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Volume 39 (2009)

Pennsylvania Bulletin  
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# PENNSYLVANIA BULLETIN

Volume 39

Number 22

Saturday, May 30, 2009 • Harrisburg, PA

Pages 2679—2770

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Department of Environmental Protection

Department of Health

Department of Public Welfare

Department of Revenue

Health Care Cost Containment Council

Insurance Department

Patient Safety Authority

Pennsylvania Infrastructure Investment  
Authority

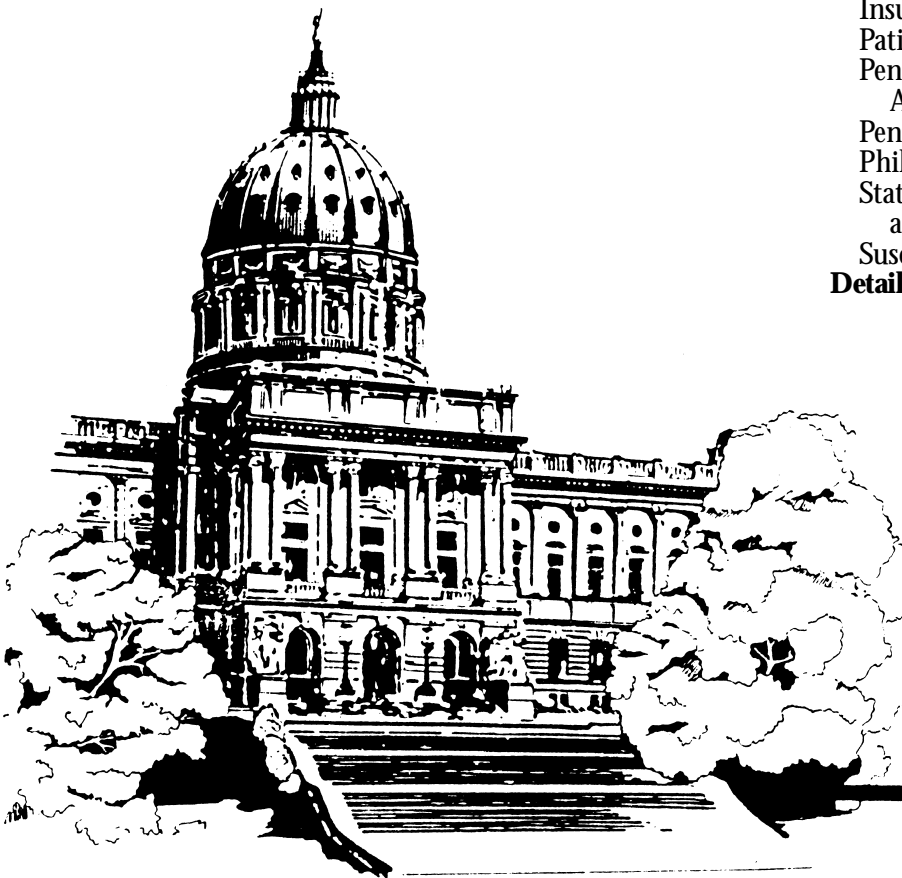
Pennsylvania Public Utility Commission

Philadelphia Regional Port Authority

State Board of Vehicle Manufacturers, Dealers  
and Salespersons

Susquehanna River Basin Commission

**Detailed list of contents appears inside.**



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

**No. 414, May 2009**

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**BULLETIN**

(ISSN 0162-2137)

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

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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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## List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2009.

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# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [ 204 PA. CODE CHS. 87, 91 and 93 ]

#### Amendments to Rules of Organization and Procedure of The Disciplinary Board of The Supreme Court of Pennsylvania

##### Order No. 68

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated April 1, 2008, September 4, 2008, December 12, 2008 and April 3, 2009, the Supreme Court of Pennsylvania amended Pa.R.D.E. 219(a), 502(b), 221, 208(a), 215(c), 402(c) and 205. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

ELAINE M. BIXLER,  
*Secretary*

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

#### CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

##### § 87.7. Notification to respondent-attorney of complaint.

(a) *General rule Condition precedent to recommendation for discipline.* Enforcement Rule 207(b)(2) provides that except in matters requiring dismissal because the complaint is frivolous or falls outside the jurisdiction of the Board, no disposition [ Condition precedent to recommendation for discipline. Disciplinary Counsel shall [ be ] not [ recommended ] recommend or [ undertaken by Disciplinary Counsel ] undertake a disposition of discipline under Enforcement Rule 204 (relating to types of discipline) until the accused attorney has been notified of the allegations and the time for response under § 89.54 (relating to answer), if applicable, has expired.

\* \* \* \* \*

##### § 87.8. District office action or recommendation.

(a) *General rule.* Enforcement Rule 208(a)(2) provides that upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous [ or ], as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion. Disciplinary Counsel may recommend:

\* \* \* \* \*

(b) *District office procedure.* Following completion of any investigation of the complaint and after consideration of any statement of position filed by the respondent-attorney pursuant to § 87.7 (relating to notification to respondent-attorney of complaint) the Assistant Disciplinary Counsel assigned to the district office shall promptly [ report the district office disposition of the matter to the Chief Disciplinary Counsel by means of ] complete the appropriate form specified in subsection (c). The action taken or disposition recommended shall be one of the following:

- (1) Dismissal for lack of jurisdiction.
- (2) Dismissal because frivolous.
- (3) **Dismissal on the basis of prosecutorial discretion.**
- (4) **Dismissal on the basis of Board policy.**
- (5) Dismissal for any other reason.

[ (4) ](6) Conditional or unconditional informal admonition or private reprimand. An informal admonition or private reprimand shall be administered in those cases in which a violation of § 85.7 (relating to grounds for discipline) is found, but which is determined to be of insufficient gravity to warrant prosecution of formal charges.

[ (5) ](7) Prosecution of formal charges before a hearing committee or special master.

