | Report | XXX | Report |
| Total Uranium (µg/L) | Report | XXX | XXX | Report | XXX | Report |
| Chloride | Report | XXX | XXX | Report | XXX | Report |
| Bromide | Report | XXX | XXX | Report | XXX | Report |
| Gross Alpha (pCi/L) | Report | XXX | XXX | Report | XXX | Report |
| Radium 226/228, Total (pCi/L) | Report | XXX | XXX | Report | XXX | Report |

In addition, the permit contains the following major special conditions:

- Receipt of Residual Waste
- Limitation on Volume of Natural Gas-Related Wastewater
- Radiation Protection Action Plan
- Solids Management

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is not in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law

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

WQM Permit No. 4611202, Industrial, **Brown Printing Company**, 668 Gravel Pike, East Greenville, PA 18041.

This proposed facility is located in Upper Hanover Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a wastewater sewage treatment plant.

WQM Permit No. WQG02091105, Sewage, **Warrington Township**, 852 Easton Road, Warrington, PA 18976.

This proposed facility is located in Warrington Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a new raw sewage pump station and force main.

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

WQM Permit No. 4511401, Sewerage, **Arrowhead Sewer Co., Inc.**, H.C. 88, Box 305, Pocono Lake, PA 18347

This proposed facility is located in Coolbaugh Twp., **Monroe County**, PA.

Description of Proposed Action/Activity: The application is for low pressure sewer extensions in Sections 1-13 of the Arrowhead Lakes Development.

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

WQM Permit No. 5095401 Amendment 11-1, Sewage, **Newport Plaza Association, LP**, 44 S Bayles Avenue, Port Washington, NY 11050-3765.

This proposed facility is located in Howe Township, **Perry County**.

Description of Proposed Action/Activity: Permit amendment approving the construction / modification of sewage facilities consisting of upgrades to the Newport STP to achieve compliance with the NPDES permit. The upgrades include installation of a grease / oil interceptor prior to the equalization tank, installation of chlorine disinfection system to replace existing ultraviolet system and upgrades to the tertiary filtration system.

WQM Permit No. 0110407, Sewage, **Robert J. Niner**, 1847 Ridge Road, Westminster, MD 21157.

This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewage facilities consisting of a 1,000 gallon two compartment septic → 500 gallon dosing tank with dosing pump → Ecoflo Peat Filer → UV disinfection.

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

WQM Permit No. 0804202, CAFO Operation [SIC 0213], **Van Blarcom Farms**, James Van Blarcom, 934 Besley Road, Columbia Cross Roads, PA 16914-7789.

This proposed facility is located in Columbia Township, **Bradford County**.

Description of Proposed Activity: Van Blarcom Farms, an existing dairy and swine farm, proposes construction of new and expanded swine barns with concrete under barn manure storage facilities and an additional HDPE lined manure storage facility impoundment. The proposed manure storage facilities will hold the following volumes of manure: breeding and gestation under barn storage (643,476 gallons), farrowing under barn storage (205,184 gallons) and gilt grower under barn storage (96,017 gallons) and a new manure storage facility impoundment (2,663,000 gallons). The new and existing manure storage facilities at this farm will hold a total stored volume of approximately 7,000,000 gallons of manure. All proposed facilities are designed with leak detection systems. A separate CAFO permit application was submitted with this WQM permit to amend the facility's existing NPDES permitted Animal Equivalent Units (AEUs) from 1316 to 2736.

This is a republish notice to correct an earlier publication error in the April 16, 2011 bulletin notice.

IV. NPDES Applications for Stormwater Discharges from MS4

V. Applications for NPDES Waiver Stormwater Discharges from MS4

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

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

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|---|---------------|------------------------|--|
| PAS10-G259-R | Tattersall Development Co 1522 Tattersall Way West Chester, PA 19382 | Chester | West Bradford Township | Broad Run (EV) |
| PAI01 151110 | Francis Schorn 1532 Montvale Circle West Chester, PA 19380 | Chester | West Bradford Township | Broad Run (EV) |
| PAI01 151111 | Baxter Properties 1025 Andrew Drive, Suite 200 West Chester, PA 19380 | Chester | Honey Brook Township | Unnamed Tributary West Branch Brandywine Creek (HQ-TSF) |
| PAI01 461001-1 | 111th Fighter Wing PA Air National Guard 2146 McGuire Street Willow Grove, PA 19090-52 | Montgomery | Horsham Township | Unnamed Tributary Park Creek (TSF) |
| PAI01 4607002-1 | Summit Realty Advisors, LLC 610 Germantown Pike Plymouth Meeting, PA 19462 | Montgomery | Ambler Borough | Wissahickon Creek (TSF) |

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

Northampton County Conservation District: 14 Gracedale Ave., Greystone Building, Nazareth, PA 18064, 610-746-1971.

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|---|---------------|---------------------|-------------------------------|
| PAI024811004 | Chihming Wong, UPG Fort James Investment, LP 3600 Glover Road Easton, PA 18040 | Northampton | Forks Twp. | Bushkill Creek, HQ-CWF, MF |

Wayne County Conservation District: 648 Park Street, Honesdale, PA 18431, 570-253-0930.

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|---|---------------|---------------------|--------------------------------------|
| PAI026411001 | PPL Electric Utilities Corp. 39 Industrial Park Road Lake Ariel, PA 18436 | Wayne | Palmyra Twp. | Wallenpaupack Creek, HQ-WWF,MF |
| PAI026411002 | Lands of Doss Wesley Doss 390 Nelson Road Monroe, NY 10950 | Wayne | Paupack Twp. | Purdy Creek, HQ-CWF,MF |

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

| <i>NPDES Permit #</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-----------------------|--|---------------|---------------------|---|
| PAI032105012R | Trindle Springs, Inc. (Trindle Springs Heights) 1737 W Main St Ephrata, PA 17522 | Cumberland | Hampden Twp | Trindle Spring Run (HQ-CWF) |
| PAI032211001 | Pa. Game Commission (Clarks Creek Road) 2001 Elmerton Ave. Harrisburg, PA 17110-9797 | Dauphin | Rush Township | Clarks Creek (HQ-CWF) |
| PAI033611003 | David H. Martin 420 Nottingham Road Nottingham, PA 19362 | Lancaster | Little Britain Twp. | UNT Little Conowingo Creek (HQ-CWF) |
| PAI033611004 | Custom Home Group, Inc./ Misty River, LLC (Camerons Knoll) 1302 Lancaster Pike Quarryville, PA 17566 | Lancaster | Fulton Township | Conowingo Creek (HQ-CWF) |

*Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701**Clearfield County Conservation District: 650 Leonard Street, Clearfield, PA 16830, (814) 765-2629*

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|---|---------------|---------------------|-----------------------------------|
| PAI041711001 | Lawrence Township PO Box 508 Clearfield, PA 16830 | Clearfield | Lawrence Township | Lick Run HQ Trout Run HQ |

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.**Indiana County Conservation District, 625 Kolter Drive, Suite 8, Indiana, PA 15701-3571 (724-471-4751)*

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|---|---------------|---------------------|--|
| PAI053211001 | Indiana County Municipal Services Authority 602 Kolter Drive Indiana, PA 15701 | Indiana | Pine Township | UNT to Little Yellow Creek (HQ-CWF) |

Washington County Conservation District, 100 West Beau Street, Suite 105, Washington, PA 15301 (724-228-6774)

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|---|---------------|---------------------|--|
| PAI056311001 | Robert Bayer 51 Lively Road Eighty-Four, PA 15330 | Washington | Somerset Township | UNT to Little Chartiers Creek (HQ-WWF) |

*Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481**Crawford County Conservation District, Woodcock Nature Center, 21742 German Road, Meadville, PA 16335**Erie County Conservation District, 1927 Wager Road, Erie, PA 16509**Forest County Conservation District, 526 Elm Street No. 4, Tionesta, PA 16353*

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|--|---------------|---------------------|---|
| PAI 0620 11 001 | DJ Howles Enterprises LLC 27827 Patterson Road Guys Mills PA 16327 | Crawford | Woodcock Township | Woodcock Creek HQ-CWF |
| PAI 0625 11 001 | Grace Baptist Church 7300 Grubb Road McKean PA 16426 | Erie | McKean Township | Thomas Run CWF-MF |
| PAI 0627 11 002 | BGCN Enterprises LLC 10509 Route 68 Rimersburg PA 16248 | Forest | Jenks Township | Maple Creek HQ-CWF UNT Salmon Creek HQ-CWF |

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

| | |
|--------|--------------------------------|
| PAG-12 | CAFOs |
| PAG-13 | Stormwater Discharges from MS4 |

CAFO Notices of Intent Received

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

PAG124839, CAFO SIC 0213, **Ridge Valley Farm II—Swine**, 4227 Ridge Road, Beaver Springs, PA 17812.

This proposed facility is located in West Beaver Township, **Snyder County**.

Description of Size and Scope of Proposed Operation/Activity: An existing 1050 head swine finishing operation located in West Beaver Township, Snyder County. They are proposing to construct a second swine barn on this operation that would house an additional 2400 head of finishing swine. The farm consists of 81 acres (29 acres cropland and 52 acres woodland). AEU's for the operation upon expansion would be 452.3 total AEU's and 15.6 AEU's/acre. It is estimated that an additional 631,620 gallons of manure would be generated.

The existing swine barn has an underbarn concrete manure storage measuring 200'x 40'x 6' with about 329,120 gallons of usable storage. The proposed barn would have concrete underbarn storage measuring 246'x 81'x 6' and would hold about 819,756 gallons of usable storage.

The receiving stream, South Branch Middle Creek, is in watershed 6A and classified for: Trout Stocking—TSF.

The proposed effluent limits for the operation/activity include: Except for the chronic or catastrophic rainfall events defined as over the 25-year/24-hour rain storms, the CAFO general permit is a non-discharge NPDES permit. Where applicable, compliance with 40 CFR federal effluent limitation guidelines is required. The general permit requires no other numeric effluent limitations and compliance with the Pennsylvania Nutrient Management Act and the Clean Stream Law constitutes compliance with the state narrative water quality standards.

PUBLIC WATER SUPPLY (PWS) PERMITS

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

Persons wishing to comment on permit applications are invited to submit statements to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding an application. A comment 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 after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

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

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Permit No. 0611511, Public Water Supply.

| | |
|-----------------------|---|
| Applicant | Reading Area Water Authority |
| Municipality | Robeson Township |
| County | Berks |
| Responsible Official | Dean Miller, Executive Director 815 Washington Street Reading, PA 19601 |
| Type of Facility | Public Water Supply |
| Consulting Engineer | Thomas L Weld Jr, P.E. BCM Engineers 920 Germantown Pike Plymouth, PA 19462 |
| Application Received: | 4/29/2011 |
| Description of Action | Construction of a booster chlorination station and chlorine monitoring station for the proposed Robeson Township transmission main. |

Permit No. 3611521, Public Water Supply.

| | |
|--------------|-------------------------------|
| Applicant | Columbia Water Company |
| Municipality | Columbia Borough |
| County | Lancaster |

Responsible Official David T Lewis, General Manager
220 Locust Street
Columbia, PA 17512

Type of Facility Public Water Supply

Consulting Engineer Daniel Cargnel, P.E.
Buchart Horn, Inc.
445 West Philadelphia Street
York, PA 17404

Application Received: 5/4/2011

Description of Action

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Application No. 6510503GWRA1, Minor Amendment.

Applicant **Ligonier Township Municipal Authority**
1 Municipal Park Drive
Ligonier, PA 15658

[Township or Borough] Ligonier Township

Responsible Official Daniel Palmer
Ligonier Township Municipal Authority
1 Municipal Park Drive
Ligonier, PA 15658

Type of Facility Water system

Consulting Engineer The EADS Group, Inc.
450 Aberdeen Drive
Somerset, PA 15501

Application Received Date May 4, 2011

Description of Action Amendment to the Authority's demonstration of 4-log treatment for groundwater sources

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

Application No. 3709504-MA1, Public Water Supply

Applicant **Pennsylvania American Water Company Ellwood**

Township or Borough Wayne Township, **Lawrence County**

Responsible Official William H. Lage, Project Manager

Consulting Engineer Jerry Hankey, PE
Pennsylvania American Water Company
1909 Oakland Avenue
Indiana PA 15701

Application Received Date 05/11/2011

Description of Action Evans City meter connection—underground vault w/PRV & custody meter for water sales to Evans City.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995 PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907)

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.302—6026.305) require the Department to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. A person intending to use the background standard, Statewide health standard, the site-specific standard or intend to remediate a site as a special industrial area shall file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of cleanup standards or receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the following site, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified as follows. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office listed before the notice. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

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

Northeast Region: Eric Supey, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Chauca Residence, 732 Greenleaf Street, Allentown City, **Lehigh County**. Andrew K. Markoski, Patriot Environmental Management, LLC, P. O. Box 629, 21 Unionville Road, Douglassville, PA 19518 has submitted a Notice of Intent to Remediate (on behalf of his client, Lucia Chauca, 732 Greenleaf Street, Allentown, PA 18102), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of a release, which occurred during the delivery of fuel oil to the wrong address and was delivered to a fill pipe that wasn't connected to a storage tank. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard for soil. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

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

Robin Reber Residence, 542 South 12th Street, City of Reading, **Berks County**. Patriot Environmental Management, P. O. Box 629 Douglassville, PA 19518, on behalf of Robin Reber, 1415 Scott Street, Reading, PA 19607, submitted a Notice of Intent to Remediate site soils contaminated with No. 2 fuel oil. The site will be remediated to the Residential Statewide Health standard.

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

OTRT Inc., Interstate 80 MM202E, White Deer Township, **Union County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, PA 17857, on behalf of OTRT, Inc., 2682 Coyle Avenue, Elk Grove Village, IL 60007, has submitted a Notice of Intent to Remediate soil contaminated with diesel fuel. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Daily Item* on April 11, 2011. The site was and will remain a right-of-way area along the interstate highway.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, Pa 15222-4745

Willard Michaels Residence, Georges Township, **Fayette County**. Eicher Construction, 87 Mountain Road, Uniontown, PA 15401 on behalf of Willard Michaels, 207 Second Street, Uniontown, PA 15401 has submitted a Notice of Intent to Remediate. Approximately 100 gallons of home heating oil was spilled within the basement of Mr. Michaels' residence. The concrete basement floor and soil will be removed. The site will remain residential.

RESIDUAL WASTE GENERAL PERMITS

Application(s) Received Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Number WMGR114SC001. CRS Reprocessing LLC, 569 Industrial Drive, Lewisberry PA 17339. General Permit Number WMGR114 authorizes the processing of spent polyethylene glycol slurry containing silicon and silicon carbide or diamond and beneficial use in fresh slurry and in production of silicon ingots and silicon carbide. The processing is limited to mechanical separation, including filtration, thin film vacuum evaporation, spray drying, classification and grinding. The application is for a major modification to General Permit Number WMGR114 to allow processing of used aluminum cold rolling lubricant for reuse by the generator and to recover waste oil. The application was received by Central Office on May 2, 2011.

Comments concerning the application should be directed to Scott E. Walters, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, 717-787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

General Permit Application No. WMGR130. Waste Recovery Solutions, Inc., 343 King Street, Myerstown, PA 17067. This application is for processing and beneficial use of residual waste including wastes that have a fuel value from the following categories: combustion residues, metallurgical process residues, sludges, chemical wastes, generic manufacturing wastes, special handling wastes, and non-coal mining, oil and gas, and other well drilling wastes to be used in the creation of alternative fuels. The application was determined to be administratively complete by Central Office on May 11, 2011.

Comments concerning the application should be directed to Scott E. Walters, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, 717-787-7381. Persons interested in obtaining more information about the general permit application may contact the Central Office, 717-787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application(s) received Under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Northeast Region: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915

Permit Application No. 603455. WeCare Organics LLC, WeCare Organics LLC, 12 Tremont Road, Tremont, PA 17981. An application to construct and operate the Blackwood Farms Class-A Biosolids Management Facility located in Reilly Township, **Schuylkill County**. The application was received in the Regional Office on February 24, 2011, with supplemental information received on March 24, 2011. The Local Municipality Involvement Process (LMIP) meeting was conducted on May 12, 2011, and as of May 13, 2011, the application was found to be administratively complete.

Comments concerning the application should be directed to Bill Tomayko, Program Manager, Waste Management Program, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

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

Permit ID No. 101176. Deep Valley Landfill, Inc., c/o Waste Management, 625 Cherrington Parkway, Moon Township, PA 15108. Application for a permit renewal of a municipal waste landfill in North Fayette Township, **Allegheny County** was received in the Regional Office on May 9, 2011.

Permit ID No. 101439. Joseph J. Brunner, Inc., 211 Brunner Road, Zelienople, PA 16063. Brunner Municipal Waste Landfill, 211 Brunner Road, Zelienople, PA 16063. Application for a permit renewal of a municipal waste landfill in New Sewickley Township, **Beaver County** was received in the Regional Office on May 17, 2011

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS NEW SOURCES AND MODIFICATIONS

The 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 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 received applications for Plan Approvals or Operating Permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office listed before the applications. Persons interested in reviewing the application files should contact the appropriate regional office to schedule appointments.

Persons wishing to receive a copy of a proposed Plan Approval or Operating Permit shall indicate interests to the Department regional office within 30 days of the date of this notice and shall file protests or comments on a proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed documents to persons or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that hearings be held concerning a proposed Plan Approval or Operating Permit. A comment or protest filed with the Department regional office shall include a concise statement of the objections to the issuance of the Plan Approval or Operating Permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office listed

before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (42 U.S.C.A. §§ 7401—7671q) and regulations adopted under the Federal Clean Air Act.

PLAN APPROVALS

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

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920

46-0275: Custom Processing Services, LLC (461 State Street, East Greenville, PA 18041) for installation of a baghouse replacing the existing baghouse on Rotary Dryer in East Greenville Borough, **Montgomery County**. The company provides customized grinding, milling, blending, and drying services of various mineral products. The pollutant of concern is particulate matter. Dust collectors are used on all sources for particulate matter control. The Plan Approval and Operating Permit will include monitoring, record keeping and reporting requirements designed to address all applicable air quality requirements.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

03-00253: Western Allegheny Energy, LLC (301 Market Street, Kittanning, Pa 16201-9642) for installation of a coal screening operation at Parkwood Mine in Plumcreek Township, **Greene County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481 Contact: Edward Orris, New Source Review Chief - Telephone: 814-332-6636

20-040H: Advanced Cast Products, Inc. (18700 Mill Street, Meadville, PA 16335) for modification of PM emission limitation from plan approval 20-040D and for the replacement of a bond silo that will be controlled by a Torit baghouse in Vernon Township, **Crawford County**. This is a Title V facility.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920

09-0186C: Kinder Morgan Bulk Terminals, Inc. (1 Sinter Lane, Fairless Hills, PA 19030) for modification of a Bulk Material Handling System (Source ID 101) and

Self-unloading Vessels (Source ID 103), to: 1) operate without a material moisture content limit; 2) increase the allowable stockpile acreage from 20 to 60 acres; 3) increase allowed vehicle miles traveled (VMT) from unpaved roads from 5,063 miles to 7,595 miles per 12-month rolling period; and 4) increase allowed VMT from paved roads from 16,657 miles to 24,986 miles per 12-month rolling period in Falls Township, Bucks County. The only pollutants of concern from this operation are PM and HAP emissions. The facility will not exceed its site-wide limits of: 1) 99.0 tons of PM-10 per 12-month rolling period; 2) 24.9 tons of total HAP per 12-month rolling period; and 3) 9.9 tons of any individual HAP per 12-month rolling period. This facility will continue to be a non-Title V facility. PM and HAP emissions will be controlled by water suppression, chemical suppression, covers, and barriers, as needed, and good management practices. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

09-0186D: Kinder Morgan Bulk Terminals, Inc. (1 Sinter Lane, Fairless Hills, PA 19030) for installation of a coal and coke import/export process, to be designated Source ID 104 in Falls Township, **Bucks County**. The only pollutants of concern from this operation are PM and HAP emissions. The facility will not exceed its site-wide limits of: 1) 99.0 tons of PM-10 per 12-month rolling period; 2) 24.9 tons of total HAP per 12-month rolling period; and 3) 9.9 tons of any individual HAP per 12-month rolling period. This facility will continue to be a non-Title V facility. PM and HAP emissions will be controlled by water suppression, chemical suppression, covers, and barriers, as needed, and good management practices. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

09-0186E: Kinder Morgan Bulk Terminals, Inc. (1 Sinter Lane, Fairless Hills, PA 19030) for expansion of a

Fertilizer Transfer and Storage process (Source ID 102), to add two (2) new domes and increase the throughput by 300,000 tons per year in Falls Township, **Bucks County**. The only pollutants of concern from this operation are PM. The facility will not exceed its site-wide limit of 99.0 tons of PM-10 per 12-month rolling period. This facility will continue to be a non-Title V facility. PM emissions will at a minimum be controlled by covers, enclosures, and good management practices. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

23-0003S: ConocoPhillips Co. (4101 Post Road, Trainer, PA 19061-3812) for installation of a flare gas recovery system at their Trainer facility in Trainer Borough, **Delaware County**. This facility is a Title V facility. Permit will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

PA 66-328-002: Procter and Gamble Co. (P. O. Box 32, Route 87 South, Mehoopany, PA 18629) for construction and operation of the following in Washington Township, **Wyoming County**:

- * One GE LM6000 PC-Sprint OR Rolls Royce Trent 60 CTG.

- * Nominal 12,000-gallon capacity aqueous ammonia storage tank.

- * The proposed emission control systems are steam or water injection, CO oxidation catalyst and selective catalytic reduction ("SCR") systems. The turbine emission rate limits for each pollutant and the associated pollutant control technologies are as follows:

| <i>Pollutant</i> | <i>Control Level</i> | <i>Control Technology</i> | <i>Emission Limitation</i> |
|------------------|----------------------|---|--|
| NOx | State BAT | * Water or Steam Injection * Selective Catalytic Reduction | * 2.5 ppmvd at 15% O ₂ —Natural gas, normal operation |
| CO | State BAT | * Oxidation Catalyst * Good Combustion Practices | * 4.0 ppmvd at 15% O ₂ (GE LM6000) or 5.0 ppm at 15% O ₂ (Rolls Royce Trent 60)—Natural gas, normal operation. Temperature > 32° F * 10.0 ppmvd at 15% O ₂ —Natural gas, normal operation. Temperature < 32° F |
| VOC | State BAT | * Good Combustion Practices * Oxidation Catalyst | * 1.20 ppmvd at 15% O ₂ —Natural gas, normal operation. Temperature > 32° F * 4.0 ppmvd at 15% O ₂ —Natural gas, normal operation. Temperature < 32° F |
| PM10 | State BAT | * Good Combustion Practices * Clean Fuels | * 0.01 lb/MMBtu at 15% O ₂ —Natural gas, normal operation |
| PM2.5 | State BAT | * Good Combustion Practices * Clean Fuels | * 0.01 lb/MMBtu at 15% O ₂ —Natural gas, normal operation |
| SO ₂ | State BAT | * Good Combustion Practices * Clean Fuels | * 0.0030 lb/MMBtu at 15% O ₂ —Natural gas, normal operation |

Emission increases will not exceed the following: NOX: 26.62 tons per year, VOC: 2.26 tons per year, SO₂: 7.67 tons per year, CO: 28.93 tons per year, and PM_{2.5}: 9.90 tons per year.

Procter and Gamble will be taking federally enforceable limits restricting fuel consumption on Nos. 1, 2, and 4 Boilers to fire natural gas only.

The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. Also, the company shall be required to monitor and record NOX and CO emissions on a continuous basis by use of a Continuous Monitoring System.

Additionally a PSD and NSR applicability analysis was conducted to determine if the Project would result in a significant net increase of any regulated pollutant. This analysis took into account emission increases attributable to the installation of the new combustion turbine, emission increases during the contemporaneous period, and emission decreases associated with the fuel restriction on Nos. 1, 2, and 4 Boilers. The analysis has determined that the proposed turbine project does not trigger the requirements of Prevention of Significant Deterioration or Nonattainment New Source Review permitting regulations.

This facility is a Title V facility. The plan approval will include all appropriate testing, monitoring, recordkeeping and reporting requirements designed to keep the operations within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

67-03027A: Pretium Packaging LLC (1 Devco Drive, Manchester, PA 17345) for construction of three (3) plastic blow mold lines at their facility in East Manchester Township, **York County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received an application and intends to issue a Plan Approval to the abovementioned company for the abovementioned project. This plan approval may be incorporated into the company's facility-wide permit via an administrative amendment at a later date.

Plan Approval No. 67-03027A authorizes the construction of the abovementioned sources. Hydrofluoric acid (HF) emissions from the sources will be controlled by an existing wet caustic scrubber. The Plan Approval and Operating Permit will contain emission restrictions, work practice standards, and testing, monitoring, record keeping, and reporting requirements to ensure the plant complies with the applicable air quality requirements. Potential HF emissions from the proposed sources will be 0.4 TPY.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, by filing a written protest with

the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *PA Bulletin*, will exist for the submission of comments or protests.

Daniel C. Husted, PE may be contacted at 717-705-4863, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Plan approvals issues to sources identified in 25 Pa. Code Section 127.44(b)(1)—(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP, and will be submitted to EPA for review and approval.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

41-00078C: Chief Gathering, LLC (6051 Wallace Road Ext., Suite 210, Wexford, PA 15090) has submitted an application (41-00078C) to the Pennsylvania Department of Environmental Protection for plan a approval to construct four (4) natural-gas fired compressor engines each equipped with oxidation catalysts, one (1) glycol dehydrator, to incorporate two (2) existing natural-gas fired compressor engines and three (3) existing glycol dehydrators at their Barto Compressor Station in Penn Township, Lycoming County. The proposed facility will be a synthetic minor facility. This notice supersedes all previous notices regarding Plan Approval 41-00078C.

The Department's review of the information submitted by Chief Gathering, LLC indicates that the construction of the compressor engines equipped with oxidation catalysts and glycol dehydrator and the two existing natural-gas fired compressor engines and three existing glycol dehydrators will meet all applicable air quality regulatory requirements pertaining to air-contamination sources and the emission of air contaminants. Based on these findings, the Department intends to approve the application and issue plan approval for the construction of the compressor engines equipped with oxidation catalysts and to incorporate two existing natural-gas fired compressor engines and three existing glycol dehydrators. Additionally, if the Department determines that the compressor engines equipped with oxidation catalysts and glycol dehydrator and the two existing natural-gas fired compressor engines and three existing glycol dehydrators are operating in compliance with all plan approval conditions, the conditions established in the plan approval will be incorporated into a State Only (Synthetic Minor) operating permit via an administrative amendment pursuant to 25 Pa. Code Sections 127.450.

The following is a summary of the conditions that the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. Pursuant to the best available technology requirements of 25 Pa. Code Sections 127.1 and 127.12, the four 2370 brake horsepower, natural-gas fired reciprocating

internal combustion engines shall incorporate a “clean burn” electronic control system to control NO_x emissions. Additionally, the carbon monoxide, volatile organic compounds, and formaldehyde emissions from each engine shall be controlled by a DCL International QUICK-LID model DC69.5A-20 oxidation catalyst unit. The permittee shall not operate any of the engines without the simultaneous operation of each respective oxidation catalyst at any time.

2. Pursuant to the best available technology requirements of 25 Pa. Code Sections 127.1 and 127.12, the permittee shall only use natural gas as fuel for each engine.

3. Pursuant to the best available technology requirements of 25 Pa. Code Sections 127.1 and 127.12, the permittee shall not permit the following air contaminant emissions from the exhaust of each oxidation catalyst associated with each engine in excess of the limitations listed below:

a. nitrogen oxides (NO_x, expressed as NO₂)—0.50 gm/bhp-hr, 2.61 lb/hr, and 11.44 tons in any 12 consecutive month period,

b. carbon monoxide (CO)—0.28 gm/bhp-hr, 1.44 lb/hr and 6.29 tons in any 12 consecutive month period,

c. volatile organic compounds (VOC)—0.13 gm/bhp-hr, 0.66 lb/hr, and 2.88 tons in any 12 consecutive month period,

d. particulate matter (PM/PM₁₀)—0.03 gm/bhp-hr, 0.16 lb/hr and 0.70 tons in any 12 consecutive month period,

e. formaldehyde—0.04 gm/bhp-hr, 0.21 lb/hr and 0.92 tons in any 12 consecutive month period.

f. sulfur oxides (SO_x, expressed as SO₂) emissions to not exceed 2 parts per million, by volume, dry basis.

4. Pursuant to the best available technology requirements of 25 Pa. Code Sections 127.1 and 127.12, each oxidation catalyst shall be capable of reducing the carbon monoxide emissions by at least 90% from each engine.

5. Pursuant to the best available technology requirements of 25 Pa. Code Sections 127.1 and 127.12, the permittee shall equip each oxidation catalyst with instrumentation to monitor and record pressure drop across each oxidation catalyst and the inlet gas temperature of each oxidation catalyst and shall monitor these parameters on a continuous basis.

6. The permittee shall comply with all applicable requirements of Subpart ZZZZ of the National Emission Standards for Hazardous Air Pollutants for each engine as specified in 40 CFR Sections 63.6580—63.6675.

7. The permittee shall comply with all applicable requirements of Subpart JJJJ of the Standards of Performance for New Stationary Sources for each engine as specified in 40 CFR Sections 60.4230—60.4248.

8. The permittee shall perform nitrogen oxide (NO_x, expressed as NO₂), carbon monoxide, volatile organic compound and formaldehyde stack tests upon each engine within 120 days from the commencement of operation of each engine to demonstrate compliance with the emission limitations and the carbon monoxide destruction efficiency requirements from each oxidation catalyst associated with each engine.

9. Pursuant to the best available technology requirements of 25 Pa. Code Sections 127.1 and 127.12, the permittee shall only use natural gas as fuel for Source ID P203.

10. Pursuant to the best available technology requirements of 25 Pa. Code Sections 127.1 and 127.12, the permittee shall not permit the following air contaminant emissions from the exhaust of the glycol regenerator incorporated in Source ID P203 in excess of the limitations listed below:

a. volatile organic compounds (VOC)—7.34 tons in any 12 consecutive month period

b. there shall not be any benzene emissions

c. particulate matter (PM/PM₁₀)—0.01 grains per dry standard cubic foot (gr/dscf),

d. sulfur oxides (SO_x, expressed as SO₂) emissions to not exceed 500 parts per million, by volume, dry basis.

e. nitrogen oxides (NO_x, expressed as NO₂)—0.64 tpy

11. As elected by CG, the carbon monoxide, volatile organic compounds, and formaldehyde emissions from Source ID P105 (Eng-1) and Source ID P106 (Eng-2) shall be controlled by DCL International QUICK-LID model 2-DC65A-12 oxidation catalyst units (Control Device IDs C105 and C106). The permittee shall not operate Source IDs P105 and P106 without the simultaneous operation of each respective oxidation catalyst (Control Device IDs C105 and C106) at any time.

12. Pursuant to their respective GP5 authorizations, Source IDs P105 and P106, when operating at conditions less than rated capacity, are limited to emitting no more than they emit at rated capacity and speed, on a pounds-per-hour basis.

13. Pursuant to their respective GP5 authorizations, visible emissions from Source IDs P105 and P106 are required to not equal or exceed 10% for 3 minutes in any 1-hour period and not equal or exceed 30% at any time.

14. The permittee shall only use natural gas as fuel for Source IDs P105 and P106.

15. As elected by CG, the permittee shall not permit the following air contaminant emissions from the exhaust of oxidation catalyst (IDs C105 and C106) associated with Source IDs P105 and P106 in excess of the limitations listed below:

a. nitrogen oxides (NO_x, expressed as NO₂)—0.5 gm/bhp-hr, 1.52 lb/hr, and 6.66 tons in any 12 consecutive month period,

b. carbon monoxide (CO)—0.07 gm/bhp-hr, 0.22 lb/hr and 0.97 tons in any 12 consecutive month period,

c. volatile organic compounds (VOC)—0.12 gm/bhp-hr, 0.37 lb/hr, and 1.60 tons in any 12 consecutive month period,

d. particulate matter (PM/PM₁₀)—0.04 grains per dry standard cubic foot (gr/dscf),

e. formaldehyde—0.03 gm/bhp-hr, 0.08 lb/hr and 0.35 tons in any 12 consecutive month period.

f. sulfur oxides (SO_x, expressed as SO₂) emissions to not exceed 500 parts per million, by volume, dry basis.

16. As elected by CG, oxidation catalyst (IDs C105 and C106) shall be capable of reducing the carbon monoxide emissions by at least 97% from Source IDs P105 and P106.

17. The permittee shall comply with all applicable requirements of Subpart ZZZZ of the National Emission Standards for Hazardous Air Pollutants for each engine as specified in 40 CFR Sections 63.6580—63.6675.

18. The permittee shall comply with all applicable requirements of Subpart JJJJ of the Standards of Performance for New Stationary Sources for each engine as specified in 40 CFR Sections 60.4230–60.4248.

19. The permittee shall perform nitrogen oxide (NO_x, expressed as NO₂), carbon monoxide, volatile organic compound, and formaldehyde stack tests upon Source IDs P105 and P106 within 120 days of issuance of this plan approval to demonstrate compliance with these respective emission limitations and the carbon monoxide destruction efficiency requirement from oxidation catalysts (IDs C105 and C106) associated with Source IDs P105 and P106.

20. The permittee shall only use natural gas as fuel for Source IDs P201, P202, and P204.

21. The permittee shall not permit the following air contaminant emissions from the exhaust of the glycol regenerators incorporated in Source IDs P201, P202, and P204 in excess of the limitations listed below:

- a. Particulate matter—0.04 gr/dscf and
- b. Sulfur oxides—500 ppmvd
- c. nitrogen oxides (NO_x, expressed as NO₂)—0.32 tpy (Source ID P201), 0.85 tpy (Source ID P202), and 0.32 tpy (Source ID P204)
- d. carbon monoxide—0.27 tpy (Source ID P201), 0.71 tpy (Source ID P202), and 0.27 tpy (Source ID P204)
- e. Volatile organic compounds—3.15 tpy (Source ID P201), 9.95 (Source ID P202), and 1.49 tpy (Source ID P204)

22. The total combined volatile organic compounds emissions from all four 6500-gallon slop tanks incorporated in Source ID P301 shall not exceed 0.66 tpy.

23. The total combined volatile organic compounds emissions from all seven 300-gallon oil tanks incorporated in Source ID P302 shall not exceed 0.06 tpy.

24. The permittee shall keep comprehensive and accurate records of the vapor pressure of the contents of the storage tanks incorporated in Source ID P301 and P302, the calculations to demonstrate compliance with their respective emission limitations, and the supporting documentation used to calculate the volatile organic compounds emissions.

25. The permittee shall not store anything in any of the storage tanks incorporated in Source ID P301 and P302 with a vapor pressure greater than 1.5 psia.

26. The total combined facility-wide emissions for the following air contaminants shall not equal or exceed the following limitations:

- a. Nitrogen oxides (expressed as NO₂): 100 tpy
- b. Carbon monoxide: 100 tpy
- c. Sulfur oxides (expressed as SO₂): 100 tpy
- d. Particulate matter less than 10 microns in diameter: 100 tpy
- e. Volatile organic compounds: 50 tpy
- f. Any single hazardous air pollutant: 10 tpy
- g. Any combination of hazardous air pollutants: 25 tpy

The plan approval contains monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulatory requirements.

A copy of the plan approval application is available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office. Appointments for

scheduling a review may be made by calling the Department at 570-327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Environmental Program Manager, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, 570-327-3648.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

63-00922B: Robinson Power Co., LLC (PO Box 127, 563 Route 18, Burgettstown, PA 15021) for construction of a Gas Turbine Power Generating Facility, in Robinson Township, Washington County.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.45 that Pennsylvania Department of Environmental Protection (PADEP) intends to issue an Air Quality Plan Approval to Robinson Power Company LLC to authorize the construction of a Gas Turbine Power Generating Facility, in Robinson Township, Washington County.

The proposed facility will consist of: a gas-fired, combined cycle, GE frame 7EA gas turbine, a heat recovery steam generator (HRSG) with a duct burner, a steam turbine generator, condenser, and auxiliary equipment—a diesel powered fire water pump and a cooling tower. The gas and steam turbines will generate 82.3 MW and 65.5 MW, respectively, for a total of 147.8 MW. Robinson proposes to utilize locally available Marcellus Shale gas consisting of a mixture of methane and ethane.

The proposed facility is subject to the applicable requirements of 25 Pa. Code, Chapters 121 through 145, 40 CFR Part 60, Subparts KKKK and IIII, (related to standards of performance for Stationary Combustion Turbines and Stationary Compression Internal Combustion Engines), 40 CFR Parts 72 through 78 (related to acid rain), and 25 Pa. Code Chapter 145 (related to the NO_x budget program). The Department believes that the facility will meet these requirements by complying with the emission limitation, testing, monitoring, recordkeeping, reporting and work practice standards established in the proposed Plan Approval

Annual emissions from this facility will not exceed 30 tons oxides of nitrogen (NO_x), 80 tons of carbon monoxide (CO), 30 tons of non-methane organic compounds (NMOCs), 5 tons or sulfur dioxide (SO₂), 30 tons of particulate matter less than 10 microns in size (PM₁₀), 0.4 tons formaldehyde, 5 tons of all HAPs (hazardous air pollutants) and 620,000 tons of carbon dioxide equivalents (CO₂e).

In accordance with 25 Pa. Code § 127.1, the Department has determined that best available technology (BAT) for the turbine/HRSG/duct burner includes the use of gas as a fuel, good combustion practices, dry low NO_x combustors, low NO_x burners, selective catalytic reduction (SCR) and catalytic oxidation (CatOx). BAT for the diesel-fired fire water pump is the use of ultra low sulfur diesel fuel, limitations on hours of operation and compliance with 60 CFR 60, Subpart IIII. BAT for the cooling tower is the use of a source designed to minimize drift to less than 0.0005%, and control of the solids content of the cooling tower fluid through testing and appropriate purge/makeup.

Application and other supporting documentation are available at the address shown below. Any person wishing to either object to issuance of the plan approval or a

proposed condition thereof, or to provide the Department with additional information that they believe should be considered prior to the issuance of the plan approval, or to request a hearing may submit the information in writing to the Department. Written comments should be mailed to the Department at the address shown below. A comment period of 30 days from the date of publication of this notice shall exist. All comments must be received within thirty days of the date of this public notice. In accordance with Pa. Code Title 25 § 127.46, comments shall include the following:

1. Name, address, and telephone number of the person filing the comment.
2. Identification of the proposed plan approval issuance being opposed (PA-63000922B).
3. Concise statement of the objections to the plan approval issuance, and the relevant facts upon which the objections are based

Written comments should be mailed to Barbara R. Hatch, P.E., Environmental Engineer Manager, PADEP, 400 Waterfront Drive, Pittsburgh, PA 15222, 412-442-4000.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

62-150C: Superior Tire & Rubber Corp. (1818 Pennsylvania Avenue West, PO Box 308, Warren, PA 16365) for construction of an automated adhesive spray system in Spray Finishing 1 & 2 booth and for a VOC emission increase in Warren City, **Warren County**. This is a State Only facility. The public notice is required for sources required to obtain a Plan Approval in accordance with 25 Pa. Code § 127.44. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the State Only operating permit through an administrative amendment at a later date. The source shall comply with the following conditions, which will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate Best Available Technology for the source:

- The facility VOC emissions shall not exceed 49.5 tpy based on a 12-month rolling total.
- The facility shall maintain records of the VOC emissions from all sources at the facility. The facility shall maintain a list of each VOC source, monthly VOC emissions from each VOC source, 12-month rolling totals for each VOC source, and 12-month rolling total for the entire facility.
 - Subject to 25 Pa. Code 123.13.
 - VOC emissions from the surface coating booth and adhesive booth (combined) shall not exceed 45 tons in any twelve (12) month rolling period. [This condition replaces Plan Approval # 62-150A, Condition #6]
 - The facility is subject to 25 Pa. Code 129.77 on or after January 1, 2012.
 - Subject to 25 Pa. Code 129.52.
 - The facility shall keep records of the adhesives used and the VOC and HAP emissions from the adhesives.
 - The pressure gauges, measuring pressure drop across the dry filter bank shall be maintained in working, readable condition at all times. The pressure drop across the filters shall be maintained in the appropriate pressure drop range, as dictated by the gauge manufacturer

and previous gauge operating parameters. Readings will be recorded weekly, and a record of the readings and maintenance log, which would include when filters are changed, will be kept for five years.

- The facility shall maintain records of the following from the operational inspections:
 - Leak detection of lines and guns
 - The facility shall determine that proposed changes in coatings and formulations are compliant with the emission limitation from Table 1 of 25 Pa. Code 129.52 prior to implementation of the new coating or formulation. This determination shall be done by one of the following methods:
 - Calculation of the VOC content of the as applied coating as in 25 Pa. Code 129.52(b)(1)(i)
 - As applied coating sampling done in accordance with EPA methods
 - Coating certified product data sheets or equivalent when no additional solvents are added
 - After the company has determined that the coating or formulation meets the required emission limitation, the facility shall notify the Department of the new coating or formulation at least two weeks prior to implementation. [This condition replaces Condition #5 from Plan Approval 62-150A - Proposed changes in coatings and formulations shall be indicated to the Department at least two weeks prior to implementation.]
- The permittee shall perform a daily operational inspection of the automated adhesive spray system when in operation.
- The source shall not operate when the control device is not operating.
- A magnehelic gauge (or equivalent) shall be permanently installed and maintained at a conveniently readable location to indicate the pressure drop across the collector.
- Whenever a condition in this permit requires the measurement of pressure drop across any part of the unit or its control device, the gauge employed shall have a scale such that the expected normal reading shall be no less than twenty percent (20%) of full scale.
- The facility shall maintain the pressure drop across the collector between 0.01 to 0.5 inches of water column.
- The facility shall comply with the following BAT requirements:
 - As-applied coatings (which do not include adhesives) used in the spray booths shall comply with the applicable limit(s) in 25 Pa. Code 129.52.
 - All spray guns used in these booths shall be of the high volume, low pressure (HVLP) type, or a type equivalent to or better than HVLP in terms of transfer efficiency.
 - All spray guns shall be cleaned as needed or before allowing to set idle for extended periods. All spray guns used in these booths shall always be cleaned with enclosed spray gun cleaning equipment designed specifically for this purpose.
 - The system shall be checked daily for leaks of lines and guns.
 - Good housekeeping practices shall be followed at all times, including but not limited to, any spills of adhesive,

paint and solvent being cleaned up immediately, and containers of adhesive, paint and solvent kept closed when not in use.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

36-05002: Armstrong World Industries, Inc. (P. O. Box 3001, Lancaster, PA 17604) for their flooring manufacturing plant in the City of Lancaster, **Lancaster County**. This is a renewal of their Title V Operating Permit issued in 2006.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The subject facility has actual emissions of 3.8 tpy of CO, 9.4 tpy NO_x, 0.3 tpy PM₁₀, 0.3 tpy PM_{2.5}, 1.6 tpy SO_x, 67.9 tpy VOC, 3.1 tpy combined HAPs, and 1.5 tpy of a single HAP (toluene). The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 40 CFR 60 Subpart Dc—Standards of Performance for Small Industrial—Commercial-Institutional Steam Generating Units, 40 CFR 63, Subpart JJJJJJ—National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers, & 40 CFR 63, Subpart KK—National Emission Standards for the Printing and Publishing Industry.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *PA Bulletin*, will exist for the submission of comments or protests.

Tom Hanlon, Chief, East Permitting Section, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Zaman, Environmental Program Manager—Telephone: 570-327-3648

08-00002: E.I. DuPont de Nemours and Co. (192 Patterson Boulevard, Towanda, PA 18848) for renewal of the Title V Operating Permit for their Towanda facility in North Towanda Township, **Bradford County**. The facility's sources includes four (4) #6 fuel oil/natural gas-fired boilers, eight (8) surface coating operations, two (2) storage tanks, three (3) fire pumps, one (1) heat treat furnace and one (1) parts washer, which have the potential to emit major quantities of nitrogen oxides (NO_x), sulfur oxide (SO_x), volatile organic compounds (VOCs) and volatile hazardous air pollutants (VHAPs) emissions. The facility has the potential to emit carbon monoxide (CO) and particulate matter (PM/PM₁₀) below the major emission thresholds. The proposed Title V operating permit renewal contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

41-00013: JW Aluminum Co. (2475 Trenton Avenue, Williamsport, PA 17701) for renewal of the Title V Operating Permit for their facility in Williamsport, **Lycoming County**. The facility's sources include nineteen (19) storage tanks, fourteen (14) natural gas-fired heaters and boilers, eight (8) coil coating lines, eight (8) natural gas-fired process heaters and ovens, four (4) cold rolling mills, three (3) annealing ovens, two (2) parts washers, one (1) vegetable/animal fat application process, quality control laboratory operations, and a coating solutions storage area which have the potential to emit major quantities of volatile organic compound emissions. The facility has the potential to emit carbon monoxide (CO), nitrogen oxides (NO_x), sulfur oxide (SO_x), volatile hazardous air pollutants (VHAPs) and particulate matter (PM/PM₁₀) emissions below the major emission thresholds. The proposed Title V operating permit renewal contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions. The proposed Title V operating permit renewal contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6131

42-00011: International Waxes Plant (45 Route 446, Smethport, PA 16749-5413) for reissuance of the Title V Permit for their Farmers Valley Plant in Keating Township, **McKean County**. The facility's representative to contact concerning this application is Mr. Daniel Goldsmith, Environmental Manager. His phone number is (814) 887-4056.

The facility's major emission sources include the boilers (controlled by an ESP), rerun unit charge heater 2, crude unit vacuum heater, resin heater, No. 2 Earth Burner (controlled by a scrubber), emergency fire pumps and compressors, storage tanks (controlled by a flare), plant wide-fugitive emissions, wastewater treatment, propane deresiner unit (controlled by a flare), degreasers, flue gas holder, coal unloading, and flyash loading. The facility is a major facility due to its potential to emit Nitrogen Oxides (NO_x), Sulfur Oxides (SO_x), and Volatile Organic Compounds (VOCs). The facility is subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The facility is subject to the

New Source Performance Standards (NSPS) for Stationary Compression Ignition Internal Combustion Engines (40 CFR 60, Subpart IIII) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Organic Hazardous Air Pollutant for Equipment Leaks (40 CFR 63, Subpart H), Recovery Device and Routing to Fuel Gas System or a Process (40 CFR 63, Subpart SS), Organic Liquids Distribution (40 CFR 63, Subpart EEEE), Stationary Reciprocating Internal Combustion Engines (40 CFR 63, Subpart ZZZZ), and, Industrial, Commercial and Institutional Boilers and Process Heaters (40 CFR 63, Subpart DDDDD).

Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920

15-00077: Hanson Aggregates PA, LLC (499 Quarry Road, East Caln Township, PA 19335) for a State Only, Natural Minor Operating Permit in East Caln Township, **Chester County**. This is a nonmetallic mineral processing plant. The pollutant of concern is particulate matter. Dust collectors and wet suppression system are used on all sources for particulate matter control. The permit will include monitoring, record keeping and reporting requirements designed to address all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

54-00071: VanHoekelen Greenhouses, Inc. (Route 309, PO Box 88, McAdoo, PA 18237-0088) to operate boilers at their greenhouse operation in Kline Township, **Schuylkill County**. This is a renewal of a State-Only Operating Permit.

35-00054: Bardane Manufacturing Co. (P O Box 70, Delaware Street, Jermyn, PA 18433-0070) for operation and manufacturing of aluminum die castings facility and its associated activities at their facility in Jermyn Borough, **Lackawanna County**. The proposed State Only Operating Permit contains applicable requirements for emissions limitations, monitoring, record keeping, reporting, and work practice standards used to maintain facility compliance with Federal and State air pollution regulations.

35-00023: United Gilsonite Laboratories (1396 Jefferson Avenue, Dunmore, PA 18510) for operation of a paint/coating manufacturing facility in Dunmore Borough, **Lackawanna County**. This is a renewal of a State-Only Operating Permit.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

36-03066: Perdue Agribusiness (1609 River Road, Marietta, PA 17547) for operation of a grain handling and storage facility in East Donegal Township, **Lancaster County**. This is a renewal of their State-Only Operating Permit issued in 2006.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The subject facility has actual emissions of 23.6 tpy PM & 5.8 tpy PM10. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *PA Bulletin*, will exist for the submission of comments or protests.

Tom Hanlon, Chief, East Permitting Section, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

19-00020: Kawneer Co., Inc. (500 East 12th Street, Bloomsburg, PA 17815) to revise the State Only (Synthetic Minor) operating permit reporting requirements of the coatings applied on a monthly basis at their facility in **Columbia County**. This revision is in response to a Notice of Violation. The revised State only (Synthetic Minor) operating permit will contain all applicable regulatory requirements including monitoring, recordkeeping, and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6131

37-00319: Three Rivers Aggregate LLC, Wampum plant, previously Ennstone Inc. (3118 Wampum Road, Wampum, PA 16157) for a Natural Minor Permit to operate sand and gravel processing plant in North Beaver Township, **Lawrence County**. The sources include crushers, screens, conveyors, storage piles and a diesel generator. The facility is natural minor because the emission of the pollutants is less than the Title V threshold limit and there is a previous plan approval. The mineral processing equipments are subject to 40 CFR Part 60 Subpart OOO and Diesel generator is subject to 40 CFR Part 63, Subpart ZZZZ.

Department of Public Health, Air Management Services:
321 University Avenue, Philadelphia, PA 19104

Contact: Edward Wiener, Chief—Telephone: 215-685-9426

S11-004: The Wistar Institute (3601 Spruce Street, Philadelphia, PA 19104) for operation of a biomedical research facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission source includes three 448 Hp boilers and five emergency generators.

The operating permit will be issued under the Pennsylvania Code Title 25, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the above operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003). The following permit applications to conduct mining activities have been received by the Department. A copy of the application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application may be submitted by any person or any officer or head of any Federal, state or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Written comments or objections regarding a mining permit application should contain the name, address and telephone number of persons submitting comments or objections, application number and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

A request for an informal conference or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 or § 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When an NPDES number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. A separate notice will be provided after the draft NPDES permit is prepared.

Coal Applications Received

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100

Permit No. 30841317. Emerald Coal Resources, LP, (PO Box 1020, 158 Portal Road, Waynesburg, PA 15370), to revise the permit for the Emerald Mine No. 1 in Jefferson and Franklin Townships, **Greene County**, ACOE Pittsburgh. (Garards Fort and Mather, PA Quadrangles, bound by the following points for restoration areas 1 through 6 from N: 0.15 inches; W: 15.20 inches to N: 2.01 inches; W: 10.80 inches and for restoration area 7 from N: 2.45 inches; W: 12.46 inches to N: 2.36 inches; W: 12.33 inches. This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15), and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the stream restoration for possible stream flow loss resulting from longwall mining to four areas of Muddy Creek and three areas of unnamed tributaries to Muddy Creek. Minor forms of restoration may be performed in Muddy Creek, Coal Lick Run and their associated tributaries. Written comments or objections on the request for Section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit, (Stream Module 15) may be submitted to the Department within 30 days of the date of this notice to the District Mining Office identified above. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water Quality Certification and Chapter 105 permit application, (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based. The Water Obstruction and Encroachment permit application is available for review at the California District Mining Office, by appointment, at the address listed above. Application received December 16, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

Permit No. 03050104 and NPDES Permit No. PA0250813. D J & W Mining, Inc. (Box 425, Indiana, PA 15701). Renewal application for continued mining of an existing bituminous surface mine, located in Kiskiminetas Township, **Armstrong County**, affecting 168.6 acres. Receiving streams: unnamed tributaries to Crooked Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: May 5, 2011.

Permit No. 03060101 and NPDES Permit No. PA0250848. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201). Renewal application for reclamation only of an existing bituminous surface mine, located in Boggs Township, **Armstrong County**, affecting 175.9 acres. Receiving streams: Nicholson Run, classified for the following use: WWF. The potable water supply intake within 10 miles downstream from the point of discharge: Municipal Authority of Buffalo Run. Renewal application received: May 4, 2011.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191

Permit No. 33930102 and NPDES Permit No. PA0211508. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767) Renewal of an existing bituminous strip and auger operation in Oliver Township, **Jefferson County** affecting 120.3 acres. Receiving streams: Two unnamed tributaries to Little Sandy Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 2, 2011.

Permit No. 33010102 and NPDES Permit No. PA0241890. McKay Coal Co., Inc. (P. O. Box 343, Punxsutawney, PA 15767) Renewal of an existing bituminous strip, auger, tippel refuse disposal and limestone removal operation in Perry Township, **Jefferson County** affecting 56.4 acres. Receiving streams: Two unnamed tributaries to Foundry Run, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 2, 2011.

Permit No. 10110105 and NPDES Permit No. PA0259098. K & A Mining (P. O. Box 288, Grove City,

PA 16127) Commencement, operation and restoration of a bituminous strip operation in Cherry Township, **Butler County** affecting 34.3 acres. Receiving streams: South Branch Slippery Rock Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 6, 2011.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

Permit No. 35910101R4 and NPDES Permit No. PA0595187. Pioneer Aggregates, Inc., (215 East Saylor Avenue, Wilkes-Barre, PA 18702), renewal of an existing anthracite surface mine operation and NPDES Permit for discharge of treated mine drainage in Fell Township, **Lackawanna County** affecting 425.0 acres, receiving stream: Wilson Creek, classified for the following use: cold water fishes. Application received: May 2, 2011.

Coal NPDES Draft Permits

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

NPDES No. PA0248851 (Mining permit no. 11000104), Hoffman Mining, Inc., P. O. Box 130, 118 Runway Road, Friedens, PA 15541, renewal of an NPDES permit for surface/auger mine in Adams Township, **Cambria County**, affecting 151.0 acres. Receiving stream(s): Paint Creek, classified for the following use(s): cold water fishery. This receiving stream is included in the Kiski-Conemaugh TMDL. Application received: December 20, 2010.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described above for coal mining activities.

The treated wastewater outfall(s) listed below discharge to Paint Creek:

| | |
|---------------------|--------------------------|
| <i>Outfall Nos.</i> | <i>New Outfall (Y/N)</i> |
| 001, 002, 003 | No |

The proposed effluent limits for the above listed outfall(s) are as follows:

| <i>Outfalls: 001, 002, 003</i> | <i>30-Day</i> | <i>Daily</i> | <i>Instant.</i> |
|--|----------------|----------------|-----------------|
| <i>Parameter</i> | <i>Average</i> | <i>Maximum</i> | <i>Maximum</i> |
| Iron (mg/l) | 1.5 | 3.0 | 3.5 |
| Manganese (mg/l) | 1.0 | 2.0 | 2.5 |
| Aluminum (mg/l) | 0.75 | 1.5 | 1.9 |
| Total Suspended Solids (mg/l) | 35 | 70 | 90 |
| pH (S.U.): Must be between 6.0 and 9.0 standard units at all times | | | |
| Alkalinity must exceed acidity at all times | | | |

The stormwater outfall(s) listed below discharge to Paint Creek:

| | |
|---------------------|--------------------------|
| <i>Outfall Nos.</i> | <i>New Outfall (Y/N)</i> |
| 004, 005, 006, 007 | No |

The proposed effluent limits for the above listed outfall(s) are as follows:

| <i>Outfalls: 004, 005, 006, 007</i> | <i>30-Day</i> | <i>Daily</i> | <i>Instant.</i> |
|--|----------------|----------------|-----------------|
| <i>Parameter</i> | <i>Average</i> | <i>Maximum</i> | <i>Maximum</i> |
| Iron (mg/l) | 1.5 | 3.0 | 3.5 |
| Manganese (mg/l) | 1.0 | 2.0 | 2.5 |
| Aluminum (mg/l) | 0.75 | 1.5 | 1.9 |
| Total Suspended Solids (mg/l) | 35 | 70 | 90 |
| pH (S.U.): Must be between 6.0 and 9.0 standard units at all times | | | |
| Alkalinity must exceed acidity at all times | | | |

Noncoal Applications Received

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

Permit No. 6477SM5. ISP Minerals, Inc., P. O. Box O, Blue Ridge Summit, PA 17214, renewal of NPDES Permit No. PA0009059 Hamiltonban and Washington Townships, **Adams** and **Franklin Counties**. Receiving stream(s): Miney Branch classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received April 29, 2011.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191

Permit No. 10110303 and NPDES Permit No. PA0259170. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201) Commencement, operation and restoration of a large industrial mineral operation in Washington Township, **Butler County** affecting 309.0 acres. Receiving streams: One unnamed tributary to Glade Dam Lake, four unnamed tributaries to South Branch Slippery Rock Creek and South Branch Slippery Rock Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: April 27, 2011.

Permit No. 1270-10110303-E-1. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201) Application for a stream encroachment to conduct mining support activities no closer than 25 feet and construct a stream crossing over unnamed tributary No. 1 to South Branch Slippery Rock Creek. Receiving streams: One unnamed tributary to Glade Dam Lake, four unnamed tributaries to South Branch Slippery Rock Creek and South Branch Slippery Rock Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application also includes a request for a Section 401 Water Quality Certification. Application received: April 27, 2011.

Permit No. 25970306. Raymond D. Showman & Sons, Inc. (12851 Sharp Road, Edinboro, PA 16412) Revision to add 2.0 acres to an existing large industrial mineral operation in LeBoeuf Township, **Erie County**. Total acreage to be affected is 22.2 acres. Receiving streams: French Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 4, 2011.

Permit No. 10960302. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201) Renewal of NPDES Permit No. PA0227200 in Marion Township, **Butler County**. Receiving streams: Unnamed tributary to North Branch Slippery Rock Creek and three unnamed tributaries to Black Creek, all classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 5, 2011.

Permit No. 10020306. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201) Renewal of NPDES Permit No. PA0242250 in Worth Township, **Butler County**. Receiving streams: Two unnamed tributaries to Slippery Rock Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 5, 2011.

Permit No. 10010310. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201) Renewal of NPDES Permit No. PA0241962 in Mercer & Pine Town-

ships, **Butler & Mercer Counties**. Receiving streams: Unnamed tributary to Swamp Run, classified for the following uses: CWF. The first downstream potable surface water supply intake from the point of discharge is the Slippery Rock Public Water Supply. Application received: May 5, 2011.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

Permit No. 4873SM8C and NPDES Permit No. PA0594644. Kinsley Construction, Inc., (PO Box 2886, York, PA 17405), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in West Manchester Township, **York County**, receiving stream: unnamed tributary to Codorus Creek, classified for the following uses: warm water fishes and migratory fishes. Application received: May 3, 2011.

Permit No. 5273SM2C17 and NPDES Permit No. PA0594130. Hanson Aggregates Pennsylvania, LLC, (7660 Imperial Way, Allentown, PA 18195), correction to an existing quarry operation to update the NPDES Points for discharge of treated mine drainage and change 3.76 acres from mining to support of 247.3 total permitted acres, receiving stream: Chester Creek and unnamed tributaries to Chester Creek, classified for the following use: trout stock fishery. Application received: May 4, 2011.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the Commonwealth to certify that the involved projects will not violate the sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA, the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment shall submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before an application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on working days at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401(a) of the FWPCA.

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southcentral Region: Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4707.

E07-434: Hollidaysburg Sewer Authority Wastewater Treatment Plant Upgrades, 401 Blair Street, Hollidaysburg, PA 16648, in Frankstown Township, Blair County, ACOE Baltimore District

To construct and maintain a new sludge management building, two (2) digester tanks, a grit building with pump pits, parking lot, and a detention pond, along with associated grading and piping including 24.0-inch DIP sewer line, 12.0-inch PVC sewer line, 8.0-inch PVC sewer line, two (2) 6.0-inch DIP waterlines, 4.0-inch DIP waterline, and four (4) manholes. All impacts are located within the 100-yr floodway and floodplain of Frankstown Branch Juniata River (WWF, MF) and will permanently impact 2.34 acres of the 100-year floodway and 0.13 acre of floodplain. The purpose of the project is to improve the existing Hollidaysburg Sewer Authority Wastewater Treatment Plant. The project is located at 2681 Reservoir Road, Frankstown Township, Blair County (Harrisburg West, PA Quadrangle N: 10.0 inches, W: 15.13 inches; Latitude: 40°25'48", Longitude: -78°21'32").

E22-548: Derry Township, 600 Clearwater Road, Hershey, PA 17033, in Derry Township, Dauphin County, ACOE Baltimore District

To 1) regrade an existing stormwater channel impacting 0.02-acre of palustrine emergent (PEM) wetland associated with an unnamed tributary to Spring Creek (WWF, MF) and construct and maintain a 28.0-inch wide by 20.0-inch high CMP stormwater outfall with endwall and depressed riprap outlet protection discharging to an unnamed tributary to Spring Creek (WWF, MF), impacting 0.01-acre of palustrine emergent wetland (Hershey, PA Quadrangle; N: 3.80 inches, W: 3.25 inches; Latitude: 40°16'15.5", Longitude: -76°38'53"); 2) relocate 334.0 feet and to restore a total of 945.0 feet of an unnamed tributary to Spring Creek (WWF, MF) including regrading to create a low flow channel and a floodplain bench impacting 0.05-acre of PEM wetland (Hershey, PA Quadrangle; N: 3.95 inches, W: 3.20 inches; Latitude: 40°16'18", Longitude: 76°38'52.2"); 3) install and maintain concrete plugs and flowable fill into existing dual 42.0-inch diameter pipes in an unnamed tributary to Spring Creek (WWF, MF) (Hershey, PA Quadrangle; N: 4.30 inches, W: 3.25 inches; Latitude: 40°16'25.1", Longitude: -76°38'54.1"); 4) construct and maintain a 12.0-foot long, 1.0-foot depressed, 75.0-inch high by 112.0-inch wide CMP arch culvert with headwall, endwall and depressed riprap apron in an unnamed tributary to Spring Creek (WWF, MF) to provide pedestrian access to an adjacent property (Hershey, PA Quadrangle; N: 4.30 inches, W: 3.25 inches; Latitude: 40°16'25.1", Longitude: -76°38'54.1"); 5) construct and maintain a 78.0-foot long, 1.0-foot depressed, 96.0-inch RCP culvert with headwall in an unnamed tributary to Spring Creek (WWF, MF) (Hershey, PA Quadrangle; N: 4.45 inches, W: 3.25 inches; Latitude: 40°16'28.8", Longitude: -76°38'53.9"); 6) construct and

maintain two (2) Type 10 junction boxes and a 297.0-foot long, 1.0-foot depressed, 75.0-inch by 112.0-inch CMP with endwall and depressed riprap apron outlet protection in an unnamed tributary to Spring Creek (WWF, MF) (Hershey, PA Quadrangle; N: 4.45 inches, W: 3.25 inches; Latitude: 40°16'28.8", Longitude: -76°38'53.9"); 7) install and maintain 54.0 lineal feet of 10.0-inch diameter PVC sanitary sewer line between existing manhole MH-57-16 and proposed Manhole MH-G290A, in the floodway of an unnamed tributary to Spring Creek (WWF, MF) (Hershey, PA Quadrangle; N: 4.65 inches, W: 3.25 inches; Latitude: 40°16'32.5", Longitude: -76°38'53"); and 8) install and maintain 97.0 lineal feet of 8.0-inch diameter PVC sanitary sewer line between proposed Manhole MH-G290A and existing Manhole MH-G290 in the floodway of an unnamed tributary to Spring Creek (WWF, MF) (Hershey, PA Quadrangle; N: 4.40 inches, W: 3.25 inches; Latitude: 40°16'27", Longitude: -76°38'53.8"). The project is located at the intersection of Governor Road (SR 0322) and Cocoa Avenue (SR 0743) in Derry Township, Dauphin County. The purpose of the project is to improve stormwater conveyance and decrease flooding. The project will permanently impact 0.078 acre of PEM wetland and the permittee is required to provide a minimum of 0.161 acres of replacement PEM wetlands onsite.

E22-576: South Hanover Township Sewer Authority, 111 West Third Street, Hershey, PA 17033, South Hanover Township, Dauphin County, ACOE Baltimore District

To install and maintain an upgrade to the existing sewage pump station located in the floodway of Kellock Run (WWF, MF) along Stoudt Road (Hershey, PA Quadrangle; N: 8.52 inches, W: 11.66 inches; Latitude: 40°17'48.8", Longitude: -76°42'31") in South Hanover Township, Dauphin County. The purpose of this upgrade is to meet sewage demand due to the construction of the Grandview Estates subdivision and the Ridgewood subdivision.

E28-367: PA Department of Transportation Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103, in Southampton Township, Franklin County, ACOE Baltimore District

To: 1) remove the existing structure, 2) construct and maintain a two-span prestressed concrete adjacent box beam bridge skewed 82°30'00", having a total clear span of 93.0 feet, a width of 37.375 feet, and an underclearance of 6.98 feet across Muddy Run (WWF, MF), 3) relocate and maintain approximately 281.0 feet of an unnamed tributary to Muddy Run (WWF, MF) underneath the proposed bridge, 4) temporarily impact 0.07 acre of PEM wetland, and 5) place and maintain fill in 0.02 acre of PEM wetland all for the purpose of improving transportation safety and roadway standards. The project is located along SR 0533 (Orrstown Road) in Southampton Township, Franklin County (Shippensburg, PA Quadrangle; N: 11.5 inches, W: 12.6 inches; Latitude: 40°3'48", Longitude: -77°35'25"). The amount of wetland impact is considered a de minimus impact of 0.02 acre and wetland replacement is not required.

E28-368: PA Department of Transportation Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103-1699, in Hamilton and St. Thomas Townships, Franklin County, ACOE, Baltimore District.

To: 1) remove the existing structure, 2) construct and maintain a two-span prestressed concrete bulb-tee beam bridge skewed 70°, having a total clear span of 112.30 feet, a width of 35.375 feet, and an underclearance of

10.33 feet across Back Creek (WWF, MF), 3) relocate and maintain approximately 55.0 feet of an unnamed tributary to Back Creek (WWF, MF) underneath the proposed bridge, and 4) place and maintain fill in 0.01 acre of PEM wetland, all for the purpose of improving transportation safety and roadway standards. The project is located along SR 3012 (Jack Road) in Hamilton and St. Thomas Townships (Chambersburg, PA Quadrangle, N: 3.3 inches, W: 16.3 inches; Latitude: 39°53'35", Longitude: -77° 44' 29"). The amount of wetland impact is considered de minimus impact 0.01 acre and wetland replacement is not required.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

E42-351, FHO Corporation, 1000 Glendorn Drive, Bradford, PA 16701, Glendorn Sewer Connection in Bradford Township, **McKean County**, ACOE Pittsburgh District (Bradford, PA Quadrangle N: 41°, 54', 54"; W: 78°, 42', 50").

Project is to replace several failing on-lot septic systems with a new 1.25" to 3" grinder pump low-pressure force main to the Bradford Township public sanitary sewer system. Installation includes roughly 22,800' of pipe, 5 directional bore wetland crossings and 2 stream crossings of Fuller Brook and Langmade Brook.

Northcentral Region: Oil and Gas Management Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701

E4129-003 Anadarko E&P Company, LP, P. O. Box 1330, Houston, Texas 77251-1330, McHenry Township, **Lycoming County**, ACOE Baltimore District. To construct, operate, and maintain a surface water withdrawal along Pine Creek (HQ-CWF) adjacent to Route 414 south of Jersey Mills (Jersey Mills Quadrangle 41° 21' 3.26"N 77° 24' 10.3"W). The proposed withdrawal will include two adjacent submersible pumps with related materials set below the stream bed parallel to the direction of stream flow. The project will result in 264 square feet of stream impacts all for the purpose of obtaining water to use to develop multiple Marcellus Shale wells.

E1929-001: Mountain Gathering, LLC, 810 Huston Street, Forth Worth, TX 76102-6298, Pine & Jackson Townships, **Columbia County**, ACOE Baltimore District. To construct, operate, and maintain:

(1) one 24 inch gas pipeline impacting 18 linear feet an unnamed tributary to Little Brier Run (EV) and 22 square feet of adjacent palustrine emergent (PEM) wetland next to Kessler Hollow Road; (Benton Quadrangle 41°14'38" N 76°28'3"W).

(2) one 12 inch and one 24 inch gas pipeline impacting 16 linear feet of Little Brier Run (EV) and 762 square feet of adjacent palustrine forested (PFO) wetland; (Elk Grove Quadrangle 41°15'11" N 76°27'52"W).

(3) one 24 inch gas pipeline impacting 54 linear feet of Little Fishing Creek (EV) and 577 square feet of adjacent palustrine forested (PFO) wetland; (Elk Grove Quadrangle 41°15'6" N 76°27'6"W).

The project will result in 88 linear feet of stream impacts and 1361 square feet of wetland impacts from utility line crossings. These crossings will accumulate a total of 0.01 acres of watercourse impacts and 0.03 acres of wetland impacts all for the purpose of installing a natural gas gathering line with associated access roadways for Marcellus well development.

E4129-011: Anadarko Marcellus Midstream, LLC, PO Box 1330, Houston, TX 77251, Loyalsock, Eldred, Gamble, & Cascade Townships, **Lycoming County**, ACOE Baltimore District.

To construct, operate, and maintain:

(1) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line impacting 31088 square feet of a palustrine emergent (PEM) wetland adjacent; (Montoursville North Quadrangle 41°17'7"N 76°58'13"W).

(2) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Millers Run (WWF-MF) impacting 2 linear feet; (Montoursville North Quadrangle 41°17'47"N 76°58'11"W).

(3) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Mill Creek (TSF-MF) impacting 8 linear feet and 2159 square feet of adjacent palustrine emergent (PEM) wetland; (Montoursville North Quadrangle 41°17'59"N 76°57'43"W).

(4) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Lick Creek (TSF-MF) impacting 3 linear feet and 7066 square feet of adjacent palustrine emergent (PEM) wetland; (Montoursville North Quadrangle 41°18'49"N 76°58'17"W).

(5) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Lick Run (TSF-MF) impacting 11 linear feet and 14661 square feet of adjacent palustrine emergent (PEM) wetland; (Montoursville North Quadrangle 41°18'55"N 76°58'19"W).

(6) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line impacting 14084 square feet of a palustrine emergent (PEM) wetland; (Montoursville North Quadrangle 41°19'5"N 76°58'21"W).

(7) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across Lick Run (TSF-MF) impacting 4 linear feet and 409 square feet of adjacent palustrine forested (PFO) wetlands; (Montoursville North Quadrangle 41°19'7"N 76°58'21"W).

(8) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Mill Creek (TSF-MF) impacting 3 linear feet; (Montoursville North Quadrangle 41°19'43"N 76° 58' 12"W).

(9) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across Mill Creek (TSF-MF) impacting 24 linear feet adjacent to Pleasant Valley Road; (Montoursville North Quadrangle 41° 20' 14"N 76°57'54"W).

(10) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line impacting 439 square feet of a palustrine scrub shrub (PSS) wetland adjacent to Mill Creek; (Montoursville North Quadrangle 41°20'17"N 76°57'54"W).

(11) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across Calebs Run (EV, MF) impacting 6 linear feet; (Montoursville North Quadrangle 41°22'14"N 76°57'16"W).

(12) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Murray Run (EV, MF) impacting 2 linear feet; (Bodines Quadrangle 41°23'13"N 76°56'20"W).

(13) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across unnamed tributaries to Murray Run (EV, MF) impacting 17 linear feet; (Bodines Quadrangle 41°23'20"N 76°56'21"W).

(14) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across Murray Run (EV, MF) impacting 26 linear feet; (Bodines Quadrangle 41°23'29"N 76°56'13"W).

(15) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Wallis Run (EV, MF) impacting 2 linear feet adjacent to Wallis Run Road; (Bodines Quadrangle 41°23'40"N 76°55'49"W).

(16) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Wallis Run (EV, MF) impacting 3 linear feet adjacent to Wallis Run Road; (Bodines Quadrangle 41°24'13"N 76°55'36"W).

(17) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Wallis Run (EV, MF) impacting 3 linear feet and 5836 square feet of adjacent palustrine forested (PFO) wetland adjacent to Wallis Run Road; (Bodines Quadrangle 41°24'13"N 76°55'35"W).

(18) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line across Roaring Run (EV, MF) impacting 9 linear feet; (Bodines Quadrangle 41°24'17"N 76°55'23"W).

(19) two 6 inch and one 24 inch gas pipelines, one 16 inch waterline, and electrical line impacting 13979 square feet of a palustrine emergent (PEM) wetland; (Bodines Quadrangle 41°24'49"N 76°55'14"W).

(20) two 6 inch and one 16 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Roaring Run (EV, MF) impacting 2 linear feet; (Bodines Quadrangle 41°24'54"N 76°55'30"W).

(21) two 6 inch and one 16 inch gas pipelines, one 16 inch waterline, and electrical line across an unnamed tributary to Roaring Run (EV, MF) impacting 12 linear feet and 1397 square feet of adjacent palustrine forested (PFO) wetland; (Bodines Quadrangle 41°25'0"N 76° 55' 33"W).

The project will result in 137 linear feet of temporary stream impacts and 91118 square feet of wetland impacts from utility line crossings. These crossings will accumulate a total of 0.31 acres of watercourse impacts and 2.09 acres of wetland impacts all for the purpose of installing a natural gas gathering line with associated access roadways for Marcellus well development.

E5929-016 Keystone Clearwater Solutions, LLC, 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033 Morris Township, **Tioga County**, ACOE Baltimore District. To construct, operate, and maintain a surface water withdrawal along Babb Creek (EV-CWF) adjacent to Route 287 south of Morris (Morris Quadrangle 41° 35' 30.8"N 77° 17' 51.4"W). The proposed withdrawal will include a portable pump with overland piping to nearby tanks. The project will result in 17 square feet of stream impacts all for the purpose of obtaining water to use to develop multiple Marcellus Shale wells.

E5329-007. Victory Energy Corporation, 220 Airport Road, Indiana, PA, 15701-8944. Pike Township, **Potter County**, ACOE Baltimore District. (Marshlands, PA Quadrangle, N: 21.41 inches; W: 15.29 inches, Latitude: 41°44'33.26"N, Longitude: 77°36'41.82"W). To construct, operate and maintain a water withdrawal on Pine Creek (EV) utilizing a 4 inch flexible hose connected to a submerged intake structure on the southern side of Pine Creek impacting 14.1 feet of Pine Creek, 117 feet of EV wetlands in the floodplain of Pine Creek, and 25 feet of an overflow channel of Pine Creek all for the purpose of obtaining water to utilize for obtaining natural gas from the Marcellus Shale.

EROSION AND SEDIMENT CONTROL PERMITS

The following parties have applied for Erosion and Sediment Control Permits for earth disturbance activities associated with either road maintenance or timber harvesting operations.

Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department proposes to issue a permit to discharge, subject to certain limitations in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

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

Following the 30-day comment period, the appropriate regional office water management program manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board (Board).

The application and related documents, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the appropriate regional office.

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

Applications received under sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402)

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701

Clearfield County Conservation District: 511 Spruce Street, Suite 6, Clearfield, PA 16830 814-765-2629

| <i>ESCP No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-----------------|---|---------------|---------------------|---|
| 1711801 | Industrial Timber & Lumber Co. PO Box 67 Endeavor, PA 16322 | Clearfield | Bell Township | Fryor Run CWF Laurel Run CWF Whiskey Run CWF Hazlett Run CWF Curry Run CWF Laurel Run Trib to East Branch Mahoning HQ-CWF Buck Run CWF |

ACTIONS

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

The Department has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and NOIs for coverage under General Permits. This notice of final action is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P.S. §§ 691.1—691.101) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

| <i>Location</i> | <i>Permit Authority</i> | <i>Application Type or Category</i> |
|-----------------|-------------------------|--|
| Section I | NPDES | Renewals |
| Section II | NPDES | New or Amendment |
| Section III | WQM | Industrial, Sewage or Animal Wastes; Discharges to Groundwater |
| Section IV | NPDES | MS4 Individual Permit |
| Section V | NPDES | MS4 Permit Waiver |
| Section VI | NPDES | Individual Permit Stormwater Construction |
| Section VII | NPDES | NOI for Coverage under NPDES General Permits |

Sections I—VI contain actions regarding industrial, animal or sewage wastes discharges, discharges to groundwater, and discharges associated with MS4, stormwater associated with construction activities and CAFOs. Section VII contains notices for parties who have submitted NOIs for Coverage under General NPDES Permits. The approval for coverage under these General NPDES Permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions in each General Permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions in the respective permit. The permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) 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 Administrative Agency Law). The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO 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 Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should contact a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

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

| <i>NPDES No. (Type)</i> | <i>Facility Name & Address</i> | <i>County & Municipality</i> | <i>Stream Name (Watershed #)</i> | <i>EPA Waived Y/N ?</i> |
|-----------------------------|---|--------------------------------------|--------------------------------------|-----------------------------|
| PA0086622 (Sew) | Newport Plaza Association LP 44 S Bayles Avenue Port Washington, NY 11050-3765 | Perry County Howe Township | UNT to Juniata River / 12-B | Y |
| PA0247413 (Sew) | Paul S. Deal 880 Fickes Road Dillsburg, PA 17019-8906 | York County Warrington Township | UNT of Doe Run / 7-F | Y |
| PA0043575 (Sew) | Lykens Borough Authority 200 Main Street Lykens, PA 17048-1132 | Dauphin County Lykens Borough | Wiconisco Creek / 6-C | Y |

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

| <i>NPDES No. (Type)</i> | <i>Facility Name & Address</i> | <i>County & Municipality</i> | <i>Stream Name (Watershed #)</i> | <i>EPA Waived Y/N ?</i> |
|-----------------------------|---|--------------------------------------|---------------------------------------|-----------------------------|
| PA0034924 | Paint-Elk Joint Sewer Authority 22139 Route 66 Shippenville, PA 16254 | Clarion County Paint Township | Paint Creek 17-B | Y |
| PA0100048 | Spectrum Control, Inc. 8061 Avonia Road Fairview, PA 16145 | Erie County Fairview Township | Unnamed Tributary to Brandy Run 15 | Y |

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

NPDES Permit No. PA0058866, Industrial, **Blommer Chocolate Company**, 1101 Blommer Drive, East Greenville, PA 18041.

This proposed facility is located Upper Hanover Township, **Montgomery County**.

Description of Action/Activity: Renewal of an NPDES permit to discharge non contact cooling water, boiler blow down, softener and dealkalizer reject water and storm water from Blommer Chocolate to unnamed tributary to Perkiomen Creek in Watershed 3E.

NPDES Permit No. PA0055913, Amendment 1, Sewage, **Corco Chemicals Corporation**, Tyburn Road and Cedar Lane, Fairless Hills, PA 19030-4501.

This proposed facility is located in Fall Township, **Bucks County**.

Description of Action/Activity: Amendment of the existing NPDES permit regarding submission of an annual Evaluation Report for Groundwater Remediation System at Corco Chemical Corporation to Lake Nos. 1 and 2 in Watershed 2E.

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

NPDES Permit No. PA0053147-A1, Sewage, SIC Code 4952, **Upper Saucon Sewage Treatment Authority**, 5500 Camp Meeting Road, Center Valley, PA 18034-9444.

This existing facility is located in Upper Saucon Township, **Lehigh County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit Amendment for an existing discharge of treated Sewage. The amended permit is based upon site-specific criteria for copper, as developed from the results of a Water-Effect Ratio (WER) study.

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

NPDES Permit No. PA0261629, Sewage, **Robert J. Niner**, 155 Pine Tree Road, New Oxford, PA 17350.

This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge to a UNT of Beaverdam Creek in Watershed 7-F.

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

NPDES Permit No. PA0023124, Sewage, **Albion Borough**, 26 Smock Avenue, Albion, PA 16401.

This existing facility is located in Conneaut Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a renewal NPDES permit for an existing discharge of treated sewage. This is a Major discharge.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law

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

WQM Permit No. 2308404, Sewage, **Amendment 1, Borough of Brookhaven**, 2 Cambridge Road, Brookhaven, PA 19015.

This proposed facility is located in Borough of Brookhaven in **Delaware County**.

Description of Action/Activity: Conversion of existing primary clarifier to an aerated sludge holding tank.

WQM Permit No. 4611202, Industrial, **Brown Printing Company**, 668 Gravel Pike, East Greenville, PA 18041.

This proposed facility is located in Upper Hanover Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a wastewater sewage treatment plant.

WQM Permit No. WQG02091105, Sewage, **Warrington Township**, 852 Easton Road, Warrington, PA 18976.

This proposed facility is located in Warrington Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a new raw sewage pump station and force main.

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

WQM Permit No. 5095401 Amendment 11-1, Sewage, **Newport Plaza Association, LP**, 44 S Bayles Avenue, Port Washington, NY 11050-3765.

This proposed facility is located in Howe Township, **Perry County**.

Description of Proposed Action/Activity: Permit amendment approving the construction / modification of sewage facilities consisting of upgrades to the Newport STP to achieve compliance with the NPDES permit. The upgrades include installation of a grease / oil interceptor prior to the equalization tank, installation of chlorine disinfection system to replace existing ultraviolet system and upgrades to the tertiary filtration system.

WQM Permit No. 0110407, Sewage, **Robert J. Niner**, 1847 Ridge Road, Westminster, MD 21157.

This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewage facilities consisting of a 1,000 gallon two compartment septic → 500 gallon dosing tank with dosing pump → Ecoflo Peat Filer → UV disinfection.

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

WQM Permit No. 101040, Sewage, **Keystone Senior Care LLC**, 4550 Lena Drive, Suite 150, Mechanicsburg, PA 17055-4920.

This existing facility is located in Penn Township, **Butler County**.