(c) *Selection of form.* Action under subsection (b)(1) [ or ], (2), (3), (4) or (5) of this section may be [ taken ] recommended by the assigned Assistant Disciplinary Counsel [ -in-charge ] and taken with the written concurrence of [ any other ] the Assistant Disciplinary Counsel-in-Charge, any other Assistant Disciplinary Counsel designated to serve in his or her absence or unavailability, the Chief Disciplinary Counsel, or an Assistant Disciplinary Counsel designated by the Chief Disciplinary Counsel to review such recommendations. In such cases the district office shall prepare and attach to the file Form DB-4 (Final Disposition of Complaint). In other cases where disposi-

tion under subsection (b)(1) [ or ], (2), (3), (4) or (5) may be appropriate, the assigned Assistant Disciplinary Counsel [ -in-charge ] shall prepare a Form DB-5 (Recommendation on Final Disposition of Complaint) and forward such form and the related file to Chief Disciplinary Counsel or his or her designee for review and action. In all other cases, Assistant Disciplinary Counsel shall prepare and attach to the file Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member).

**§ 87.9. Office of Disciplinary Counsel action.**

(a) [ *Frivolous or no jurisdiction* ] **Dismissal of the complaint.** If the district office or Chief Disciplinary Counsel or his or her designee, determines that the complaint should be dismissed under § 87.8(b)(1) [ or ], (2), (3), (4) or (5) (relating to district office action or recommendation), the Office of Disciplinary Counsel shall notify the complainant of such disposition by [ means of Form DB-33 (Notice of Dismissal of Complaint) ] letter and close the file on the matter. Wherever possible [ in cases of lack of jurisdiction ], the Office of Disciplinary Counsel shall advise the complainant that he or she may bring the matter to the attention of the authorities of the appropriate jurisdiction, to another agency or jurisdiction that has disciplinary authority over the respondent-attorney, to any fee disputes committee which may have been established for the county involved, to a criminal prosecution agency, or to any other duly constituted body which may be able to provide forum for the consideration of the grievance. Where the respondent-attorney has been previously notified of the pendency of the complaint by means of Form DB-7 (Request for Statement of Respondent's Position) or otherwise, the Office of Disciplinary Counsel shall [ , ] notify the respondent-attorney of the dismissal and may [ in any other case, ] transmit a copy of [ Form DB-33 ] the dismissal letter to the respondent-attorney.

(b) *Other cases.* In all other cases the Office of Disciplinary Counsel shall forward to the Office of the Secretary [ Form DB-32 (Request) ] a request for the [ Designation ] assignment of a Reviewing Hearing Committee Member [ ] .

(c) *Review of dismissed complaints.* The Office of Disciplinary Counsel will review complaints dismissed under subsection (a) of this section upon request of the complainant. The request shall be in writing and submitted to the Assistant Disciplinary Counsel-in-Charge of the district office that dismissed the complaint. The request should specify the reason or reasons why Office of Disciplinary Counsel should reopen the investigation under § 87.6 and include any evidence that was not previously brought to the attention of Disciplinary Counsel. The Assistant Disciplinary Counsel-in-Charge or designated Assistant Disciplinary Counsel who concurred in the recommendation to dismiss the complaint pursuant to § 87.8(c) shall conduct the review and notify the complainant in writing of the decision to grant or deny the request. Where the request is denied by the Assistant Disciplinary Counsel-in-Charge, the complainant may direct a written request for further review to the Chief Disciplinary Counsel or his or her designee. The decision of the Chief Disciplinary Counsel or the designee shall be final for purposes of this subsection.

(d) *No right to appeal.* A complainant shall have no right to appeal the dismissal or any other disposition of a complaint under § 87.8 (relating to district office action or recommendation) or a final decision under paragraph (c) of this subsection to deny a request to reopen the investigation.

**Subpart D. ABATEMENT OF INVESTIGATION**

**§ 87.73. Resignation by attorneys under disciplinary investigation.**

\* \* \* \* \*

(d) *Confidentiality of resignation statement.* Enforcement Rule 215(c) provides that the order disbarring the attorney on consent shall be a matter of public record; and that, if the statement required by subsection (a) is submitted before the filing and service of a petition for discipline and the filing of an answer or the time to file an answer has expired, the statement shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

\* \* \* \* \*

(3) upon a request of another jurisdiction for purposes of a reciprocal disciplinary proceeding, [ or ]

(4) upon a request by the Pennsylvania Client Security Fund Board pursuant to Enforcement Rule 521(a) (relating to cooperation with Disciplinary Board) [ . ], or

(5) when the resignation is based on an order of temporary suspension from the practice of law entered by the Court either pursuant to Enforcement Rule 208(f)(1) (relating to emergency temporary suspension orders and related relief) or pursuant to Enforcement Rule 214 (relating to attorneys convicted of crimes).

**CHAPTER 91. MISCELLANEOUS MATTERS**

**Subchapter H. FUNDS OF CLIENTS AND THIRD PERSONS; MANDATORY OVERDRAFT NOTIFICATION**

Sec.	
91.171.	Definitions
91.172.	Maintenance of fiduciary accounts.
91.173.	Approval and termination of [ financial institutions ] Eligible Institutions.
91.174.	Reports of overdrafts.
91.175.	Fiduciary accounts.
91.176.	Rules for determining reporting obligation.
91.177.	Required records.

**§ 91.171. Definitions.**

The following terms when used in this subchapter shall have the meanings given to them in this section:

[ "Financial institution." Enforcement Rule 221(e) provides that the term "financial institution" includes savings and loan associations, credit unions, saving banks and any other business which accepts for deposit funds held in trust by attorneys.