Description of Proposed Action/Activity: Issuance of a Water Quality Permit for replacement of an existing sewage treatment plant for the Keystone Senior Care's Shelbourne Assisted Living Residence.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

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

| <i>NPDES Permit No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|-------------------------|--|---------------|---------------------|-------------------------------------|
| PAI030610006 | Mr. John Smith Forino Company, LP 555 Mountain Home Road Sinking Spring, PA 19608 | Berks | Ontelaunee Twp. | Willow Creek (HQ-CWF) |
| PAI030710002 | Mr. John Mueller Mueller's Auto Recycling and Sales, Inc. 1555 Mill Run Road Altoona, PA 16602 | Blair | Logan Township | Mill Run (HQ-CWF) |
| PAI033610005 | Mr. James Landis 825 Little Britain Road North Quarryville, PA 17566 | Lancaster | Little Britain Twp. | West Branch Octoraro Creek (HQ-CWF) |

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701

Centre County Conservation District: 414 Holmes Avenue, Suite 4, Bellefonte, PA 16823, (814) 355-6817

| NPDES Permit No. | Applicant Name & Address | County | Municipality | Receiving Water/Use |
|------------------|--|--------|-----------------|---------------------|
| PAI041411003 | Patrick Hubert Patton Township 100 Patton Plz State College, PA 16803 | Centre | Patton Township | Buffalo Run HQ-CWF |

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

Washington County Conservation District, 602 Courthouse Square, Washington, PA 15301 (724-228-6774)

| NPDES Permit No. | Applicant Name & Address | County | Municipality | Receiving Water/Use |
|------------------|---|------------|-------------------------|---------------------------------|
| PAI056310004 | Pennsylvania Department of Transportation, D-12 825 North Gallatin Avenue Uniontown, PA 15401 | Washington | South Strabane Township | UNT to Chartiers Creek (HQ-WWF) |

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision in 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

| | |
|-------------|--|
| PAG-1 | General Permit for Discharges from Stripper Oil Well Facilities |
| PAG-2 | General Permit for Discharges of Stormwater Associated with Construction Activities (PAR) |
| PAG-3 | General Permit for Discharges of Stormwater from Industrial Activities |
| PAG-4 | General Permit for Discharges from Small Flow Treatment Facilities |
| PAG-5 | General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems |
| PAG-6 | General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems |
| PAG-7 | General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application |
| PAG-8 | General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site |
| PAG-8 (SSN) | Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage |
| PAG-9 | General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site |
| PAG-9 (SSN) | Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage |
| PAG-10 | General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines |
| PAG-11 | (To Be Announced) |
| PAG-12 | CAFOs |
| PAG-13 | Stormwater Discharges from MS4 |

General Permit Type—PAG-02

Facility Location:

| Municipality & County | Permit No. | Applicant Name & Address | Receiving Water/Use | Contact Office & Phone No. |
|--|-------------------|--|-------------------------------------|---|
| Newtown Township Bucks County | PAG0200 091035 | Newtown Racquetball Associates 209 Penns Trail Newtown, PA 18940 | Core Creek (CWF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Upper Southampton Township Bucks County | PAG0200 091056 | Centennial School District 433 Centennial Road Warminster, PA 18974-5455 | Mill Creek/Neshaminy Creek (WWF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Lower Makefield Township Bucks County | PAG0200 091019 | Zubaida Fountain 855 Big Oak Road Yardley, PA 19067 | Delaware Canal (WWF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |

| <i>Facility Location: Municipality & County</i> | <i>Permit No.</i> | <i>Applicant Name & Address</i> | <i>Receiving Water / Use</i> | <i>Contact Office & Phone No.</i> |
|---|----------------------|--|---|---|
| Wrightstown Township Bucks County | PAG0200 091110 | Tami R. Herman 42 Alexander Court Newtown, PA 18940-3640 | Jericho Creek (WWF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Bristol Borough Bucks County | PAG0200 091117 | Borough of Bristol 250 Pond Street Bristol, PA 19007 | Bristol Marsh/Mill Creek (WWF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Hilltown Township Bucks County | PAG0200 091109 | JAJOPE, LLC 2188 Detwielier Road Harleysville, PA 19438 | North Branch Creek (WWF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Upper Makefield Township Bucks County | PAG0200 091112 | Richard L. Foster PO Box 390 Newtown, PA 18940 | Jericho Creek (WWF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Chester City Delaware County | PAG0200 231006 | Widener University One University Place Chester, PA 19013 | Chester Creek (WWF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Rose Valley Borough Delaware County | PAG0200 2306058-1 | NVWS Associates 347 East Conestoga Road Wayne, PA 19087 | Ridley Creek (TSF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Lower Gwynedd Township Montgomery County | PAG0200 4610091 | LG homes Associates 731 Skippack Pike Blue Bell, PA 19422 | Unnamed Tributary Wissahickon Creek (TSF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Hatfield Township Montgomery County | PAG0200 461109 | Mikelen, LLC 2965 West Germantown Pike Fairview Village, PA 19409 | West Branch Neshaminy Creek (WWF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Lower Merion Township Montgomery County | PAG0200 461112 | Hollowell Construction Company 123 West Wayne Drive Ardmore, PA 19003 | Sawmill Run (WWF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| Towamencin Township Montgomery County | PAG0200 461101 | North Penn School District 401 East Hancock Street Lansdale, PA 19466 | Unnamed Tributary Towamencin Creek (TSF-MF) | Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900 |
| North Whitehall Twp., Lehigh County | PAG02003906009R | Kenneth Snyder SK Development Co., Inc. 3312 Seventh St. Whitehall, PA 18052 | Fells Creek, CWF,MF | Lehigh Co. Cons. Dist. 610-391-9583 |
| Butler Twp., Luzerne County | PAG02004005047R | Lamont Development Company, Inc. Kevin Lamont 330 W. Butler Ave. Drums, PA 18222 | Little Nescopeck Creek, CWF,MF | Luzerne Co. Cons. Dist. 570-674-7991 |
| Berwick Township Adams County | PAG02000111005 | Jeff Faulkroad J. D. Eckman, Inc. P. O. Box 160 Atglen, PA 19310 | South Branch Conewago Creek/WWF, MF | Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 (717) 334-0636 |

NOTICES

2741

| <i>Facility Location: Municipality & County</i> | <i>Permit No.</i> | <i>Applicant Name & Address</i> | <i>Receiving Water / Use</i> | <i>Contact Office & Phone No.</i> |
|---|-------------------|---|---|---|
| Spring Township Berks County | PAG02000610001 | Vaughan, Jay W. Township of Spring 2850 Windmill Road Reading, PA 19608 | Cacoosing Creek (CWF) | Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142 |
| Cumru Township Berks County | PAG02000611012 | William Whitman Berkshire Greens, Inc. 10 Village Center Drive Reading, PA 19607 | UNT to Schuylkill River & Angelica Creek (WWF) | Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142 |
| Heidelberg Township Berks County | PAG02000606031 | LGN Management, LLC 155 Phillips Park Drive S Williamsport, PA 17702-7049 | UNT to Tulpehocken Creek (TSF) | Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142 |
| Oley Township Berks County | PAG02000611013 | Matlock, Michael A. Matlock Family Trust 21 Foxglove Lane Oley, PA 19547 | Little Manatawny Creek (CWF) | Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142 |
| Exeter Township Berks County | PAG02000611022 | Snyder, Leon Snyder Construction 230 Poplar Road Fleetwood, PA 19522 | Trout Run (WWF) | Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142 |
| Maxatawny Township Berks County | PAG02000607080 | Mark A. Austin/ PA Dept of Military/ Veteran Affairs Bur of Fac & Mgmt Building 0-10 Fort Indiantown Gap Annville, PA 17003 | UNT to Sacony Creek (TSF) | Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142 |
| Logan Township Blair County | PAG2000711001 | ALDI Inc. (PA) Christina L. Morascyzk, 6000 North Noah Drive, Saxonburg, PA 16056 | Brush Run | Logan Township, Blair County |
| South Middleton & Dickinson Townships | PAG2002105032R | A.C. Kuhn and Son, Inc. AC Kuhn-Dennison Farm P. O. Box 121 Carlisle PA 17013 | Alexanders Spring Creek-CWF | Cumberland County Conservation District 310 Allen Road, Suite 301 Carlisle PA 17013 717-240-7812 |
| West Hanover Township Dauphin County | PAG02002206018 | The McNaughton Co 4400 Deer Path Rd Suite 201 Harrisburg, PA 17110 | Manada Creek/WWF | Dauphin County Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 |
| Lower Paxton Township Dauphin County | PAG02002206031R | Joseph Gallo Palm Development Inc. 10 W Chocolate Ave Hershey, PA 17033 | Beaver Creek/WWF | Dauphin County Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 |
| Lower Paxton Township Dauphin County | PAG020022100241 | Daniel Schiavoni 2401 N Front St Harrisburg, PA 17110 | Beaver Creek/WWF | Dauphin County Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 |

| <i>Facility Location: Municipality & County</i> | <i>Permit No.</i> | <i>Applicant Name & Address</i> | <i>Receiving Water / Use</i> | <i>Contact Office & Phone No.</i> |
|---|-------------------|---|------------------------------------|---|
| Rapho Township Lancaster County | PAG02003610070 | Mount Hope Nazarene Retire Comm. 3026 Mt Hope Home Rd Manheim PA 17545 | Brubaker Run/WWF | Lancaster County Conservation District 1383 Arcadia Rd Rm 200 Lancaster PA 17601 717-299-5361 Ext. 5 |
| Sadsbury Township Lancaster County | PAG02003610071 | Kauffman Family LP 160 Route 41 PO Box 549 Gap PA 17527 | Williams Run/TSF; MF | Lancaster County Conservation District 1383 Arcadia Rd Rm 200 Lancaster PA 17601 717-299-5361 Ext. 5 |
| New Holland Borough Lancaster County | PAG02003611014 | Geoffrey H Class 508 W Main St New Holland PA 17551 | UNT Mill Creek/WWF | Lancaster County Conservation District 1383 Arcadia Rd Rm 200 Lancaster PA 17601 717-299-5361 Ext. 5 |
| Millersville Borough Lancaster County | PAG02003611025 | Millersville University PO Box 1002 Millersville PA 17551 | UNT Conestoga River/WWF | Lancaster County Conservation District 1383 Arcadia Rd Rm 200 Lancaster PA 17601 717-299-5361 Ext. 5 |
| Patton Township Centre County | PAG2001406011-R | Joe Sattazahn PA Air National Guard 1500 York Rd Annaville, MD 17003 | Big Hollow CWF Spring Creek CWF | Centre County Conservation District 414 Holmes Avenue, Suite 4 Bellefonte, PA 16823 (814) 355-6817 |
| Washington County West Brownsville Borough | PAG02006311012 | Bill Saghy 532 Pittsburgh Road, W Brownsville, PA 15417 Glenn Johnston, Inc. 1055 Center Street McKeesport, PA 15132 | UNT to Monongahela River (WWF) | Washington County CD 602 Courthouse Square Washington, PA 15301 |
| Washington County South Strabane Township | PAG02006311013 | Swank Associated Companies, Inc. 632 Hunt Valley Road New Kensington, PA 15068 | Chartiers Creek (WWF) | Washington County CD 602 Courthouse Square Washington, PA 15301 |
| Westmoreland County Ligonier Township | PAG02006511014 | Kim Miller- Kananga Farm 213 People Road Ligonier, PA 15658 | Mill Creek (TSF) | Westmoreland County CD 218 Donohoe Road Greensburg, PA 15601 |
| Westmoreland County Ligonier Township | PAG02006511006 | Denison Investments, LLC PO Box 100 Ligonier, PA 15658 | Mill Creek (CWF) | Westmoreland County CD 218 Donohoe Road Greensburg, PA 15601 |
| Westmoreland County Ligonier Township | PAG02006511010 | Municipal Authority of Westmoreland County 124 Park Road Ligonier, PA 15658 | Mill Creek (TSF) | Westmoreland County CD 218 Donohoe Road Greensburg, PA 15601 |

General Permit Type—PAG-3

| <i>Facility Location: Municipality & County</i> | <i>Permit No.</i> | <i>Applicant Name & Address</i> | <i>Receiving Water / Use</i> | <i>Contact Office & Phone No.</i> |
|---|-------------------|--|----------------------------------|---|
| Blair County / Taylor Township | PAR323514 | New Enterprise Stone & Lime Company, Roaring Spring Quarry PO Box 77 New Enterprise, PA 16664 | Plum Creek / WWF | DEP—SCRO— Water Management Program 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4800 |

| <i>Facility Location: Municipality & County</i> | <i>Permit No.</i> | <i>Applicant Name & Address</i> | <i>Receiving Water / Use</i> | <i>Contact Office & Phone No.</i> |
|---|---------------------------|--|--|--|
| Berks County/ Ontelaunee Township | PAR603526 | Pollock Reading Scrap Recycling PO Box 737 Temple, PA 19560 | Willow Creek / CWF | DEP—SCRO— Water Management Program 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4800 |
| Lancaster County / East Cocalico Township | PAR203579 | Boose Aluminum Foundry Co., Inc. PO Box 261 77 N. Reamstown Road Reamstown, PA 17567-0261 | Stony Run / WWF | DEP—SCRO— Water Management Program 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4800 |
| West Burlington Township Bradford County | PAR504802 | Northern Tier Swa PO Box 10 Burlington, PA 18814 | Unnamed Tributary to Sugar Creek—4-C | DEP Northcentral Regional Office Water Management 208 W Third Street Suite 101, Williamsport, PA 17701-6448 570.327.3664 |
| Bald Eagle Township Clinton County | PAR604835 | Martin Motor Company 2512 Eagle Valley Road Mill Hall, PA 17751 | Unnamed Tributary to Bald Eagle Creek—9-C | DEP Northcentral Regional Office Water Management 208 W Third Street Suite 101, Williamsport, PA 17701-6448 570.327.3664 |
| Canton Borough Bradford County | PAR124805 | H. Rockwell & Son, Inc. PO Box 197, 430 Troy Street Canton, PA 17724-1021 | Mill Creek—4-C | DEP Northcentral Regional Office Water Management 208 W Third Street Suite 101, Williamsport, PA 17701-6448 570.327.3664 |
| Middlecreek Township Snyder County | PAR224828 | Bingaman & Son Lumber Inc. PO Box 247 Kreamer, PA 17833 | Middle Creek—6-A | DEP Northcentral Regional Office Water Management 208 W Third Street Suite 101, Williamsport, PA 17701-6448 570.327.3664 |
| Old Lycoming Township, Lycoming County | PAR124802 (Stormwater) | Frito-Lay, Inc. 220 N. Reach Road Williamsport, PA 17701 | Unnamed Tributary to Fox Hollow Run, WWF | Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3666 |

General Permit Type—PAG-8 (SSN)

| <i>Facility Location: Municipality & County</i> | <i>Permit No.</i> | <i>Applicant Name & Address</i> | <i>Site Name & Location</i> | <i>Contact Office & Phone No.</i> |
|---|-------------------|---|--|---|
| Jordan Township Clearfield County | PAG-089908 | Kyler Environmental 1269 Piedmont Road Somerset, PA 15501 | Lamborn LLC Mine Reclamation Site Jordan Township Clearfield County | NCRO 570-327-0526 |

*General Permit Type—PAG-9**Facility Location:
Municipality &
County*City of St. Marys
Elk County*Permit No.*
PAG098309*Applicant Name &
Address*John Buerk
1039 Brusselles Street
Saint Marys, PA 15857*Site Name &
Location*Buerk's Septic Service
1039 Brusselles Street
Saint Marys, PA 15857*Contact Office &
Phone No.*DEP NWRO
Water Management
230 Chestnut Street
Meadville, PA 16335-3481
814/332-6942*General Permit Type—PAG-10**Facility Location:
Municipality &
County*Charleston
Township
Tioga County*Permit No.*
PAG104821*Applicant Name &
Address*Tennessee Gas
Pipeline Co.
197 Tennessee Road
Coudersport, PA 16915*Receiving
Water / Use*Unnamed Tributary to
Catlin Hollow-4-A*Contact Office &
Phone No.*DEP Northcentral
Regional Office
Water Management
208 W Third Street
Suite 101,
Williamsport, PA
17701-6448
570.327.3664*General Permit Type—PAG-12**Facility Location:
Municipality &
County*Harrison Township,
Potter County*Permit No.*
PAG124824*Applicant Name &
Address*Rodney E. Lane,
Lane Farms,
750 Woodard Road,
Harrison Valley, PA
16927-9434*Receiving
Water / Use*North Branch
Cowanesque River, Cold
Water Fishery (CWF)*Contact Office &
Phone No.*PADEP-North
Central Regional Office
Watershed Management,
208 West Third Street,
Suite 101,
Williamsport, PA
17701-6448
570-327-0529**PUBLIC WATER SUPPLY (PWS)
PERMITS**

The Department has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO 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 Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this document to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER**Actions taken under the Pennsylvania Safe Drinking Water Act**

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

Permit No. 0611509, Public Water Supply.

| | |
|----------------------|---|
| Applicant | Superior Water Company, Inc. |
| Municipality | Washington Township |
| County | Berks |
| Responsible Official | Louise Knight, Chief Operating Officer 1885 Swamp Pike Gibbertsville, PA 19525-9666 |
| Type of Facility | New 100,000 gallon finished water storage tank and booster pumping facilities. |

Consulting Engineer Steven E Riley, P.E.
Entech Engineering, Inc
PO Box 32
Reading, PA 19603

Permit to Construct 5/9/2011
Issued:

Permit No. 4411502 MA, Minor Amendment, Public Water Supply.

Applicant **Municipal Authority of the Borough of Lewistown**

Municipality Armagh Township

County **Mifflin**

Responsible Official Thomas G. White Jr.,
Operations Manager
70 Chestnut Street
Lewistown, PA 17044-2216

Type of Facility Permit to rebuild Filter
Cell No. 2.

Consulting Engineer John T Mazich, P.E.
Uni-Tec Consulting
Engineers, Inc.
2007 Cato Avenue
State College, PA 16801

Permit to Construct 5/12/2011
Issued:

Operations Permit issued to: **New Oxford Municipal Authority**, 7010025, New Oxford Borough, **Adams County** on 5/12/2011 for the operation of facilities approved under Construction Permit No. 0109502 MA.

Operations Permit issued to: **City of Lebanon Authority**, 7380010, North Lebanon Township, **Lebanon County** on 5/13/2011 for the operation of facilities approved under Construction Permit No. 3809504 MA.

Operations Permit issued to: **Pennsylvania American Water**, 7220017, South Hanover Township, **Dauphin County** on 5/12/2011 for the operation of facilities approved under Construction Permit No. 2211502 MA.

Operations Permit issued to: **Meadow View Village Mobile Home Park**, 7500013, Centre Township, **Perry County** on 5/12/2011 for the operation of facilities submitted under Application No. 7500013.

Operations Permit issued to: **Cornell Companies dba Abraxas Academy**, 3060127, New Morgan Borough, **Berks County** on 5/6/2011 for the operation of facilities approved under Construction Permit No. 0610509.

Operations Permit issued to: **Aqua Pennsylvania**, 3060811, Cumru Township, **Berks County** on 5/10/2011 for the operation of facilities submitted under Application No. 0610546 MA.

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

Operations Permit issued to: **Southwestern Pennsylvania Water Authority**, PO Box 187, 1442 Jefferson Road, Jefferson, PA 15344 (PWSID #5300017) Franklin Township, **Greene County** on May 16, 2011 for the operation of facilities approved under Construction Permit # 3010501.

Permit No. 8623WT1-MA, Minor Amendment. Public Water Supply.

Applicant **Pennsylvania American Water Company**
800 West Hersheypark Drive
PO Box 888
Hershey, PA 17033

[Borough or Township] White Township

County **Indiana**

Type of Facility PAWC—Indiana water treatment plant

Consulting Engineer

Permit to Operate May 16, 2011
Issued

Permit No. 0410515GWR, Minor Amendment. Public Water Supply.

Applicant **Vanport Township Municipal Authority**
285 River Avenue
Vanport, PA 15009

[Borough or Township] Vanport Township

County **Beaver**

Type of Facility Groundwater rule approval

Consulting Engineer

Permit to Operate May 16, 2011
Issued

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

Permit No. 6111501, Public Water Supply

Applicant

Pleasantville Borough

Township or Borough Pleasantville Borough & Oil
Creek Township

County

Venango County

Type of Facility

Public Water Supply

Consulting Engineer

Arthur Kuholski, PE

Permit to Construct 05/13/2011
Issued

Operations Permit issued to **Pinebloom Corporation, Wolfs Camping Resort**, PWSID, #6160861, Beaver Township, **Clarion County**. Permit Number 1605501-MA1, issued May 12, 2011, for operation of the Camping Resort's water treatment plant. Permit is issued in response to an inspection conducted by Department personnel on May 5, 2011, and in accordance with construction permit 1605501-MA1, issued March 3, 2011.

Operations Permit issued to **Borough of Zelenople**, PWSID #5100093, Zelenople Borough, **Butler County**. Permit Number 1011503, issued May 13, 2011, for operation of the Zelenople Public Water Supply as a consecutive system to the Beaver Falls Municipal Authority. Permit is issued in response to actions required by the January 25, 2007 Consent Order and Agreement with the Department of Environmental Protection.

Operations Permit issued to **Mount Jewett Borough Authority**, PWSID, #6420018, Mount Jewett Borough, **McKean County**. Permit Number 8444W-T1-MA4, issued May 17, 2011, for operation of 4-Log treatment of viruses for Entry Point 129. This action is taken under the requirements of the Groundwater Rule.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted Under the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)

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

Plan Location:

| <i>Borough or Township</i> | <i>Borough or Township Address</i> | <i>County</i> |
|----------------------------|--|-----------------|
| Maxatawny | 127 Quarry Road, Kutztown, PA 19530 | Berks County |

Plan Description: The approved plan provides for a one lot commercial development proposing to replace their current visitor center on-lot system with an on-lot system that will require a Water Quality Management permit. The proposed system consists of an effluent pretreatment system involving wetland cells prior to final disposal in a drip irrigation absorption bed on-lot system. The visitor center generates 400 gallons of sewage per day. The proposed development is located on Siegfriedale Rd., Maxatawny Township, Berks County. The plan revision DEP number is A3-06944-176-3. 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.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Provisions of Sections 301—308 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.301—6026.308) require the Department to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, will also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the environmental cleanup program manager in the Department regional office under which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

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

Robin Reber Residence, 542 South 12th Street, City of Reading, **Berks County**. Patriot Environmental Management, P. O. Box 629 Douglassville, PA, 19518, on behalf of Robin Reber, 1415 Scott Street, Reading, PA, 19607, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to meet the Residential Statewide Health standard.

333 South Queen Street, Lancaster, PA 17602, City of Lancaster, **Lancaster County**. Alternative Environmental Solutions 480 New Holland Avenue, Suite 8203 Lancaster, PA 17602, on behalf of Randy Patterson, 120 N. Duke Street, Lancaster, PA 17602, submitted a Remedial Investigation, Risk Assessment, and Final Report concerning remediation of site soils contaminated with lead and arsenic. The reports are intended to document remediation of the site to meet the Site Specific Standard.

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

Shamokin-Coal Township Joint Sewer Auth., Ralpho Township, **Northumberland County**. Alternative Environmental Solutions, Inc., 480 New Holland Ave., Suite 8203, Lancaster, PA 17602 on behalf of Shamokin Coal Township Joint Sewer Authority, 114 Bridge St., Shamokin, PA 17872 has submitted a Final Report to remediate soil and groundwater contaminated with heating oil, used motor oil, leaded and unleaded gasoline constituents along the west side of Route 61 north of the intersection with Bridge Street. The report is intended to document remediation of the site to meet the Statewide Health Standard.

OTRT Inc. Interstate 80 @ MM202E, White Deer Township, **Union County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, PA 17857, on behalf of OTRT, Inc., 2682 Coyle Avenue, Elk Grove Village, IL 60007, has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Gilbert Maton Property, Nippenose Township, **Lycoming County**. Pennsylvania Tectonics, Inc., 826 Main Street, Peckville, PA 18452, on behalf of Superior Plus Energy Services, 760 Brooks Ave., Rochester, NY 14619, has submitted a Final Report concerning remediation of site soil contaminated with heating oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Former Newell Rubbermaid, Inc. Former Palmieri Site, Center Township, **Beaver County**. AECOM Four Gateway Center, 444 Liberty Avenue, Suite 700, Pitts-

burgh Pa 15222 on behalf of Newell Rubbermaid, Inc., 6833 Stalter Drive, Suite 101, Rockford, IL 61109, and the Estate of Mary A. Palmieri, c/o John A. Palmieri, 3399 Broadhead Road, Aliquippa, PA 15001 has submitted a Final Report concerning the remediation of site soil contaminated with lead and heavy metals. The Final Report was noticed in the *Beaver County Times* on May 2, 2011.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Section 250.8 of 25 Pa. Code and administration of the Land Recycling and Environmental Remediation Standards Act (act) require the Department to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the environmental cleanup program manager in the Department regional office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Molycorp Washington Remediation Site, Canton Township **Washington County**. Arcadis U.S. Inc., One Adams Place, 310 Seven Fields Blvd, Suite 210, Seven Fields, PA 16046 on behalf of Molycorp, Inc., P. O. Box 469 Questa, NM 87556 and Chevron Environmental Management Company, 6101 Bollinger Canyon Road, BR1Z/5354, San Ramon, CA 94583, has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with VOCs, SVOCs, metals, and cyanide. The Final Report was noticed in the *Washington Observer Reporter* on April 30, 2011.

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

Betty Transportation Services, Inc., Interstate 80@MM186E, Greene Township, **Clinton County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, PA 17857, on behalf of Betty Transportation Services, Inc., 13 Melblum Lane, Edison, NJ 08837, has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel along I-80 at MM 186E. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on May 6, 2011.

Cooney Bulk Sales, Ltd., Interstate 180 @ MM8W, Delaware Township, **Northumberland County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, PA 17857, on behalf of Cooney Bulk Sales, Ltd., P. O. Box 186, Trenton, Ontario, Canada K8V5R2, has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on May 11, 2011.

RESIDUAL WASTE GENERAL PERMITS

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 Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

General Permit No. WMGR028SW001C. Lane Construction Corporation, 2 Prestley Road, Bridgeville, PA 15017. Crafton Plant, 1601 Chartiers Valley Lane, Pittsburgh, PA 15205. Application for the beneficial use of baghouse fines in the City of Pittsburgh, **Allegheny County**. The permit was issued by the Regional Office on May 16, 2011.

General Permit No. WMGR028SW001D. Lane Construction Corporation, 2 Prestley Road, Bridgeville, PA 15017. Springdale Plant, 1000 Sherosky Way, Springdale, PA 15144. Application for the beneficial use of baghouse fines in Springdale Borough, **Allegheny County**. The permit was issued by the Regional Office on May 16, 2011.

Persons interested in reviewing the general permit may contact Diane McDaniel, Environmental Engineering Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

**OPERATE WASTE PROCESSING OR DISPOSAL
AREA OR SITE**

Permits Issued Under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

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

Permit No. 101463. BFI Transfer Systems of Pennsylvania, LLC, 2904 South Christopher Columbus Blvd., Philadelphia, PA 19148. This permit is issued for the operation of a single-stream recycling center (SSRC) within a portion of the municipal solid waste (MSW) transfer building at the TRC Transfer Station Facility located at 2904 South Christopher Columbus Avenue, in the City of Philadelphia, **Philadelphia County**. The permit was issued by the Southeast Regional Office on May 10, 2011.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920

GP3-09-0101: DeNucci Excavating Corp. (2807 Old Rodgers Road, Bristol, PA 19007) on May 13, 2011, to construct and operate a portable nonmetallic mineral processing plant in Middletown Township, **Bucks County**.

GP9-09-0031: DeNucci Excavating Corp. (2807 Old Rodgers Road, Bristol, PA 19007) on May 13, 2011, to construct and operate diesel-fired internal combustion engines in Middletown Township, **Bucks County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

GP9-06-05007M: Carpenter Technology Corp. (101 Bern Street, PO Box 14662, Reading, PA 19612-4662) on May 10, 2011, for installation and operation of a 500 Kilowatt emergency generator powered by a 67 BHP diesel engine under GP9, at their specialty steel manufacturing facility in the City of Reading, **Berks County**.

GP9-36-03183: Chester Water Authority (415 Welsh Street, PO Box 467, Chester, PA 19016) on May 11, 2011, for two (2) diesel fired internal combustion engines under GP9, to power two (2) emergency generators at their Octoraro Water Treatment Plant in Little Britain Township, **Lancaster County**.

GP3-38-05039: Mellott Co. (100 Mellott Drive, Warfordsburg, PA 17267) on May 10, 2011, for installation and operation of a portable nonmetallic mineral processing plant at the Pennsy Supply Prescott Quarry in South Lebanon Township, **Lebanon County**.

GP11-38-05039: Mellott Co. (100 Mellott Drive, Warfordsburg, PA 17267) on May 10, 2011, for installation and operation of a non-road diesel engine at the Pennsy Supply Prescott Quarry in South Lebanon Township, **Lebanon County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

GP3-08-314A: Marcus Cole Construction, Inc. (PO Box 158, Nichols, NY 13812) on April 26, 2011, to construct and operate a 2000 vintage Eagle model 500-05CV portable crushing plant, a 2008 vintage Fintec model 1107 portable crushing plant, two 2005 vintage Fintec model 1107 portable crushing plants, a 1998 vintage Extec S5 portable screening plant, a 2008 vintage Fintec 640 portable screening plant and four stacker conveyors under the General Plan Approval and/or General Operating Permit for Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at their site in Windham Township, **Bradford County**.

GP9-08-314A: Marcus Cole Construction, Inc. (PO Box 158, Nichols, NY 13812) on April 26, 2011, to construct and operate a 2000 vintage 217 brake-horsepower John Deere model 6081A diesel engine, a 2008 vintage 350 brake-horsepower Caterpillar model C9 MBD05972 diesel engine, two 2005 vintage 365 brake-horsepower Duetz model BF6M1015C diesel engines and a 1998 vintage 100 brake-horsepower Deutz model BF4M2012 diesel engine under the General Plan Approval and/or General Operating Permit for Diesel-Fired Internal Combustion Engines (BAQ-GPA/GP-9) at their site in Windham Township, **Bradford County**.

GP3-17-503A: Russell Stone Products (2640 Greenville Pike, Grampian, PA 16838) on April 27, 2011, to construct and operate a 2010 vintage Kolberg model FT2650 portable crushing plant under the General Plan Approval and/or General Operating Permit for Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at their site in Bloom and Pike Townships, **Clearfield County**.

GP9-17-503A: Russell Stone Products. (2640 Greenville Pike, Grampian, PA 16838) on April 27, 2011, to construct and operate a 2010 vintage 275 brake-horsepower Caterpillar model C-9 diesel engine under the General Plan Approval and/or General Operating Permit for Diesel-Fired Internal Combustion Engines (BAQ-GPA/GP-9) at their site in Bloom and Pike Townships, **Clearfield County**.

GP3-17-502A: Russell Stone Products (2640 Greenville Pike, Grampian, PA 16838) on April 27, 2011, to construct and operate a 2010 vintage Kolberg model FT2650 portable crushing plant under the General Plan Approval and/or General Operating Permit for Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at their site in Bloom Township, **Clearfield County**.

GP9-17-502A: Russell Stone Products. (2640 Greenville Pike, Grampian, PA 16838) on April 27, 2011, to construct and operate a 2010 vintage 275 brake-horsepower Caterpillar model C-9 diesel engine under the General Plan Approval and/or General Operating Permit for Diesel-Fired Internal Combustion Engines (BAQ-GPA/GP-9) at their site in Bloom Township, **Clearfield County**.

GP3-41-647A: Kinsley Construction, Inc. (P. O. Box 2886, York, PA 17405-2886) on May 11, 2011, to construct and operate a portable non-metallic mineral screen pursuant to the General Plan Approval And/Or General Operating Permit For Portable Nonmetallic Mineral Processing Plants (BAQ-PGPA/GP-3) at their Minnier Quarry facility in McNett Township, **Lycoming County**.

GP9-41-647A: Kinsley Construction, Inc. (P. O. Box 2886, York, PA 17405-2886) on May 11, 2011, to construct and operate one 100 hp Deutz model BF4M2012 diesel-fired engine pursuant to the General Plan Approval and/or General Operating Permit BAQ-GPA/GP-9: Diesel or #2 fuel-fired Internal Combustion Engines, at their Minnier Quarry in McNett Township, **Lycoming County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Mark Gorog and Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

GP5-30-00201 Coal Gas Recovery, LLC (158 Portal Road, P. O. Box 1020, Waynesburg, PA 15370) on May 4, 2011, to allow the installation and operation of a new coal bed methane extraction facility under GP-5 consisting of one natural gas fired engine at 425 bhp and controlled by an oxidation catalyst to be named DFM 3/4 and, located in Center Township, **Greene County**.

GP5-56-00313: Caiman Penn Midstream, LLC (5949 Sherry Lane, Suite 1300 Dallas, TX 75225) on May 16, 2011, to allow construction and operation of a natural gas-fired compressor engine rated at 630 bhp and a triethylene glycol (TEG) dehydrator, with reboiler, under GP-5 for natural gas production at the proposed Miller Connect Compressor Station, located in Middlecreek Township, **Somerset County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

GP2-10-021D: INDSPEC Chemical Corp. (133 Main Street, Petrolia, PA 16050) on May 9, 2011, for storage tanks for volatile organic liquids, Tank T3069, (BAQ-GPA/GP-2) in Petrolia, **Butler County**.

GP9-62-018A: DPW—Warren State Hospital (33 Main Drive, Warren, PA 16365) on May 10, 2011, to operate a diesel or #2 fuel fired internal combustion engine (BAQ-GPA/GP-9) in Conewango Township, **Warren County**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920

09-0059A: Saint Mary Medical Center (1201 Langhorne-Newtown Road, Langhorne, PA 19047) on May 9, 2011, for installation of one (1) 1,000 kW internal combustion generator used for Peak Shaving and emergency use, at their facility in Middletown Township, **Bucks County**. Saint Mary Medical Center is a Synthetic Minor facility, operating under SMOP 09-00059. The Plan Approval will contain monitoring, recordkeeping

and operating restrictions designed to minimize emissions and keep the facility operating within all applicable air quality requirements.

46-0069E: Highway Materials, Inc.—Plymouth Meeting Quarry (5000 Joshua Road, Plymouth Meeting, PA 19462) on May 13, 2011, for replacement of the primary crusher at their existing stone crushing facility in Whitmarsh Township, **Montgomery County**. Sources at the quarry currently operate under Synthetic Minor Operating Permit No. 46-00069. Facility Nitrogen Oxide (NO_x) emissions are restricted to less than 25 tons per year. The new crusher has a maximum capacity of 925 tons per hour. Particulate matter emissions from the new primary crusher will be controlled by the existing pulse jet baghouse (C28) and a wet suppression system. The project is subject to the New Source Performance Standards, 40 CFR Part 60 Subpart OOO. Plan Approval No. 46-0069E will include monitoring, testing, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

17-00066A: Allied Production Services, Inc. (1102 Industrial Park Drive, Clearfield, PA 16830) on April 12, 2011, to construct a surface coating operation consisting of a paint booth and natural gas fired curing oven at their facility in Lawrence Township, **Clearfield County**.

60-00014A: Evangelical Community Hospital. (One Hospital Drive, Lewisburg, PA 17837) on April 15, 2011, to construct a 24.7 million Btu per hour, biomass-fired boiler at their facility in Kelly Township, **Union County**.

08-00030A: Angelina Gathering Co. (2350 North Sam Houston Parkway East, Houston, TX 77009) on April 19, 2011, to modify Plan Approval 08-00030A to reflect the model numbers for the oxidation catalysts (ID C101) associated with the compressor engines incorporated in Source ID P101 in Plan Approval 08-00030A at their Greenzweig Compressor Station in Herrick Township, **Bradford County**.

59-00017B: Hitachi Metals Automotive Components USA, LLC (18986 Route 87, Tioga, PA 16946-8815) on May 5, 2011, to modify to increase the melt capacity of the iron foundry at their facility in Lawrence Township, **Tioga County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

25-025Q: General Electric Transportation—Erie Plant (2901 East Lake Road, Building 9-201, Erie, PA 16531) on May 11, 2011, to modify plan approval 25-025Q with regards to the test cells in buildings 4E and 63 in Lawrence Park Township, **Erie County**. This is a Title V facility.

62-185A: Berenfield Containers, Inc. (304 Main Avenue, Warren, PA 16365) on May 6, 2011, to construct a metal container manufacturing facility in the City of Warren, **Warren County**. The inside liner coating and exterior paint will be applied using high volume, low pressure (HVLP) spray guns in spray booths. Emissions from spray booths will be controlled by fiber filter pads. A recuperative thermal oxidizer (RTO) will be used to control VOC emissions from the curing process.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

PA-65-00966A: Greensburg Thermal, LLC (755 Opossum Lake Road, Carlisle, PA, 17015) on May 5, 2011, to revise the fuel requirements and associated conditions to include coal/biomass blend and to incorporate emissions limitations at their SCI Greensburg steam plant in Hempfield Township, **Westmoreland County**. The Plan Approval Expires on July 6, 2011.

PA-63-00549B: Arden Landfill, Inc. (625 Cherrington Parkway, Moon Township, PA 15108) on May 4, 2011, for an extension of the Plan Approval to amend the Title V Permit after the approval of emissions tests by central office at Chartiers Township, **Washington County**. This plan approval has been extended.

PA-63-00110H: World Kitchen, Inc. (100 Eighth Street, Charleroi, PA 15022) on May 6, 2011, to increase allowable SO_x emissions from Source 107. This plan approval has also been extended to November 7, 2011. This is a plan approval modification and extension.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

06-03065: Tube City IMS LLC (1155 Business Center Drive, Horsham, PA 19044-3422) on May 11, 2011, for their steel slag processing facility in Muhlenberg Township, **Berks County**. The State-only permit was renewed.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

59-00021: Phoenix Resources, Inc. (782 Antrim Road, Wellsboro, PA 16901) on May 2, 2011, for their construction and demolition landfill in Duncan Township, **Tioga County**. The facility's main sources include site haul roads and construction/operation activities. The State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

08-00024: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on April 15, 2011, for operation of their Canton Aggregate Plant No. 21 facility in Canton Township, **Bradford County**.

49-00046: Kurt Weiss Greenhouses of PA, Inc. (225 Arcos Road, Mt. Carmel, PA 17851) on May 2, 2011, for operation of their Mt. Carmel Greenhouse facility in Mt. Carmel Township, **Northumberland County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174

04-00252: Alex E. Paris Contracting (1595 Smith Township State Road, Atlasburg, PA 15004) on May 17, 2011, for renewal of its State Only Operating Permit for its flyash disposal site in Atlasburg, **Beaver County**. This is a state only renewal submittal.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104

Contact: Edward Wiener, Chief—Telephone: 215-685-9426

S10-027: Penn Maid Ready Foods (10975 Dutton Street, Philadelphia, PA 19154) on May 17, 2011, for operation of manufacturing and distributing of dairy products in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one (1) 33.6 MMBTU/hr boilers burning either natural gas or #2 oil and two (2) less than 34 MMBTU/hr boilers burning natural gas.

S10-013: Ardex Laboratories (2050 Byberry Rd, Philadelphia, PA 19116) on May 16, 2011, reissued for the operation of manufacturing and distributor of automotive cleaning and detailing products in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a mixing tank, thirteen (13) mixing vessels, tank truck unloading, drum filling and packaging, and three (3) combustion units each rated less than 1 MMBTU/hr.

N05-006: Drexel University—Queen Lane Campus (2900 Queen Lane, Philadelphia PA 19129) on May 16, 2011, for the operation of a medical college in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include 5 boilers, each 225 Hp or less, and one 1500 kW emergency generator, one 200 kW emergency generator, and 110 hp fire pump.

N09-017: Deer Meadows (8301 Roosevelt Boulevard, Philadelphia, PA) on May 16, 2011, for the operation of a residential care and nursing home in the City of Philadelphia, **Philadelphia County**. The facilities air emission sources include seven boilers at 5.5 MMBTU/hr or less that burn natural gas or #2 fuel oil, two emergency generators that burn #2 fuel oil, and a fire pump.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

21-05021: Mechanicsburg Terminals Corp. (PO Box 2621, Harrisburg, PA 17105) on May 9, 2011, to operate the Mechanicsburg North Terminal in Silver Spring Township, **Cumberland County**. This is an administrative amendment to the state-only permit to incorporate the requirements of Plan Approval No. 21-05021A, and to incorporate the requirements of GP9-21-05021A and related provisions of NSPS Subpart IIII, and to incorporate the requirements for GP2-21-05021B and for certain sources constructed under GP2-21-05021A, and to make minor administrative corrections to the incorporation of MACT Subpart BBBBBB.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

14-00005: Pennsylvania Department of Corrections (Box A, Bellefonte, Pa 16823) on April 8, 2011, issued a revised Title V operating permit through an administrative amendment to incorporate terms and conditions from Plan Approval 14-00005B into operating permit TVOP 14-00005B, for the installation a fabric collector to control the air contaminant emissions from the (3) existing coal-fired boilers (Source IDs 031, 032 and 033) at their Rockview State Correctional Institution located in Benner Township, **Centre County**. This revised Title V operating permit contains all applicable regulatory requirements including monitoring, record-keeping and reporting conditions.

17-00060: Rosebud Mining Company (301 Market Street, Kittanning, PA 16201) on April 21, 2011, issued a revised state only operating permit No. 2, for a change of ownership of the Lady Jane Plant from Penfield Collieries, LLC to Rosebud Mining Company. This facility is located in Huston Township, **Clearfield County**. This revised State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping, and reporting conditions.

De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

| Date | Source | PM10 (tons) | SOx (tons) | NOx (tons) | VOC (tons) | CO (tons) |
|--------------------------|-------------------------------|-----------------------------------|------------------------------------|---------------------------------|---------------------------------|-----------------------------------|
| 7-10-10 | EFI Vutek digital printer | 0.001 | | | 0.02 | |
| 5-12-11 | Tiger M-Press digital printer | 0.002 | | | | |
| Total Reported Increases | | 0.003 | | | 0.02 | |
| Allowable | | 0.6 ton/source 3 tons/facility | 1.6 tons/source 8 tons/facility | 1 ton/source 5 tons/facility | 1 ton/source 5 tons/facility | 4 tons/source 20 tons/facility |

37-00243: INMETCO (1 Inmetco Drive, Ellwood City, PA 16117) for its facility located in Ellwood City Borough, **Lawrence County**. The De minimis emission increase is for the construction of the battery shredding equipment. In addition, this source is exempt from plan approval as it complies with 25 Pa. Code § 127.14(a)(8). The Department hereby approves the De minimis emission increase. The following table is a list of the De minimis emission increases as required by 25 PA Code 127.449(i). This list includes the De minimis emission increases since the State Only Operating Permit issuance on April 13, 2011.

| Date | Source | PM10 (tons) | SOx (tons) | NOx (tons) | VOC (tons) | CO (tons) |
|--------------------------|-------------------|-----------------------------------|------------------------------------|---------------------------------|---------------------------------|-----------------------------------|
| 5-13-11 | Battery Shredding | 0.5 | | | | |
| Total Reported Increases | | 0.5 | | | | |
| Allowable | | 0.6 ton/source 3 tons/facility | 1.6 tons/source 8 tons/facility | 1 ton/source 5 tons/facility | 1 ton/source 5 tons/facility | 4 tons/source 20 tons/facility |

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35

Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174

65-00354: Sunoco Partners M&T (525 Fritztown Road, Sinking Spring, PA 19607). Per Title 25 Pa. Code Section 127.449(i), on May 11, 2011 Notice is for the following de minimis emission increase at the Sunoco Partners M&T, Delmont Facility located in Salem Township, **Westmoreland County**.

Emissions from the construction and operation of an 8,000 gallon Winter Blend Lubricity Additive Storage Tank will not exceed 0.015 tpy VOC.

The list of de minimis increases includes only this project. This is a Title V Facility.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

10-00350: iDL Worldwide—Cloverleaf Group, Inc. (500 Grant Avenue, PO Box 569, East Butler, PA 16029) for its facility located in East Butler Borough, **Butler County**. The De minimis emission increase is for the construction of a Tiger M-Press digital printer. In addition, this source is exempt from plan approval as it complies with 25 Pa. Code § 127.14(a)(8). The Department hereby approves the De minimis emission increase. The following table is a list of the De minimis emission increases as required by 25 PA Code 127.449(i). This list includes the De minimis emission increases since the State Only Operating Permit issuance on July 22, 2008.

P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015);

the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department. A copy of the application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application may be submitted by any person or any officer or head of any Federal, state or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Written comments or objections regarding a mining permit application should contain the name, address and telephone number of persons submitting comments or objections, application number and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

A request for an informal conference or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code §§ 77.123 or 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When an NPDES number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. A separate notice will be provided after the draft NPDES permit is prepared.

Coal Permits Actions

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191

Permit No. 33050106. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767) Renewal of an existing bituminous strip and auger operation in Knox & Oliver Townships, **Jefferson County** affecting 75.3 acres. Receiving streams: Unnamed tributary to Sandy Creek. This renewal is issued for reclamation only. Application received: March 16, 2011. Issued: May 4, 2011.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

Permit No. 17070106 and NPDES No. PA0256528. Junior Coal Contracting, Inc. (2330 Six Mile Road, Philipsburg, PA 16866). Renewal of an existing bituminous surface mine located in Decatur Township, **Clearfield County** affecting 245.6 acres. Receiving stream: Big Run classified for cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received March 22, 2011. Permit expires May 21, 2016.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

Permit No. 54733020R5 and NPDES Permit No. PA0012360. BET Associates IV, LLC, (PO Box 150, Tamaqua, PA 18252), renewal of an existing anthracite

surface mine, refuse reprocessing, refuse disposal and preparation plant operation in Tamaqua, Coaldale, Lansford, Summit Hill and Nesquehoning Boroughs, **Schuylkill and Carbon Counties** affecting 7596.4 acres, receiving stream: Little Schuylkill River. Application received: March 9, 2010. Renewal issued: May 13, 2011.

Permit No. 54733020T2 and NPDES Permit No. PA0012360. BET Associates IV, LLC, (PO Box 150, Tamaqua, PA 18252), transfer of an existing anthracite surface mine, refuse reprocessing, refuse disposal and preparation plant operation in Tamaqua, Coaldale, Lansford, Summit Hill and Nesquehoning Boroughs, **Schuylkill and Carbon Counties** affecting 7596.4 acres, receiving stream: Little Schuylkill River. Application received: July 28, 2010. Transfer issued: May 13, 2011.

Permit No. 54-305-016GP12. BET Associates IV, LLC, (PO Box 150, Tamaqua, PA 18252), general operating permit to operate a coal preparation plant on Surface Mining Permit No. 54733020 in Tamaqua, Coaldale, Lansford, Summit Hill and Nesquehoning Boroughs, **Schuylkill and Carbon Counties**. Application received: February 22, 2011. Permit issued May 13, 2011.

Noncoal Permits Actions

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

Permit No. 02010301 and NPDES Permit No. PA0202916. Redland Brick, Inc. (375 Rich Hill Road, Cheswick, PA 15024-2317). NPDES permit renewal issued for continued operation and reclamation of a large noncoal surface mining site located in Harmar Township, **Allegheny County**, affecting 48 acres. Receiving stream: Deer Creek. Application received: December 1, 2010. Renewal issued: May 13, 2011.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191

Permit No. 25100303 and NPDES Permit No. PA0258997. J. D. Diversified Services, Inc. (3463 Beaver Street, Springboro, PA 16435-4403) Commencement, operation and restoration of a large industrial mineral operation in Springfield Township, **Erie County** affecting 43.0 acres. Receiving streams: Unnamed tributary to Crooked Creek. Application received: December 21, 2010. Permit Issued: May 9, 2011.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

Permit No. 08090807 Robert E. Harkness (RR 2 Box 49, Wysox, PA 18854), commencement, operation, and restoration of a small noncoal (Flagstone) operation in Wysox Township, **Bradford County** affecting 5.0 acres. Receiving stream(s): Wysox Creek and Susquehanna River. Application received: November 18, 2009. Permit issued May 4, 2011.

Permit No. 08100801 Daniel B. Force (RR 1 Box 1086, Laceyville, PA 18623), commencement, operation, and restoration of a small noncoal (Bluestone) operation in Tuscarora Township, **Bradford County** affecting 5.0 acres. Receiving stream(s): Unnamed Tributary to Tuscarora Creek and North Branch Susquehanna River. Application received: March 26, 2010. Permit issued May 5, 2011.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

Permit No. 58100809. Douglas Decker, (314 Montrose Terrace Park, Montrose, PA 18801), commence-

ment, operation and restoration of a quarry operation in New Milford Township, **Susquehanna County** affecting 5.0 acres, receiving stream: Martins Creek. Application received: July 7, 2010. Permit issued: May 10, 2011.

Permit No. 7474SM2C7 and NPDES Permit No. PA0124303. Essroc Cement Corp., (3938 Easton Nazareth Highway, Nazareth, PA 18064), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Upper and Lower Nazareth Townships and Nazareth Borough, **Northampton County**, receiving stream: unnamed tributary to Shoeneck Creek. Application received: January 11, 2011. Renewal issued: May 13, 2011.

Permit No. 7175SM2C7 and NPDES Permit No. PA0124061. New Enterprise Stone & Lime Co., Inc. d/b/a Eastern Industries, Inc., (4401 Camp Meeting Road, Center Valley, PA 18034), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Washington and Jackson Townships, **Dauphin County**, receiving stream: Wiconisco and Armstrong Creeks. Application received: January 13, 2011. Renewal issued: May 13, 2011.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191

Permit No. 10114001. Mashuda Corporation (21101 Route 19, Cranberry Township, PA 16066) Blasting activity permit for construction of a commercial park in Jackson Township, **Butler County**. This blasting activity permit will expire on June 15, 2011. Permit Issued: May 5, 2011.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

Permit No. 38114107. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Greystone Crossings in North Cornwall Township, **Lebanon County** with an expiration date of May 31, 2011. Permit issued: May 10, 2011.

Permit No. 49114002. Daniel Shingara Enterprises, (5965 State Route 61, Paxinos, PA 17860) and Pennex Powder Company, (1357 Scott Street, Kulpmont, PA 17834), construction blasting for Shingara Enterprises in Shamokin Township, **Northumberland County** with an expiration date of May 31, 2012. Permit issued: May 11, 2011.

Permit No. 15114103. American Infrastructure, Inc., (PO Box 98, Worcester, PA 19490), construction blasting for SR 29 Interchange in Charlestown, West Whiteland and Tredyffrin Townships, **Chester County** with an expiration date of May 3, 2012. Permit issued: May 11, 2011.

Permit No. 45114108. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Pocono Highland Estates in Pocono Township, **Monroe County** with an expiration date of May 31, 2012. Permit issued: May 11, 2011.

Permit No. 45114109. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Skytop Lodge in Barrett Township, **Monroe County** with an expiration date of May 31, 2012. Permit issued: May 11, 2011.

Permit No. 64114105. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Paupacken Lake Estates in Paupack and Lake Townships, **Wayne County** with an expiration date of May 31, 2012. Permit issued: May 11, 2011.

Permit No. 66114109. Meshoppen Blasting, Inc., (PO Box 127, Meshoppen, PA 18630), construction blasting for Mazzara Well site in Washington Township, **Wyoming County** with an expiration date of September 1, 2011. Permit issued: May 11, 2011.

Permit No. 40114108. Maurer & Scott Sales, Inc., (PO Box 20843, Lehigh Valley, PA 18002), construction blasting for Freeland Municipal Authority water treatment plant expansion in Freeland Borough, **Luzerne County** with an expiration date of December 31, 2011. Permit issued: May 13, 2011.

Permit No. 52114104. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Birchwood Lakes in Delaware Township, **Pike County** with an expiration date of May 10, 2012. Permit issued: May 13, 2011.

Permit No. 58114109. Midstream Explosives, LLC, (289 Southside Drive, Newville, PA 17241), construction blasting for Kerr to Squire Gathering pipeline in Thompson and Lathrop Townships, **Susquehanna County** with an expiration date of May 10, 2012. Permit issued: May 13, 2011.

Permit No. 58114110. Midstream Explosives, LLC, (289 Southside Drive, Newville, PA 17241), construction blasting for Wilson to Oliver Gathering pipeline in Springville and Lemon Townships, **Susquehanna and Wyoming Counties** with an expiration date of May 10, 2012. Permit issued: May 13, 2011.

Permit No. 15114105. M & J Explosives, Inc., (PO Box 608, Carlisle, PA 17013), construction blasting for Eagle View in Uwchlan Township, **Chester County** with an expiration date of May 16, 2012. Permit issued: May 16, 2011.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO 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 Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law and Notice of Final Action for Certification under section 401 of the FWPCA.

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northcentral Region: Oil and Gas Management Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701

E0829-011: Chesapeake Appalachia, LLC, 101 North Main Street, Athens, PA 18810, Rome and Sheshequin Township, **Bradford County**, ACOE Baltimore District. To construct, operate and maintain:

1. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across Dry Run (CWF, MF). Impacted Area: 129 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 51'2.59", Longitude: -76° 23'12.59") in Rome Township, Bradford County.

2. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across an unnamed tributary to Dry Run (CWF, MF). Impacted Area: 95 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 51'4.48", Longitude: -76° 23'23.74") in Rome Township, Bradford County.

3. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across a Palustrine Emergent Wetland. Impacted Area: 1,887 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41°51'15.37", Longitude: -76° 24'12.09") in Rome Township, Bradford County.

4. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across an unnamed tributary to Laning Creek (WWF, MF) and adjacent Palustrine Emergent Wetland. Impacted Area: 601 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 51'15.00", Longitude: -76° 23'18.70") in Rome Township, Bradford County.

5. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across a Palustrine Emergent

Wetland. Impacted Area: 1,125 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 51'25.02", Longitude: -76° 24'46.15") in Sheshequin Township, Bradford County.

6. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across a Palustrine Emergent Wetland. Impacted Area: 1,826 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 51'47.49", Longitude: -76° 24'44.90") in Sheshequin Township, Bradford County.

7. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across a Palustrine Emergent Wetland. Impacted Area: 445 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 52'7.69", Longitude: -76° 24'59.70") in Sheshequin Township, Bradford County.

8. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across a Palustrine Emergent Wetland. Impacted Area: 777 square feet; (Towanda, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 52'10.54", Longitude: -76° 25'5.12") in Sheshequin Township, Bradford County.

9. Two 16 inch diameter temporary waterlines and a 16 foot wide equipment mat across an unnamed tributary to Bullard Creek and adjacent Palustrine Emergent and Palustrine Scrub-Shrub Wetland. Impacted Area: 12,583 square feet; (Litchfield, PA Quadrangle N: 18.5 inches, W: 1.4 inches, Latitude: 41° 52'54.70", Longitude: -76° 25'8.51") in Sheshequin Township, Bradford County.

The project will result in 27 linear feet of temporary stream impacts and 19,244 square feet of temporary wetland impacts from waterlines and temporary mat crossings. These crossings will accumulate a total of 0.44 acres of PEM wetland impacts for the purpose of establishing temporary water supply for Marcellus well development.

E5929-007: Seneca Resources Corporation, 51 Zents Boulevard, Brookville, PA 15825, Richmond Township, **Tioga County**, ACOE Baltimore District. To construct and maintain:

1) a temporary road crossing using a wood mat bridge and a 16 inch diameter fresh waterline impacting 653 square feet of an exceptional value palustrine emergent (EV-PEM) wetland (Mansfield, PA Quadrangle 41° 45' 10.86"N 77°7'28.51"W);

2) a temporary road crossing using a wood mat bridge and a 16 inch diameter fresh waterline impacting 48 square feet of an Unnamed Tributary to Elk Run (CWF) (Crooked Creek, PA Quadrangle 41° 45' 10.62"N 77° 7' 32.10"W);

3) a 16 inch diameter fresh waterline impacting 27 square feet of Elk Run (CWF) (Crooked Creek, PA Quadrangle 41° 45' 24.24"N 77° 7' 43.82"W);

4) a 16 inch diameter fresh waterline impacting 15 square feet of an Unnamed Tributary to Elk Run (CWF) (Crooked Creek, PA Quadrangle 41° 45' 34.92"N 77° 7' 47.89"W).

The project will result in 31 linear feet of temporary stream impacts, a total of 653 square feet (0.02 acres) of temporary wetland impacts all for the purpose of installing a fresh waterline to transport water which will be used for hydraulic fracturing.

E5929-006: SWEPI LP, 190 Thorn Hill Road, Warrendale, PA 15086, Union Township, **Tioga County**, ACOE Baltimore District.

To construct and maintain:

1) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas gathering line and a 10 inch diameter fresh waterline impacting 777 square feet of an Unnamed Tributary to Salt spring Run (HQ-CWF) (Liberty, PA Quadrangle 41°34'5.69"N 77°0'17.30"W);

2) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas line and a 10 inch diameter fresh waterline impacting 3,377 square feet of an exceptional value palustrine scrub shrub and palustrine emergent (EV-PSS/PEM) wetland (Liberty, PA Quadrangle 41°34'22.18"N 77°0'35.69"W);

3) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas line and a 10 inch diameter fresh water line impacting 4,451 square feet of a palustrine emergent (PEM) wetland (Liberty, PA Quadrangle 41°34'20.10"N 77°0'36.99"W);

4) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas line and a 10 inch diameter fresh water line impacting 1,445 square feet of a palustrine emergent (PEM) wetland (Liberty, PA Quadrangle 41°34'17.41"N 77°0'37.63"W);

5) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas line and a 10 inch diameter fresh water line impacting 780 square feet of an exceptional value palustrine emergent (EV-PEM) wetland (Liberty, PA Quadrangle 41°34'6.84"N 77°0'27.09"W);

6) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas line and a 10 inch diameter fresh water line impacting 5 square feet of a palustrine emergent (PEM) wetland (Liberty, PA Quadrangle 41°34'5.10"N 77°0'21.20"W);

The project will result in 16 linear feet of temporary stream impacts, a total of 10,058 square feet (0.23 acres) of temporary wetland impacts all for the purpose of installing a natural gas gathering line with associated access roadways.

E5329-002. Allegheny Enterprises, Inc., 3885 Roller Coaster Road, Corsica, PA, 15829-3833. Kelly Troyer/Edgerton Pipeline, in Bingham Township, **Potter County**, ACOE Baltimore District.

To construct, operate, and maintain a 4" natural gas pipeline with impacts to the following:

(1) Crossing 236.0 lineal feet of EV wetland (PEM) and 7.0 lineal feet of Turner Creek (CWF) via boring, (Ulysses, PA Quadrangle, Latitude: 41°57'18.8", Longitude: 77°46'25.6");

(2) Crossing 52.0 lineal feet of EV wetland (PEM) and 6.0 lineal feet of an unnamed tributary to Turner Creek (CWF) via boring, (Ulysses, PA Quadrangle, Latitude: 41°57'47.0", Longitude: 77°46'52.0");

(3) Crossing 3.0 lineal feet of an unnamed tributary to Turner Creek (CWF) via open cut trenching, with temporary impacts to 61.2 square feet (0.001 acre), (Ulysses, PA Quadrangle, Latitude: 41°57'49.0", Longitude: 77°47'41.7");

(4) Crossing 1.5 lineal feet of Shanty Hollow (CWF) via open cut trenching, with temporary impacts to 31.4 square feet (0.001 acre), (Ulysses, PA Quadrangle, Latitude: 41°57'57.8", Longitude: 77°48'5.9");

(5) Crossing 111.0 lineal feet of EV wetland (PEM) via open cut trenching, with temporary impacts to 2166.0 square feet (0.050 acre), (Ulysses, PA Quadrangle, Latitude: 41°57'45.6", Longitude: 77°49'42.6");

(6) Crossing 2.0 lineal feet of an unnamed tributary to Genesee River (CWF) via open cut trenching; with temporary impacts to 39.0 square feet (0.001 acre), (Ulysses, PA Quadrangle, Latitude: 41°57'44.7", Longitude: 77°49'41.9");

(7) Crossing 235.0 lineal feet of EV wetland (PEM) via open cut trenching, with temporary impacts to 3583.0 square feet (0.082 acre), (Ulysses, PA Quadrangle, Latitude: 41°57'42.6", Longitude: 77°49'47.3");

(8) Crossing 61.0 lineal feet of EV wetland (PFO) via open cut trenching, with temporary impacts to 1205.0 square feet (0.028 acre), (Ulysses, PA Quadrangle, Latitude: 41°57'36.1", Longitude: 77°50'0.6");

(9) Crossing 170.0 lineal feet of EV wetland (R3EM) and 30.0 lineal feet of Genesee River (CWF) via boring, (Ulysses, PA Quadrangle, Latitude: 41°57'32.9", Longitude: 77°50'6.8").

The project will result in 458.0 lineal feet of temporary EV wetland impacts via boring, 431.0 lineal feet of temporary channel impacts via boring, 407.0 lineal feet (6954.0 square feet) of temporary EV wetland impacts via open cut trenching, and 6.5 lineal feet (131.6 square feet) of temporary channel impacts via open cut trenching.

Southeast Region: Watershed Management Program Manager, 2 East Main Street, Norristown, PA 19401

E23-491. David Sciocchetti, Chester Economic Development Authority, P. O. Box 407, 511 Welsh Street, Chester, PA 19016-0407, City of Chester, **Delaware County**, ACOE Philadelphia District.

To construct and maintain a recreation facility along floodplain of Chester Creek (WWF-MF).

The site is located approximately 150 feet southeast of the intersection of Penn Street and Seventh Avenue (Bridgeport, N.J- PA, USGS Quadrangle N: 17.95 inches; W: 16.05 inches) in City of Chester, Delaware County.

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511

E52-224. Columbia Gas Transmission, LLC, 1700 MacCorkle Avenue SE, Charleston, WV 25314. Delaware, Dingman, Milford & Westfall Townships, **Pike County**, Army Corps of Engineers Philadelphia District.

To abandon the existing pipeline and to construct and maintain the following water obstructions and encroachments associated with the 11.4 mile long natural gas transmission pipeline - Line 1278 replacement project:

1. (SPA-DJC-001) a 20-inch diameter pipeline crossing of an UNT to Raymondskill Creek (HQ-CWF, MF), impacting approximately 95 feet of channel, by means of open trench cut (Latitude: 41° 17' 39.5"; Longitude: -74° 52' 21.9") in Dingman Township.

2. (SPA-DJC-002) a 20-inch diameter pipeline crossing of Raymondskill Creek (HQ-CWF, MF), impacting approximately 76 feet of channel, by means of open trench cut (Latitude: 41° 18' 13.7"; Longitude: -74° 51' 59.8"), in Dingman Township.

3. (SPA-DJC-008) a 20-inch diameter pipeline crossing of an UNT to Raymondskill Creek (HQ-CWF, MF), impacting approximately 189 feet of channel, by means of open trench cut (Latitude: 41° 18' 26.4"; Longitude: -74° 51' 50.9") in Dingman Township.

4. (SPA-DJC-007) a 20-inch diameter pipeline crossing of an UNT to Raymondskill Creek (HQ-CWF, MF), impacting approximately 108 feet of channel, by means of

open trench cut (Latitude: 41° 18' 26.6"; Longitude: -74° 51' 50.5") in Dingman Township.

5. (SPA-DJC-003) a 20-inch diameter pipeline crossing of an UNT to Swale Brook (HQ-CWF, MF), impacting approximately 80 feet of channel, by means of open trench cut (Latitude: 41° 18' 59.1"; Longitude: -74° 51' 25.0") in Dingman Township.

6. (SPA-DJC-009) a 20-inch diameter pipeline crossing of Swale Brook (HQ-CWF, MF), impacting approximately 82 feet of channel, by means of open trench cut (Latitude: 41° 19' 14.9"; Longitude: -74° 51' 11.1") in Dingman Township.

7. (SPA-DJC-010) a 20-inch diameter pipeline crossing of Sloat Brook (EV, MF), impacting approximately 86 feet of channel, by means of open trench cut (Latitude: 41° 19' 43.9"; Longitude: -74° 50' 41.5") in Dingman Township.

8. (SPA-DJC-011) a 20-inch diameter pipeline crossing of an UNT to Sloat Brook (EV, MF), impacting approximately 76 feet of channel, by means of open trench cut (Latitude: 41° 19' 58.4"; Longitude: -74° 50' 26.0") in Dingman Township.

9. (SPA-DJC-013) a 20-inch diameter pipeline crossing of an UNT to Sawkill Creek (EV, MF), impacting approximately 87 feet of channel, by means of open trench cut (Latitude: 41° 20' 14.2"; Longitude: -74° 50' 01.2") in Milford Township.

10. (SPA-DJC-012) a 20-inch diameter pipeline crossing of an UNT to Sawkill Creek (EV, MF), impacting approximately 9 feet of channel, by means of open trench cut (Latitude: 41° 20' 15.2"; Longitude: -74° 50' 0.3") in Milford Township.

11. (SPA-BMC-001) a 20-inch diameter pipeline crossing of Sawkill Creek (EV, MF), impacting approximately 143 feet of channel, by means of open trench cut (Latitude: 41° 20' 37.6"; Longitude: -74° 49' 40.9") in Milford Township.

12. (SPA-BMC-002) a 20-inch diameter pipeline crossing of an UNT to Vantine Brook (HQ-CWF, MF), impacting approximately 88 feet of channel, by means of open trench cut (Latitude: 41° 21' 15.9"; Longitude: -74° 49' 07.3") in Westfall Township.

13. (SPA-BMC-003) a 20-inch diameter pipeline crossing of an Vandermark Creek (HQ-CWF, MF), impacting approximately 84 feet of channel, by means of open trench cut (Latitude: 41° 22' 10.0"; Longitude: -74° 48' 01.3") in Westfall Township.

14. (SPA-DJC-014) a 20-inch diameter pipeline crossing of an UNT to Cummins Creek (HQ-CWF, MF), impacting approximately 11 feet of channel, by means of open trench cut (Latitude: 41° 23' 25.3"; Longitude: -74° 46' 29.7") in Westfall Township.

15. (SPA-DJC-017) a 20-inch diameter pipeline crossing of an UNT to Bush Kill Creek (EV, MF), impacting approximately 90 feet of channel, by means of open trench cut (Latitude: 41° 23' 52.1"; Longitude: -74° 45' 56.0") in Westfall Township.

16. (SPA-DJC-015) Dual 10-inch diameter pipeline crossing of an UNT to the Delaware River (HQ-CWF, MF), impacting approximately 96 feet of channel, by means of open trench cut (Latitude: 41° 24' 29.1"; Longitude: -74° 44' 35.1") in Westfall Township.

17. (WPA-DJC-001) a 20-inch diameter pipeline crossing of 34 feet of wetlands, temporarily impacting 0.04 acres of PEM wetlands (EV) (Latitude: 41° 17' 32.4"; Longitude: -74° 52' 25.6") in Dingman Township.

18. (WPA-DJC-002) a 20-inch diameter pipeline crossing of 263 feet of wetlands, temporarily impacting 0.42 acres of PEM/PFO wetlands (EV), by means of open trench cut (Latitude: 41° 17' 39.3"; Longitude: -74° 52' 22.0") in Dingman Township.

19. (WPA-DJC-003) a 20-inch diameter pipeline crossing of 177 feet of wetlands, temporarily impacting 0.13 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 21' 56.2"; Longitude: -74° 48' 18.2") in Dingman Township.

20. (WPA-DJC-004) a 20-inch diameter pipeline crossing of 45 feet of wetlands, temporarily impacting 0.04 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 21' 13.4"; Longitude: -74° 49' 09.9") in Dingman Township.

21. (WPA-DJC-013) a 20-inch diameter pipeline crossing of 272 feet of wetlands, temporarily impacting 0.32 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 18' 16.6"; Longitude: -74° 51' 58.1") in Dingman Township.

22. (WPA-DJC-008) a 20-inch diameter pipeline crossing of 503 feet of wetlands, temporarily impacting 0.33 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 18' 24.9"; Longitude: -74° 51' 52.0") in Dingman Township.

23. (WPA-DJC-005) a 20-inch diameter pipeline crossing of 69 feet of wetlands, temporarily impacting 0.03 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 18' 45.2"; Longitude: -74° 51' 36.3") in Dingman Township.

24. (WPA-DJC-006) a 20-inch diameter pipeline crossing of 52 feet of wetlands, temporarily impacting 0.02 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 18' 49.8"; Longitude: -74° 51' 32.6") in Dingman Township.

25. (WPA-DJC-007) a 20-inch diameter pipeline crossing of 361 feet of wetlands, temporarily impacting 0.30 acres of PEM/PFO wetlands (EV), by means of open trench cut (Latitude: 41° 18' 58.7"; Longitude: -74° 51' 25.5") in Dingman Township.

26. (WPA-DJC-009) a 20-inch diameter pipeline crossing of 109 feet of wetlands, temporarily impacting 0.10 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 19' 15.0"; Longitude: -74° 51' 11.2") in Dingman Township.

27. (WPA-DJC-010) a 20-inch diameter pipeline crossing of 109 feet of wetlands, temporarily impacting 0.11 acres of PEM/PFO wetlands (EV), by means of open trench cut (Latitude: 41° 19' 52.1"; Longitude: -74° 50' 33.0") in Dingman Township.

28. (WPA-DJC-011) a 20-inch diameter pipeline adjacent to PEM wetlands (EV), by means of open trench cut, temporarily impacting 0.02 acre (Latitude: 41° 20' 0.1"; Longitude: -74° 50' 34.9") in Dingman Township.

29. (WPA-DJC-012) a 20-inch diameter pipeline crossing of 16 feet of wetlands, temporarily impacting 0.03 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 20' 17.8"; Longitude: -74° 49' 58.9") in Milford Township.

30. (WPA-BMC-004) a 20-inch diameter pipeline crossing of 63 feet of wetlands, temporarily impacting 0.07 acres of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 17' 54.4"; Longitude: -74° 52' 12.7") in Milford Township.

31. (WPA-BMC-003) a 20-inch diameter pipeline adjacent to PEM wetlands (EV) by means of open trench cut, temporarily impacting 0.04 acres (Latitude: 41° 17' 52.4"; Longitude: -74° 52' 13.6") in Westfall Township.

32. (WPA-BMC-001) a 20-inch diameter pipeline crossing of 291 feet of wetlands, temporarily impacting 0.41 acre of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 22' 10.5"; Longitude: -74° 48' 0.8") in Westfall Township.

33. (WPA-BMC-002) a 20-inch diameter pipeline crossing of 232 feet of wetlands, temporarily impacting 0.10 acre of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 22' 07.6"; Longitude: -74° 48' 04.1") in Westfall Township.

34. (WPA-DJC-015) a 20-inch diameter pipeline adjacent to PEM wetlands (EV), by means of open trench cut, temporarily impacting 0.03 acre (Latitude: 41° 22' 43.5"; Longitude: -74° 47' 20.3") in Westfall Township.

35. (WPA-DJC-016) a 20-inch diameter pipeline crossing of 120 feet of wetlands, temporarily impacting 0.08 acre of PEM/PFO wetlands (EV), by means of open trench cut (Latitude: 41° 23' 17.5"; Longitude: -74° 46' 39.1") in Westfall Township.

36. (WPA-DJC-018) a 20-inch diameter pipeline crossing of 74 feet of wetlands, temporarily impacting 0.10 acre of PEM wetlands (EV), by means of open trench cut (Latitude: 41° 23' 24.0"; Longitude: -74° 46' 29.6") in Westfall Township.

37. (WPA-DJC-019) a 20-inch diameter pipeline adjacent to PEM/PFO wetlands (EV), by means of open trench cut, temporarily impacting 0.03 acre (Latitude: 41° 23' 47.8"; Longitude: -74° 46' 03.1") in Westfall Township.

38. (WPA-DJC-023) a 20-inch diameter pipeline crossing of 434 feet of wetlands, temporarily impacting 0.55 acre of PEM/PFO wetlands (EV), by means of open trench cut (Latitude: 41° 23' 51.8"; Longitude: -74° 45' 56.2") in Westfall Township.

39. (WPA-DJC-020) a 20-inch diameter pipeline crossing of 55 feet of wetlands, temporarily impacting 0.06 acre of PEM/PFO wetlands (EV), by means of open trench cut (Latitude: 41° 24' 0.5"; Longitude: -74° 45' 38.6") in Westfall Township.

40. (WPA-DJC-021) a 20-inch diameter pipeline crossing adjacent to PSS wetlands (EV), by means of open trench cut, temporarily impacting 0.01 acre (Latitude: 41° 24' 04.8"; Longitude: -74° 45' 31.6") in Westfall Township.

The project will temporarily impact 3.33 acres of wetlands (2.96-PEM and 0.37-PFO) and 1,425 linear feet of stream channel.

The project site is located on the north side of Weber Road approximately 0.2 mile from its intersection of State Route 2001 (Edgemere, PA Quadrangle Latitude: 41° 17' 05.2"; Longitude -74° 52' 40.8") and runs northeasterly direction and ends on the east side of River Road approximately 0.2 mile from its intersection with Bluestone Boulevard (Port Jervis North, NY-PA Quadrangle Latitude: 41° 24' 27.3"; Longitude -74° 44' 33.7") in Dingman Township, Milford Township and Westfall Township. Subbasin: 1D.

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

E36-882: Pennsylvania Department of Transportation, Engineering District 8-0, 2140 Herr Street, Har-

risburg, PA 17103, Brecknock and East Earl Townships, **Lancaster County**, ACOE Baltimore District

To remove the existing structure and to construct and maintain a two-span composite prestressed concrete bridge having a clear span of 142.62 feet, a width of 33.4 feet, and a minimum underclearance of 4.92 feet across Muddy Run (TSF, MF) for the purpose of improving transportation safety and roadway standards. The project is located along Dry Tavern Road in Brecknock and East Earl Townships, Lancaster County (Terre Hill, PA Quadrangle; N: 9.2 inches, W: 7.1 inches; Latitude: 40°10'32", Longitude: -76°3.0'3.0"). The project involves approximately 292.0 linear feet of streambank stabilization.

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636

E59-507. Mansfield University, 115 Sherwood Street, Mansfield, PA 16933-1143. Water Obstruction and Encroachment Joint Permit, in Mansfield Borough and Richmond Township, **Tioga County**, ACOE Susquehanna River Basin District (Mansfield, PA Quadrangle N: 41° 48' 60"; W: 77° 4' 04").

To construct and maintain 27 linear feet of aluminum box culvert having a span of 17-feet, 9-inches and an underclearance of 3-feet, 10-inches over an UNT to Corey Creek (CWF). The culvert is located off Newtown Hill Road, 0.25 miles northeast of SR 0006 in Mansfield Borough, Tioga County. This project does not propose to impact any wetlands. This permit was issued under Section 105.13(e) "Small Projects."

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

E63-628. Pennsylvania Department of Transportation—District 12-0, PO Box 459, Uniontown, PA 15401. The applicant proposes to construct and maintain a 87 ft long extension of an existing 508 ft long, 8 ft span arch culvert with a drainage area of 201 acres under the to be widened SR79 and access ramp to SR70 in an unnamed tributary to Little Chartiers Creek (HQ-WWF); 253 ft of stream relocation associated with the above culvert extension and road bank fill; a 7 span two lane high level connection ramp overpass over an existing culvert in Little Chartiers Creek (HQ-WWF); and road construction associated temporary encroachments and stormwater outfalls.

Mitigation for the stream relocation will be on site. Mitigation for the culvert extension and one of the outfall structures will be off site. The off site mitigation was approved under Permit E63-622. This project is associated with SR70 and SR79 interchange improvements east of Washington, PA located in South Strabane Township (Washington East, PA Quadrangle: North: 5.7 inches and West: 10.1 inches; Latitude 40° 10' 9.3" and Longitude 80° 12' 20.7"), Washington County.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335.

E37-185, Jeffery Reckard, 1150 Eastbrook-Harlansburg Road, New Castle, PA 16101. Hottenbaugh Run & UNT Crossings - Jeff Reckard Subdivision, in Scott Township, Lawrence County, ACOE Pittsburgh District (Harlansburg, PA Quadrangle N: 41°, 2', 36"; W: 80°, 13', 28").

The applicant proposes to construct and maintain the following: (1) a steel arch crossing of Hottenbaugh Run (TSF) having a clear span of 12 feet, a rise of 5 feet, and

an instream length of 22 feet; (2) a 48 inch diameter 20 feet long CPP culvert in an unnamed tributary to Hottenbaugh Run (TSF); (3) to permanently fill 0.038 acres of PEM wetlands adjacent to the unnamed tributary to Hottenbaugh Run (TSF) all within the Jeff Reckard Subdivision located approximately 3500 feet west of the S.R. 0956 and Eastbrook-Harlansburg Road intersection in Scott Township, Lawrence County.

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control permits have been issued.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO 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 Board within 30 days of publication of this

notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board’s rules of practice and procedure may be obtained from the Board. The appeal form and the Board’s rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

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

Pike County Conservation District: 556 Route 402, Ste. 1, Hawley, PA 18428, 570-226-8220.

| <i>ESCP No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|--------------------|--|---------------|--|--|
| ESCGP-1 5211801 | Columbia Gas Transmission, LLC Ms. A. Rebekah Hovermale 1700 MacCorkle Ave. Southeast Charleston, WV 25314 | Pike | Delaware Twp., Dingman Twp., Milford Twp., and Westfall Township | Unnamed Tributary to Raymondskill Creek, HQ-CWF,MF; Raymondskill Creek, HQ-CWF,MF; Unnamed Tributary to Raymondskill Creek, HQ-CWF,MF; Unnamed Tributary to Raymondskill Creek, HQ-CWF,MF; Unnamed Tributary to Swale Brook, HQ-CWF,MF; Swale Brook, HQ-CWF,MF; Sloat Brook, EV,MF; Unnamed Tributary to Sloat Brook, EV,MF; Unnamed Tributary to Sawkill Creek, EV,MF; Unnamed Tributary to Sawkill Creek, EV,MF; Sawkill Creek, EV,MF; Unnamed Tributary to Vantine Brook, HQ-CWF,MF; Vandermark Creek, HQ-CWF,MF; |

| <i>ESCP No.</i> | <i>Applicant Name & Address</i> | <i>County</i> | <i>Municipality</i> | <i>Receiving Water/Use</i> |
|------------------------------|--|---------------|---------------------|--|
| | | | | Unnamed Tributary to Cummins Creek, HQ-CWF,MF; |
| | | | | Unnamed Tributary to Bush Kill, EV,MF; |
| | | | | Unnamed Tributary to Bush Kill, EV,MF; |
| | | | | Unnamed Tributary to Delaware River, HQ-CWF,MF |
| | | | | Vandermark Creek, HQ-CWF,MF; |
| | | | | Unnamed Tributary to Delaware River, HQ-CWF,MF |
| <hr/> | | | | |
| | <i>Northcentral Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701</i> | | | |
| ESCGP-1 # ESX11-117-0052 | Applicant Name SWEPI LP Contact Person Richard Lewis Address 190 Thorn Hill Road City, State, Zip Warrendale, PA 15086 County Tioga Township(s) Sullivan Twp. Receiving Stream(s) and Classification(s) UNT Corey Cr/Susquehanna R Basin in PA—Tioga R (CWF), Corey Cr to Tioga River | | | |
| ESCGP-1 # ESX11-081-0031 | Applicant Name Anadarko Marcellus Midstream LLC Contact Person Bertha Nefe Address P. O. Box 1330 City, State, Zip Houston, TX 77251-1330 County Lycoming Township(s) Cummings Twp. Receiving Stream(s) and Classification(s) UNT to Carson Run/Dam Run/English/First Fork Larry's Cr; Run Carson Run, Dam Run, English Run, (HQ-EV) | | | |
| ESCGP-1 # ESX11-081-0037 | Applicant Name Anadarko Marcellus Midstream LLC Contact Person Bertha Nefe Address P. O. Box 1330 City, State, Zip Houston, TX 77251-1330 County Lycoming Township(s) Cummings and Cogan House Twps. Receiving Stream(s) and Classification(s) UNT to 1st Fork Larrys Cr/Right & Left Fork Funston Run; 1st & 2nd Fork Larrys Cr, Larrys Cr, Right & Left Fork Funston Run, Bear Hollow Run, Lawshe Run, Funston Run | | | |
| ESCGP-1 # ESX11-081-0038 | Applicant Name Anadarko Marcellus Midstream LLC Contact Person Bertha Nefe Address P. O. Box 1330 City, State, Zip Houston, TX 77251-1330 County Lycoming Township(s) Cummings Twps. Receiving Stream(s) and Classification(s) English Run, Naval Run, McKees Run, Little Pine Cr (EV, MF) | | | |
| ESCGP-1 # ESX11-081-0043 | Applicant Name Anadarko Marcellus Midstream LLC Contact Person Bertha Nefe Address P. O. Box 1330 City, State, Zip Houston, TX 77251-1330 County Lycoming Township(s) Cummings and McHenry Twps. Receiving Stream(s) and Classification(s) Zinck Fork, UNT Upper Pine Bottom Run, Upper Pine Bottom Run (HQ-CWF,MF); Pine Cr (HQ-TSF, MF) | | | |
| ESCGP-1 # ESX11-081-0039 | Applicant Name Anadarko Marcellus Midstream LLC Contact Person Bertha Nefe Address P. O. Box 1330 City, State, Zip Houston, TX 77251-1330 County Lycoming Township(s) McHenry Twp. Receiving Stream(s) and Classification(s) English Run, UNT Pine Cr, Browns Run (HQ-CWF, MF); Pine Cr (HQ-TSF, MF); W. Br. Susquehanna R (WWF, MF) | | | |
| ESCGP-1 # ESX11-015-0089 | Applicant Name Appalachia Midstream Services LLC Contact Person Patrick Myers Address 100 1st Center City, State, Zip Horseheads, NY 14845 County Bradford Township(s) Smithfield and Ulster Twps. Receiving Stream(s) and Classification(s) Tomjack Cr, Peas Cr, Brown Cr, Tribs to Browns Cr, Peas Cr, Tomjack Cr, W. Br Tomjack Cr (TSF, WWF, MF) | | | |
| ESCGP-1 # ESX11-015-0077 | Applicant Name Chesapeake Appalachia, LLC Contact Person Eric Haskins Address 101 North Main Street City, State, Zip Athens, PA 18810 County Bradford Township(s) Albany Twp. Receiving Stream(s) and Classification(s) UNT of Sugar Run, Sugar Run (CWF) | | | |
| ESCGP-1 # ESX09-015-0060(02) | Applicant Name Chesapeake Appalachia, LLC Contact Person Eric Haskins | | | |

Address 101 North Main Street
City, State, Zip Athens, PA 18810
County Bradford
Township(s) Wyalusing Twp.
Receiving Stream(s) and Classification(s) UNT to
Susquehanna R—CWF

ESCGP-1 # ESX10-015-0141(01)
Applicant Name Chesapeake Appalachia, LLC
Contact Person Eric Haskins
Address 101 North Main Street
City, State, Zip Athens, PA 18810
County Bradford
Township(s) Overton Twp.
Receiving Stream(s) and Classification(s) Chilson Run is a
trib. to Millstone Cr, which discharges to Schrader
Cr—HQ-CWF

ESCGP-1 # ESX11-015-0091
Applicant Name Chesapeake Appalachia, LLC
Contact Person Eric Haskins
Address 101 North Main Street
City, State, Zip Athens, PA 18810
County Bradford
Township(s) Wysox Twp.
Receiving Stream(s) and Classification(s) Laning Cr,
Susquehanna R. (WWF/MF)

ESCGP-1 # ESX11-081-0044
Applicant Name Range Resources—Appalachia, LLC
Contact Person Carla Suszkowski
Address 380 Southpointe Blvd
City, State, Zip Canonsburg, PA 15317
County Lycoming
Township(s) Lewis Twp.
Receiving Stream(s) and Classification(s) UNT 20579 to
Hoagland Run/Wheeling-Buffalo Cr (HQ), Hoagland
Run

ESCGP-1 # ESX11-033-014
Applicant Name EQT Production Company
Contact Person Todd Klaner
Address 455 Racetrack Rd, Ste 101
City, State, Zip Washington, PA 15301
County Clearfield
Township(s) Chest Twp.
Receiving Stream(s) and Classification(s) Huckenberry
Run, Holes Run, Davidson Run, North Witmer Run—
CWF, MF; Clearfield Cr—WWF, MF

ESCGP-1 # ESX11-115-0034
Applicant Name Appalachia Midstream Services LLC
Contact Person Patrick Myers
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Susquehanna and Wyoming Counties
Township(s) Auburn Twp (Susquehanna); Meshoppen &
Washington Twps (Wyoming)
Receiving Stream(s) and Classification(s) Trib 29351 &
29358 to Little Meshoppen Cr; 29374 to W. Br Meshop-
pen Cr; Trib to 29397 to Meshoppen Cr; W. Br. Meshop-
pen Cr, Baker Cr, Riley Cr—CWF, MF

ESCGP-1 # ESX11-015-0068
Applicant Name Appalachia Midstream Services LLC
Contact Person Patrick Myers
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Leroy and Granville Twps.
Receiving Stream(s) and Classification(s) UNTs to
Towanda Cr (TSF-MF); Towanda Cr (TSF-MF); Trib to
Gulf Br (CW-MF)

ESCGP-1 # ESX11-081-0034
Applicant Name Range Resources—Appalachia, LLC
Contact Person Carla Suszkowski
Address 380 South Pointe Blvd, Ste 300
City, State, Zip Canonsburg, PA 15317
County Lycoming
Township(s) Gamble Twp.
Receiving Stream(s) and Classification(s) UNT to Mill Cr
(West)(EV) and two UNT to Mill Cr (WWF)

ESCGP-1 # ESX11-033-0010
Applicant Name EOG Resources, Inc.
Contact Person William Burket
Address 400 Southpointe Blvd, Ste 300
City, State, Zip Canonsburg, PA 15317-8548
County Clearfield
Township(s) Lawrence Twp.
Receiving Stream(s) and Classification(s) UNT to
Coldstream Run (HQ)

ESCGP-1 # ESX11-015-0076
Applicant Name Chesapeake Appalachia, LLC
Contact Person Eric Haskins
Address 101 North Main St
City, State, Zip Athens, PA 18810
County Bradford
Township(s) Springfield Twp.
Receiving Stream(s) and Classification(s) Mill Cr (TSF)