"Trust Account." Enforcement Rule 221(a) provides that a Trust Account of an attorney is an account in which an attorney, in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, deposits funds received from a client or a third person in connection with a client-lawyer relationship, excluding funds which the attorney receives while acting as fiduciary for an estate, trust, guardianship or conservatorship. ]

**Eligible Institution.** An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to section (h), *infra*.

**Financial Institution.** A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the Federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

**Fiduciary Funds.** Fiduciary Funds are Rule 1.15 Funds which an attorney holds as a Fiduciary, as defined in Rule 1.15(a)(2) of the Pennsylvania Rules of Professional Conduct. Fiduciary Funds may be either Qualified Funds or Non-Qualified Funds.

**Rule 1.15 Funds.** Rule 1.15 Funds are funds which an attorney receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the attorney's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the attorney receives in any of the foregoing capacities.

**Trust Account.** A Trust Account is an account in an Eligible Institution in which an attorney holds Rule 1.15 Funds. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account, as defined in Rule 1.15(a)(5) and (7) of the Pennsylvania Rules of Professional Conduct.

#### § 91.172. Maintenance of fiduciary accounts.

Enforcement Rule 221(b) provides that a Trust Account may be maintained only in [ a financial institution ] an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts.

#### § 91.173. Approval and termination of [ financial institutions ] Eligible Institutions.

(a) *Approval.* Enforcement Rule 221 [ (c) ] (h) provides that [ a financial institution ] an Eligible Institution shall be approved as a depository for Trust Accounts if it shall file with the Board an agreement (in a form provided by the Board) in which the [ financial institution ] Eligible Institution agrees to make a prompt report to the Lawyers Fund for Client Security Board under the circumstances described in § 91.174 (relating to reports of overdrafts). Upon receiving a signed agreement from [ a financial institution ] an Eligible Institution as required by this subsection, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order approving the [ financial institution ] Eligible Institution as a depository for Trust Accounts.

(b) *Termination of approval.* Enforcement Rule 221 [ (m) ] (k) provides that a failure on the part of [ a

financial institution ] an Eligible Institution to make a report called for by this subchapter may be cause for termination of its approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action by any person who is proximately caused harm thereby. Upon learning that a financial institution has failed to make a report called for by this subchapter, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order terminating the approval of the financial institution as a depository for Trust Accounts.

(c) *List of approved [ financial institutions ] Eligible Institutions.* The Board will periodically publish in the *Pennsylvania Bulletin* a list of [ financial institutions ] Eligible Institutions that are approved at the time as depositories for Trust Accounts under this subchapter. The current list shall also be published in the *Pennsylvania Code* as an appendix to this section.

#### § 91.174. Reports of overdrafts.

(a) *General rule.* Enforcement Rule 221 [ (c) ] (h) provides that [ a financial institution ] an Eligible Institution shall report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of:

- (1) whether the instrument is honored; or
- (2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(b) *Timing of report.* Enforcement Rule 221 [ (r) ] (p) provides that the report required to be made under this subchapter shall be made by the [ financial institution ] Eligible Institution to the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.

(c) *Handling of report.* Enforcement Rule 221 [ (q) ] (o) provides that a designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry regarding the report and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation.

(d) *Effect of report or referral.* Enforcement Rule 221 [ (k) ] (o) also provides that neither a report filed with the Lawyers Fund for Client Security Board pursuant to this subchapter nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

(e) *Immunity.* Enforcement Rule 221 [ (n) ] (l) provides that [ financial institutions ] Eligible Institutions shall be immune from suit for the filing of any reports required by this subchapter or believed in good faith to be required by this subchapter. See § 91.173(b) (relating to termination of approval).

#### § 91.175. Fiduciary accounts.

(a) *Identification.* Enforcement Rule 221 [ (f) ] (d) provides that the responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.

(b) *Service charge.* Enforcement Rule 221 [ (o) ] (m) provides that [ a financial institution ] an Eligible Institution shall be free to impose a reasonable service

charge upon the attorney in whose name the account is held for the filing of the report required by this subchapter.

**§ 91.176. Rules for determining reporting obligation.**

For purposes of this subchapter:

(1) Enforcement Rule 221 [ (d) ] (i)(1) provides that a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(2) Enforcement Rule 221 [ (j) ] (i)(2) provides that funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the [ financial institution's ] Eligible Institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § 4108(b) (relating to items or deposits received after cutoff hour).

(3) Enforcement Rule 221 [ (k) ] (i)(3) provides that a check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(4) Enforcement Rule 221 [ (l) ] (j) provides that no report need be made when [ a financial institution ] the Eligible Institution determines that an instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

**§ 91.177. Required records**

(a) *In general.* Enforcement Rule 221 [ (g) ] (e) provides that **an attorney shall maintain** the following books and records [ shall be maintained ] for each Trust Account **and for any other account in which Rule 1.15 Funds are held:**

(1) [ **bank statements and check registers (which shall include the payee, date, amount and the client matter involved);**

(2) ] **all transaction records [ returned ] provided to the attorney by the [ financial institution ] Eligible Institution, [ including ] such as periodic statements, canceled checks in whatever form, deposited items and records of electronic transactions; and**

[ **(3) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made. ]**

(2) **check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.**

(b) *Form.* Enforcement Rule 221 [ (h) ] (f) provides that the records required by this rule may be maintained in electronic or [ **other form if they can be retrieved in printed ] hard copy form [; and that electronic**

**records must be regularly backed up by an appropriate storage device ]. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.**

(c) *Availability.* Enforcement Rule 221 [ (i) ] (g) provides that the records required by this rule may be subject to subpoena **and must be produced** in connection with an investigation or hearing pursuant to these rules; and that failure to produce such records may result in the initiation of proceedings pursuant to § 91.151 (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

**CHAPTER 93. ORGANIZATION AND ADMINISTRATION**

**Subchapter B. THE DISCIPLINARY BOARD**

**§ 93.21. The Disciplinary Board.**

Enforcement Rule 205(a) and (b) provide that the Supreme Court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Pennsylvania" which shall be composed of [ 14 ] 12 members of the bar of this Commonwealth and two non-lawyer electors; that the regular terms of members of the Board shall be for three years; that no member shall serve for more than two consecutive three-year terms [ **and that the terms of one-third of the members of the Board, as nearly as may be, shall expire on April 1 of each year ]**.

**Subchapter F. CONFIDENTIALITY**

**§ 93.102. Access to disciplinary information and confidentiality.**

\* \* \* \* \*

(c) *Exceptions to initial confidentiality.* Enforcement Rule 402(c) provides that, until the proceedings are open under subsection (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential unless:

\* \* \* \* \*

(3) **the proceeding is based on an order of temporary suspension from the practice of law entered by the Court pursuant to Enforcement Rule 208(f)(1) (relating to emergency temporary suspension orders and related relief),**

[ (3) ] (4) in matters involving alleged disability, the Supreme Court enters its order transferring the respondent-attorney to inactive status pursuant to Chapter 91 Subchapter D (relating to disability), **or**

[ (4) ] (5) there is a need to notify another person or organization, including the Lawyers' Fund for Client Security, in order to protect the public, the administration of justice, or the legal profession.

\* \* \* \* \*

**§ 93.104. Access by judicial system agencies to confidential information.**

\* \* \* \* \*

(c) *Exception to required notice to respondent-attorney.* Enforcement Rule 402(h) provides that, if an agency or board requesting the release of information under subsection (a) **other than the Judicial Conduct Board and the Pennsylvania Lawyers Fund for Client Security Board** has not obtained an applicable waiver of confiden-

tiality from the respondent-attorney, and the agency or board requests that the information be released without giving notice to the respondent-attorney, the requesting agency or board shall certify that:

\* \* \* \* \*

### Subchapter G. FINANCIAL MATTERS

#### ANNUAL ASSESSMENT [ OR ] ATTORNEY'S

##### § 93.141. Annual assessment

(a) *General rule.* Enforcement Rule 219(a) provides that every attorney admitted to practice law in this Commonwealth, other than a military attorney holding a limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys), shall pay an annual fee under such rule of [ **\$130.00** ] **\$140.00**; that the annual fee shall be collected under the supervision of the Administrative Office, which shall send and receive, or cause to be sent and received, the notices and statements provided for in this subchapter, and that the fee shall be used to defray the costs of disciplinary administration and enforcement under the Enforcement Rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine.

\* \* \* \* \*

[Pa.B. Doc. No. 09-975. Filed for public inspection May 29, 2009, 9:00 a.m.]

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE [ 210 PA. CODE CHS. 15 AND 17 ]

#### Amending Rules of Appellate Procedure 1561, 1701 and proposed New Rule of Appellate Pro- cedure 1765

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 1561, 1701 and proposes new rule, Pa.R.A.P. 1765. These amendments and new rule are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court. This Committee has coordinated publication of this recommendation with the Criminal Procedural Rules Committee's publication of proposed new Rule of Criminal Procedure 911.

Proposed additions are bold while deleted material is bracketed and bold.

All communications in reference to the proposed amendment should be sent no later than July 3, 2009 to:

Dean R. Phillips, Chief Counsel  
D. Alicia Hickok, Deputy Counsel  
Scot Withers, Deputy Counsel  
Appellate Court Procedural Rules Committee  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 6200  
P. O. Box 62635  
Harrisburg, PA 17106-2635

fax: (717) 231-9551  
e-mail: appellaterules@pacourts.us

An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court  
Procedural Rules Committee*

HONORABLE MAUREEN E. LALLY-GREEN,  
*Chair*

#### Explanatory Comment

The Appellate Court Procedural Rules Committee proposes that the Supreme Court amend Pa.R.A.P. 1561 and 1701(b) and enact a new Rule Pa.R.A.P. 1765 to permit the PCRA trial court, after an appeal has been taken, to "consider any petition for bail where post-conviction relief is granted or where an intermediate appellate court has reversed the denial of post-conviction relief," as well as to permit review of a PCRA trial court's bail determination while the disposition of the petition is on appeal.

In preparing this Recommendation, the Appellate Court Procedural Rules Committee appointed a subcommittee to work with a subcommittee of the Criminal Procedural Rules Committee. These proposed amendments and the new rule are the product of the joint subcommittee, as is proposed Criminal Rule 911, which is being published concurrently.

The Post-Conviction Relief Act, 42 Pa.C.S. § 9541, *et seq.*, limits its discussion of bail to what the trial court can do if the trial court *grants* the petition.

If the court rules in favor of the petitioner, it shall order appropriate relief and issue supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper.

42 Pa.C.S. § 9546(a). This is consistent with Pa.R.Crim.P. 908(D)(2), which permits a court to "issue any supplementary orders appropriate to the proper disposition of the case" at the conclusion of a PCRA hearing.

In other words, if the PCRA court grants relief, it can also set bail. There is no provision, however, for a situation in which a PCRA court *denies* relief and the Superior Court vacates and remands, but before the matter is returned to the PCRA trial court, the Commonwealth takes an appeal. This was the situation in *Commonwealth v. Bishop*, 829 A.2d 1170 (Pa. Super. July 22, 2003), in which the trial court stated that it had no jurisdiction under Rule 1701(a) unless and until the appellate court decided or dismissed the appeal and remanded the record.

Pa.R.A.P. 1762 provides that "in criminal matters" applications for bail should "ordinarily" first be presented to the trial court, whether or not an appeal is pending. A post-conviction relief proceeding is a civil proceeding that is quasi-criminal in nature but is collateral to the original proceeding and is governed by the Rules of Criminal Procedure. However, some Rules of Criminal Procedure limit their application to proceedings prior to the conclusion of direct appeal. *See, e.g.*, Pa.R.Crim.P. 534 (authorizing a bail bond only through direct appeal and expressly excluding post-conviction proceedings or other collateral attacks); see also Pa.R.Crim.P. 521 (describing the trial court's ability to grant bail). This has given rise to confusion in the Courts of Common Pleas and Superior Court as to the scope of each court's power to grant bail pursuant to a pending PCRA proceeding.