ESCGP-1 # ESX11-015-0070
Applicant Name Appalachia Midstream Services, LLC
Contact Person Patrick Myers
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Monroe Twp.
Receiving Stream(s) and Classification(s) Two Trib to
Bennetts Cr (WWF, MF)

ESCGP-1 # ESX11-015-0067
Applicant Name Appalachia Midstream Services, LLC
Contact Person Patrick Myers
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Leroy Twp.
Receiving Stream(s) and Classification(s) Towanda Cr
(TSF/MF), tribs. to Towanda Cr (CWF/MF)

ESCGP-1 # ESX11-115-0038
Applicant Name Southwestern Energy Production
Company
Contact Person Dave Sweeley
Address 917 SR 92 North
City, State, Zip Tunkhannock, PA 18657
County Susquehanna
Township(s) New Milford Twp.
Receiving Stream(s) and Classification(s) E. Br. Martins
Cr (CWF)

ESCGP-1 # ESX11-015-0081
Applicant Name Appalachia Midstream Services, LLC
Contact Person Patrick Myers
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Towanda Twp.
Receiving Stream(s) and Classification(s) Towanda Cr
(CWF, MF)

ESCGP-1 # ESX11-015-0062
 Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers
 Address 100 1st Center
 City, State, Zip Horseheads, NY 14845
 County Bradford
 Township(s) Monroe Twp.
 Receiving Stream(s) and Classification(s) Trib to stream
 to S. Br Towanda Cr & S Br Towanda Cr (CWF, MF)

ESCGP-1 # ESX11-033-0012
 Applicant Name Carrizo Marcellus, LLC
 Contact Person Gary Byron
 Address 251 Drain Lick Rd
 City, State, Zip Drifting, PA 16834
 County Clearfield
 Township(s) Beccaria Twp.
 Receiving Stream(s) and Classification(s) Turner Run,
 Blain Run

ESCGP-1 # ESX11-033-0011
 Applicant Name Carrizo Marcellus, LLC
 Contact Person Gary Byron
 Address 251 Drain Lick Rd
 City, State, Zip Drifting, PA 16834
 County Clearfield
 Township(s) Gulich Twp.
 Receiving Stream(s) and Classification(s) Whiteside
 Run—CWF, Moshannon Cr

ESCGP-1 # ESX11-117-0034
 Applicant Name EQT Gathering, LLC
 Contact Person Hanna McCoy
 Address 625 Liberty Avenue, Ste 1700
 City, State, Zip Pittsburgh, PA 15222-3114
 County Tioga
 Township(s) Charleston & Duncan Twps.
 Receiving Stream(s) and Classification(s) Babb Cr/Pine
 Cr; Catlin Hollow/Crooked Cr; Charleston Cr/Marsh Cr;
 Hills Cr/Crooked Cr; North Elk Run/Elk Run; Rock
 Run/Babb Cr; HQ-EV; Pine Cr, Tioga River

ESCGP-1 # ESG11-117-0026
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Eric Potter
 Address 337 Daniel Zenker Road
 City, State, Zip Horseheads, NY 14845
 County Tioga
 Township(s) Jackson Twp.
 Receiving Stream(s) and Classification(s) UNT to Ham-
 mond Cr, Hammond Cr (CWF-MF)

ESCGP-1 # ESX11-015-0029(01)
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Road
 City, State, Zip Horseheads, NY 14845
 County Bradford
 Township(s) Herrick, Orwell, Pike Twps.
 Receiving Stream(s) and Classification(s) South Cr,
 Rockwell Cr and Cold Cr (WWF & MF)

ESCGP-1 # ESX11-131-0011
 Applicant Name Chief Oil & Gas LLC
 Contact Person Michael Hritz
 Address 6051 Wallace Rd Ext., Ste 210
 City, State, Zip Wexford, PA 15090
 County Wyoming
 Township(s) Tunkhannock Twp.
 Receiving Stream(s) and Classification(s) Tunkhannock
 Cr (TSF, MF); UNT to Tunkhannock Cr (CWF, MF)

ESCGP-1 # ESX11-015-0074
 Applicant Name Chief Oil & Gas LLC
 Contact Person Michael Hritz
 Address 6051 Wallace Rd Ext., Ste 210
 City, State, Zip Wexford, PA 15090
 County Bradford
 Township(s) Asylum Twp.
 Receiving Stream(s) and Classification(s) UNT to
 Towanda Cr (CWF); Towanda Cr (WWF)

ESCGP-1 # ESX11-131-0012
 Applicant Name Chief Oil & Gas LLC
 Contact Person Michael Hritz
 Address 6051 Wallace Rd Ext., Ste 210
 City, State, Zip Wexford, PA 15090
 County Wyoming
 Township(s) Monroe Twp.
 Receiving Stream(s) and Classification(s) Marsh Cr,
 Sugar Run, Bowman Cr (HQ-CWF, MF)

ESCGP-1 # ESX11-081-0040
 Applicant Name Range Resources—Appalachia, LLC
 Contact Person Carla Suszkowski
 Address 380 Southpoint Blvd, Ste 300
 City, State, Zip Canonsburg, PA 15317
 County Lycoming
 Township(s) Anthony Twp.
 Receiving Stream(s) and Classification(s) Stony Gap Run,
 and (2) UNTs to Stony Gap Run (HQ-CWF)

*Northwest Region: Oil and Gas Program Manager, 230
 Chestnut St., Meadville, PA 16335*

ESCGP-1 #ESX10-083-0033B Phase 3—Warrant 4871
 Applicant U.S. Energy Development Corporation
 Contact Doug Walsh
 Address 2350 North Forest Road
 City Getzville State NY Zip Code 14068
 County McKean Township(s) Corydon(s)
 Receiving Stream(s) and Classification(s) Coon Run,
 North Branch Willow Creek—HQ-CWF

ESCGP-1 #ESX11-019-0069—McElhinney (Double to
 Behm) Pipeline
 Applicant Keystone Midstream Services, LLC
 Contact Mike Brinkmeyer
 Address 11400 Westmoor Circle, Suite 325
 City Westminster State CO Zip Code 80021
 County Butler Township(s) Connoquenessing(s)
 Receiving Stream(s) and Classification(s) UNT to Con-
 noquenessing Creek—WWF, Connoquenessing Creek—
 Other

ESCGP-1 #ESX11-083-0042 SRC 18H Well Pad SG-V
 Applicant EOG Resources, Inc.
 Contact Jon Jorgenson
 Address 400 Southpointe Blvd., Plaza 1, Suite 300
 City Canonsburg State PA Zip Code 15317
 County McKean Township(s) Sergeant
 Receiving Stream(s) and Classification(s) East Branch
 Clarion River—HQ—Secondary Water—Clarion River

[Pa.B. Doc. No. 11-885. Filed for public inspection May 27, 2011, 9:00 a.m.]

Alternative Fuels Incentive Grant Program; Solici- tation Clarification

The Department of Environmental Protection (Depart-
 ment), Bureau of Energy, Innovations and Technology
 Deployment announce clarifications to pages 12 and 13 of

the 2011 Alternative Fuels Incentive Grant solicitation originally published at 41 Pa.B. 1970 (April 9, 2011). The changes are as follows:

Under "Examples of eligible projects include, but are not limited to:" the fourth bullet has been eliminated.

Under "Projects that are not eligible include:" the seventh bullet is changed to read: "Projects requesting infrastructure funding for a fleet consisting exclusively of vehicles that are in excess of 26,000 gross vehicle weight."

Under "Projects must comply with the following in order to be funded:" the fourth bullet is changed to read: "Infrastructure projects must belong to a fleet that contains at least one vehicle with a gross vehicle weight of less than 26,000 pounds."

These changes are reflected in a revised Alternative Fuels Incentive Grant Program (Program) application document which has replaced the previous document.

For persons who have any questions or require further clarification on the changes, contact Carmen LaRosa or Mark Brojakowski at (717) 783-8411.

The Program provides grants to improve this Commonwealth's air quality and reduce consumption of imported oil through the use of homegrown alternative fuels that will help the economy and environment in this Commonwealth. The Department is seeking applications for innovative, advanced fuel and vehicle technology projects resulting in cleaner advanced alternative transportation within this Commonwealth.

Funding is available for school districts, municipal authorities, political subdivisions, nonprofit entities, corporations, limited liability companies or partnerships incorporated or registered in this Commonwealth to retrofit fleet vehicles to operate on alternative fuels, subsidize the cost of the purchase of an alternative fuel vehicle for a fleet or subsidize the cost to install fleet refueling equipment for alternative fuel vehicles or support next-phase advanced research, development and training related to alternative fuels and alternative fuel vehicles.

Funding is also available for school districts, municipal authorities, political subdivisions and nonprofit entities to subsidize the incremental cost to purchase biofuel and provide refueling and storage equipment or related tank cleaning.

Project costs cannot be incurred before July 1, 2011.

The Program guidelines and application instructions are available on the Department's web site at <http://www.depweb.state.pa.us> (click on "DEP Programs" and then "Alternative Fuels"). Applications will be accepted online through the eGrants system. Visit <https://www.grants.dcnr.state.pa.us/> and click on "Find a Grant." Scroll down to "AFIG" and click "Apply for this grant."

The application period opened on April 15, 2011. Applications must be submitted by 4 p.m. on June 17, 2011. Hardcopy applications will not be accepted.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 11-886. Filed for public inspection May 27, 2011, 9:00 a.m.]

Proposed Water Quality Certification Under Section 401 of the Federal Clean Water Act and Federal Consistency Review under the Coastal Zone Management Act of 1972 for the Army Corps of Engineers Pennsylvania State Programmatic General Permit (PASPGP-4)

On November 1, 2010, the Baltimore, Philadelphia and Pittsburgh Districts of the Army Corps of Engineers, under the authority of section 404(e) of the Federal Clean Water Act (33 U.S.C.A. § 1344(e)), proposed by its Special Public Notice 10-65, to issue Pennsylvania State Programmatic General Permit-4 (PASPGP-4) for a 5-year period. Section 401(a) of the Federal Clean Water Act (33 U.S.C.A. § 1341(a)) requires the Commonwealth to certify that any activity requiring a Federal license or permit, which may result in a discharge into the waters of the United States, will comply with the applicable provisions of the Federal Clean Water Act as well as Commonwealth water quality standards. In addition, section 307 of the Coastal Zone Management Act of 1972 (33 U.S.C.A. § 1456) requires that any Federal action which affects the coastal use or resource of a coastal state will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of that state's approved Coastal Management Program. On April 15, 2011, the Army Corps of Engineers furnished to the Department of Environmental Protection (Department) a final copy of the PASPGP-4 to be issued for a 5-year period with an effective date of July 1, 2011.

This action by the Army Corps of Engineers continues the present Federal permitting process undertaken jointly with the State permitting process for activities affecting waterways, water bodies and wetlands authorized under the Dam Safety and Encroachment Act (32 P.S. §§ 693.1—693.27). PASPGP-4 places the Department and delegated county conservation districts in the lead for the majority of permit actions. Through the incorporation of Federal and State permitting standards in one process, the PASPGP-4 continues a streamlined process for permit applicants without compromising comprehensive environmental protection.

The Department, by this notice, proposes to certify that the construction, operation and maintenance of an encroachment or water obstruction as proposed in PASPGP-4 complies with the applicable provisions of sections 301—303, 306 and 307 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311—1313, 1316 and 1317). The Department further proposes to certify that the construction, operation and maintenance of the projects complies with Commonwealth water quality standards and that the construction, operation and maintenance of the projects does not violate applicable Commonwealth water quality standards provided that the construction, operation and maintenance of the projects complies with the criteria and conditions of the permit.

The Department further intends that this certification be subject to the following condition: Prior to commencing any activity covered by PASPGP-4, the applicant must obtain all necessary permits or approvals from the Department, including, but not limited to, those required by the The Clean Streams Law (35 P.S. §§ 691.1—691.1001), the Dam Safety and Encroachments Act, the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101—6020.1305), the Land Recycling and Remediation Standards Act (35 P.S. §§ 6026.101—6026.908) and the regulations promulgated thereunder

including 25 Pa. Code Chapters 75, 91—93, 95, 102, 105 and 260—299. Additionally, all environmental assessments required under these regulations, in addition to other regulatory requirements, must be complied with as a condition of the Section 401 Water Quality Certification for the PASPGP-4.

Furthermore, PASPGP-4 is a Federal action subject to review for consistency with the enforceable policies of the Commonwealth Coastal Resources Management (CRM) Program. As required under section 306(d)(14) of the Coastal Zone Management Act of 1972 (33 U.S.C.A. § 1455(d)(14)), the CRM Program is providing the public this opportunity to provide comments on whether the PASPGP-4 is consistent with the CRM Program's policies. The CRM Program's policies can be found on the Department's web site at www.depweb.state.pa.us by selecting Water; The Water Planning Office; Coastal Resources Management Program; Program Reference Documents; Program Guidance Document.

Prior to final action on the proposed section 401 Water Quality Certification and Coastal Zone Management (CZM) Consistency for the PASPGP-4, consideration will be given to any comments, suggestions or objections which are submitted in writing by June 27, 2011. Comments concerning the proposed 401 Water Quality Certification and CZM consistency for PASPGP-4 should be directed to Kenneth Murin, Chief, Division of Waterways, Wetlands and Stormwater Management, Bureau of Watershed Management, P. O. Box 8775, Harrisburg, PA 17105-8775, (717) 787-6827 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted. The Department will consider all relevant and timely comments received. Comments must be submitted by June 27, 2011.

The proposed PASPGP-4 and Army Corps of Engineers public notices can be viewed on the Army Corps of Engineers web page at <http://www.nab.usace.army.mil/Wetlands%20Permits/>. Copies of the PASPGP-4 and the Army Corps of Engineers public notices may be obtained by contacting Mary Lou Martin, U.S. Army Corps of Engineers, Baltimore District, State College Field Office, 1631 South Atherton Street, State College, PA 16801 or (814) 235-0570.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 11-887. Filed for public inspection May 27, 2011, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Altoona Regional Health System for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Altoona Regional Health System has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility

specifically requests exception from the following standard contained in this publication: 2.2-5.7.1 (relating to morgue location).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-888. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Comprehensive Pain Centers for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Comprehensive Pain Centers has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: Table 3.1-1 (relating to station outlets for oxygen, vacuum and mechanical air in outpatient facilities).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or

hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-889. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Easton Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Easton Hospital has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-890. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application for Exception to 28 Pa. Code § 29.33(6)

Under 28 Pa. Code § 29.42 (relating to exceptions), the Department of Health (Department) gives notice that the following facilities have requested an exception to the requirements of 28 Pa. Code § 29.33(6) (relating to requirements for abortion):

Allentown Medical Services
American Women's Services
Planned Parenthood of Central Pennsylvania, Inc.

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be

reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-891. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application for Exception to 28 Pa. Code § 123.25(2)

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that the following facilities have requested an exception to the requirements of 28 Pa. Code § 123.25(2) (relating to regulations for control of anesthesia explosion hazards):

Mercy Philadelphia Hospital
St. Luke's Riverside Hospital

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

The facilities are requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-892. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Hospital of the University of Pennsylvania—Penn Medicine Radnor for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Hospital of the University of Pennsylvania—Penn Medicine Radnor has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 3.1-3.2.2.2(2) and 3.1-3.2.4.2(2) (relating to clearances), 3.1-3.6.9 (relating to clean storage) and 3.1-3.6.10 (relating to soiled holding).

This request is on file with the Department. Persons may receive a copy of a request for exception by request-

ing a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-893. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Jefferson Regional Medical Center—Bethel Park Imaging Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Jefferson Regional Medical Center—Bethel Park Imaging Center has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 2.2-3.4.5.3(1) (relating to patient toilet).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-894. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Jefferson Regional Medical Center—Brentwood Imaging Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Jefferson Regional Medical Center—Brentwood Imaging Center has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-3.4.3.5 (relating to hand-washing station), 2.2-3.4.5.3(1) (relating to patient toilet) and 3.1-7.2.2.1(1) (relating to corridor width).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-895. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Jefferson Regional Medical Center—Charleroi Imaging Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Jefferson Regional Medical Center—Charleroi Imaging Center has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-3.4.2.3(1), 2.2-3.4.3.4, 2.2-3.4.3.5, 2.2-3.4.4.4, 2.2-3.4.4.2, 2.2-3.4.5.1, 2.2-3.4.8.3, 3.1-3.2.2.2(2) and 3.1-7.2.2.1(1).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and

Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-896. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Jefferson Regional Medical Center—Jefferson MRI for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Jefferson Regional Medical Center—Jefferson MRI has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-3.4.4.2 (relating to MRI suite) and 3.1-7.2.2.1(1) (relating to corridor width).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-897. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Lancaster General Health for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Lancaster General Health has requested an exception to the requirements of 28 Pa. Code § 115.25 (relating to infant footprints).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-898. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of Regional Hospital Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Regional Hospital Surgery Center has requested an exception to the requirements of 28 Pa. Code §§ 553.1—553.4, 553.31(b), 555.1—555.4, 557.2—557.4, 561.2, 563.1, 563.2 and 567.2.

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or

hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-899. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of St. Luke's Riverside Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that St. Luke's Riverside Hospital has requested an exception to the requirements of 28 Pa. Code § 107.62(b) (relating to oral orders).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-900. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of St. Luke's Riverside Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that St. Luke's Riverside Hospital has requested an exception to the requirements of 28 Pa. Code § 127.32 (relating to written orders).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or

hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-901. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of The Western Pennsylvania Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Western Pennsylvania Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 2.2-3.10.2.8(1) (relating to visual control).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-902. Filed for public inspection May 27, 2011, 9:00 a.m.]

Application of York Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that York Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 2.2-2.2.2.7 (relating to patient bathing facilities).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of

Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-903. Filed for public inspection May 27, 2011, 9:00 a.m.]

Long-Term Care Nursing Facilities; Requests for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Bradford Ecumenical Home
100 St. Francis Drive
Bradford, PA 16701
FAC ID 281402

The following long-term care nursing facility is seeking exceptions to 28 Pa. Code §§ 205.28(c)(3) and 205.36(e) and (f) (relating to nurses' station; and bathing facilities):

Foulkeways at Gwynedd
1120 Meetinghouse Road
Gwynedd, PA 19436
FAC ID 060902

These requests are on file with the Department of Health (Department). Persons may receive a copy of the request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact V/TT (717) 783-6514 for

speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-904. Filed for public inspection May 27, 2011, 9:00 a.m.]

Newborn Screening and Follow-Up Program Technical Advisory Committee Meeting

The Newborn Screening and Follow-Up Program, established under the Newborn Child Testing Act (35 P. S. §§ 621—625) will hold a public meeting on Monday, June 20, 2011, from 10 a.m. to 3 p.m., at Dixon University Center, Administration Building, Administration Building Conference Room C, 2986 North Second Street, Harrisburg, PA.

For additional information or for persons with a disability wishing to attend the meeting and require auxiliary aid, service or other accommodations to do so, contact Suzanne Bellotti, Public Health Program Administrator, Division of Newborn Screening and Genetics at (717) 783-8143, or speech and/or hearing impaired persons may use V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT). R.S.V.P. by June 6, 2010, to Jen Wilt at (717) 783-8143.

This meeting is subject to cancellation without notice.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 11-905. Filed for public inspection May 27, 2011, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Current Prevailing Wage Act Debarments

The following contractors have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-1—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), these contractors, or either one of them, or any firms, corporations or partnerships in which either one of these contractors has an interest, shall be awarded no contract for 3 years after the date listed.

| <i>Contractor</i> | <i>Address</i> | <i>Date of Debarment</i> |
|---|---------------------------------------|------------------------------|
| Apex Electric, Inc., Mark Dunlap, Individually, and Patricia Dunlap, Individually EIN # 25-1723577 | 119 Dunlap Lane Valencia, PA 16059 | 5/6/2011 |

JULIA K. HEARTHWAY,
Acting Secretary

[Pa.B. Doc. No. 11-906. Filed for public inspection May 27, 2011, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Additional Class of Disproportionate Share Payments

The Department of Public Welfare (Department) is providing final notice of decreased funding for Fiscal Year (FY) 2010-2011 for disproportionate share hospital (DSH) payments to certain qualifying Medical Assistance (MA) enrolled hospitals that advance the Department's goal of enhancing access to multiple types of medical care in economically distressed areas of this Commonwealth. This decrease is the result of the Commonwealth's budget constraints. There is no change in the qualifying criteria or payment methodology for this additional class of DSH payments.

In making these payments, the Department ensures that no acute care general hospital receives any DSH payment that is in excess of its hospital specific DSH upper payment limit and the Commonwealth does not exceed its aggregate annual DSH allotment.

The Department published notice of its intent to decrease the funding allocation for DSH payments to certain qualifying MA enrolled hospitals at 40 Pa.B. 7161 (December 11, 2010). The Department received no public comments during the 30-day comment period, and will implement the changes described in its notice of intent.

Fiscal Impact

The FY 2010-2011 fiscal impact of this allocation for the additional class of DSH payments is \$36.105 million (\$16.016 million in State funds). These funds are provided for in the FY 2010-2011 MA—Inpatient appropriation.

GARY D. ALEXANDER,
Acting Secretary

Fiscal Note: 14-NOT-691. (1) General Fund; (2) Implementing Year 2010-11 is \$16,016,000; (3) 1st Succeeding Year 2011-12 is \$16,016,000; 2nd Succeeding Year 2012-13 is \$16,016,000; 3rd Succeeding Year 2013-14 is \$16,016,000; 4th Succeeding Year 2014-15 is \$16,016,000; 5th Succeeding Year 2015-16 is \$16,016,000; (4) 2007-08 Program—\$468,589,000; 2008-09 Program—\$426,822,000; 2009-10 Program—\$373,515,000; (7) MA—Inpatient; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 11-907. Filed for public inspection May 27, 2011, 9:00 a.m.]

Additional Class of Disproportionate Share Payments for Critical Access Hospitals and Qualifying Rural Hospitals

The Department of Public Welfare (Department) is providing final notice of increased funding for Fiscal Year (FY) 2010-2011 for disproportionate share hospital (DSH) payments to qualifying hospitals based on the designation as a Critical Access Hospital (CAH) or as a qualifying rural hospital. There is no change in the current qualifying criteria or methodology for determining eligibility for these payments.

The Department published notice of its intent to increase the funding allocation for DSH payments to hospi-

tals based on the designation as a CAH or as a qualifying rural hospital at 40 Pa.B. 7162 (December 11, 2010). The Department received no public comments during the 30-day comment period, and will implement the changes described in its notice of intent.

Fiscal Impact

For FY 2010-2011, CAH DSH payments in the amount of \$10.543 million (\$4.677 million in State funds and \$5.866 million in Federal funds upon approval by the Centers for Medicare and Medicaid Services) will be paid to qualifying hospitals.

GARY D. ALEXANDER,
Acting Secretary

Fiscal Note: 14-NOT-689. (1) General Fund; (2) Implementing Year 2010-11 is \$4,677,000; (3) 1st Succeeding Year 2011-12 is \$0; 2nd Succeeding Year 2012-13 is \$0; 3rd Succeeding Year 2013-14 is \$0; 4th Succeeding Year 2014-15 is \$0; 5th Succeeding Year 2015-16 is \$0; (4) 2007-08 Program—\$0; 2008-09 Program—\$4,888,000; 2009-10 Program—\$4,378,000; (7) Medical Assistance—CAH; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 11-908. Filed for public inspection May 27, 2011, 9:00 a.m.]

Additional Class of Payments to Qualifying Acute Care General Hospitals for Obstetrical and Neonatal Intensive Care Services

The Department of Public Welfare (Department) is announcing its intent to increase the allocation of funding for Fiscal Year (FY) 2010-2011 for disproportionate share hospital (DSH) payments to certain qualifying hospitals based on obstetrical and neonatal intensive care cases. There will be no change in the current qualifying criteria or methodology for determining eligibility for these payments.

Fiscal Impact

For FY 2010-2011, obstetrical and neonatal DSH payments in the amount of \$10.854 million (\$4.815 million in State funds) will be paid to qualifying hospitals.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Acting Secretary

Fiscal Note: 14-NOT-690. (1) General Fund; (2) Implementing Year 2010-11 is \$4,815,000; (3) 1st Succeeding Year 2011-12 is \$0; 2nd Succeeding Year 2012-13 is \$0; 3rd Succeeding Year 2013-14 is \$0; 4th Succeeding Year 2014-15 is \$0; 5th Succeeding Year 2015-16 is \$0; (4) 2007-08 Program—\$5,000,000; 2008-09 Program—\$6,544,000; 2009-10 Program—\$4,500,000; (7) Medical

Assistance—Obstetric and Neonatal Services; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 11-909. Filed for public inspection May 27, 2011, 9:00 a.m.]

Medical Assistance Program Fee Schedule Revisions

The Department of Public Welfare (Department) announces that it will revise the fees, or a component of the fee, on the Medical Assistance (MA) Program Fee Schedule for select medical, surgical, laboratory, durable medical equipment and radiological services effective May 30, 2011.

Fee Schedule Revisions

The Pennsylvania Medicaid State Plan (State Plan) specifies that maximum fees for services covered under the MA Program are to be determined on the basis of the following: fees may not exceed the Medicare upper limit when applicable; fees must be consistent with efficiency, economy and quality of care; and fees must be sufficient to assure the availability of services to recipients. MA

regulations in 55 Pa. Code § 1150.62(a) (relating to payment levels and notice of rate setting changes) also specify that the MA fees may not exceed the Medicare upper limit.

The Department has determined that MA fees for approximately 112 medical, surgical, laboratory, durable medical equipment and radiological procedure codes or combinations of procedure codes and modifiers are above the Medicare upper limit for the same procedure codes. The Department is adjusting the fees on the MA Program Fee Schedule for these combinations of procedure codes and modifiers to equal the Medicare upper limit. Revision of these fees is necessary to comply with the regulation and State Plan and to avoid a Federal disallowance.

As set forth as follows, the Department has revised the total fee (billed with no modifier) and, as applicable, the professional component fee (billed with modifier 26), the technical component fee (billed with modifier TC), the physician office procedure fee (billed with modifier SU) and the fee when billing for the purchase (billed with modifier NU) or rental (billed with modifier RR) of durable medical equipment. “N/A” indicates that the modifier is not on the MA Program Fee Schedule for the procedure code and “N/C” indicates that there is no change in the fee associated with the modifier:

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|--|---|--|---|--|
| 25335 | Centralization of wrist on ulna (for example, radial club hand) | N/A | N/A | \$815.98 | N/A |
| 27250 | Closed treatment of hip dislocation, traumatic; without anesthesia | N/A | N/A | \$204.65 | N/A |
| 52400 | Cystourethroscopy with incision, fulguration, or resection of congenital posterior urethral valves, or congenital obstructive hypertrophic mucosal folds | N/A | N/A | \$493.01 | N/A |
| 52640 | Transurethral resection; of postoperative bladder neck contracture | N/A | N/A | \$303.27 | N/A |
| 55250 | Vasectomy, unilateral or bilateral (separate procedure), including postoperative semen examination(s) | N/A | N/A | \$417.84 (SU) | N/A |
| 55873 | Cryosurgical ablation of the prostate (includes ultrasonic guidance and monitoring) | N/A | N/A | \$855.70 | N/A |
| 57155 | Insertion of uterine tandem and/or vaginal ovoids for clinical brachytherapy | N/A | N/A | \$179.75 | N/A |
| 59414 | Delivery of placenta (separate procedure) | N/A | N/A | \$85.42 | N/A |

NOTICES

2771

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|---|---|--|---|--|
| 59857 | Induced abortion, by 1 or more vaginal suppositories (for example, prostaglandin) with or without cervical dilation (for example, laminaria), including hospital admission and visits, delivery of fetus and secundines; with hysterotomy (failed medical evacuation) | N/A | N/A | \$516.11 | N/A |
| 64416 | Injection, anesthetic agent; brachial plexus, continuous infusion by catheter (including catheter placement) | N/A | N/A | \$81.06 | N/A |
| 64446 | Injection, anesthetic agent; sciatic nerve, continuous infusion by catheter (including catheter placement) | N/A | N/A | \$82.36 | N/A |
| 64448 | Injection, anesthetic agent; femoral nerve, continuous infusion by catheter (including catheter placement) | N/A | N/A | \$73.22 | N/A |
| 64449 | Injection, anesthetic agent; lumbar plexus, posterior approach, continuous infusion by catheter (including catheter placement) | N/A | N/A | \$83.66 | N/A |
| 67028 | Intravitreal injection of a pharmacologic agent (separate procedure) | N/A | N/A | \$105.88 | N/A |
| 69801 | Labyrinthotomy, with perfusion of vestibuloactive drug(s); transcanal | N/A | N/A | \$294.59 | N/A |
| 70371 | Complex dynamic pharyngeal and speech evaluation by cine or video recording | \$40.73 | \$48.42 | N/C | N/A |
| 71250 | Computed tomography, thorax; without contrast material | \$50.49 | \$83.10 | N/C | N/A |
| 72125 | Computed tomography, cervical spine; without contrast material | \$50.49 | \$83.10 | N/C | N/A |
| 72128 | Computed tomography, thoracic spine; without contrast material | \$50.49 | \$90.60 | N/C | N/A |
| 72131 | Computed tomography, lumbar spine; without contrast material | \$50.49 | \$88.10 | N/C | N/A |
| 73020 | Radiologic examination, shoulder; 1 view | \$7.42 | \$14.51 | N/C | N/A |
| 73200 | Computed tomography, upper extremity; without contrast material | \$50.59 | \$79.04 | N/C | N/A |
| 73700 | Computed tomography, lower extremity; without contrast material | \$50.59 | \$79.04 | N/C | N/A |
| 74485 | Dilation of nephrostomy, ureters, or urethra, radiological supervision and interpretation | \$26.96 | \$77.77 | N/C | N/A |

NOTICES

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|---|---|--|---|--|
| 75630 | Aortography, abdominal plus bilateral iliofemoral lower extremity, catheter, by serialography, radiological supervision and interpretation | \$89.30 | \$154.98 | \$244.28 | N/A |
| 75962 | Transluminal balloon angioplasty, peripheral artery other than cervical carotid, renal or other visceral artery, iliac or lower extremity, radiological supervision and interpretation | \$26.63 | \$178.42 | \$205.05 | N/A |
| 75964 | Transluminal balloon angioplasty, each additional peripheral artery other than cervical carotid, renal or other visceral artery, iliac and lower extremity, radiological supervision and interpretation (List separately in addition to code for primary procedure) | \$18.28 | \$109.74 | \$128.02 | N/A |
| 75966 | Transluminal balloon angioplasty, renal or other visceral artery, radiological supervision and interpretation | \$66.01 | \$181.67 | \$247.68 | N/A |
| 75968 | Transluminal balloon angioplasty, each additional visceral artery, radiological supervision and interpretation (List separately in addition to code for primary procedure) | \$17.81 | \$107.46 | \$125.27 | N/A |
| 75978 | Transluminal balloon angioplasty, venous (for example, subclavian stenosis), radiological supervision and interpretation | \$26.30 | \$179.07 | \$205.37 | N/A |
| 76098 | Radiological examination, surgical specimen | \$8.09 | \$10.62 | N/C | N/A |
| 76820 | Doppler velocimetry, fetal; umbilical artery | \$24.20 | \$21.53 | \$45.73 | N/A |
| 76827 | Doppler echocardiography, fetal, pulsed wave and/or continuous wave with spectral display; complete | \$27.89 | \$36.55 | N/C | N/A |
| 76946 | Ultrasonic guidance for amniocentesis, imaging supervision and interpretation | \$18.49 | \$18.60 | \$37.09 | N/A |
| 76977 | Ultrasound bone density measurement and interpretation, peripheral site(s), any method | \$2.72 | \$7.53 | \$10.25 | N/A |
| 77012 | Computed tomography guidance for needle placement (for example, biopsy, aspiration, injection, localization device), radiological supervision and interpretation | \$56.53 | \$102.25 | \$158.78 | N/A |

NOTICES

2773

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|--|---|--|---|--|
| 77031 | Stereotactic localization guidance for breast biopsy or needle placement (for example, for wire localization or for injection), each lesion, radiological supervision and interpretation | \$79.67 | \$78.17 | \$157.84 | N/A |
| 77051 | Computer-aided detection (computer algorithm analysis of digital image data for lesion detection) with further physician review for interpretation, with or without digitization of film radiographic images; diagnostic mammography (List separately in addition to code for primary procedure) | \$3.06 | \$8.19 | \$11.25 | N/A |
| 77052 | Computer-aided detection (computer algorithm analysis of digital image data for lesion detection) with further physician review for interpretation, with or without digitization of film radiographic images; screening mammography (List separately in addition to code for primary procedure) | \$3.06 | \$8.19 | \$11.25 | N/A |
| 77053 | Mammary ductogram or galactogram, single duct, radiological supervision and interpretation | \$17.49 | \$48.22 | \$65.71 | N/A |
| 77079 | Computed tomography, bone mineral density study, 1 or more sites; appendicular skeleton (peripheral) (for example, radius, wrist, heel) | \$10.78 | \$38.46 | \$49.24 | N/A |
| 77081 | Dual-energy X-ray absorptiometry (DXA), bone density study, 1 or more sites; appendicular skeleton (peripheral) (for example, radius, wrist, heel) | \$9.80 | \$17.68 | N/C | N/A |
| 77295 | Therapeutic radiology simulation-aided field setting; 3-dimensional | \$227.38 | \$321.46 | \$548.84 | N/A |
| 77305 | Teletherapy, isodose plan (whether hand or computer calculated); simple (1 or 2 parallel opposed unmodified ports directed to a single area of interest) | \$21.18 | \$30.32 | N/C | N/A |
| 77333 | Treatment devices, design and construction; intermediate (multiple blocks, stents, bite blocks, special bolus) | \$41.75 | \$16.97 | \$58.72 | N/A |
| 77620 | Hyperthermia generated by intracavitary probe(s) | \$74.68 | \$110.15 | N/C | N/A |

NOTICES

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|---|---|--|---|--|
| 78016 | Thyroid carcinoma metastases imaging; with additional studies (for example, urinary recovery) | \$37.45 | \$56.55 | N/C | N/A |
| 78320 | Bone and/or joint imaging; tomographic (SPECT) | \$50.55 | \$176.58 | N/C | N/A |
| 78710 | Kidney imaging morphology; tomographic (SPECT) | \$30.94 | \$175.06 | N/C | N/A |
| 78730 | Urinary bladder residual study (List separately in addition to code for primary procedure) | \$8.07 | \$36.15 | N/C | N/A |
| 79403 | Radiopharmaceutical therapy, radiolabeled monoclonal antibody by intravenous infusion | \$110.83 | \$88.35 | \$199.18 | N/A |
| 80047 | Basic metabolic panel (Calcium, ionized) This panel must include the following: Calcium, ionized (82330), Carbon dioxide (82374), Chloride (82435), Creatinine (82565), Glucose (82947), Potassium (84132), Sodium (84295), Urea Nitrogen (BUN) (84520) | N/A | N/A | \$11.91 | N/A |
| 88182 | Flow cytometry, cell cycle or DNA analysis | \$34.44 | \$6.87 | N/C | N/A |
| 88355 | Morphometric analysis; skeletal muscle | \$82.95 | \$33.32 | N/C | N/A |
| 88358 | Morphometric analysis; tumor (for example, DNA ploidy) | \$41.86 | \$20.63 | N/C | N/A |
| 89230 | Sweat collection by iontophoresis | N/A | N/A | \$2.98 | N/A |
| 91040 | Esophageal balloon distension provocation study | \$49.38 | \$280.62 | \$330.00 | N/A |
| 92285 | External ocular photography with interpretation and report for documentation of medical progress (for example, close-up photography, slit lamp photography, gonioscopy, stereo-photography) | \$4.03 | \$9.22 | N/C | N/A |
| 92977 | Thrombolysis, coronary; by intravenous infusion | N/A | N/A | \$88.68 | N/A |
| 93000 | Electrocardiogram, routine ECG with at least 12 leads; with interpretation and report | N/A | N/A | \$19.22 | N/A |
| 93005 | Electrocardiogram, routine ECG with at least 12 leads; tracing only, without interpretation and report | N/A | N/A | \$10.46 | N/A |
| 93015 | Cardiovascular stress test using maximal or submaximal treadmill or bicycle exercise, continuous electrocardiographic monitoring, and/or pharmacological stress; with physician supervision, with interpretation and report | N/A | N/A | \$89.75 | N/A |

NOTICES

2775

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|---|---|--|---|--|
| 93224 | External electrocardiographic recording up to 48 hours by continuous rhythm recording and storage; includes recording, scanning analysis with report, physician review and interpretation | N/A | N/A | \$93.65 | N/A |
| 93226 | External electrocardiographic recording up to 48 hours by continuous rhythm recording and storage; scanning analysis with report | N/A | N/A | \$39.76 | N/A |
| 93270 | External patient and, when performed, auto activated electrocardiographic rhythm derived event recording with symptom-related memory loop with remote download capability up to 30 days, 24-hour attended monitoring; recording (includes connection, recording, and disconnection) | N/A | N/A | \$14.70 | N/A |
| 93278 | Signal-averaged electrocardiography (SAECG), with or without ECG | \$12.45 | \$21.53 | \$33.98 | N/A |
| 93320 | Doppler echocardiography, pulsed wave and/or continuous wave with spectral display (List separately in addition to codes for echocardiographic imaging); complete | \$19.14 | \$41.39 | \$60.53 | N/A |
| 93321 | Doppler echocardiography, pulsed wave and/or continuous wave with spectral display (List separately in addition to codes for echocardiographic imaging); follow-up or limited study (List separately in addition to codes for echocardiographic imaging) | \$7.75 | \$20.55 | \$28.30 | N/A |
| 93724 | Electronic analysis of antitachycardia pacemaker system (includes electrocardiographic recording, programming of device, induction and termination of tachycardia via implanted pacemaker, and interpretation of recordings) | \$251.30 | \$44.32 | \$295.62 | N/A |
| 95811 | Polysomnography; sleep staging with 4 or more additional parameters of sleep, with initiation of continuous positive airway pressure therapy or bilevel ventilation, attended by a technologist | \$129.89 | \$517.67 | N/C | N/A |

NOTICES

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|---|---|--|---|--|
| 96151 | Health and behavior assessment (for example, health-focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaires), each 15 minutes face-to-face with the patient; re-assessment | N/A | N/A | \$19.94 | N/A |
| 96154 | Health and behavior intervention, each 15 minutes, face-to-face; family (with the patient present) | N/A | N/A | \$18.59 | N/A |
| 97598 | Debridement (for example, high pressure waterjet with/without suction, sharp selective debridement with scissors, scalpel and forceps), open wound, (for example, fibrin, devitalized epidermis and/or dermis, exudate, debris, biofilm), including topical application(s), wound assessment, use of a whirlpool, when performed and instruction(s) for ongoing care, per session, total wound(s) surface area; each additional 20 sq cm, or part thereof (List separately in addition to code for primary procedure) | N/A | N/A | \$11.56 | N/A |
| E0143 | Walker, folding, wheeled, adjustable or fixed height | N/A | N/A | N/A | N/C (NU) \$19.52 (RR) |
| E0158 | Leg extensions for walker, per set of 4 | N/A | N/A | N/A | \$29.09 (NU) |
| E0250 | Hospital bed, fixed height, with any type side rails, with mattress | N/A | N/A | N/A | N/C (NU) \$88.38 (RR) |
| E0251 | Hospital bed, fixed height, with any type side rails, without mattress | N/A | N/A | N/A | N/C (NU) \$66.97 (RR) |
| E0255 | Hospital bed, variable height, hi-lo, with any type side rails, with mattress | N/A | N/A | N/A | N/C (NU) \$103.40 (RR) |
| E0256 | Hospital bed, variable height, hi-lo, with any type side rails, without mattress | N/A | N/A | N/A | N/C (NU) \$70.60 (RR) |
| E0260 | Hospital bed, semi-electric (head and foot adjustment), with any type side rails, with mattress | N/A | N/A | N/A | N/C (NU) \$126.99 (RR) |
| E0261 | Hospital bed, semi-electric (head and foot adjustment), with any type side rails, without mattress | N/A | N/A | N/A | N/C (NU) \$116.31 (RR) |
| E0271 | Mattress, innerspring | N/A | N/A | N/A | N/C (NU) \$20.85 (RR) |
| E0272 | Mattress, foam rubber | N/A | N/A | N/A | N/C (NU) \$19.10 (RR) |
| E0280 | Bed cradle, any type | N/A | N/A | N/A | \$33.46 (NU) |

NOTICES

2777

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|--|---|--|---|--|
| E0290 | Hospital bed, fixed height, without side rails, with mattress | N/A | N/A | N/A | N/C (NU) \$67.57 (RR) |
| E0291 | Hospital bed, fixed height, without side rails, without mattress | N/A | N/A | N/A | N/C (NU) \$49.09 (RR) |
| E0292 | Hospital bed, variable height, hi-lo, without side rails, with mattress | N/A | N/A | N/A | N/C (NU) \$73.30 (RR) |
| E0293 | Hospital bed, variable height, hi-lo, without side rails, without mattress | N/A | N/A | N/A | N/C (NU) \$64.66 (RR) |
| E0296 | Hospital bed, total electric (head, foot, and height adjustments), without side rails, with mattress | N/A | N/A | N/A | N/C (NU) \$148.45 (RR) |
| E0297 | Hospital bed, total electric (head, foot, and height adjustments), without side rails, without mattress | N/A | N/A | N/A | N/C (NU) \$127.18 (RR) |
| E0431 | Portable gaseous oxygen system, rental; includes portable container, regulator, flowmeter, humidifier, cannula or mask, and tubing | N/A | N/A | N/A | \$28.74 (RR) |
| E0434 | Portable liquid oxygen system, rental; includes portable container, supply reservoir, humidifier, flowmeter, refill adaptor, contents gauge, cannula or mask, and tubing | N/A | N/A | N/A | \$28.74 (RR) |
| E0560 | Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery | N/A | N/A | N/A | \$18.17 (RR) |
| E0910 | Trapeze bars, also known as Patient Helper, attached to bed, with grab bar | N/A | N/A | N/A | N/C (NU) \$18.08 (RR) |
| E2209 | Accessory, arm trough, with or without hand support, each | N/A | N/A | N/A | \$96.88 (NU) \$9.71 (RR) |
| E2210 | Wheelchair accessory, bearings, any type, replacement only, each | N/A | N/A | N/A | \$5.92 (NU) |
| E2601 | General use wheelchair seat cushion, width less than 22 in, any depth | N/A | N/A | N/A | \$55.29 (NU) \$5.54 (RR) |
| E2602 | General use wheelchair seat cushion, width 22 in or greater, any depth | N/A | N/A | N/A | \$107.95 (NU) \$10.80 (RR) |
| E2603 | Skin protection wheelchair seat cushion, width less than 22 in, any depth | N/A | N/A | N/A | \$137.05 (NU) \$13.72 (RR) |
| E2604 | Skin protection wheelchair seat cushion, width 22 in or greater, any depth | N/A | N/A | N/A | \$170.34 (NU) \$17.02 (RR) |
| E2605 | Positioning wheelchair seat cushion, width less than 22 in, any depth | N/A | N/A | N/A | \$243.36 (NU) \$24.35 (RR) |

| <i>Procedure Code</i> | <i>Procedure Code Description</i> | <i>Professional Component Fee Revision (Billing with Modifier 26)</i> | <i>Technical Component Fee Revision (Billing with Modifier TC)</i> | <i>Billing with No Modifier or with Pricing Modifier SU</i> | <i>Billing with Pricing Modifiers NU or RR</i> |
|-----------------------|---|---|--|---|--|
| E2611 | General use wheelchair back cushion, width less than 22 in, any height, including any type mounting hardware | N/A | N/A | N/A | \$282.40 (NU) \$28.23 (RR) |
| E2612 | General use wheelchair back cushion, width 22 in or greater, any height, including any type mounting hardware | N/A | N/A | N/A | \$382.02 (NU) \$38.20 (RR) |
| Q0035 | Cardiokymography | \$8.10 | \$9.82 | \$17.92 | N/A |

Fiscal Impact

It is anticipated that these revisions will result in savings of \$0.135 million (\$0.065 million in State funds) in the MA Outpatient Program in Fiscal Year 2011-2012 and annualized savings of \$0.147 million (\$0.071 million in State funds) in Fiscal Year 2012-2013. These State fund estimates are based on the increased Federal Medical Assistance Percentages as determined under the American Recovery and Reinvestment Act of 2009.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revisions of the MA Program Fee Schedule.