The trial court is generally the fact-finding tribunal. Accordingly, the Committee believes that Pa.R.A.P. 1701

should be amended to clarify that the trial court is the court to which a request for release on bail should be presented in the first instance following a vacation or reversal of the denial of post-conviction relief, even if the Commonwealth appeals the merits decision.

Another question that has arisen is whether a decision on bail by the PCRA trial court is reviewable by the appellate courts. In *Commonwealth v. Bonaparte*, 366 Pa. Super. 182, 530 A.2d 1351 (1987), a petitioner appealed a bail determination pending disposition of a PCHA petition. The trial court had considered the request under then—Pa.R.Crim.P. 4010. The Superior Court held that the question was instead governed by then—Pa.R.Crim.P. 1506(2) but nonetheless affirmed the trial court's determination. The Superior Court stated expressly that Pa.R.A.P. 1762 did not apply because it was limited to orders "denying bail prior to sentence or pending direct appeal."

That appears to be a correct reading of the Rules prior to this amendment. If the Superior Court reverses the denial of a PCRA petition *and no appeal is taken*, review of the bail determination would be governed by Pa.R.A.P. 1762(b) only because the failure to seek review would place the procedural posture of the case as "criminal" once again.

If an appeal is taken, however, the matter is still part of the post-conviction relief process and is not covered by Pa.R.A.P. 1762(a). We are thus recommending revisions of Pa.R.A.P. 1561 and the enactment of a new rule Pa.R.A.P. 1765 to fill this narrow gap. The right to review a bail determination under Pa.R.A.P. 1765 is limited to the time during which the substantive disposition is on appeal, in accordance with Pa.R.Crim.P. 910, which specifies that only "[a]n order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal." Pa.R.Crim.P. 910. That determination must be made by the PCRA trial court in the first instance. Because the record will be in the appellate court, the PCRA trial court must hold an evidentiary hearing, and it must apply a standard that recognizes: (1) that the petitioner has been tried and convicted, and the conviction upheld on direct appeal; and (2) that the petitioner has been granted relief by a panel or *en banc* sitting of an intermediate appellate court. To strike that balance, the three criteria that govern the right to pretrial bail have been balanced against the fact of the conviction and affirmance and the fact that the Commonwealth has appealed the intermediate appellate court's decision. Pre-trial, courts must balance:

- (a) the importance of the presumption of innocence;
- (b) the distaste for imposition of sanctions prior to trial and conviction;
- (c) the desire to give the accused maximum opportunity to prepare a defense.

See *Commonwealth v. Fowler*, 451 Pa. 505, 513, 304 A.2d 124, 128 (1973) (discussing *Commonwealth v. Truesdale*, 449 Pa. 325, 335-36, 296 A.2d 829, 834-35 (1972).) Between conviction and sentence, one convicted of murder could not be released on bail—with the sole caveat that if delay was unreasonable and caused by the Commonwealth, the court could decide to grant bail. The *Fowler* Court reasoned that the first and third *Truesdale* factors are no longer implicated and the second minimized, while the public interest in detaining the defendant "becomes compelling." *Id.* at 514-15, 304 A.2d at 129. See also *Commonwealth v. Cabeza*, 489 Pa. 142, 413 A.2d 1054 (1980) (applying the analysis to the then-new rules of criminal procedure).

To the extent that the passing observation in *Commonwealth v. Kyle*, 582 Pa. 624, 874 A.2d 12 (2005), that the Superior Court "granted bail" can be read as recognition that the Superior Court made the bail determination in the first instance rather than reversing a bail denial, it will be superseded, because the Superior Court would not have the right to grant bail without the petitioner's having first presented an application to the PCRA trial court.

## Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

#### PETITION FOR REVIEW

#### Rule 1561. Disposition of Petition for Review.

\* \* \* \* \*

(d) *Review of detention*.—Except as prescribed by Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending, **Rule 1765, which governs applications relating to bail when an appeal is pending**, or [ **by** ] Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction relief may not be granted under this chapter.

**Official Note:** Subdivision (a) is based on 42 Pa.C.S. § 706 (disposition of appeals).

\* \* \* \* \*

Subdivision (d) is intended to make clear that the scope of this chapter is essentially civil in nature. [ **The application of the petition for review to questions of release prior to sentence in criminal matters and in questions arising out of special prosecutions or investigations is merely a recognition of the technical need for a plenary filing to bring the question within the appellate jurisdiction of the appropriate court.** ] Although a Post-Conviction Relief Act proceeding is technically civil, it is quasi-criminal, and, by definition, it occurs following the entry of judgment and affirmance of that judgment on direct appeal. A court's review in such instances is undertaken with a different presumption than applies in other civil or even criminal proceedings, because a court has found a defendant guilty and that determination has been affirmed on direct appeal. See [ **Rules** ] Rule 1762(b)(2) and 1765 regarding bail applications.

#### CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

#### IN GENERAL

#### Rule 1701. Effect of Appeal Generally.

(a) *General rule*.—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) *Authority of a trial court or agency after appeal*.—After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

- (1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to

the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, **consider a [ any ] petition for bail except that, if the appeal is taken from a post-conviction relief determination, the trial court can consider a bail application only if (a) it has granted post-conviction relief or (b) an intermediate appellate court has reversed the denial of post-conviction relief,** and take other action permitted by these rules or otherwise ancillary to the appeal or petition for review proceeding.

\* \* \* \* \*

**STAY IN CRIMINAL MATTERS**

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

**Rule 1765. Release in Post-Conviction Collateral Proceedings.**

(a) Other than as provided by statute or Rule of Appellate Procedure 1701, a petitioner seeking post-conviction collateral relief may not make application for bail in any court while petitioner's appeal of a trial or appellate court's disposition of the petition is pending.

(b) If an appellate court has reversed the denial of post-conviction relief, an application for bail may be made in the Post-Conviction Relief Act trial court. If the Commonwealth has appealed that decision on the merits, the trial court may grant an application for bail only after an evidentiary hearing as required in Pennsylvania Rule of Criminal Procedure 911.

(c) If the Post-Conviction Relief Act trial court has made a bail determination, and if the grant or denial of the merits of a Post-Conviction Relief Act Petition is pending, either party may seek review of the bail determination by filing an application pursuant to Pa.R.A.P. 123 that is ancillary to the appeal on the merits. Such application should be filed in the court in which the appeal of the disposition of the Post-Conviction Relief Act petition is pending.

**Official Note:** This rule should be read in conjunction with Pennsylvania Rule of Criminal Procedure 911 and with 42 Pa.C.S. § 9546, which provides in part that a court that rules in favor of a Post-Conviction Relief Act petitioner "shall order appropriate relief and issue supplementary orders as to . . . bail." See also Pa.R.Crim.P. 908(D)(2); 42 Pa.C.S. § 5701; Pa.R.Crim.P. 521 (governing bail determinations generally). Because a Post-Conviction Relief Act matter is not criminal, the provisions of Pa.R.A.P. 1762 do not apply unless relief has been granted and no appeal taken.

[Pa.B. Doc. No. 09-976. Filed for public inspection May 29, 2009, 9:00 a.m.]

**[ 210 PA. CODE CH. 9 ]**

**Proposed New Rule of Appellate Procedure 912**

The Appellate Court Procedural Rules Committee is proposing a new rule, Rule of Appellate Procedure 912. The proposed rule is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed amendment should be sent no later than July 3, 2009 to:

Dean R. Phillips, Chief Counsel  
 D. Alicia Hickok, Deputy Counsel  
 Scot Withers, Deputy Counsel  
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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court  
 Procedural Rules Committee*

HONORABLE MAUREEN LALLY-GREEN,  
*Chair*

**Annex A**

**TITLE 210. APPELLATE PROCEDURE**

**PART I. RULES OF APPELLATE PROCEDURE**

**ARTICLE II. APPELLATE PROCEDURE**

**CHAPTER 9. APPEALS FROM LOWER COURTS**

**Rule 912. Abandonment of Appellant During an Appeal of the Disposition of a First Post-Conviction Relief Act Petition.**

(a) If counsel for an appellant who is appealing the merits of a denial of a first Post-Conviction Relief Act Petition fails to file a document that is required by Rule or Order of the Court for the appeal to proceed, the appellate court shall not quash or dismiss the appeal for failure to file until the following steps have been taken:

(1) The appellate court shall order the Post-Conviction Relief Act court to investigate whether the appellant has abandoned the appeal voluntarily, and if not, whether appellant's counsel has been *per se* ineffective by failing to file that document.

(2) A copy of the appellate court's order shall be served on the appellant, appellant's counsel, and the attorney for the Commonwealth.

(3) Notwithstanding the provisions of Pa.R.A.P. 1701, at the conclusion of its investigation, if the Post-Conviction Relief Act court concludes that appellant's counsel abandoned the appeal through *per se* ineffectiveness by failing to file that document, the Post-Conviction Relief Act court shall replace counsel. The Post-Conviction Relief Act court also may sanction counsel.

(4) The Post-Conviction Relief Act court shall report its findings in writing to the appellate court within sixty days of the date of the appellate court order. A copy of the report shall be served on the appellant, appellant's counsel, and the attorney for the Commonwealth.

(b) When the Post-Conviction Relief Act court finds, pursuant to paragraph (1), that the appellant's counsel was *per se* ineffective for failing to file the document that was required by Rule or Order of the Court for the appeal to proceed, the appellate court shall permit the filing nunc pro tunc of that document.



(c) The appellate court will retain jurisdiction during the proceedings in the Post-Conviction Relief Act court.

#### Note

This rule was adopted in 2009 to formalize the informal procedure adopted by the Superior Court in response to *Commonwealth v. Robinson*, 575 Pa. 500, 837 A.2d 1157 (2002). Pursuant to this informal procedure, when counsel abandons his or her client in cases on appeal following the denial of a first PCRA petition, as for example when the attorney fails to file an appellate brief, the Superior Court will retain jurisdiction and instead of dismissing the appeal will remand the case to the Post-Conviction Relief Act court for a determination whether the attorney abandoned the client and with instructions for the judge to take appropriate action. See *Commonwealth v. Bennett*, 539 Pa. 382, 930 A.2d 1264 (2007) at fn. 12.

“Post-Conviction Relief Act court,” as used in this rule, refers to the judge of the Court of Common Pleas handling the Post-Conviction Relief Act proceedings at the time of the appeal.

Appeals or orders that are ancillary to the appeal on the merits—including, but not limited to bail denials—may not be remanded under Rule 912.

#### Explanatory Comment

The Appellate Court Procedural Rules Committee, in conjunction with the Criminal Procedural Rules Committee, proposes that the Supreme Court enact Pa.R.A.P. 912 to codify the procedure to be followed when a failure to file a document required for an appeal to proceed jeopardizes an appeal on a first Petition filed under the Post-Conviction Relief Act.<sup>1</sup> Both Committees designated members to work as a joint subcommittee to prepare this Recommendation.

As the Supreme Court recognized in *Commonwealth v. Bennett*, 539 Pa. 382, 930 A.2d 1264 (2007), the Superior Court currently follows a practice such as that set forth in the proposed rule. In large part, the new rule would formalize the current practice, which was developed by the Superior Court in response to the Supreme Court’s opinion in *Commonwealth v. Robinson*, 575 Pa. 500, 837 A.2d 1157 (2002). Pursuant to this informal procedure, when counsel abandons his or her client in cases on appeal following the denial of a first PCRA petition, as for example when an attorney fails to file an appellate brief, the Superior Court will retain jurisdiction while remanding the case to the PCRA court for a determination as to whether the attorney’s failure constituted an abandonment of the client on appeal. If so, either current or replacement counsel may be permitted to file the necessary document *nunc pro tunc*. Under the proposed new rule, if the PCRA court finds that appellate counsel was *per se* ineffective—but only upon that finding—the court *must* replace counsel, and the Superior Court *must* allow the document in question to be filed *nunc pro tunc*. In this way, the proposed rule reduces the discretion of informal practice, but it provides greater consistency.