Persons with a disability who require auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Acting Secretary

Fiscal Note: 14-NOT-694. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 11-910. Filed for public inspection May 27, 2011, 9:00 a.m.]

Pharmacy Prior Authorization; Duplicate Therapy

The Department of Public Welfare (Department) announces it will add duplicate therapy to the Medical Assistance (MA) Program's list of services and items requiring prior authorization.

Section 443.6(b)(7) of the Public Welfare Code (62 P. S. § 443.6(b)(7)) authorizes the Department to add items and services to the list of services requiring prior authorization by publication of notice in the *Pennsylvania Bulletin*.

The MA Program will require prior authorization of prescription for a medication when there is a record of a recent paid claim for another drug within the same therapeutic class of drugs in the Department's pharmacy claims processing system.

The Department will phase-in implementation of prior authorization of duplicate therapy and will issue MA Bulletins to providers enrolled in the MA Program specifying each class of drugs subject to a review for therapeutic duplication, the effective date of implementation and the procedures for obtaining prior authorization of prescriptions that are considered duplicate therapy. The first phase of implementation will be for drugs dispensed on or after June 6, 2011.

Fiscal Impact

It is anticipated that these changes will result in savings of \$9.292 million (\$4.162 million in State funds) in the MA Outpatient Program in Fiscal Year (FY) 2011-2012 and annualize savings of \$10.137 million (\$4.584 million in State funds) in FY 2012-2013.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revisions to these prior authorization requirements.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Acting Secretary

Fiscal Note: 14-NOT-688. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 11-911. Filed for public inspection May 27, 2011, 9:00 a.m.]

DEPARTMENT OF REVENUE

Mega Millions® Terminal-Based Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 875.4 (relating to notice of terminal-based lottery game rules), the Secretary of Rev-

enue hereby provides public notice of changes to the Mega Millions® terminal-based lottery game rules that were published at 40 Pa.B. 676 (January 30, 2010); and amended at 40 Pa.B. 5263 (September 11, 2011) and 40 Pa.B. 6846 (November 27, 2010).

This amendment further provides for the Megaplier® promotion by clarifying that the second category prize shall be \$1,000,000 with a Megaplier® wager and will be effective on the publication date of this Notice.

The correct version of this document is as follows, with ellipses referring to the existing text as it appeared at 40 Pa.B. 676—681, 40 Pa.B. 5263 and 5264 and 40 Pa.B. 6846 and 6847:

* * * * *

2. *Definitions:* The following words and terms, when used in this notice, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Megaplier® promotion—A Mega Millions® game feature by which a player, for an additional wager of \$1 per play, can increase the third through the ninth category set prize amounts or the third through the ninth category parimutuel set prize amounts, as applicable, by a factor of two, three or four times depending upon the multiplier number that is drawn prior to a Mega Millions® drawing. The second category prize shall be \$1,000,000 regardless of the Megaplier® number drawn. The Megaplier® does not apply to the jackpot category prize.

* * * * *

10. *Megaplier® promotion.*

(a) The Megaplier® promotion shall be available in association with the Mega Millions® game and will continue until the Secretary publicly announces a suspension or termination thereof. The Megaplier® promotion will be conducted in accordance with the Mega Millions® rules except that players may purchase the Megaplier® promotion for the chance to multiply or increase the third through the ninth category set prizes won as a result of a Mega Millions® drawing by a number ranging from 2 to 4. The Secretary on occasion may announce, as a special promotion, multipliers greater than four or a greater second category prize amount. The second category prize shall be \$1,000,000 unless a higher limited promotional dollar amount is announced by the Secretary. The Mega Millions® jackpot category prize will not be eligible for multiplication under the Megaplier® promotion.

* * * * *

(d) Mega Millions® tickets that contain the Megaplier® promotion and one or more plays eligible for Mega Millions® third through ninth category prizes, identified in section 7 (relating to prizes available to be won and determination of prize winners), shall be entitled to a total set prize calculated by multiplying each Mega Millions® third through ninth category prize by the Megaplier® number selected for the drawing in which the ticket was entered. Mega Millions® tickets that contain the Megaplier® promotion and one or more plays eligible for the Mega Millions® second category prize shall be entitled to prize of \$1,000,000 unless a higher limited promotional dollar amount is announced by the Secretary.

* * * * *

(g) When the Mega Millions® second through fifth category prizes become parimutuel, the third through the fifth category prizes won will be calculated by multiplying the parimutuel prize value by the Megaplier® number.

The second category prize amount may be reduced as announced by the MUSL Mega Millions® Product Group.

(h) If the total of the Mega Millions® set prizes, as determined in section 7(b) and the Megaplier® prizes, as determined in this section, awarded in a drawing exceeds the percentage of the sales allocated to the Mega Millions® set prizes and the Megaplier® prizes, then the amount needed to fund the Mega Millions® set prizes and the Megaplier® prizes awarded shall be drawn from the following sources, in the following order: (i) the amount allocated to the set prizes and carried forward from previous draws, if any; (ii) an amount from the reserve accounts not to exceed the lesser of 300% of draw sales or 50% of draw sales plus \$50 million. If, after these sources are depleted, there are not sufficient funds to pay the second through the ninth category prizes awarded, including the Megaplier® prizes, then the second through fifth category prize levels shall become a parimutuel prize, as set out in section 7(d). The funds dedicated to the payment of Mega Millions® set prizes and the Megaplier® prizes shall be combined in the rare instance when the set prizes are paid on a parimutuel basis, so that the Megaplier® will remain in effect for all prize levels. The second category prize may be reduced as announced by the Mega Millions Product Group.

* * * * *

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 11-912. Filed for public inspection May 27, 2011, 9:00 a.m.]

Pennsylvania Diamond Millionaire Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Diamond Millionaire.

2. *Price:* The price of a Pennsylvania Diamond Millionaire instant lottery game ticket is \$20.

3. *Play Symbols:* Each Pennsylvania Diamond Millionaire instant lottery game ticket will contain one play area featuring a “WINNING NUMBERS” area and a “YOUR NUMBERS” area. The play symbols and their captions located in the “WINNING NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWY TWO), 23 (TWY THR), 24 (TWY FOR), 25 (TWY FIV), 26 (TWY SIX), 27 (TWY SVN), 28 (TWY EGT), 29 (TWY NIN), 30 (THIRTY), 31 (THY ONE), 32 (THY TWO), 33 (THY THR), 34 (THY FOR), 35 (THY FIV), 36 (THY SIX), 37 (THY SVN), 38 (THY EGT), 39 (THY NIN) and 40 (FORTY). The play symbols and their captions located in the “YOUR NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16

(SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWY TWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN), 40 (FORTY), Cash (CASH) symbol, 10X (10X) symbol, Necklace (NECKLACE) symbol and a Millionaire (\$1MIL) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$25⁰⁰ (TWY FIV), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$5,000 (FIV THO), \$50,000 (FTY THO), \$100,000 (ONEHUNTHO) and \$1MILL (ONE MIL).

5. *Prizes:* The prizes that can be won in this game are: \$10, \$20, \$25, \$40, \$50, \$100, \$200, \$500, \$1,000, \$5,000, \$50,000, \$100,000 and \$1,000,000. A player can win up to 20 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 7,200,000 tickets will be printed for the Pennsylvania Diamond Millionaire instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1MILL (ONE MIL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000,000. This prize shall be paid as a lump-sum cash payment.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Millionaire (\$1MIL) symbol, on a single ticket, shall be entitled to a prize of \$1,000,000. This prize shall be paid as a lump-sum cash payment.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Necklace (NECKLACE) symbol, and a prize symbol of \$5,000 (FIV THO) appears in twenty of the "prize" areas, on a single ticket, shall be entitled to a prize of \$100,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$50,000 (FTY THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10X) symbol, and a prize symbol of \$5,000 (FIV THO) appears in the "prize" area under the 10X (10X) symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5,000 (FIV THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10X) symbol, and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under the 10X (10X) symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Necklace (NECKLACE) symbol, and a prize symbol of \$200 (TWO HUN) appears in ten of the "prize" areas, a prize symbol of \$500 (FIV HUN) appears in five of the "prize" areas and a prize symbol of \$100 (ONE HUN) appears in five of the "prize" areas, on a single ticket, shall be entitled to a prize of \$5,000.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Cash (CASH) symbol, and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10X) symbol, and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under the 10X (10X) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Necklace (NECKLACE) symbol, and a prize symbol of \$40⁰⁰ (FORTY) appears in ten of the "prize" areas, a prize symbol of \$50⁰⁰ (FIFTY) appears in eight of the "prize" areas and a prize symbol of \$100 (ONE HUN) appears in two of the "prize" areas, on a single ticket, shall be entitled to a prize of \$1,000.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Cash (CASH) symbol, and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$500.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10X) symbol, and a prize symbol of \$50⁰⁰ (FIFTY) appears in the "prize" area under the 10X (10X) symbol, on a single ticket, shall be entitled to a prize of \$500.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Necklace (NECKLACE) symbol, and a prize symbol of \$10⁰⁰ (TEN DOL) appears in ten of the "prize" areas and a prize symbol of \$40⁰⁰ (FORTY) appears in ten of the "Prize" areas, on a single ticket, shall be entitled to a prize of \$500.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10X) symbol, and a prize symbol of \$25⁰⁰ (TWY FIV) appears in the "prize" area under the 10X (10X) symbol, on a single ticket, shall be entitled to a prize of \$250.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$200 (TWO HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$200.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Cash (CASH) symbol, and a prize symbol of \$200 (TWO HUN) appears in the “prize” area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$200.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 10X (10X) symbol, and a prize symbol of \$20.00 (TWENTY) appears in the “prize” area under the 10X (10X) symbol, on a single ticket, shall be entitled to a prize of \$200.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Necklace (NECK-LACE) symbol, and a prize symbol of \$10.00 (TEN DOL) appears in twenty of the “prize” areas, on a single ticket, shall be entitled to a prize of \$200.

(w) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(x) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Cash (CASH) symbol, and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$100.

(y) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 10X (10X) symbol, and a prize symbol of \$10.00 (TEN DOL) appears in the “prize” area under the 10X (10X) symbol, on a single ticket, shall be entitled to a prize of \$100.

(z) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$50.00 (FIFTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(aa) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Cash (CASH) symbol, and a prize symbol of \$50.00 (FIFTY) appears in the “prize” area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$50.

(bb) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$40.00 (FORTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$40.

(cc) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Cash (CASH) symbol, and a prize symbol of \$40.00 (FORTY) appears in the “prize” area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$40.

(dd) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$25.00 (TWY FIV) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$25.

(ee) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Cash (CASH) symbol, and a prize symbol of \$25.00 (TWY FIV) appears in the “prize” area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$25.

(ff) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20.00 (TWENTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(gg) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Cash (CASH) symbol, and a prize symbol of \$20.00 (TWENTY) appears in the “prize” area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$20.

(hh) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10.00 (TEN DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(ii) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Cash (CASH) symbol, and a prize symbol of \$10.00 (TEN DOL) appears in the “prize” area under the Cash (CASH) symbol, on a single ticket, shall be entitled to a prize of \$10.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With Prize(s) Of:

\$10 × 2
 (\$10 w/CASH) × 2
 \$20 w/CASH
 \$20
 \$25 w/CASH
 \$25
 \$10 × 4

Win:
 \$20
 \$20
 \$20
 \$20
 \$25
 \$25
 \$40

Approximate Odds Are
1 In:
 30
 60
 60
 30
 30
 30
 75

Approximate No. Of Winners Per
 7,200,000
Tickets:
 240,000
 120,000
 120,000
 240,000
 240,000
 240,000
 96,000

When Any Of Your Numbers
Match Any Winning Number,
Win Prize Shown Under The
Matching Number. Win With
Prize(s) Of:

| Win: | Approximate Odds Are 1 In: | Approximate No. Of Winners Per 7,200,000 Tickets: | |
|---|----------------------------------|--|--------|
| \$20 × 2 | \$40 | 75 | 96,000 |
| (\$20 w/CASH) × 2 | \$40 | 75 | 96,000 |
| \$40 w/CASH | \$40 | 75 | 96,000 |
| \$40 | \$40 | 75 | 96,000 |
| \$10 × 5 | \$50 | 150 | 48,000 |
| \$25 × 2 | \$50 | 150 | 48,000 |
| (\$20 × 2) + \$10 | \$50 | 150 | 48,000 |
| \$50 w/CASH | \$50 | 150 | 48,000 |
| \$50 | \$50 | 150 | 48,000 |
| \$10 × 10 | \$100 | 150 | 48,000 |
| \$20 × 5 | \$100 | 300 | 24,000 |
| \$10 w/10X | \$100 | 300 | 24,000 |
| (\$50 w/CASH) × 2 | \$100 | 150 | 48,000 |
| \$100 | \$100 | 150 | 48,000 |
| NECKLACE w/(\$10 × 20) | \$200 | 800 | 9,000 |
| \$20 × 10 | \$200 | 1,500 | 4,800 |
| \$25 × 8 | \$200 | 1,500 | 4,800 |
| \$20 w/10X | \$200 | 960 | 7,500 |
| (\$40 w/CASH) × 5 | \$200 | 1,200 | 6,000 |
| \$100 × 2 | \$200 | 1,500 | 4,800 |
| \$200 w/CASH | \$200 | 960 | 7,500 |
| \$200 | \$200 | 1,500 | 4,800 |
| \$25 × 20 | \$500 | 4,800 | 1,500 |
| (\$25 × 10) + (\$50 × 5) | \$500 | 8,000 | 900 |
| \$50 × 10 | \$500 | 6,000 | 1,200 |
| [(\$100 w/CASH) × 2] + [(\$50 w/CASH) × 4] + [(\$20 w/CASH) × 5] | \$500 | 6,000 | 1,200 |
| \$100 × 5 | \$500 | 6,000 | 1,200 |
| NECKLACE w/(\$10 × 10) + (\$40 × 10) | \$500 | 3,429 | 2,100 |
| \$50 w/10X | \$500 | 4,800 | 1,500 |
| \$500 w/CASH | \$500 | 6,000 | 1,200 |
| \$500 | \$500 | 6,000 | 1,200 |
| \$50 × 20 | \$1,000 | 15,000 | 480 |
| (\$50 w/10X) × 2 | \$1,000 | 10,000 | 720 |
| (\$100 × 6) + (\$40 × 10) | \$1,000 | 20,000 | 360 |
| \$200 × 5 | \$1,000 | 15,000 | 480 |
| \$100 w/10X | \$1,000 | 12,000 | 600 |
| \$500 × 2 | \$1,000 | 15,000 | 480 |
| NECKLACE w/(\$40 × 10) + (\$50 × 8) + (\$100 × 2) | \$1,000 | 6,000 | 1,200 |
| \$1,000 w/CASH | \$1,000 | 12,000 | 600 |
| \$1,000 | \$1,000 | 15,000 | 480 |
| NECKLACE w/(\$200 × 10) + (\$500 × 5) + (\$100 × 5) | \$5,000 | 120,000 | 60 |
| (\$25 w/10X) × 20 | \$5,000 | 120,000 | 60 |
| \$1,000 × 5 | \$5,000 | 120,000 | 60 |
| \$500 w/10X | \$5,000 | 120,000 | 60 |
| \$5,000 | \$5,000 | 120,000 | 60 |
| \$50,000 | \$50,000 | 1,800,000 | 4 |
| \$5,000 w/10X | \$50,000 | 1,440,000 | 5 |
| NECKLACE w/(\$5,000 × 20) | \$100,000 | 2,400,000 | 3 |
| \$100,000 | \$100,000 | 2,400,000 | 3 |
| \$1,000,000 w/MILLIONAIRE | \$1,000,000 | 3,600,000 | 2 |
| \$1,000,000 | \$1,000,000 | 2,400,000 | 3 |

Get a "CASH" (CASH) symbol, win prize shown under it automatically.

Get a "10X" (10X) symbol, win 10 times the prize shown under it.

Get a "NECKLACE" (NECKLACE) symbol, win all 20 prizes shown.

Reveal a "MILLIONAIRE" (\$1MIL) symbol, win \$1 million automatically.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Diamond Millionaire instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Diamond Millionaire, prize money from winning Pennsylvania Diamond Millionaire instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Diamond Millionaire instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Diamond Millionaire or through normal communications methods.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 11-913. Filed for public inspection May 27, 2011, 9:00 a.m.]

Pennsylvania Gold Class Instant Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Gold Class.

2. *Price:* The price of a Pennsylvania Gold Class instant lottery game ticket is \$1.

3. *Play Symbols:* Each Pennsylvania Gold Class instant lottery game ticket will contain one play area. The play symbols and their captions, located in the play area are: Bell (BELL) symbol, Chest (CHEST) symbol, Clover (CLOVER) symbol, Coins (COINS) symbol, Diamond (DMND) symbol, Piggy Bank (PIGBNK) symbol, Pot of Gold (POT) symbol, Rainbow (RAINBW) symbol, Safe (SAFE) symbol, Horse Shoe (SHOE) symbol, Wallet (WALLET) symbol, Moneybag (MNYBAG) symbol and a Goldbar (GOLDBAR) symbol.

4. *Prize Symbols:* The prize symbols and their captions, located in the play area are: FREE (TICKET), \$1⁰⁰ (ONE DOL), \$2⁰⁰ (TWO DOL), \$3⁰⁰ (THR DOL), \$4⁰⁰ (FOR DOL), \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$500 (FIV HUN) and \$10,000 (TEN THO).

5. *Prizes:* The prizes that can be won in this game are: Free \$1 Ticket, \$1, \$2, \$3, \$4, \$5, \$10, \$20, \$50, \$100, \$500 and \$10,000. The player can win up to 5 times on the ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 10,560,000 tickets will be printed for the Pennsylvania Gold Class instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$10,000 (TEN THO) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(b) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$500 (FIV HUN) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$500.

(c) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$100 (ONE HUN) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$100.

(d) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$50⁰⁰ (FIFTY) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$50.

(e) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$20⁰⁰ (TWENTY) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$20.

(f) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$10.

(g) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$5.

(h) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$4⁰⁰ (FOR DOL) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$4.

(i) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$3⁰⁰ (THR DOL) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$3.

(j) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$2⁰⁰ (TWO DOL) appears in the “Prize” area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$2.

(k) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of \$1⁰⁰ (ONE DOL) appears in the “Prize” area under that Goldbar

(GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of \$1.

(1) Holders of tickets with a Goldbar (GOLDBAR) symbol in the play area, and a prize symbol of FREE (TICKET) appears in the "Prize" area under that Goldbar (GOLDBAR) symbol, on a single ticket, shall be entitled to a prize of one Pennsylvania Gold Class instant game

Reveal A "GOLDBAR"
(GOLDBAR) Symbol In The
Play Area, Win Prize Shown
Below It. Win With Prizes Of:

| | Win |
|-------------------------------|-----------------|
| FREE | FREE \$1 TICKET |
| \$1 × 2 | \$2 |
| \$2 | \$2 |
| \$1 × 3 | \$3 |
| \$1 + \$2 | \$3 |
| \$3 | \$3 |
| \$1 × 5 | \$5 |
| \$5 | \$5 |
| (\$1 × 2) + (\$4 × 2) | \$10 |
| \$2 × 5 | \$10 |
| \$5 × 2 | \$10 |
| (\$2 × 2) + (\$3 × 2) | \$10 |
| \$10 | \$10 |
| (\$5 × 3) + \$3 + \$2 | \$20 |
| \$10 × 2 | \$20 |
| (\$5 × 2) + \$10 | \$20 |
| \$20 | \$20 |
| \$10 × 5 | \$50 |
| \$20 + (\$10 × 2) + (\$5 × 2) | \$50 |
| (\$20 × 2) + \$10 | \$50 |
| \$50 | \$50 |
| \$20 × 5 | \$100 |
| \$50 × 2 | \$100 |
| \$100 | \$100 |
| \$100 × 5 | \$500 |
| \$500 | \$500 |
| \$10,000 | \$10,000 |

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Gold Class instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Gold Class, prize money from winning Pennsylvania Gold Class instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Gold Class instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets

ticket or one Pennsylvania Lottery instant game ticket of equivalent sale price which is currently on sale.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

| Approximate Odds Are 1 In: | Approximate No. Of Winners Per 10,560,000 Tickets |
|-------------------------------|--|
| 9.52 | 1,108,800 |
| 42.86 | 246,400 |
| 37.50 | 281,600 |
| 100 | 105,600 |
| 100 | 105,600 |
| 100 | 105,600 |
| 136.36 | 77,440 |
| 130.43 | 80,960 |
| 750 | 14,080 |
| 1,000 | 10,560 |
| 1,000 | 10,560 |
| 1,500 | 7,040 |
| 300 | 35,200 |
| 1,000 | 10,560 |
| 1,000 | 10,560 |
| 1,500 | 7,040 |
| 1,500 | 7,040 |
| 3,000 | 3,520 |
| 3,000 | 3,520 |
| 3,000 | 3,520 |
| 3,000 | 3,520 |
| 12,000 | 880 |
| 15,000 | 704 |
| 17,143 | 616 |
| 30,000 | 352 |
| 30,000 | 352 |
| 704,000 | 15 |

from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Gold Class or through normal communications methods.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 11-914. Filed for public inspection May 27, 2011, 9:00 a.m.]

Pennsylvania Mustang Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Mustang.

2. *Price:* The price of a Pennsylvania Mustang instant lottery game ticket is \$5.

3. *Play Symbols:* Each Pennsylvania Mustang instant lottery game ticket will contain one play area featuring a

“WINNING NUMBERS” area and a “YOUR NUMBERS” area. The play symbols and their captions located in the “WINNING NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWNIN) and 30 (THIRTY). The play symbols and their captions located in the “YOUR NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWNIN), 30 (THIRTY), Wheel (WHEEL) symbol and a Key (KEY) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the “YOUR NUMBERS” area are: \$2.⁰⁰ (TWO DOL), \$5.⁰⁰ (FIV DOL), \$10.⁰⁰ (TEN DOL), \$20.⁰⁰ (TWENTY), \$40.⁰⁰ (FORTY), \$50.⁰⁰ (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$400 (FOR HUN), \$1,000 (ONE THO), \$10,000 (TEN THO), \$100,000 (ONEHUNTHO) and MUSTANG (MUSTANG) symbol.

5. *Prizes:* The prizes that can be won in this game are: \$2, \$5, \$10, \$20, \$40, \$50, \$100, \$200, \$400, \$1,000, \$10,000, \$100,000 and a 2012 Ford Mustang GT prize package. A player can win up to 10 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 7,200,000 tickets will be printed for the Pennsylvania Mustang instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(b) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Key (KEY) symbol, on a single ticket, shall be entitled to a prize of a \$60,000 Mustang Prize Package. The Mustang Prize Package \$60,000 value is based on a base model 2012 Ford Mustang GT Convertible with 6 speed automatic transmission, \$6,000 winner selected options, registration, dealer fees, taxes and \$15,000 in federal withholding.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10,000 (TEN THO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(d) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$1,000 (ONE THO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$400 (FOR HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$400.

(f) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$400 (FOR HUN) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$400.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$200 (TWO HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$200.

(h) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$200 (TWO HUN) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$200.

(i) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(j) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$100 (ONE HUN) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$100.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$50.⁰⁰ (FIFTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$50.⁰⁰ (FIFTY) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$50.

(m) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$40.⁰⁰ (FORTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$40.

(n) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$40.⁰⁰ (FORTY) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$40.

(o) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20.⁰⁰ (TWENTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(p) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$20.⁰⁰ (TWENTY) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$20.

(q) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol

of \$10^{.00} (TEN DOL) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(r) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$10^{.00} (TEN DOL) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$10.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$5^{.00} (FIV DOL) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Wheel (WHEEL) symbol, and a prize symbol of \$5^{.00} (FIV DOL) appears under the Wheel (WHEEL) symbol, on a single ticket, shall be entitled to a prize of \$5.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$2^{.00} (TWO DOL) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$2.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

| <i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With Prize(s) Of:</i> | <i>Win:</i> | <i>Approximate Odds Are 1 In:</i> | <i>Approximate No. Of Winners Per 7,200,000 Tickets:</i> |
|--|-------------|-----------------------------------|--|
| \$5 | \$5 | 15 | 480,000 |
| \$5 w/WHEEL | \$5 | 20 | 360,000 |
| \$2 x 5 | \$10 | 120 | 60,000 |
| \$5 x 2 | \$10 | 120 | 60,000 |
| \$10 | \$10 | 40 | 180,000 |
| \$10 w/WHEEL | \$10 | 120 | 60,000 |
| \$5 x 4 | \$20 | 120 | 60,000 |
| \$20 | \$20 | 120 | 60,000 |
| \$20 w/WHEEL | \$20 | 60 | 120,000 |
| \$5 x 8 | \$40 | 600 | 12,000 |
| \$10 x 4 | \$40 | 600 | 12,000 |
| \$20 x 2 | \$40 | 600 | 12,000 |
| \$40 | \$40 | 600 | 12,000 |
| \$40 w/WHEEL | \$40 | 600 | 12,000 |
| \$5 x 10 | \$50 | 600 | 12,000 |
| \$10 x 5 | \$50 | 600 | 12,000 |
| \$50 | \$50 | 300 | 24,000 |
| \$50 w/WHEEL | \$50 | 600 | 12,000 |
| \$10 x 10 | \$100 | 1,000 | 7,200 |
| \$50 x 2 | \$100 | 1,000 | 7,200 |
| \$100 | \$100 | 1,000 | 7,200 |
| \$100 w/WHEEL | \$100 | 1,000 | 7,200 |
| \$20 x 10 | \$200 | 24,000 | 300 |
| \$100 x 2 | \$200 | 24,000 | 300 |
| \$200 | \$200 | 24,000 | 300 |
| \$200 w/WHEEL | \$200 | 24,000 | 300 |
| \$40 x 10 | \$400 | 40,000 | 180 |
| \$100 x 4 | \$400 | 40,000 | 180 |
| \$400 | \$400 | 40,000 | 180 |
| \$400 w/WHEEL | \$400 | 60,000 | 120 |
| \$100 x 10 | \$1,000 | 24,000 | 300 |
| (\$400 x 2) + (\$100 x 2) | \$1,000 | 24,000 | 300 |
| \$1,000 | \$1,000 | 24,000 | 300 |
| \$1,000 x 10 | \$10,000 | 240,000 | 30 |
| \$10,000 | \$10,000 | 240,000 | 30 |
| 2012 MUSTANG GT w/KEY | \$60,000 | 720,000 | 10 |
| \$100,000 | \$100,000 | 720,000 | 10 |

“WHEEL” (WHEEL) symbol = win prize shown under it automatically.
 “KEY” (KEY) symbol = win a 2012 Ford Mustang GT instantly!

MUSTANG = Mustang Prize Package \$60,000 value is based on a base model 2012 Ford Mustang GT Convertible with 6 speed automatic transmission, \$6,000 winner selected options, registration, dealer fees, taxes and \$15,000 in federal withholding.

Winners opting for the cash value of the Mustang Prize Package will receive \$45,000 in cash and a \$15,000 federal withholding credit.

Non-winning Pennsylvania Mustang instant lottery tickets may be entered in bonus promotional drawings via

the Lottery's website (<http://www.palottery.com>) for a chance to win bonus prizes as determined by the Secretary and announced on the Lottery's website. These prizes are not part of the Prize Structure and are provided to the Pennsylvania Lottery at no additional cost.

Entries submitted via the Lottery's website must be submitted from a computer within Pennsylvania.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Mustang instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Mustang, prize money from winning Pennsylvania Mustang instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Mustang instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Mustang or through normal communications methods.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 11-915. Filed for public inspection May 27, 2011, 9:00 a.m.]

Powerball

In accordance with 61 Pa. Code § 871.21 (relating to future changes to Powerball), the Secretary of Revenue (Secretary) announces the following changes to the Powerball regulations. This amendment further provides for the power play promotion by clarifying that the second category prize shall be \$1,000,000 with a power play wager.

These changes will affect ticket sales beginning on the publication date of this Notice. The changes to the regulation will be codified as paragraph (4) in 61 Pa. Code § 871.22 (relating to changes to Powerball):

* * * * *

(4) Changes effective for Powerball tickets sold on or after the publication date of this Notice:

(i) *Section 871.20(a) (relating to power play promotion).* The power play promotion shall be available in association with the Powerball game and will continue until the

Secretary publicly announces a suspension or termination thereof. The power play promotion will be conducted in accordance with the Powerball rules except that players may purchase the power play option for the chance to multiply or increase the third through the ninth category set prizes won as a result of a Powerball drawing by a number ranging from 2 to 5. The Powerball grand prize, the second category prize and the Match 5 Bonus prizes will not be eligible for multiplication under the power play promotion. The Secretary will on occasion announce, as a special promotion, multipliers greater than 5 or a greater second category prize amount. The second category prize shall be \$1,000,000 unless a higher promotional dollar amount is announced by the Secretary.

(ii) *Section 871.20(d).* Powerball tickets that contain the power play option and one or more plays eligible for Powerball third through ninth category prizes identified in § 871.8(a) (relating to expected prize payout percentages) shall be entitled to a total set prize calculated by multiplying each Powerball third through ninth category prize by the power play number. Powerball tickets that contain the power play option and one or more plays eligible for a Powerball second category prize shall be entitled to a prize of \$1,000,000 unless a higher limited promotional dollar amount is announced by the Secretary.

(iii) *Section 871.20(g).* If, with respect to a single Powerball drawing and associated power play drawing, the total of the Powerball set prizes without the power play option and the Powerball set prizes increased by the power play option exceeds the percentage of the prize pools allocated to the set prizes, the amount needed to fund those combined set prizes shall be drawn from the following sources in the following order:

(1) The amount allocated to the set prizes and carried forward from previous Powerball drawings and power play drawings, if any.

(2) An amount from the Powerball set prize reserve account, if available, not to exceed \$25,000,000 per drawing.

(iv) *Section 871.20(h).* If the sources set forth in subsection (g) are depleted and there still are not sufficient funds to pay the set prizes for a particular Powerball drawing and associated power play drawing, the highest set prize, including the prize increased by the power play option, shall become a parimutuel prize. If the amount of the highest set prize, when paid as a parimutuel prize, is less than or equal to the next highest set prize and there are still not sufficient funds to pay the remaining prizes, the next highest set prize, including the prize increased by the power play option, shall become a parimutuel prize. If necessary under the same test set forth in the preceding sentence, each succeeding set prize level shall be converted to a parimutuel prize, in order, until all set prizes become parimutuel. If all set prizes are converted to parimutuel prizes, the money available from the funding sources listed in subsection (g) shall be divided among the winning plays in proportion to their respective prize percentages.

(v) *Section 871.20(j).* Except as otherwise provided, all power play set prizes shall be paid in single, lump-sum payments. Power play prizes for the third through the ninth category prizes shall be determined by multiplying the Powerball set prize by the number selected in the power play drawing. The power play prize for the second category prize level shall be paid \$1,000,000. Power play prize levels shall be paid as follows:

| <i>Prize Level</i> | <i>Powerball Set Prize Amount</i> | | <i>Regardless of Power Play Number Selected:</i> | | | |
|--------------------|-----------------------------------|-------------|--|----------|----------|--|
| | | | | | | |
| Second Prize | \$200,000 | \$1,000,000 | | | | |
| | | 5X | 4X | 3X | 2X | |
| Third Prize | \$10,000 | \$50,000 | \$40,000 | \$30,000 | \$20,000 | |
| Fourth Prize | \$100 | \$500 | \$400 | \$300 | \$200 | |
| Fifth Prize | \$100 | \$500 | \$400 | \$300 | \$200 | |
| Sixth Prize | \$7 | \$35 | \$28 | \$21 | \$14 | |
| Seventh Prize | \$7 | \$35 | \$28 | \$21 | \$14 | |
| Eighth Prize | \$4 | \$20 | \$16 | \$12 | \$8 | |
| Ninth Prize | \$3 | \$15 | \$12 | \$9 | \$6 | |

(vi) *Section 871.20(k)*. When the Powerball set prizes become parimutuel, the Powerball set prize amounts will be less than the amount shown and the power play prizes for the third through the ninth category prizes shall be a multiple of the new Powerball set prize amount and the power play prize for the second category prize shall be reduced as announced by the MUSL Powerball Product Group.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 11-916. Filed for public inspection May 27, 2011, 9:00 a.m.]

Quinto Terminal-Based Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 875.4 (relating to notice of terminal-based lottery game rules), the Secretary of Revenue hereby provides public notice of changes to the Quinto terminal-based lottery game rules that were published at 38 Pa.B. 4166 (August 2, 2008).

The following changes to the Quinto terminal-based lottery game will be effective upon publication.

This amendment will permit special drawings to take place from time to time, thus allowing players additional chances to win a prize. While no dates are specified for special drawings the option is deemed necessary to further promote the game and to increase public awareness, and will be exercised as required.

The correct version of this document is as follows, with ellipses referring to the existing text as it appeared at 38 Pa.B. 4166—4169:

* * * * *

5. *Time, place and manner of conducting drawings.*

* * * * *

(d) Special drawings. The Secretary may designate and announce through available media special drawings to be held in addition to those previously scheduled. A ticket purchased for a drawing shall be valid for that drawing's associated special drawing held on the same date. Tickets eligible for a drawing's associated special drawing shall also be eligible for the prizes as provided in section 6 (relating to prizes available to be won and determination of prize winners). Money for the prizes to be paid to

winners of special drawings, under section 6, will be paid from funds authorized for the payment of prizes.

* * * * *

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 11-917. Filed for public inspection May 27, 2011, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

**Finding
Lehigh County**

Under section 2002(b) of The Administrative Code of 1929 (71 P.S. § 512(b)), the Director of the Bureau of Project Delivery as delegated by the Secretary of Transportation, makes the following written finding:

The Department of Transportation (Department) plans to remove the Centennial Bridge (SR 2030, Section 01B) which crosses a tributary of the Saucon Creek in Center Valley, Upper Saucon Township, Lehigh County.

In accordance with section 2002 of The Administrative Code of 1929 establishing the Department, a Level 2 Environmental Documentation has been prepared to obtain environmental clearance for the removal of the Centennial Bridge, which is available in the CE/EA Expert System.

Two Section 2002 resources are identified in the project area. Centennial Bridge, listed in the National Register of Historic Places (NRHP), and the Center Valley Historic District listed as eligible for the NRHP. Centennial Bridge is considered a contributing element to the district. In addition to the removal of the Centennial Bridge, this project includes construction of a cul-de-sac at the east side of the structure. The bridge has been closed to vehicular and pedestrian traffic since April 1992 when a routine bridge inspection revealed cracks in its supporting stone arches. A Level 2 Environmental Documentation (ED) has been prepared to obtain environmental clearance for the removal of the Centennial Bridge on Station Avenue (SR 2030). This ED takes into account all environmental features and the proposed engineering features incorporated into the proposed action.

BRIAN G. THOMPSON, P.E.,
*Director
Bureau of Project Delivery*

[Pa.B. Doc. No. 11-918. Filed for public inspection May 27, 2011, 9:00 a.m.]

Invitation to Submit Applications Under the Automated Red Light Enforcement Transportation Enhancement Grants Program

Under 67 Pa. Code Chapter 233 (relating to transportation enhancement grants from automated red light enforcement system revenues), the Department of Transportation (Department) is inviting city, county and municipal governments, and other local boards or bodies with authority to enact laws relating to traffic in this Commonwealth, to submit applications, in accordance with the parameters delineated in 67 Pa. Code Chapter 233. Applications will be accepted until July 31, 2011.

Applications can be obtained at <ftp://ftp.dot.state.pa.us/public/Bureaus/HighwaySafety/ARLE%20Grant%20Application.doc>.

Additional guidance information can be found on the Department's Traffic Signal Resource Portal located at http://www.dot.state.pa.us/Portal%20Information/Traffic%20Signal%20Portal/index_files/Automated_Red_Light_Enforcement.htm.

Completed applications should be submitted electronically to ARLE_Grants@state.pa.us and be followed by the submission of a hard copy. Any questions should be directed to Larry Shifflet, Director, Center for Program Development and Management, 400 North Street, 6th Floor, Harrisburg, PA 17120, (717) 787-2862, ARLE_Grants@state.pa.us.

BARRY J. SCHOCH, P.E.,
Secretary

[Pa.B. Doc. No. 11-919. Filed for public inspection May 27, 2011, 9:00 a.m.]

HOUSING FINANCE AGENCY

Homeowner's Emergency Mortgage Assistance Program; Unavailability of Funds

Under section 409-C of the Housing Finance Agency Law (35 P. S. § 1680.409c), (Act), the Executive Director of the Housing Finance Agency (Agency) has determined that as of July 1, 2011, the Agency will have insufficient money available in the Homeowner's Emergency Mortgage Assistance Program (Fund) to accept new applications for emergency mortgage assistance.

The Agency projects that the money available in the Fund will be insufficient to pay out on new applications that are expected to be received after June 30, 2011, and at the same time to continue making disbursements on behalf of mortgagors previously approved.

The Agency will continue to accept applications for mortgage assistance up to and including June 30, 2011. The applications will be considered on a first-come, first-served basis, based on availability of funds.

Effective July 31, 2011, mortgagees shall no longer be subject to the provisions of Article IV-C of the act (35 P. S. §§ 1680.401c—1680.412c), and mortgagees may, at any time on or after August 1, 2011, take legal action to enforce the mortgage without any further restriction or requirement of the article. Notwithstanding the previous information, however, mortgagees shall not take legal action against mortgagors who applied for mortgage

assistance on or before July 1, 2011, and whose application was approved by the Agency in a timely manner; while continuing mortgage assistance disbursements are being made on their behalf by the Agency; or during the time that their mortgage assistance loan is being prepared for closing by the Agency.

If funds become replenished in sufficient amount, by an appropriation or otherwise, to continue the Fund, a new notice will be published in accordance with the act announcing that fact and thereafter mortgagees and mortgages shall again be subject to the provisions of Article IV-C of the act. Additional information on funding availability may be available at www.phfa.org and all mortgagors and mortgagees are encouraged to visit the web site for updated status.

Nothing in this notice affects other Agency funding programs. Specifically, the Agency continues to have available funds in the Federal Emergency Homeowners' Loan Program (EHLP) for qualifying mortgagors. Additional information about the EHLP is available at www.phfa.org.

BRIAN A. HUDSON, Sr.,
Executive Director

[Pa.B. Doc. No. 11-920. Filed for public inspection May 27, 2011, 9:00 a.m.]

INSURANCE DEPARTMENT

Application for the Merger of Atlantic Employers Insurance Company with and into ACE American Insurance Company

An application has been received requesting approval of the merger of Atlantic Employers Insurance Company, a nonadmitted insurance company organized under the laws of the State of New Jersey, with and into ACE American Insurance Company, a stock casualty insurance company organized under the laws of the Commonwealth. The filing was made under Article XIV of The Insurance Company Law of 1921 (40 P. S. §§ 991.1401—991.1413); 15 Pa.C.S. §§ 1921—1932 (relating to merger, consolidation, share exchanges and sale of assets) and the GAA Amendments Act of 1990 (15 P. S. §§ 21101—21208).

Persons wishing to comment on the merger are invited to submit a written statement to the Insurance Department (Department) within 14 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, cbybee@state.pa.us.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 11-921. Filed for public inspection May 27, 2011, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insureds' automobile insurance policy. The hearing will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearing will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by an appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Morris G. and Mary Ann Strickland; file no. 11-188-102016; Erie Insurance Exchange; Doc. No. P11-05-007; June 29, 2011, 10 a.m.

Parties may appear with or without counsel and offer relevant testimony or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to

participate in the hearing should contact Donna R. Fleischauer, Human Resources Director, (717) 705-4194.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 11-922. Filed for public inspection May 27, 2011, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

Delaware County, Wine & Spirits Store # (TBD) (New Store), Middletown Township, PA

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 5,500 to 6,500 net useable square feet of new or existing retail commercial space within a 1.5-mile radius of the intersection of Route 1 and Oriole Avenue in the Middletown Township, PA area.