[Pa.B. Doc. No. 09-977. Filed for public inspection May 29, 2009, 9:00 a.m.]

<sup>1</sup> A petitioner has a Commonwealth-created right to counsel on a first Post-Conviction Relief Act Petition, but not on subsequent ones.

# Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 9 ]

## Proposed New Rule of Criminal Procedure 911

### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule of Criminal Procedure 911 (Bail Motions After Disposition of Post-Conviction Collateral Relief Petition) that would clarify when the PCRA court may grant a defendant’s request for release on bail. This proposal is correlative to a proposal by the Appellate Court Procedural Rules Committee for new Pa.R.A.P. 1765, and amendments to Pa.Rs.A.P. 1561 and 1701. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee’s considerations in formulating this proposal. Please note that the Committee’s Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee’s Comments or the contents of the explanatory Reports.

The text of proposed new Rule 911 precedes the Report.

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

Anne T. Panfil, Chief Staff Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 6200  
P. O. Box 62635  
Harrisburg, PA 17106-2635

fax: (717) 231-9521

e-mail: criminal.rules@pacourts.us

By the Criminal Procedural  
Rules Committee

D. PETER JOHNSON,  
Chair

### Annex A

## TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

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

### Rule 911. Bail Motions After Disposition of Post-Conviction Collateral Relief Petition.

(A) After disposition of a post-conviction collateral relief petition, the petitioner by motion filed within 30 days of entry of the disposition on the docket may request release on bail with the judge only when:

- (1) the judge has granted post-conviction relief; or
- (2) an appellate court has reversed the PCRA court’s denial of post-conviction relief.

(B) Upon receipt of a motion requesting release on bail, the judge shall hold a hearing. At the hearing, the judge shall consider any relevant evidence, including information about:

(1) the release criteria set forth in Rule 523 and the types of release on bail set forth in Rule 524;

(2) any interest that will be served by detaining the defendant;

(3) any interest that will be served by releasing the defendant;

(4) the likelihood that the defendant will prevail if a new trial or sentencing is held;

(5) the seriousness of the criminal offense committed;

(6) the danger the defendant may pose to any other person, the community, or himself or herself if he or she is released;

(7) the likelihood that the defendant may flee if released; and

(8) any other factors relevant to the case.

(C) Release shall not be granted unless necessary in the interest of justice, in exceptional circumstances, and for compelling reasons.

(D) At the conclusion of the hearing, the judge shall state on the record the reasons for the decision granting or denying the motion for release on bail.

#### Comment

This rule provides the procedures for the filing and disposition of motions for release on bail in post-conviction collateral relief cases either after the judge has granted the petition or once an appellate court has reversed the judge's denial of the petition. See Rules of Appellate Procedure 1701(b)(1), 1762(b)(2), and 1765. Also see Rule 908(C)(2) and 42 Pa.C.S. § 9546(a).

Unlike pretrial and pre-sentence release on bail, a PCRA petitioner is not entitled to release on bail as a matter of right. Rather, bail may be allowed in the discretion of the judge. Paragraph (C) cautions the judge about the limitations on the exercise of discretion in these cases. Article I, § 14 of the Pennsylvania Constitution, that provides "all prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great" also limits the judge's discretion. See also Rule 521.

"Judge," as used in this rule, refers to the judge of the court of common pleas handling the PCRA proceedings at the time the motion for release on bail is filed.

The parties may introduce copies of the record from any proceedings, including pretrial, trial, direct appeal, or PCRA, during the bail hearing.

**Official Note:** Adopted \_\_\_\_\_, effective \_\_\_\_\_.  
*Committee Explanatory Reports:*

Report explaining the provisions of the proposed new rule published at 39 Pa.B. 2695 (May 30, 2009).

#### REPORT

*Proposed New Rule of Criminal Procedure 911*

### **BAIL MOTIONS AFTER DISPOSITION OF POST-CONVICTION COLLATERAL RELIEF PETITION**

#### **I. Introduction**

The Committee, in conjunction with the Appellate Court Procedural Rules Committee,<sup>1</sup> is planning to pro-

<sup>1</sup> The Appellate Court Procedural Rules Committee proposal is for new Pa.R.A.P. 1765 and amendments to Pa.Rs.A.P. 1561 and 1701.

pose to the Supreme Court new Rule of Criminal Procedure 911 that would clarify when a PCRA judge<sup>2</sup> at the conclusion of a post-conviction collateral proceeding may grant a defendant's request for release on bail. The need for this new rule was suggested to the Committee by the Appellate Court Procedural Rules Committee.

The Appellate Court Procedural Rules Committee noted that, because there are no procedural rules specific to bail after the conclusion of the PCRA proceedings, there is a great deal of confusion about whether bail may be considered and, if so, how and when. Because the issues implicate both the Appellate Court Procedural Rules and the Criminal Procedural Rules, a Joint Subcommittee of members from both Committees was formed to assist the two Committees in addressing these concerns. The Joint Subcommittee's recommendation for new Pa.R.A.P. 1765 and amendments to Pa.Rs.A.P. 1561 and 1701, and, correlatively, for new Rule of Criminal Procedure 911 has been approved for publication by both Committees.