Proposals due: June 17, 2011, at 12 p.m.

Department: Liquor Control Board
Location: 7114 Ridge Avenue
Philadelphia, PA 19128-3250
Contact: James M. Bradley
(215) 482-9671

The following text replaces the lease expiration notice for Wine & Spirits Store #0909 published at 41 Pa.B. 2670 (May 21, 2011):

Bucks County, Wine & Spirits Store #0909 (Relocation), Newtown, PA

Lease expiration date: Entered 90-day status since July 1, 2009.

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 9,000 to 12,000 net useable square feet of new or existing retail commercial space within a 2.5-mile radius of the intersection of Routes 332 and 532, Buck Road, Newtown Township, Newtown, PA.

Proposals due: June 10, 2011, at 12 p.m.

Department: Liquor Control Board
Location: 7114 Ridge Avenue
Philadelphia, PA 19128-3250
Contact: James M. Bradley
(215) 482-9671

PATRICK J. STAPLETON, III,
Chairperson

[Pa.B. Doc. No. 11-923. Filed for public inspection May 27, 2011, 9:00 a.m.]

MILK MARKETING BOARD

Sunshine Meeting Calendar for Fiscal Year 2011-2012

| <i>Date</i> | <i>Room</i> | <i>Time</i> |
|------------------------------|--|-------------|
| Wednesday, July 6, 2011 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, August 3, 2011 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, September 7, 2011 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, October 5, 2011 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, November 9, 2011* | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, December 7, 2011 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, January 4, 2012 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, February 8, 2012* | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, March 7, 2012 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, April 4, 2012 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, May 2, 2012 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |
| Wednesday, June 6, 2012 | 202 Agriculture Building Harrisburg, PA 17110 | 1 p.m. |

* Not the first Wednesday of the month due to conflicts.

TIM MOYER,
Acting Secretary

[Pa.B. Doc. No. 11-924. Filed for public inspection May 27, 2011, 9:00 a.m.]

PENNSYLVANIA COUNCIL ON AGING

Meeting Change

The June 8, 2011, meeting of the Pennsylvania Council on Aging (Council) has been rescheduled for Wednesday, June 15, 2011, at 9 a.m. at the Crowne Plaza Hotel, 23 South Second Street, Harrisburg, PA.

Questions concerning this meeting can be directed to Anne Shriver at ashriver@state.pa.us or (717) 783-2233. Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Anne Shriver directly to discuss how the Council may accommodate their needs.

BRIAN M. DUKE,
Secretary

[Pa.B. Doc. No. 11-925. Filed for public inspection May 27, 2011, 9:00 a.m.]

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY

Request for Proposal

The Pennsylvania Higher Education Assistance Agency, located in Harrisburg, PA, is seeking public accounting firms to respond to a Request for Proposal to provide independent audit services and project-focused internal audit outsourcing. For more information, visit www.pheaa.org.

JAMES L. PRESTON,
President and Chief Executive Officer

[Pa.B. Doc. No. 11-926. Filed for public inspection May 27, 2011, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Telecommunications

A-2011-2241748. United Telephone Company of Pa, LLC, d/b/a CenturyLink and USA Mobility Wireless, Inc. Joint petition of United Telephone Company of Pa, LLC, d/b/a CenturyLink and USA Mobility Wireless, Inc. for approval of a paging agreement under section 252(e) of the Telecommunications Act of 1996.

United Telephone Company of Pa, LLC, d/b/a Century Link and USA Mobility Wireless, Inc., by its counsel, filed on May 16, 2011, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a paging agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the United Telephone Company of Pa, LLC, d/b/a Century Link and USA Mobility Wireless, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 11-927. Filed for public inspection May 27, 2011, 9:00 a.m.]

Telecommunications Services

A-2011-2242109. NTELOS of West Virginia, Inc., t/a NTELOS. Application of NTELOS of West Virginia, Inc., t/a NTELOS for approval to offer, render, furnish or supply telecommunications services to the public as a competitive local exchange carrier in the service territory of Windstream Pennsylvania, LLC.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before June 13, 2011. The documents

filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.state.pa.us, and at the applicant's business address.

Applicant: NTELOS of West Virginia, Inc., t/a NTELOS

Through and By Counsel: Mary McDermott, SR VP-Legal & Regulatory Affairs, NTELOS, Inc., 401 Spring Lane, Waynesboro, VA 22980

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 11-928. Filed for public inspection May 27, 2011, 9:00 a.m.]

Transfer of Control and Assets

A-2011-2241983 and A-2011-2241984. Value-Added Communications, Inc. and Global Tel*Link Corporation. Joint application of Value-Added Communications, Inc. and Global Tel*Link Corporation for approval to transfer control and assets of value-added communications to Global Tel*Link Corporation.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before June 13, 2011. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.state.pa.us, and at the applicant's business address.

Joint Applicants: Value-Added Communications, Inc., Global Tel*Link Corporation

Through and by Counsel: Lance J. M. Steinhart, Esquire, Lance J. M. Steinhart P.C., 1720 Windward Concourse, Suite 115, Alpharetta, GA 30005

John T. Nakahata, Esquire, Jonathan B. Mirsky, Esquire, Wiltshire & Grannis, LLP, 1200 Eighteenth Street, North West, Washington, DC 20036

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 11-929. Filed for public inspection May 27, 2011, 9:00 a.m.]

PROPOSED RULEMAKING

Title 225—RULES OF EVIDENCE

[225 PA. CODE ARTS. I—X]

Proposed Rescission of Rules of Evidence 101— 1008 and Comments and Promulgation of Re- styled Rules of Evidence 101—1008 and Com- ments

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania that the current Rules of Evidence be rescinded and replaced with restyled Rules of Evidence and Comments thereto, as more fully discussed in the accompanying Report. This proposal has not been submitted to the Supreme Court of Pennsylvania for review.

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

Daniel A. Durst, Chief Counsel
Supreme Court of Pennsylvania
Committee on Rules of Evidence
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635

Fax: (717) 231-9536

Email: evidencerules@pacourts.us

no later than August 1, 2011.

By the Committee on Rules of Evidence

BRIDGET E. MONTGOMERY, Esq.
Chair

(Editor's Note: The Committee on Rules of Evidence is proposing to replace the existing rules in 225 Pa. Code Articles I—X with the following restyled rules. The existing rules appear in 225 Pa. Code, serial pages (316995), (316996), (341549)—(341552), (245741)—(245743), (317753)—(317758), (338879)—(338882), (276577), (276578), (245755), (331677)—(331679), (276579), (276580), (330287), (330288), (276583)—(276586), (245767), (245768), (254215), (254216), (265699)—(265702), (254221), (303515), (303516), (299643)—(299645), (308921)—(308923), (276587)—(276589), (285605)—(285608), (245789), (245790), (280387), (280388), (285609), (285610), (265707), (265708), (308925)—(308929), (245801), (245802), (285611), (285612), (302931)—(302933), (245807), (245808) and (276591)—(276594).)

Annex A

TITLE 225. RULES OF EVIDENCE

| | |
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| Art. | |
| I. | GENERAL PROVISIONS |
| II. | JUDICIAL NOTICE |
| III. | PRESUMPTIONS |
| IV. | RELEVANCE AND ITS LIMITS |
| V. | PRIVILEGES |
| VI. | WITNESSES |
| VII. | OPINIONS AND EXPERT TESTIMONY |
| VIII. | HEARSAY |
| IX. | AUTHENTICATION AND IDENTIFICATION |
| X. | CONTENTS OF WRITINGS, RECORDINGS, AND PHOTO- GRAPHS |

Preface to Comments

The original Comments to the Pennsylvania Rules of Evidence were prepared by the Ad Hoc Committee on Evidence. The Comments accompanied the Pennsylvania Rules of Evidence that were adopted by the Pennsylvania Supreme Court on May 8, 1998. The Pennsylvania Rules of Evidence closely followed the format, language, and style of the Federal Rules of Evidence, but the guiding principle was to preserve the Pennsylvania law of evidence. The original Comments reflected this approach by identifying the Pennsylvania sources of the law. The original Comments also compared the Pennsylvania Rules to the Federal Rules for the convenience of the Bench and Bar.

The Federal Rules of Evidence were amended effective December 1, 2011. The goal of the Federal amendments was to make the rules more easily understood and to make the format and terminology more consistent, but to leave the substantive content unchanged. The Pennsylvania Rules of Evidence were rescinded and replaced on _____, and become effective on _____. They closely follow the format, language, and style of the amended Federal Rules of Evidence. The goal of the Pennsylvania Supreme Court's rescission and replacement of the Pennsylvania Rules of Evidence was likewise to make its rules more easily understood and to make the format and terminology more consistent, but to leave the substantive content unchanged. Once again, the guiding principle is to preserve the Pennsylvania law of evidence.

These Comments are prepared by the Pennsylvania Supreme Court's Committee on Rules of Evidence for the convenience of the Bench and Bar. The Comments have not been adopted by the Supreme Court and it is not intended that they have precedential significance.

ARTICLE I. GENERAL PROVISIONS

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| Rule | |
| 101. | Scope; Adoption and Citation. |
| 102. | Purpose. |
| 103. | Rulings on Evidence. |
| 104. | Preliminary Questions. |
| 105. | Limiting Evidence That is Not Admissible Against Other Parties or for Other Purposes. |
| 106. | Remainder of or Related Writings or Recorded Statements. |

Rule 101. Scope; Adoption and Citation.

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

(b) *Adoption and 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 (testimony by electronic means).

Decisional law is applicable to some evidentiary issues not covered by these rules. This would include for example, the *corpus delicti* rule, see *Commonwealth v. Fears*, 575 Pa. 281, 836 A.2d 52 (2003); the collateral source rule, see *Boudwin v. Yellow Cab Co.*, 410 Pa. 31, 188 A.2d 259 (1963); and the parol evidence rule, see *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 854 A.2d 425 (2004). 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 in the courts of the Commonwealth of Pennsylvania's unified judicial system. In some respects, these rules are applicable in administrative proceedings. See, e.g., *Gibson v. W.C.A.B.*, 580 Pa. 470, 861 A.2d 938 (2004) (evidentiary rules 602, 701 and 702 applicable in agency proceedings in general, including Workers' Compensation proceedings). These rules are also applicable in compulsory arbitration hearings, with specific exceptions relating to the admissibility of certain written evidence and official documents. See Pa.R.C.P. 1305.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised December 30, 2005, effective February 1, 2006; rescinded and replaced , 2011 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the December 30, 2005 revision of the Comment published with the Court's Order at 36 Pa.B. 384 (January 28, 2008).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 102. Purpose.

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Comment

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

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 103. Rulings on Evidence.

(a) *Preserving a Claim of Error.* A party may claim error in a ruling to admit or exclude evidence only:

(1) if the ruling admits evidence, a party, on the record:

(A) makes a timely objection, motion to strike, or motion *in limine*; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) *Not Needing to Renew an Objection or Offer of Proof.* Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) *Court's Statement About the Ruling; Directing an Offer of Proof.* The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) *Preventing the Jury from Hearing Inadmissible Evidence.* To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

Comment

Pa.R.E. 103(a) differs from F.R.E. 103(a). The Federal Rule says, "A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party. . . ." In Pennsylvania criminal cases, the accused is entitled to relief for an erroneous ruling unless the court finds 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) is consistent with Pennsylvania law.

Pa.R.E. 103(a)(1) specifically refers to motions *in limine*. These motions are not mentioned in the Federal rule. 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.

Pa.R.E. 103(b), (c) and (d) are identical to F.R.E. 103(b), (c) and (d).

F.R.E. 103(e) permits a court to "take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved." This paragraph has not been adopted because it is inconsistent with Pa.R.E. 103(a) and Pennsylvania law. See *Commonwealth v. Clair*, 458 Pa. 418, 326 A.2d 272 (1974); *Dilliaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001 amendments to paragraph (a) published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 104. Preliminary Questions.

(a) *In General.* The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) *Relevance That Depends on a Fact.* When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) *Conducting a Hearing So That the Jury Cannot Hear it.* The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves evidence alleged to have been obtained in violation of the defendant's rights;

(2) a defendant in a criminal case is a witness and so requests; or

(3) justice so requires.

(d) *Cross-Examining a Defendant in a Criminal Case.* By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

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

Comment

Pa.R.E. 104(a) is identical to F.R.E. 104(a).

The second sentence of Pa.R.E. 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 need 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. This approach is consistent with Pennsylvania law. See *Commonwealth v. Raab*, 594 Pa. 18, 934 A.2d 695 (2007).

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.

Pa.R.E. 104(b) is identical to F.R.E. 104(b).

Pa.R.E. 104(c)(1) differs from F.R.E. 104(c)(1) in that the Federal Rule says "the hearing involves the admissibility of a confession;" Pa.R.E. 104(c)(1) is consistent with Pa.R.Crim.P. 581(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.

Pa.R.E. 104(c)(2) and (3) are identical to F.R.E. 104(c)(2) and (3). Paragraph(c)(3) is consistent with *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998), a case involving child witnesses, in which the Supreme Court created a *per se* rule requiring competency hearings to be conducted outside the presence of the jury. In *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the Supreme Court held that a competency hearing is the appropriate way to explore an allegation that the memory of a child has been so corrupted or "tainted" by unduly suggestive or coercive interview techniques as to render the child incompetent to testify.

Pa.R.E. 104(d) is identical to F.R.E. 104(d). In general, when a party offers himself or herself 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 with regard to a preliminary question only, he or she may not be cross-examined as to other matters. This is consistent with Pa.R.E. 104(c)(2) in that it is designed to preserve the defendant's right not to testify in the case in chief.

Pa.R.E. 104(e) differs from F.R.E. 104(e) to clarify the meaning of this paragraph.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 105. Limiting Evidence That is Not Admissible Against Other Parties or for Other Purposes.

If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly. The court may also do so on its own initiative.

Comment

The first sentence of Pa.R.E. 105 is identical to F.R.E. 105. The second sentence was added to conform to Pennsylvania practice. There are other ways to deal with evidence that is admissible against one party but not another, or for one purpose but not another. For example, the evidence may be redacted. See *Commonwealth v. Johnson*, 474 Pa. 410, 378 A.2d 859 (1977). In some cases, severance may be appropriate. 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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 revision of the Comment deleting "as amended" from the second sentence published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

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

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Comment

This rule is identical to F.R.E. 106. 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 the offering party 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 a part of a writing or recorded statement that may be taken out of context. This rule gives the adverse party the opportunity 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 proffered part.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court’s Order at Pa.B. (, 2011).

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts.

Rule 201. Judicial Notice of Adjudicative Facts.

(a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) *Kinds of Facts That May Be Judicially Noticed.* The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court’s territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) *Taking Notice.* The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) *Timing.* The court may take judicial notice at any stage of the proceeding.

(e) *Opportunity to Be Heard.* On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) *Instructing the Jury.* The court must 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 (f).

Pa.R.E. 201(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 (6th ed. 2006).

In determining the law applicable to a matter, the judge is sometimes said to take judicial notice of law. 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. § 6107 (judicial notice of municipal ordinances); 42 Pa.C.S. § 5327 (judicial notice of laws of any jurisdiction outside the Commonwealth); 45 Pa.C.S. § 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.

Pa.R.E. 201(f) differs from F.R.E. 201(f). 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).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court’s Order at Pa.B. (, 2011).

ARTICLE III. PRESUMPTIONS

Rule 301. Presumptions.

Rule 301. Presumptions.

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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court’s Order at Pa.B. (, 2011).

ARTICLE IV. RELEVANCE AND ITS LIMITS

Rule 401. Test for Relevant Evidence.
 402. General Admissibility of Relevant Evidence.
 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.
 404. Character Evidence; Crimes or Other Acts.
 405. Methods of Proving Character.
 406. Habit; Routine Practice.
 407. Subsequent Remedial Measures.
 408. Compromise Offers and Negotiations.
 409. Offers to Pay Medical and Similar Expenses.
 410. Pleas, Plea Discussions, and Related Statements.

- 411. Liability Insurance.
- 412. Sex Offense Cases: The Victim's Sexual Behavior or Predisposition (Not Adopted).

Rule 401. Test for Relevant Evidence.

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Comment

This rule is identical to F.R.E. 401.

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 proposed evidence may be dependent on evidence not yet of record. Under Pa.R.E. 104(b), the court may admit the proposed evidence on the condition that the evidence supporting its relevance be introduced later.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 402. General Admissibility of Relevant Evidence.

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

Comment

Pa.R.E. 402 differs from F.R.E. 402. The Federal Rule specifically enumerates the various sources of federal rule-making power. Pa.R.E. 402 substitutes the phrase "by law".

Pa.R.E. 402 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—relevant evidence may be excluded by operation of constitutional law, by statute, by these rules, by other rules promulgated by the Supreme Court or by rules of evidence created by case law.

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, see *Boudwin v. Yellow Cab Co.*, 410 Pa. 31, 188 A.2d 259 (1963); the parol evidence rule, see *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 854 A.2d 425 (2004); and the rule excluding certain evidence to rebut the presumption of legitimacy, see *John M. v. Paula T.*, 524 Pa. 306, 571 A.2d 1380 (1990).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.

The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting 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).

"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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 404. Character Evidence; Crimes or Other Acts.

(a) *Character Evidence.*

(1) *Prohibited Uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for a Defendant or Victim in a Criminal Case.* The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) subject to limitations imposed by statute a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted the prosecutor may:

- (i) offer evidence to rebut it; and
- (ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) *Exceptions for a Witness.* Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(4) *Exception in a Civil Action for Assault and Battery.* In a civil action for assault and battery, evidence of the plaintiff's character trait for violence may be admitted when offered by the defendant to rebut evidence that the defendant was the first aggressor.

(b) *Crimes, Wrongs or Other Acts*

(1) *Prohibited Uses.* Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this

evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.

(3) *Notice in a Criminal Case.* In a criminal case the prosecutor must provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence the prosecutor intends to introduce at trial.

Comment

Pa.R.E. 404(a) differs from F.R.E. 404(a). There are two differences. First, F.R.E. 404(a)(2)(B) gives the defendant the right to introduce evidence of a pertinent trait of character of the alleged victim of the crime subject to the limitations in F.R.E. 412. The Pennsylvania Rule differs in that Pennsylvania has not adopted Rule 412. Instead, Pennsylvania recognizes statutory limitations on this right. In particular, 18 Pa. C.S. § 3104 (the Rape Shield Law) often prohibits the defendant from introducing evidence of the alleged victim's past sexual conduct, including reputation evidence. See Comment to Pa.R.E. 412 (Not Adopted), *infra*. Second, Pa.R.E. 404(a)(4), which applies only to a civil action for assault and battery, is not part of the federal rule. It is based on *Bell v. Philadelphia*, 341 Pa. Super. 534, 491 A.2d 1386 (1985).

Pa.R.E. 404(a)(1) prohibits the use of evidence of a person's character or trait of character to prove conduct in conformity therewith on a particular occasion. The rationale is that the relevance of such evidence is usually outweighed by its tendency to create unfair prejudice, particularly with a jury. This does not prohibit the introduction of evidence of a person's character, or trait of character, to prove something other than conduct in conformity therewith. For example, a party must sometimes prove a person's character or trait of character because it is an element of the party's claim or defense. See Pa.R.E. 405(b) and its Comment.

A person's trait of character is not the same as a person's habit. The distinction is discussed in the Comment to Rule 406, *infra*. If a person's trait of character leads to habitual behavior, evidence of the latter is admissible to prove conduct in conformity therewith on a particular occasion, pursuant to Rule 406.

Pa.R.E. 404(a)(2)(A) which deals with the character of a defendant in a criminal case, is identical to F.R.E. 404(a)(2)(A). It allows the defendant to "put his character in issue," usually by calling character witnesses to testify to his good reputation for a law-abiding disposition, or other pertinent trait of character. If the defendant does so, the Commonwealth may (1) cross-examine such witnesses, subject to the limitations imposed by Rule 405(a), and (2) offer rebuttal evidence.

If a defendant in a criminal case chooses to offer evidence of a pertinent trait of character of an alleged victim under subsection (a)(2)(B), then subsection (a)(2)(B)(ii) allows the Commonwealth to offer evidence that the defendant has the same trait of character. For example, in an assault and battery case, if the defendant introduces evidence that the alleged victim was a violent and belligerent person, the Commonwealth may counter by offering evidence that the defendant was also a violent and belligerent person. Thus, the jury will receive a balanced picture of the two participants to help it decide who was the first aggressor.

Pa.R.E. 404(b)(1) is identical to F.R.E. 404(b)(1). It prohibits the use of evidence of other crimes wrongs or acts to prove a person's character.

Pa.R.E. 404(b)(2), like F.R.E. 404(b)(2), contains a non-exhaustive list of purposes, other than proving character,

for which a person's other crimes wrongs or acts may be admissible. But it differs in several aspects. First, Pa.R.E. 404(b)(2) requires that the probative value of the evidence must outweigh its potential for prejudice. When weighing the potential for prejudice of evidence of other crimes, wrongs, or acts, the trial court may consider whether and how much such potential for prejudice can be reduced by cautionary instructions. See *Commonwealth v. LaCava*, 542 Pa. 160, 666 A.2d 221 (1995). When evidence is admitted for this purpose, the party against whom it is offered is entitled, upon request, to a limiting instruction. See *Commonwealth v. Hutchinson*, 571 Pa. 45, 811 A.2d 556 (2002). Second, the federal rule requires the defendant in a criminal case to make a request for notice of the prosecutor's intent to offer evidence of other crimes, wrongs or acts. This issue is covered in Pa.R.E. 404(b)(3) which is consistent with prior Pennsylvania practice in that the requirement that the prosecutor give notice is not dependent upon a request by the defendant.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised November 2, 2001; effective January 1, 2002; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001 revision of Subsection (a) of the Comment published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 405. Methods of Proving Character.

(a) *By Reputation.* When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation. Testimony about the witness's opinion as to the character or character trait of the person is not admissible.

(1) On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct probative of the character trait in question.

(2) In a criminal case, on cross-examination of a character witness, inquiry into allegations of other criminal conduct by the defendant, not resulting in conviction, is not permissible.

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

(1) In a civil case, when a person's character or a character trait is an essential element of a claim or defense, character may be proved by specific instances of conduct.

(2) In a criminal case, when character or a character trait of an alleged victim is admissible under Pa.R.E. 404(a)(2)(B) the defendant may prove the character or character trait by specific instances of conduct.

Comment

Pa.R.E. 405(a) differs from F.R.E. 405(a). The first sentence of Pa.R.E. 405(a) permits proof of character or a character trait by reputation testimony, as does F.R.E. 405(a). But the second sentence specifically prohibits opinion testimony about character or a trait of character. This prohibition is consistent with prior Pennsylvania law. See *Commonwealth v. Lopinson*, 427 Pa. 284, 234 A.2d 552 (1967), *vacated on other grounds*, 392 U.S. 647 (1968).

Pa.R.E. 405(a) also differs from F.R.E. 405(a) in that there are two subparagraphs, Pa.R.E. 405(a)(1) and Pa.R.E. 405(a)(2), dealing with cross-examination of a character witness. Pa.R.E. 405(a)(2) prohibits cross-examination of a criminal defendant's character witnesses regarding criminal conduct of the defendant not resulting in conviction. This is consistent with prior Pennsylvania law. *See Commonwealth v. Morgan*, 559 Pa. 248, 739 A.2d 1033 (1999). When 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).

Pa.R.E. 405(b) differs from F.R.E. 405(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.

With regard to civil cases, Pa.R.E. 405(b)(1) is similar 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 prior 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). With regard to criminal cases, under Pa.R.E. 404(a)(2)(B), the accused may offer evidence of a pertinent trait of character of the alleged crime victim. Under Pa.R.E. 405(b)(2) the trait may be proven by specific instances of conduct without regard to whether the trait is an essential element of the charge, or defense. This is consistent with prior Pennsylvania law. *See Commonwealth v. Dillon*, 528 Pa. 417, 598 A.2d 963 (1991).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended July 20, 2000; effective October 1, 2000; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the July 20, 2000 amendment of paragraph (a) concerning allegations of other criminal misconduct published with the Court's Order at 30 Pa.B. 3920 (August 5, 2000).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 406. Habit; Routine Practice.

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or there was an eyewitness.

Comment

This rule is identical to F.R.E. 406. 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 v. Matthews*, 378 Pa. 566, 570; 106 A.2d 809, 811 (1954) (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 propen-

sity 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).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 407. Subsequent Remedial Measures.

When measures are taken by a party that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible against that party to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

Comment

Pa.R.E. 407 differs from F.R.E. 407. The rule has been modified to clarify that the rule only protects the party that took the measures. Though F.R.E. 407 is silent on the point, the courts have generally held that the federal rule does not apply when one other than the alleged tortfeasor takes the action because the reason for the rule (to encourage remedial measures) is not then implicated. *See, e.g., TLT-Babcock, Inc. v. Emerson Electric Co.*, 33 F.3d 397, 400 (4th Cir. 1994) (collecting cases).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended June 12, 2003, effective July 1, 2003; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the June 12, 2003 amendments published with the Court's Order at 33 Pa.B. 2973 (June 28, 2003).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 408. Compromise Offers and Negotiations.

(a) *Prohibited Uses.* Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or a statement made during compromise negotiations about the claim.

(b) *Exceptions.* The court may admit this evidence for another purpose, such as proving a witness's bias or

prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Comment

Pa.R.E. 408(a) differs from F.R.E. 408(a) in that the federal rule in paragraph (a)(2) contains language that seems to permit the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotiations in civil cases. That language has not been adopted because the use of such statements might conflict with the policies underlying Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement).

This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

Pa.R.E. 408(b) is identical to F.R.E. 408(b).

Admissibility of conduct and statements in mediations pursuant to the Mediation Act of 1996, 42 Pa.C.S. § 5949, is governed by that statute.

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 10, 2000; effective July 1, 2000; Comment revised March 29, 2001, effective April 1, 2001; amended September 18, 2008, effective October 30, 2008; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 amendments concerning the inadmissibility of evidence of conduct or statements made in compromise negotiations published at 30 Pa.B. 1643 (March 25, 2000).

Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the September 18, 2008 amendments published with the Court's Order at 38 Pa.B. 5423 (October 4, 2008).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 409. Offers to Pay Medical and Similar Expenses.

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

Comment

This rule is identical to F.R.E. 409.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised December 30, 2005, effective February 1, 2006; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the December 30, 2005 revision of the Comment published with the Court's Order at 36 Pa.B. 384 (January 28, 2006).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 410. Pleas, Plea Discussions, and Related Statements.

(a) *Prohibited Uses.* In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a *nolo contendere* plea;

(3) a statement made in the course of any proceedings under Rules 311, 313, 409, 414, 424, 550 or 590 of the Pennsylvania Rules of Criminal Procedure, Rule 11 of the Federal Rules of Criminal Procedure, or a comparable rule or procedure of another state; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later withdrawn guilty plea.

(b) *Exceptions.* The court may admit a statement described in Rule 410(a)(3) or (4):

(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Comment

Pa.R.E. 410(a)(3) differs from F.R.E. 410(a)(3) in that it refers to the Pennsylvania proceedings to which the paragraph applies rather than the federal proceedings.

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 (Pa. 1986) (conviction based on *nolo*

contendere plea permitted to establish element of charge in administrative proceeding).

There is also a statute governing the admissibility of guilty pleas and pleas of *nolo contendere* in cases charging summary motor vehicle violations when offered in civil cases arising out of the same facts. See 42 Pa.C.S. § 6142 which provides:

(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 registration.

Pa.R.E. 410(b) is identical to F.R.E. 410(b).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; amended March 10, 2000, effective immediately; amended March 29, 2001, effective April 1, 2001; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions of the Comment published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 technical amendments updating the rule published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the March 29, 2001 amendments published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 411. Liability Insurance.

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

Comment

This rule is identical to F.R.E. 411.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 412. Sex Offense Cases: The Victim's Sexual Behavior or Predisposition (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. § 3104 provides:

§ 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).

Official Note: Comment adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

ARTICLE V. PRIVILEGES

- Rule 501. Privileges.
- 502. Attorney-Client Privilege and Work Product; Limitations on Waiver (Not Adopted).

Rule 501. Privileges.

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

Comment

Pa.R.E. 501 is similar to F.R.E. 501 in that this rule does not modify existing law.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver (Not Adopted).

ARTICLE VI. WITNESSES

- Rule 601. Competency.
- 602. Need for Personal Knowledge.
- 603. Oath or Affirmation to Testify Truthfully.
- 604. Interpreter.
- 605. Judge's Competency as a Witness.
- 606. Juror's Competency as a Witness.
- 607. Who May Impeach a Witness, Evidence to Impeach a Witness.
- 608. A Witness's Character for Truthfulness or Untruthfulness.
- 609. Impeachment by Evidence of a Criminal Conviction.
- 610. Religious Beliefs or Opinions.
- 611. Mode and Order of Examining Witnesses and Presenting Evidence.
- 612. Writing or Other Item Used to Refresh a Witness's Memory.
- 613. Witness's Prior Inconsistent Statement to Impeach; Witness's Prior Consistent Statement to Rehabilitate.

614. Court's Calling or Examining a Witness.
615. Sequestering 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(a). It is consistent, instead, with Pennsylvania statutory law. 42 Pa.C.S. §§ 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. § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S. § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S. §§ 5925, 5926, and 5927); 42 Pa.C.S. §§ 5930—5933 and 20 Pa.C.S. § 2209 (“Dead Man’s statutes”).

Pa.R.E. 601(b) has no counterpart in the Federal Rules. It is consistent with Pennsylvania law concerning the factors for determining competency of a person to testify, including persons with a mental defect and children of tender years. *See Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976) (standards for determining competency generally); *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).

Pennsylvania case law recognizes two other grounds for incompetency, a child’s “tainted” testimony, and hypnotically refreshed testimony. In *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the Supreme Court reiterated concern for the susceptibility of children to suggestion and fantasy and held that a child witness can be rendered incompetent to testify where unduly suggestive or coercive interview techniques corrupt or “taint” the child’s memory and ability to testify truthfully about that memory. *See also Commonwealth v. Judd*, 897 A.2d 1224 (Pa. Super. 2006).

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).

The application of the standards in Pa.R.E. 601(b) is a factual question to be resolved by the court as a preliminary question under Rule 104. The party challenging competency bears the burden of proving grounds of incompetency by clear and convincing evidence. *Commonwealth v. Delbridge*, 578 Pa. at 664, 855 A.2d at 40. In *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998), a case involving child witnesses, the Supreme Court announced a *per se* rule requiring trial courts to conduct competency hearings outside the presence of the jury. Expert testimony has been used when competency under these standards has been an issue. *See e.g.*, *Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976); *Commonwealth v. Gaerttner*, 335 Pa. Super. 203, 484 A.2d 92 (1984).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2007, effective December 14, 2007; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

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Rule 602. Need for Personal Knowledge.

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony under Rule 703.

Comment

This rule is identical to F.R.E. 602.

Personal or firsthand 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).

Generally speaking, the personal knowledge requirement of Rule 602 is applicable to the declarant of a hearsay statement. *See, e.g., Commonwealth v. Pronkoskie*, 477 Pa. 132, 383 A.2d 858 (1978) and *Carney v. Pennsylvania R.R. Co.*, 428 Pa. 489, 240 A.2d 71 (1968). However, personal knowledge is not required for an opposing party’s statement under Pa.R.E. 803(25). *See Salvitti v. Throppe*, 343 Pa. 642, 23 A.2d 445 (1942); *Carswell v. SEPTA*, 259 Pa. Super. 167, 393 A.2d 770 (1978). In addition, Pa.R.E. 804(b)(4) explicitly dispenses with the need for personal knowledge for statements of personal or family history, and Pa.R.E. 803(19), (20) and (21) impliedly do away with the personal knowledge requirement by permitting testimony as to reputation to prove personal or family history, boundaries or general history, and a person’s character.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 603. Oath or Affirmation to Testify Truthfully.

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

Comment

This rule is identical to F.R.E. 603.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 604. Interpreter.

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Comment

In 2006, legislation was enacted pertaining to the certification, appointment, and use of interpreters in judicial and administrative proceedings for persons having limited proficiency with the English language and persons who are deaf. See 42 Pa.C.S. §§ 4401—4438; 2 Pa.C.S. §§ 561—588. Pursuant to this legislation, the Administrative Office of the Pennsylvania Courts ("AOPC") has implemented an interpreter program for judicial proceedings. See 204 Pa. Code §§ 221.101—407. Information on the court interpreter program and a roster of court interpreters may be obtained from the AOPC web site at www.pacourts.us/t/aopc/courtinterpreterprog.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001; amended , 2011, effective , 2011; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 605. Judge's Competency as a Witness.

The presiding judge may not testify as a witness at the trial.

Comment

This rule is identical to the first sentence of F.R.E. 605.

The second sentence of F.R.E. 605 which provides, "A party need not object to preserve the issue," is not adopted. This is consistent with Pa.R.E. 103(a) which provides 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 permit the making of the objection out of the presence of the jury. See Pa.R.E. 103(d).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 606. Juror's Competency as a Witness.

(a) *At the Trial.* A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) *During an Inquiry into the Validity of a Verdict or Indictment*

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

(A) prejudicial information not of record and beyond common knowledge and experience was improperly brought to the jury's attention; or

(B) an outside influence was improperly brought to bear on any juror.

Comment

Pa.R.E. 606(a) is identical to F.R.E. 606(a). Note that this paragraph bars a juror from testifying "before the other jurors at the trial." That phrase indicates that a juror may testify outside the presence of the rest of the jury on matters occurring during the course of the trial. See, e.g., *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) differs from F.R.E. 606(b). First, the words, "extraneous prejudicial information" in F.R.E. 606(b)(2)(A) have been replaced by the phrase "prejudicial information 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.

Second, Pa.R.E. 606(b)(2) does not contain the third exception to juror incompetency that appears in F.R.E. 606(b)(2)(C)—permitting juror testimony about whether there was a mistake in entering the verdict onto the verdict form. Pennsylvania law deals with possible mistakes in the verdict form by permitting the polling of the jury prior to the recording of the verdict. If there is no concurrence, the jury is directed to retire for further deliberations. See Pa.R.Crim.P. 648(G); *City of Pittsburgh v. Dinardo*, 410 Pa. 376, 189 A.2d 886 (1963); *Barefoot v. Penn Central Transportation Co.*, 226 Pa. Super. 558, 323 A.2d 271 (1974).

Pa.R.E. 606(b) does not purport to set forth the substantive grounds for setting aside verdicts because of an irregularity.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised September 17, 2007, October 17, 2007; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the September 17, 2007 revision of the Comment published with the Court's Order at 37 Pa.B. 5247 (September 29, 2007).

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at _____ Pa.B. _____ (_____, 2011).

Rule 607. Who May Impeach a Witness, Evidence to Impeach a Witness.

(a) *Who May Impeach a Witness.* Any party, including the party that called the witness, may attack the witness's credibility.

(b) *Evidence to Impeach a Witness.* 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. It abolishes the common law rule that prohibited a party from impeaching a witness called by that party.

The Federal Rules have no provision similar to Pa.R.E. 607(b). Pa.R.E. 607(b) applies the test for relevant evidence of Pa.R.E. 401 to evidence offered to impeach the credibility of a witness. As is the case under Pa.R.E. 402, there are limits on the admissibility of evidence relevant to the credibility of a witness imposed by these rules. For example, Pa.R.E. 403 excludes relevant evidence if its probative value is outweighed by danger of unfair prejudice, etc., and there are specific limitations on impeachment imposed by Rules 608, 609 and 610. There are statutory limitations such as 18 Pa.C.S. § 3104 (Rape Shield Law).

Pa.R.E. 607(b), however, is not curtailed by 42 Pa.C.S. § 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.

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Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at _____ Pa.B. _____ (_____, 2011).

Rule 608. A Witness's Character for Truthfulness or Untruthfulness.

(a) *Reputation Evidence.* A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked. Opinion testimony about the witness's character for truthfulness or untruthfulness is not admissible.

(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's 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) differs from F.R.E. 608(a) in that the Federal Rule permits character for truthfulness or untruthfulness to be attacked or supported by testimony about the witness's reputation or by opinion testimony. Under Pa.R.E. 608(a), opinion testimony 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). Compare Pa.R.E. 405(a).

Pa.R.E. 608(b)(1) differs from F.R.E. 608(b). Pa.R.E. 608(b)(1) prohibits the use of evidence of specific instances of conduct to support or attack credibility. This is consistent with Pennsylvania law. See *Commonwealth v. Cragle*, 281 Pa. Super. 434, 422 A.2d 547 (1980). F.R.E. 608(b)(1) prohibits the use of extrinsic evidence for this purpose, but permits cross-examination of a witness about specific instances of conduct reflecting on the witness's credibility within the court's discretion. Both the Pennsylvania and the Federal Rule refer the issue of attacking a witness's credibility with evidence of prior convictions to Rule 609.

Pa.R.E. 608(b)(2) is similar to F.R.E. 608(b); it permits a witness who has testified to another witness's character for truthfulness to be cross-examined, about specific instances of conduct of the principal witness, in the discretion of the court. Pa.R.E. 608(b)(2) makes it clear that although the cross-examination concerns the specific acts of the principal witness, that evidence affects 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, Pa.R.E. 608(b)(2) 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 instances 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, 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, is not adopted.

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Committee Explanatory Reports:

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Rule 609. Impeachment by Evidence of a Criminal Conviction.

(a) *In General.* 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*, must be admitted if it involved dishonesty or false statement.

(b) *Limit on Using the Evidence After 10 Years.* This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) *Effect of Pardon or Other Equivalent Procedure.* 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. §§ 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 an Appeal.* A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Comment

Pa.R.E. 609(a) differs from F.R.E. 609(a). It is designed to be consistent with Pennsylvania case law. *See Commonwealth v. Randall*, 515 Pa. 410, 528 A.2d 1326 (1987); *Commonwealth v. Bigham*, 452 Pa. 554, 307 A.2d 255 (1973). In addition, 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 attack the credibility of a witness; this, too, is consistent with prior Pennsylvania case 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 attack the credibility of a witness 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. 310-320 may not be used to attack credibility. *See Commonwealth v. Krall*, 290 Pa. Super. 1, 434 A.2d 99 (1981).

42 Pa.C.S. § 5918 provides (with certain exceptions) that when a defendant in a criminal case has been called to testify in his or her own behalf he or she cannot be cross-examined about prior convictions. However, evi-

dence of a prior conviction or convictions of a crime or crimes admissible under paragraph (a) 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 F.R.E. 609(b)(1) 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 *Bigham*, *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 1001 (1991).

Pa.R.E. 609(c) differs from F.R.E. 609(c) because the Federal Rule includes procedures that are not provided by Pennsylvania law.

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. § 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. § 6354(b)(1), (2), and (3).

Pa.R.E. 609(e) is identical to F.R.E. 609(e).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 610. Religious Beliefs or Opinions.

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Comment

This rule is identical to F.R.E. 610. It is consistent with 42 Pa.C.S. § 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."

Pa.R.E. 610 bars evidence of a witness's religious beliefs or opinions only when offered to show that the beliefs or opinions affect the witness's truthfulness.

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*, 374 Pa. Super. 243, 542 A.2d 1004 (1988).

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Committee Explanatory Reports:

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Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence.

(a) *Control by the Court; Purposes.* The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting 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 direct or redirect examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Comment

Pa.R.E. 611(a) is identical to F.R.E. 611(a).

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. 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 limited to a narrow topic, there is some authority that the scope of cross-examination may be limited as well. See *Commonwealth v. Camm*, 443 Pa. 253, 277 A.2d 325 (1971); *Commonwealth v. Ulen*, 414 Pa. Super. 502, 607 A.2d 779 (1992), *rev'd on other grounds*, 539 Pa. 51, 650 A.2d 416 (1994).

Pa.R.E. 611(c) differs from F.R.E. 611(c) in that the word "redirect" has been added to the first sentence. This is consistent with Pennsylvania law. See *Commonwealth v. Reidenbaugh*, 282 Pa. Super. 300, 422 A.2d 1126 (1980).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

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Rule 612. Writing or Other Item Used to Refresh a Witness's Memory.

(a) *Right to Refresh Memory.* A witness may use a writing or other item to refresh memory for the purpose of testifying while testifying, or before testifying.

(b) *Rights of Adverse Party.*

(1) If a witness uses a writing or other item to refresh memory while testifying, an adverse party is entitled to have it produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.

(2) If a witness uses a writing or other item to refresh memory before testifying, and the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have it produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.

(c) *Rights of Producing Party.* If the producing party claims that the writing or other item includes unrelated matter, the court must examine it in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(d) *Failure to Produce or Deliver.* If the writing or other item is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or-if justice so requires-declare a mistrial, or the court may use contempt procedures.

Comment

Pa.R.E. 612 differs from F.R.E. in several ways:

Pa.R.E. 612 applies to writings and other items. This would include such things as photographs, videos, and recordings. F.R.E. 612 applies only to writings. The Pennsylvania rule is consistent with prior law. *See Commonwealth v. Proctor*, 253 Pa. Super. 369, 385 A.2d 383 (1978).

Pa.R.E. 612(a) states that a witness or a party has a right to refresh recollection. This is not expressly provided by F.R.E. 612.

Pa.R.E. 612(b) reorganizes the material that appears in F.R.E. 612(a) and the first sentence of F.R.E. 612(b) for clarity, includes the word “deposition” to clarify that the rule is applicable both at hearings and depositions, and deletes reference to 18 U.S.C. § 3500.

Paragraph (c) differs from the second sentence of F.R.E. 612(b) in that it refers to other items as well as writings.

Paragraph (d) differs from F.R.E. 612(c) in that it adds the phrase “or the court may use contempt procedures”.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical amendments to paragraph (a) published with the Court’s Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the , 2011 rescission and replacement published with the Court’s Order at Pa.B. (, 2011).

Rule 613. Witness’s Prior Inconsistent Statement to Impeach; Witness’s Prior Consistent Statement to Rehabilitate.

(a) *Witness’s Prior Inconsistent Statement to Impeach.* A witness may be examined concerning a prior inconsistent statement made by the witness to impeach the witness’s credibility. The statement need not be shown or its contents disclosed to the witness at that time, but on request the statement or contents must be shown or disclosed to an adverse party’s attorney.

(b) *Extrinsic Evidence of a Witness’s Prior Inconsistent Statement.* Unless the interests of justice otherwise require, extrinsic evidence of a witness’s prior inconsistent statement 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) an adverse party is given an opportunity to question the witness.

This paragraph does not apply to an opposing party’s statement as defined in Rule 803(25).

(c) *Witness’s Prior Consistent Statement to Rehabilitate.* Evidence of a witness’s prior consistent statement is admissible to rehabilitate the witness’s credibility 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’s denial or explanation.

Comment

Pa.R.E. 613 differs from F.R.E. 613 to clarify its meaning and to conform to Pennsylvania law.

Pa.R.E. 613(a) and (b) are similar to F.R.E. 613(a) and (b), but the headings and the substance make it clear that the paragraphs are dealing with the use of an inconsistent statement to impeach. The disclosure requirement in paragraph (a) is intended to deter sham allegations of the existence of an inconsistent statement.

Pa.R.E. 613(b) differs from F.R.E. 613(b) in that extrinsic evidence of a prior inconsistent statement is not admissible unless the statement is shown or disclosed to the witness during the witness’s examination. Paragraph (b) is intended to give the witness and the party a fair opportunity to explain or deny the allegation.

F.R.E. 613 does not contain a paragraph (c); it does not deal with rehabilitation of a witness with a prior consistent statement. Pa.R.E. 613(c) gives a party an opportunity to rehabilitate the witness with a prior consistent statement where there has been an attempt to impeach the witness. In most cases, a witness’s prior statement is hearsay, but F.R.E. 801(d)(1)(B) treats some prior consistent statements offered to rebut impeachment as not hearsay. Pa.R.E. 613(c) is consistent with Pennsylvania law in that the prior consistent statement is admissible, but only to rehabilitate the witness. *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) (to offset implication of improper influence).

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’s testimony should be admissible to rehabilitate the witness if it supports the witness’s denial or explanation of the alleged inconsistent statement.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately; amended March 10, 2000, effective July 1, 2000; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical amendments to paragraph (b)(3) published with the Court’s Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 amendments adding “inconsistent” to section (a) published with the Court’s Order at 30 Pa.B. 1645 (March 25, 2000).

Final Report explaining the , 2011 rescission and replacement published with the Court’s Order at Pa.B. (, 2011).

Rule 614. Court’s Calling or Examining a Witness.

(a) *Calling.* Consistent with its function as an impartial arbiter, the court, with notice to the parties, may call

a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) *Examining.* Where the interest of justice so requires, the court may examine a witness regardless of who calls the witness.

(c) *Objections.* A party may object to the court's calling or examining a witness when given notice that the witness will be called or when the witness is examined. When requested to do so, the court must 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" has been added to Pa.R.E. 614(a), and the clause regarding "interest of justice" has been added in Pa.R.E. 614(b). These additions 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. Myma*, 278 Pa. 505, 123 A. 486 (1924).

Pa.R.E. 614(a) also differs from F.R.E. 614(a) in that the Pennsylvania Rule requires the court to give notice of its intent to call a witness.

Pa.R.E. 614(c), unlike F.R.E. 614(c), does not permit an objection to the court's calling or questioning a witness "at the next available opportunity when the jury is not present." Pa.R.E. 614(c) is consistent with Pa.R.E. 103(a)(1)(A), which requires a "timely objection." The requirement that the objecting party be given an opportunity make its objection out of the presence of the jury is consistent with Pa.R.E. 103(d).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

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Rule 615. Sequestering Witnesses.

At a party's request the court may order witnesses sequestered so that they cannot learn of other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize sequestering:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person (including the Commonwealth) after being designated as the party's representative by its attorney;
- (c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or
- (d) a person authorized by statute or rule to be present.

Comment

Pa.R.E. 615 differs from F.R.E. 615 in that the word "sequestering" is used instead of the word "excluding", and the rule is discretionary not mandatory. Both of these are consistent with prior Pennsylvania law. See *Commonwealth v. Albrecht*, 510 Pa. 603, 511 A.2d 764 (1986). Pa.R.E. 615 uses the term "learn of" rather than the word "hear." This indicates that the court's order may prohibit witnesses from using other means of learning of the testimony of other witnesses.

Pa.R.E. 615(b) adds the parenthetical (including the Commonwealth).

Pa.R.E 615(d) differs from the Federal Rule in that it adds the words "or rule." This includes persons such as the guardian of a minor, see Pa.R.C.P. 2027, and the guardian of an incapacitated person, see Pa.R.C.P. 2053.

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).

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Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

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| Rule | |
| 701. | Opinion Testimony by Lay Witnesses. |
| 702. | Testimony by Expert Witnesses. |
| 703. | Bases of an Expert's Opinion Testimony. |
| 704. | Opinion on an Ultimate Issue. |
| 705. | Disclosing the Facts or Data Underlying an Expert's Opinion. |
| 706. | Court-Appointed Expert Witnesses. |

Rule 701. Opinion Testimony by Lay Witnesses.

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Comment

This rule is identical to F.R.E. 701.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 2, 2002; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001, amendments published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 702. Testimony by Expert Witnesses.

A witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical or other specialized knowledge has gained general acceptance in its field;
- (b) the subject of the expert's testimony is beyond the competence of a layperson; and
- (c) the expert's testimony will help the trier of fact to understand the evidence or to determine a fact in issue.

Comment

Pa.R.E. 702 differs from F.R.E. 702. Pa.R.E. 702(a) applies the “general acceptance” test for the admissibility of scientific, technical, or other specialized knowledge. This test is consistent with Pennsylvania law. *See Grady v. Frito-Lay, Inc.*, 576 Pa. 546, 839 A.2d 1038 (2003). This rule rejects the federal test derived from *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

Pa.R.E. 702(b) is consistent with Pennsylvania law. *See Commonwealth v. Dunkle*, 529 Pa. 168, 602 A.2d 830 (1992).

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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised April 1, 2004, effective May 10, 2004; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

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Rule 703. Bases of an Expert’s Opinion Testimony.

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

Comment

This rule is identical to the first two sentences of F.R.E. 703. It does not include the third sentence of the Federal Rule that provides that the facts and data that are the bases for the expert’s opinion are not admissible unless their probative value substantially outweighs their prejudicial effect. This is inconsistent with Pennsylvania law which requires that facts and data that are the bases for the expert’s opinion must be disclosed to the trier of fact. *See Pa.R.E. 705.*

Pa.R.E. 703 requires that the facts or data upon which an expert witness bases an opinion be “of a type reasonably relied upon by experts in the particular field. . . .” Whether the facts or data satisfy this requirement is a preliminary question to be determined by the trial court under Pa.R.E. 104(a). If an expert witness relies on novel scientific evidence, Pa.R.C.P. 207.1 sets forth the procedure for objecting, by pretrial motion, on the ground that the testimony is inadmissible under Pa.R.E. 702, or Pa.R.E. 703, or both.

When an expert testifies about the underlying facts and data that support the expert’s opinion and the evidence would be otherwise inadmissible, the trial judge upon request must, or on the judge’s own initiative may, instruct the jury to consider the facts and data only to explain the basis for the expert’s opinion, and not as substantive evidence.

An expert witness cannot be a mere conduit for the opinion of another. An expert witness may not relate the opinion of a non-testifying expert unless the witness has reasonably relied upon it in forming the witness’s own opinion. *See, e.g., Foster v. McKeesport Hospital*, 260 Pa. Super. 485, 394 A.2d 1031 (1978); *Allen v. Kaplan*, 439 Pa. Super. 263, 653 A.2d 1249 (1995).

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Rule 704. Opinion on an Ultimate Issue.

An opinion is not objectionable just because it embraces an ultimate issue.

Comment

Pa.R.E. 704 is identical to F.R.E. 704(a).

F.R.E. 704(b) is not adopted. The Federal Rule prohibits an expert witness in a criminal case from stating an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or a defense. This is inconsistent with Pennsylvania law. *See Commonwealth v. Walzack*, 468 Pa. 210, 360 A.2d 914 (1976).

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Rule 705. Disclosing the Facts or Data Underlying an Expert’s Opinion.

If an expert states an opinion the expert must state the facts or data on which the opinion 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 the 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. *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); *Hussey v. May Department Stores, Inc.*, 238 Pa. Super. 431, 357 A.2d 635 (1976).

When an expert testifies about the underlying facts and data that support the expert's opinion and the evidence would be otherwise inadmissible, the trial judge upon request must, or on the judge's own initiative may, instruct the jury to consider the facts and data only to explain the basis for the expert's opinion, and not as substantive evidence.

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Rule 706. Court-Appointed Expert Witnesses.

Where the court has appointed an expert witness, the witness appointed must advise the parties of the witness's 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 any party, including a party calling the witness. In civil cases, the witness's 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.

In *Commonwealth v. Correa*, 437 Pa. Super. 1, 648 A.2d 1199 (1994), abrogated on other grounds by *Commonwealth v. Weston*, 561 Pa. 199, 749 A.2d 458 (2000), the Superior Court held that the trial court had inherent power to appoint an expert. 23 Pa.C.S. § 5104 provides for the appointment of experts to conduct blood tests in paternity proceedings.

See also Pa.R.E. 614 (Court's Calling or Examining a Witness).

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ARTICLE VIII. HEARSAY

- Rule
801. Definitions That Apply to This Article.
802. The Rule Against Hearsay.
803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness.
- 803(2). Excited Utterance.
803(3). Then-Existing Mental, Emotional, or Physical Condition.
803(4). Statement Made for Medical Diagnosis or Treatment.
803(5). Recorded Recollection (Not Adopted).
803(6). Records of a Regularly Conducted Activity.
803(7). Absence of a Record of a Regularly Conducted Activity (Not Adopted).
803(8). Public Records (Not Adopted).
803(9). Public Records of Vital Statistics (Not Adopted).
803(10). Absence of a Public Record (Not Adopted).
803(11). Records of Religious Organizations Concerning Personal or Family History.
803(12). Certificates of Marriage, Baptism, and Similar Ceremonies.
803(13). Family Records.
803(14). Records of Documents That Affect an Interest in Property.
803(15). Statements in Documents That Affect an Interest in Property.
803(16). Statements in Ancient Documents.
803(17). Market Reports and Similar Commercial Publications.
803(18). Statements in Learned Treatises, Periodicals, or Pamphlets (Not Adopted).
803(19). Reputation Concerning Personal or Family History.
803(20). Reputation Concerning Boundaries or General History.
803(21). Reputation Concerning Character.
803(22). Judgment of a Previous Conviction (Not Adopted).
803(23). Judgments Involving Personal, Family, or General History or a Boundary (Not Adopted).
803(24). Other Exceptions (Not Adopted).
803(25). An Opposing Party's Statement.
- 803.1. Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary.
803.1(2). Prior Statement of Identification.
803.1(3). Recorded Recollection.
804. Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness.
804(b). The Exceptions.
804(b)(2). Statement Under Belief of Imminent Death.
804(b)(3). Statement Against Interest.
804(b)(4). Statement of Personal or Family History.
804(b)(5). Other exceptions (Not Adopted).
804(b)(6). Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.
805. Hearsay Within Hearsay.
806. Attacking and Supporting the Declarant's Credibility.
807. Residual Exception (Not Adopted).

Rule 801. Definitions That Apply to This Article.

(a) *Statement*. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) *Declarant*. "Declarant" means the person who made the statement.

(c) *Hearsay*. "Hearsay" means a statement that

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Comment

Pa.R.E. 801(a), (b) and (c) are identical to F.R.E. 801(a), (b) and (c). The matters set out in F.R.E. 801(d)(1) (A Declarant-Witness's Prior Statement) are covered in Pa.R.E. 803.1(1) and (2) and Pa.R.E. 613(c). The matters set out in F.R.E. 801(d)(2) (An Opposing Party's Statement) are covered in Pa.R.E. 803(25).

Communications that are not assertions are not hearsay. These would include questions, greetings, expressions of gratitude, exclamations, offers, instructions, warnings, etc.

Pa.R.E. 801(c), which defines hearsay, is consistent with Pennsylvania law, although the Pennsylvania cases have usually defined hearsay as an "out-of-court statement offered to prove the truth of the matter asserted" instead

of the definition used Pa.R.E. 801(c). *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 is hearsay only if it is offered to prove the truth of the matter asserted in the statement. There are many situations in which evidence of a statement is offered for a purpose other than to prove the truth of the matter asserted.

Sometimes a statement has direct legal significance, whether or not it is true. For example, one or more 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, a 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 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 a statement, particularly if it is proven untrue by other evidence, may imply the existence of a conspiracy, or fraud. Evidence of a statement made by a witness, if inconsistent with the witness's testimony, may imply that the witness is an unreliable historian. Conversely, evidence of a statement made by a witness that is consistent with the witness's testimony may imply the opposite. *See* Pa.R.E. 613(c).

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Rule 802. The Rule Against Hearsay.

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 differs from F.R.E. 802 in that it refers to other rules prescribed by the Pennsylvania Supreme Court, and to statutes in general, rather than federal statutes.

Often, hearsay will be admissible under an exception provided by these rules. The organization of the Pennsylvania Rules of Evidence generally follows the organization of the Federal Rules of Evidence, but the Pennsylvania Rules' organization of the exceptions to the hearsay rule is somewhat different than the federal organization. There are three rules which contain the exceptions: Pa.R.E. 803 Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant is Available as a Witness, Pa.R.E. 803.1 Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary, and Pa.R.E. 804 Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness.

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 video deposition of an expert witness may be admitted pursuant to Pa.R.C.P. 4017.1(g). In preliminary hearings in criminal cases, the court may consider hearsay evidence pursuant to Pa.R.Crim.P. 542(E) and 1003(E).

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. § 6104. *See* Comment to Pa.R.E. 803(8) (Not Adopted).

2. A record of vital statistics may be admitted pursuant to 35 P. S. § 450.810. *See* Comment to Pa.R.E. 803(9) (Not Adopted).

3. In a civil case, a deposition of a licensed physician may be admitted pursuant to 42 Pa.C.S. § 5936.

4. In a criminal case, a deposition of a witness may be admitted pursuant to 42 Pa.C.S. § 5919.

5. In a criminal or civil case, an out-of-court statement of a witness 12 years of age or younger, describing certain kinds of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5985.1.

6. In a dependency hearing, an out-of-court statement of a witness under 16 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5986.

7. 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. § 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).

Hearsay Exceptions and the Right of Confrontation of a Defendant in a Criminal Case

The exceptions to the hearsay rule in Rules 803, 803.1, and 804 and the exceptions provided by other rules or by statute are applicable both in civil and criminal cases. In a criminal case, however, hearsay that is offered against a defendant under an exception from the hearsay rule provided by these rules or by another rule or statute may sometimes be excluded because its admission would violate the defendant's right "to be confronted with the witnesses against him" under the Sixth Amendment of the United States Constitution, or "to be confronted with the witnesses against him" under 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 United States 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 excep-

tions 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 *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court, overruling its prior opinion in *Ohio v. Roberts*, 448 U.S. 56 (1980), interpreted the Confrontation Clause to prohibit the introduction of "testimonial" hearsay from an unavailable witness against a defendant in a criminal case unless the defendant had an opportunity to confront and cross-examine the declarant, regardless of its exception from the hearsay rule, except, perhaps, if the hearsay qualifies as a dying declaration (Pa.R.E. 804(b)(2)).

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 of the United States Constitution, and (3) admission of the evidence would violate defendant's right "to be confronted with the witnesses against him" under Article I, § 9 of the Pennsylvania Constitution.

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Final Report explaining the March 10, 2000 changes updating the seventh paragraph of the Comment published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness.

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present Sense Impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

Comment

This rule is identical to F.R.E. 803(1).

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.

Rule 803(2). Excited Utterance.

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

Comment

This rule is identical to F.R.E. 803(2).

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, 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.

Rule 803(3). Then-Existing Mental, Emotional, or Physical Condition.

(3) *Then-Existing Mental, Emotional, or Physical Condition.* A statement of the declarant's then-existing state of mind (such as motive, intent or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

Comment

This rule is identical to F.R.E. 803(3).

Rule 803(4). Statement Made for Medical Diagnosis or Treatment.

(4) *Statement Made for Medical Diagnosis or Treatment.* A statement that:

(A) is made for—and is reasonably pertinent to—medical treatment or diagnosis in contemplation of treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception or general cause, insofar as reasonably pertinent to treatment, or diagnosis in contemplation of treatment.

Comment

Pa.R.E. 803(4) differs from F.R.E. 803(4) in that 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 rule 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*.

Rule 803(5). Recorded Recollection (Not Adopted).

(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 testimony of the declarant is necessary.

Rule 803(6). Records of a Regularly Conducted Activity.

(6) *Records of a Regularly Conducted Activity*. A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if,

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor other circumstances indicate a lack of trustworthiness.

Comment

Pa.R.E. 803(6) differs from F.R.E. 803(6). One difference is that Pa.R.E. 803(6) defines the term "record." In the Federal Rules this definition appears at F.R.E. 101(b). Another difference is that Pa.R.E. 803(6) applies to records of an act, event or condition, but does not include opinions and diagnoses. This is consistent with prior Pennsylvania case law. See *Williams v. McClain*, 513 Pa. 300, 520 A.2d 1374 (1987); *Commonwealth v. DiGiacomo*, 463 Pa. 449, 345 A.2d 605 (1975). A third 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 neither the "source of information nor

other circumstances indicate lack of trustworthiness." The Federal Rule allows the court to do so only if neither "the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness."

If offered against a defendant in a criminal case, an entry in a record may be excluded if its admission would violate the defendant's constitutional right to confront the witnesses against him or her. See *Melendez-Diaz v. Massachusetts*, 557 U.S., 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009).

Rule 803(7). Absence of a Record of a Regularly Conducted Activity (Not Adopted).

(7) *Absence of a Record of a Regularly Conducted Activity (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(7) which provides:

Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist; and

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a 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).

Rule 803(8). Public Records (Not Adopted).

(8) *Public Records (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. § 6104 which provides:

(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), and Pennsylvania case law. *See* Comment to Pa.R.E. 803(6).

Rule 803(9). Public Records of Vital Statistics (Not Adopted).

(9) *Public Records of Vital Statistics (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(9). Records of vital statistics are also records of a regularly conducted activity 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. § 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.

Rule 803(10). Absence of a Public Record (Not Adopted).

(10) *Absence of a Public Record (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. § 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. § 5328, entitled “Proof of Official Records,” which provides, in pertinent part:

(d) *Lack of record.*—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.

Rule 803(11). Records of Religious Organizations Concerning Personal or Family History.

(11) *Records of Religious Organizations Concerning Personal or Family History.* A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

Comment

This rule is identical to F.R.E. 803(11).

Rule 803(12). Certificates of Marriage, Baptism, and Similar Ceremonies.

(12) *Certificates of Marriage, Baptism, and Similar Ceremonies.* A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

Comment

This rule is identical to F.R.E. 803(12).

Rule 803(13). Family Records.

(13) *Family Records.* A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

Comment

This rule is identical to F.R.E. 803(13).

Rule 803(14). Records of Documents That Affect an Interest in Property.

(14) *Records of Documents That Affect an Interest in Property.* The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

Comment

This rule is identical to F.R.E. 803(14).

Rule 803(15). Statements in Documents That Affect an Interest in Property.

(15) *Statements in Documents That Affect an Interest in Property.* A statement contained in a document, other than a will, that purports to establish or affect an interest in property if the matter stated was relevant to the document’s purpose—unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

Comment

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

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

Rule 803(16). Statements in Ancient Documents.

(16) *Statements in Ancient Documents.* A statement in a document that is at least 30 years old and whose authenticity is established.

Comment

Pa.R.E. 803(16) differs from F.R.E. 803(16) in 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*, 277 Pa. 301, 121 A.191 (1923).

Rule 803(17). Market Reports and Similar Commercial Publications.

(17) *Market Reports and Similar Commercial Publications.* Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

Comment

This rule is identical to F.R.E. 803(17).

Rule 803(18). Statements in Learned Treatises, Periodicals, or Pamphlets (Not Adopted).

(18) *Statements in Learned Treatises, Periodicals, or Pamphlets (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).

Regarding the permissible uses of learned treatises under Pennsylvania law, see *Aldridge v. Edmunds*, 561 Pa. 323, 750 A.2d 292 (Pa. 2000).

Rule 803(19). Reputation Concerning Personal or Family History.

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

Comment

This rule is identical to F.R.E. 803(19). It changed prior Pennsylvania case 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 case 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).

Rule 803(20). Reputation Concerning Boundaries or General History.

(20) *Reputation Concerning Boundaries or General History.* A reputation in a community—arising before the controversy—concerning boundaries of land in the com-

munity or customs that affect the land, or concerning general historical events important to that community, state or nation.

Comment

This rule is identical to F.R.E. 803(20).

Rule 803(21). Reputation Concerning Character.

(21) *Reputation Concerning Character.* A reputation among a person's associates or in the community concerning the person's character.

Comment

This rule is identical to F.R.E. 803(21).

Rule 803(22). Judgment of a Previous Conviction (Not Adopted).

(22) *Judgment of a 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 Hurtt 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. §§ 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)*.

Rule 803(23). Judgments Involving Personal, Family, or General History or a Boundary (Not Adopted).

(23) *Judgments Involving Personal, Family, or General History or a Boundary (Not Adopted)*

Comment

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

Rule 803(24). Other Exceptions (Not Adopted).

(24) *Other Exceptions (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(24) (now F.R.E. 807).

Rule 803(25). An Opposing Party's Statement.

(25) *An Opposing Party's Statement.* The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement may be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Comment

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

The Federal Rules treat these statements as "not hearsay" and places them in F.R.E. 801(d)(2). The traditional view was that these statements were hearsay, but admissible as exceptions to the hearsay rule. The Pennsylvania Rules of Evidence follow the traditional view and place these statements in Pa.R.E. 803(25), as exceptions to the hearsay rule—regardless of the availability of the declarant. This differing placement is not intended to have substantive effect.

The statements in this exception were traditionally, and in prior versions of both the Federal Rules of Evidence and the Pennsylvania Rules of Evidence, called admissions, although in many cases the statements were not admissions as that term is employed in common usage. The new phrase used in the federal rules—an opposing party's statement—more accurately describes these statements and is adopted here.

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

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately; Comment revised May 16, 2001, effective July 1, 2001; amended November 2, 2001, effective January 1, 2002; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions to the Comment for paragraph 25 published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 revision of the Comment for paragraph 25 published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the May 16, 2001 revision of the Comment for paragraph 18 published with the Court's Order at 31 Pa.B. 2789 (June 2, 2001).

Final Report explaining the November 2, 2001, amendments to paragraph 6 published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 803.1. Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary.

The following statements are not excluded by the rule against hearsay if the declarant testifies and is subject to cross-examination about the prior statement:

(1) *Prior Inconsistent Statement of Declarant-Witness.* A prior statement by a declarant-witness that is inconsistent with the declarant-witness'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;

(B) is a writing signed and adopted by the declarant; or

(C) is a verbatim contemporaneous electronic, audiotaped, or videotaped recording of an oral statement.

Comment

The Federal Rules treat statements corresponding to Pa.R.E. 803.1(1) and (2) as "not hearsay" and places them in F.R.E. 801(d)(1)(A) and (C). Pennsylvania follows the traditional approach that treats these statements as exceptions to the hearsay rule if the declarant testifies at the trial.

Pa.R.E. 803.1(1) is consistent with prior Pennsylvania case law. See *Commonwealth v. Brady*, 510 Pa. 123, 507 A.2d 66 (1986) (seminal case that overruled close to two centuries of decisional law in Pennsylvania and held that the recorded statement of a witness to a murder, inconsistent with her testimony at trial, was properly admitted as substantive evidence, excepted to the hearsay rule); *Commonwealth v. Lively*, 530 Pa. 464, 610 A.2d 7 (1992). In *Commonwealth v. Wilson*, 550 Pa. 518, 707 A.2d 1114 (1998), the Supreme Court held that to be admissible under this rule an oral statement must be a verbatim contemporaneous recording in electronic, audiotaped, or videotaped form.

An inconsistent statement of a witness that does not qualify as an exception to the hearsay rule may still be introduced to impeach the credibility of the witness. See Pa.R.E. 613.

Rule 803.1(2). Prior Statement of Identification.

(2) *Prior Statement of Identification by Declarant-Witness.* A prior statement by a declarant-witness identifying a person or thing, made after perceiving the person or thing, provided that the declarant-witness testifies to the making of the prior statement.

Comment

Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(2) as an exception to the hearsay rule. F.R.E. 801(d)(1)(C) provides that such a statement is not hearsay. This differing organization is consistent with Pennsylvania law.

Pa.R.E. 803.1(2) differs from F.R.E. 801(d)(1)(C) in several respects. It requires the witness to testify to making the identification. This is consistent with Pennsylvania law. See *Commonwealth v. Ly*, 528 Pa. 523, 599 A.2d 613 (1991). The Pennsylvania rule includes identification of a thing, in addition to a person.

Rule 803.1(3). Recorded Recollection.

(3) *Recorded Recollection of Declarant-Witness.* A memorandum or record made or adopted by a declarant-witness that:

(A) is on a matter the declarant-witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the declarant-witness when the matter was fresh in his or her memory; and

(C) the declarant-witness testifies accurately reflects his or her knowledge at the time when made.

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. Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(3) as an exception to the hearsay rule in which the testimony of the declarant is necessary. F.R.E. 803(5) treats this as an exception regardless of the availability of the declarant. This differing organization is consistent with Pennsylvania law.

2. Pa.R.E. 803.1(3)(C) makes clear that, to qualify a recorded recollection as an exception to the hearsay rule, the witness must testify that the memorandum or 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 memorandum or 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).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 10, 2000, effective July 1, 2000; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the amendment to subsection (1) and the updates to the Comment to subsection (1) published with the Court’s Order at 30 Pa.B. 1645 (March 25, 2000).

Final Report explaining the _____, 2011 rescission and replacement published with the Court’s Order at Pa.B. (_____, 2011).

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness.

(a) *Criteria for Being Unavailable.* A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant’s statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement’s proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant’s attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant’s attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement’s proponent procured or wrongfully caused the declarant’s unavailability as a witness in order to prevent the declarant from attending or testifying.

Comment

This rule is identical to F.R.E. 804(a).

Rule 804(b). The Exceptions.

(b) *The Exceptions.* The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Comment

Pa.R.E. 804(b)(1) is identical to F.R.E. 804(b)(1). In criminal cases the Supreme Court has held that former testimony is admissible against the defendant only if the defendant had a “full and fair” opportunity to examine the witness. See *Commonwealth v. Bazemore*, 531 Pa. 582, 614 A.2d 684 (1992).

Depositions

Depositions are the most common form of former 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. § 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. § 5325 sets forth the procedure for taking depositions, by either prosecution or defendant, outside Pennsylvania.

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).

A video 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).

42 Pa.C.S. § 5936 provides that 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.

Rule 804(b)(2). Statement Under Belief of Imminent Death.

(2) *Statement Under Belief of Imminent Death.* A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

Comment

Pa.R.E. 804(b)(2) differs from F.R.E. 804(b)(2) in that the Federal Rule is applicable in criminal cases only if the defendant is charged with homicide. The Pennsylvania Rule is applicable in all civil and criminal cases, subject to the defendant's right to confrontation in criminal cases.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court interpreted the Confrontation Cause in the Sixth Amendment of the United States Constitution to prohibit the introduction of "testimonial" hearsay from an unavailable witness against a defendant in a criminal case unless the defendant had an opportunity to confront and cross-examine the declarant, regardless of its exception from the hearsay rule. However, in footnote 6, the Supreme Court said that there may be an exception, *sui generis*, for those dying declarations that are testimonial.

Rule 804(b)(3). Statement Against Interest.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

Comment

This rule is identical to F.R.E. 804(b)(3).

Rule 804(b)(4). Statement of Personal or Family History.

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

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

Comment

Pa.R.E. 804(b)(4) differs from F.R.E. 804(b)(4) by requiring that the statement be made before the controversy arose. See *In re McClain's Estate*, 481 Pa. 435, 392 A.2d 1371 (1978). This requirement is not imposed by the Federal Rule.

Rule 804(b)(5). Other exceptions (Not Adopted).

(5) *Other exceptions (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 804(b)(5) (now F.R.E. 807).

Rule 804(b)(6). Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.* A statement offered against a party that wrongfully caused-or acquiesced in wrongfully causing-the declarant's unavailability as a witness, and did so intending that result.

Comment

This rule is identical to F.R.E. 804(b)(6).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 revision of the Comment to paragraph (b)(4) published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 805. Hearsay Within Hearsay.

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Comment

This rule is identical to F.R.E. 805.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 806. Attacking and Supporting the Declarant's Credibility.

When a hearsay statement has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the

statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Comment

Pa.R.E. 806 differs from F.R.E. 806 in that Pa.R.E. 806 makes no reference to Rule 801(d)(2). The subject matter of F.R.E. 801(d)(2) (an opposing party's statement) 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).

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)(2) 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)(2) is not appropriate.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 amendments published with the Court's Order at Pa.B. (, 2011).

Rule 807. Residual Exception (Not Adopted).

Comment

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

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

- 901. Authenticating or Identifying Evidence.
- 902. Evidence That Is Self-Authenticating.
- 903. Subscribing Witness's Testimony.

Rule 901. Authenticating or Identifying Evidence.

(a) *In General.* To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) *Examples.* The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert Opinion about Handwriting.* A non-expert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an Expert Witness or the Trier of Fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion About a Voice.* An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence About a Telephone Conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence About Public Records.* Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence About Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 30 years old when offered.

(9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or a Rule.* Any method of authentication or identification allowed by a statute or a rule prescribed by the Supreme Court.

Comment

Pa.R.E. 901(a) is identical to F.R.E. 901(a) and consistent with Pennsylvania law. The authentication or identification requirement 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. Hudson*, 489 Pa. 620, 414 A.2d 1381 (1980); *Commonwealth v. Pollock*, 414 Pa. Super. 66, 606 A.2d 500 (1992).

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).

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).

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

Pa.R.E. 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).

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

Pa.R.E. 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. § 6111.

Pa.R.E. 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).

Pa.R.E. 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).

Pa.R.E. 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).

Pa.R.E. 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 Pa.R.E. 901(b)(10) and its Comment.

Pa.R.E. 901(b)(8) differs from F.R.E. 901(b)(8), in 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).

Pa.R.E. 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. Visconto*, 301 Pa. Super. 543, 448 A.2d 41 (1982), a computer print-out was held to be admissible. In *Appeal of Chartiers 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).

Pa.R.E. 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. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P. S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office); 42 Pa.C.S. § 6110 (certain registers of marriages, births and burials records); 75 Pa.C.S. § 1547(c) (chemical tests for alcohol and controlled substances); 75 Pa.C.S. § 3368 (speed timing devices); 75 Pa.C.S. § 1106(c) (certificates of title); 42 Pa.C.S. § 6151 (certified copies of medical records); 23 Pa.C.S. § 5104 (blood tests to determine paternity); 23 Pa.C.S. § 4343 (genetic tests to determine paternity).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 902. Evidence That Is Self-Authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) *Domestic Public Documents That Are Not Sealed But Are Signed and Certified.* A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certifica-

tion may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it 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 a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute or a rule prescribed by the Supreme Court.

(5) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) *Newspapers and Periodicals.* Printed material purporting to be a newspaper or periodical.

(7) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions Authorized by Statute.* A signature, document, or anything else that a statute declares to be presumptively or prima facie genuine or authentic.

(11) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)—(C), as shown by a certification of the custodian or another qualified person that complies with Pa.R.C.P. 76. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

(12) *Certified Foreign Records of a Regularly Conducted Activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification rather than complying with a statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

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.

Pa.R.E. 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, e.g.* 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office).

Pa.R.E. 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. § 506 (judicial notice of the contents of the *Pennsylvania Code* and the *Pennsylvania Bulletin*) is similar to Pa.R.E. 902(5).

Pa.R.E. 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 Pa.R.E. 902(1), (2), (3), and (4).

Pa.R.E. 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. § 3505 (evidence of dishonor of negotiable instruments).

Pa.R.E. 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, e.g.*, 13 Pa.C.S. § 3505.

Pa.R.E. 902(11) and (12) permit the authentication of domestic and foreign records of regularly conducted activity by verification or certification. Pa.R.E. 902(11) is similar to F.R.E. 902(11). The language of Pa.R.E. 902(11) differs from F.R.E. 902(11) in that it refers to Pa.R.C.P. 76 rather than to Federal law. Pa.R.E. 902(12) differs from F.R.E. 902(12) in that it requires compliance with a Pennsylvania statute rather than a Federal statute.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; amended February 23, 2004, effective May 1, 2004; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001 amendments adding paragraphs (11) and (12) published with Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the February 23, 2004 amendment of paragraph (12) published with Court's Order at 34 Pa.B. 1429 (March 13, 2004).

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 903. Subscribing Witness's Testimony.

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

Comment

This rule is identical to F.R.E. 903. There are no laws in Pennsylvania requiring the testimony of a subscribing witness to authenticate a writing.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

| | |
|-------|---|
| Rule | |
| 1001. | Definitions That Apply to This Article. |
| 1002. | Requirement of the Original. |
| 1003. | Admissibility of Duplicates. |
| 1004. | Admissibility of Other Evidence of Content. |
| 1005. | Copies of Public Records to Prove Content. |
| 1006. | Summaries to Prove Content. |
| 1007. | Testimony or Statement of a Party to Prove Content. |
| 1008. | Functions of the Court and Jury. |

Rule 1001. Definitions That Apply to This Article.

In this article:

(a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

(b) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A "photograph" means a photographic image or its equivalent stored in any form.

(d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout—or other output readable by sight—if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.

(e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Comment

This rule is identical to F.R.E. 1001.

Paragraph 1001(e) defines the term duplicate. This term is important because of the admissibility of duplicates under Pa.R.E. 1003. 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. 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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the , 2011 rescission and replacement published with the Court's Order at Pa.B. (, 2011).

Rule 1002. Requirement of the Original.

An original writing, recording, or photograph is required in order to prove its content unless these rules, other rules prescribed by the Supreme Court, or a statute provides otherwise.

Comment

Pa.R.E. 1002 differs from F.R.E. 1002 to eliminate the reference to Federal law.

This rule corresponds to the common law "best evidence rule." See *Hera v. McCormick*, 425 Pa. Super. 432, 625 A.2d 682 (1993). 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(d). 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. 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. Quandel 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. Quandel Co., supra*.

Traditionally, the best evidence rule applied only to writings, but Pa.R.E. 1002 may be applicable to recordings or photographs. However, recordings and photographs are usually only evidence of the transaction, thing or event. It is rare that a recording or photograph would be operative or dispositive, but in cases involving matters such as infringement of copyright, defamation, pornogra-

phy 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).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 1003. Admissibility of Duplicates.

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

Comment

This rule is identical to F.R.E. 1003.

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 multiplicate 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. § 6104 (governmental records in the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 42 Pa.C.S. § 6106 (documents recorded or filed in a public office); 42 Pa.C.S. § 6109 (photographic copies of business and public records); 42 Pa.C.S. §§ 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. 573(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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 1004. Admissibility of Other Evidence of Content.

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, or photograph is not closely related to a controlling issue.

Comment

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

When the proponent of the evidence alleges that it is lost, there should be evidence that a sufficient search was made. *See Hera v. McCormick*, 425 Pa. Super. 432, 625 A.2d 682 (1993).

Under Pa.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. 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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 1005. Copies of Public Records to Prove Content.

The proponent may use a copy to prove the content of an official record—or of a document that was recorded or filed in a public office as authorized by law—if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

Comment

This rule is identical to F.R.E. 1005.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 1006. Summaries to Prove Content.

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Comment

This rule is identical to F.R.E. 1006.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 1007. Testimony or Statement of a Party to Prove Content.

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for 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. For example, 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 Rule 1002. 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.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

Rule 1008. Functions of the Court and Jury.

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines—in accordance with Rule 104(b)—any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

Comment

This rule is identical to F.R.E. 1008.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced _____, 2011, effective _____, 2011.

Committee Explanatory Reports:

Final Report explaining the _____, 2011 rescission and replacement published with the Court's Order at Pa.B. _____ (_____, 2011).

REPORT**Proposed Rescission of Rules of Evidence 101—1008 and Comments and Promulgation of Restyled Rules of Evidence 101—1008 and Comments***Restyled Rules of Evidence**Background*

In 1995, the Supreme Court of Pennsylvania authorized the Ad Hoc Committee on Evidence to draft Rules of Evidence for the Court's consideration. The proposed Rules were drafted to codify Pennsylvania's common law of evidence and closely followed the format and numbering of the Federal Rules of Evidence. The Comments to the Rules were designed to identify the common law sources of Pennsylvania's Rules of Evidence, compare them to the Federal Rules of Evidence, and to explain any differences between the two bodies of rules. Additionally, some Comments were augmented with information thought to be helpful to the bench and bar in the application of the Rules. On May 8, 1998, the Court adopted the proposed Rules, effective October 1, 1998.

On September 8, 1998, the Court established the Committee on Rules of Evidence to, *inter alia*, "assist and advise the Supreme Court of Pennsylvania in the preparation, adoption, promulgation and revision of the rules of evidence governing proceedings in the courts of the Commonwealth."

Restyled Federal Rules of Evidence

In, 2007, the Advisory Committee on the Federal Rules of Evidence voted to begin a project to restyle the Federal Rules of Evidence. The style revisions were intended to make the Rules clearer and easier to read, without altering substantive meaning. This project would be similar to prior restyling projects for the Federal Rules of Appellate Procedure, Federal Rules of Criminal Procedure, and the Federal Rules of Civil Procedure.

On April 26, 2011, the Supreme Court of the United States transmitted the restyled Federal Rules of Evidence to Congress for consideration pursuant to the Rules Enabling Act, 28 U.S.C. § 2074(a). If Congress does not enact legislation to reject, modify, or defer the Rules, then the Rules will become effective on December 1, 2011.

Proposed Amendment of the Pennsylvania Rules of Evidence

The Committee has monitored the progression of the Federal Rules' project and reviewed the proposed changes given that the Pennsylvania Rules of Evidence so closely mirror significant portions of the Federal Rules of Evidence. The Committee concurs with the conclusion that the restyled Federal Rules are clearer and easier to read. The Committee believes that maintaining consistency with the language and format of the Federal Rules, where such consistency exists, benefits the bench and bar.

Additionally, dissimilarities between the wordings of the restyled Federal Rules and the current Pennsylvania

Rules may lead to confusion with the more than 60 references throughout certain Comments of Pennsylvania Rules being “identical” to the Federal Rule, when in fact the language would no longer be identical when the restyled Federal Rules become effective. Further, the value of purely historical references to Pennsylvania common law of evidence in the Comments has significantly diminished since the adoption of the Rules.

Accordingly, the Committee intends to recommend rescission of the current Pennsylvania Rules and replacement with the restyled Pennsylvania Rules to incorporate stylistic changes from the Federal Rules and to eliminate surplusage in the Comments. The Committee wishes to offer the following observations concerning the proposed action:

◆ None of the stylistic changes to the Rules is intended to change the substantive meaning of the Rules. The Committee has adopted the criteria used by the Advisory Committee on the Federal Rules of Evidence to determine whether a proposed change was substantive:

A proposed change is deemed “substantive” if:

(1) Under existing practice, it could lead to a different result on a question of admissibility (*e.g.*, a change that requires a court to provide either a less or more stringent standard in evaluating the admissibility of a certain piece of evidence); or

(2) Under existing practice, it could lead to a change in the procedure by which an admissibility decision is made (*e.g.*, a change in the time in which an objection must be made, or a change in whether a court must hold a hearing on the admissibility question); or

(3) It changes the structure of a rule or method of analysis in a manner that fundamentally changes how courts and litigants have thought about, or argued about, the rule (*e.g.*, merging Rules 104(a) and 104(b) into a single subdivision); or

(4) It changes a “sacred phrase” a phrase that has become so familiar in practice that to alter it would be unduly disruptive to practice and expectations (*e.g.*, “unfair prejudice” or “truth of the matter asserted”).

◆ Many Comments contain discussion and citation of Pennsylvania’s common law of evidence. The Committee recognized the value of such references when the Pennsylvania Rules of Evidence were adopted in 1998, especially

where the Federal Rules and Pennsylvania Rules differ. However, the Rules have been in existence now for more than twelve years and incorporated into judicial proceedings and practice. The Committee believes that many references contained in the Comments have become historical. Accordingly, the Committee proposes deletion of discussion and citation of Pennsylvania’s common law of evidence in the Comments where the common law of evidence was consistent to the Pennsylvania Rule. Where a Pennsylvania Rule and the Federal Rule is dissimilar, the Committee recommends that references to Pennsylvania’s common law of evidence be retained in the Comment.

The reader is reminded that the Comments are prepared by the Committee for the convenience of the bench and bar. The Comments were not adopted by the Court and have no precedential import.

◆ The Comment to Pa.R.E. 604 was amended to reflect a pending recommendation before the Court.

◆ The Comment to Pa.R.E. 804 was updated to reflect the recent amendment of F.R.E. 804.

◆ The “Introductory Comment” to Article VIII has been moved to the Comment to Pa.R.E. 802.

◆ The “Official Notes” and citations to the “Committee Explanatory Reports” have been updated, corrected, and/or added to the Comments for all Rules.

◆ Additional, non-substantive changes were made to the Comments to correct errors in grammar, citations, spacing, and alignment.

Side-By-Side Format

The Committee has also prepared a presentation of this recommendation in a side-by-side format with the current Rule and Comment appearing in the left column and the proposed Rule and Comment appearing in the right column. This side-by-side format is intended to facilitate comparison of the original and restyled Rules and any additions or deletions from the Comments.

The recommendation in this format is available at the Committee’s website at <http://www.aopc.org/T/Boards/Committees/ComRulesEvid/>. The side-by-side presentation will be available on the website during the comment period.

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