The Joint Subcommittee initially proposed changes to the Rules of Appellate Court Procedure prohibiting applications for bail in the trial or appellate court during the pendency of appeal of the denial of the petition for post-conviction relief, and appeals from a denial of bail.<sup>3</sup>

After reviewing the publication responses, the Appellate Court Rules Committee asked the Joint Subcommittee to re-evaluate the original proposal. In particular, the Joint Subcommittee was to consider whether, because bail is a collateral proceeding to an underlying action, the option to request bail exists when the PCRA judge has granted the defendant's PCRA petition or when the Appellate Court has reversed the PCRA judge's denial of the petition. After a thorough re-examination of the issues, the original proposal has been amended to permit a bail request by the defendant in the limited situations in which the PCRA judge has granted the PCRA petition and when the Appellate Court has reversed the PCRA judge's denial of the petition. To accomplish this, the Joint Subcommittee recommended to the respective Committees that there be changes made to both the Appellate Court Procedural Rules and the Criminal Procedural Rules.<sup>4</sup>

#### **II. Proposed New Rule of Criminal Procedure 911 (Bail Motions After Disposition of Post-Conviction Collateral Relief Petition)**

Proposed new Rule 911 sets forth the procedures for release on bail in the limited circumstances after disposition of a post-conviction collateral relief petition either when the PCRA judge has granted post-conviction relief or when an appellate court has reversed the PCRA judge's denial of post-conviction relief. Because bail at this stage is extremely restricted, the changes also include cautionary language making the limitations clear. In addition, because the procedures occur only after the conclusion of the PCRA proceedings, the new rule is being numbered Rule 911, the last rule of the PCRA rules in Chapter 9.

Paragraph (A) sets forth the motion procedure and the limitations on when bail may be requested. The burden is on the defendant to file a motion with the PCRA judge and the motion must be filed within 30 days of entry of the disposition of a post-conviction collateral relief petition on the docket. The time to make a request for bail is

<sup>2</sup> "PCRA judge" refers to the judge of the court of common pleas handling the proceedings under the Post Conviction Relief Act ("PCRA") at the time the motion for release on bail is filed.

<sup>3</sup> This proposal was published for comment on May 24, 2008. See 38 Pa.B. 2359.

<sup>4</sup> The Appellate Court Procedural Rules Committee's recommendation explaining the proposed changes to the Rules of Appellate Court Procedure has been published with this proposal.

limited to when the PCRA judge has granted post-conviction relief or when an appellate court has reversed the PCRA judge's denial of post-conviction relief.

After the PCRA judge receives a request for release on bail, the judge is required to hold a hearing. At the hearing, the PCRA judge is required to consider the criteria enumerated in paragraph (B) and the restrictions set forth in paragraph (C) before making a decision. When the case is proceeding pursuant to the PCRA, the defendant does not have a right to release on bail because a court has found a defendant guilty and that determination has been affirmed on direct appeal.<sup>5</sup> The fact that the nature of the PCRA court's inquiry is different is reflected in the new Rule 911(B) criteria and the further restrictions enumerated in paragraph (C). These points are elaborated in the Comment.

Paragraph (D) requires the PCRA judge to state on the record the reasons for granting or denying bail. This requirement is necessary to make a record for purposes of appeal.

The Comment includes a reference to the relevant Rules of Appellate Procedure. The Comment also includes references to Rule of Criminal Procedure 908 and 42 Pa.C.S. § 9546(a) that provide the PCRA judge's authority to issue supplementary orders appropriate to the proper disposition of the case.

Finally, recognizing that, at this stage in the proceedings, some of the information that would be relevant to making a determination about releasing a defendant on bail may be in the records of earlier proceedings that might not be available to the PCRA court, the Comment explains that the parties may introduce copies of these records at the hearing.

[Pa.B. Doc. No. 09-978. Filed for public inspection May 29, 2009, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### DELAWARE COUNTY

Delaware County Orphans' Court Division Local Rules Nos. 3.5A, 3.5B, 3.6A, 6.10B(2), 6.10D(3), 6.9A, 6.10D(3), 6.10D(4), 6.1A(3), 6.1C and 14.2B; No. 08-2750

#### Order

*And Now*, this 11th day of May 2009, upon unanimous approval of the Board of Judges of Delaware County, Pennsylvania, the Thirty Second Judicial District, it is hereby *Ordered* and *Decreed* that the Orphans' Court Rules are hereby amended to reflect the changes and recommendations of the Orphans' Court Rules Committee prescribed in the following document. Said rules changes shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

*By the Court*

JOSEPH P. CRONIN, Jr.,  
*President Judge*

<sup>5</sup> Prior to conviction, defendants have a constitutional right to release on bail except in limited cases set forth in Article I, § 14 of the Pennsylvania Constitution. See Pa.Rs.Crim.P. 520 and 521.

## PROPOSALS FOR CHANGES TO DELAWARE COUNTY LOCAL ORPHANS' COURT RULES

NOVEMBER 7, 2008  
AS AMENDED FEBRUARY 4, 2009

First: ***Re: Local Rule 3.5A.***

The Committee recommends implementation of the new Citation (attached hereto) drafted by William G. Halligan, Esquire, as it is consistent with Local Rule 3.5A. The Committee also recommends drafting of a new Preliminary Decree, for the same purpose. No change to Local Rule 3.5A is recommended.

Second: ***Re: Local Rule 3.5B.***

The Committee recommends passage of new Local Rule 3.5B, as follows:

#### **Local Rule 3.5B *Uncontested Petitions.***

(1) If a petitioner believes there will be no objections, by creditors and/or parties in interest, to a petition being filed, petitioner may state this in his petition and send notice pursuant to Rule 5.1 to all such creditors and/or parties at least twenty (20) days prior to filing said petition advising said creditors and/or parties in interest of the projected date of filing said petition unopposed petition. In the notice, petitioner should advise said creditors and/or parties in interest that petitioner intends to state to the Court in the petition that said petition is unopposed and any creditor or party in interest who disagrees with petitioner's position that the petition is unopposed must notify petitioner or his counsel on or before the projected date of filing of the petition. If no creditor or party in interest notifies petitioner or his counsel by the projected filing date that the petition is opposed, the Court may rule on the petition without scheduling a hearing thereon, or may schedule a hearing if the Court believes a hearing is necessary for any reason.

(2) The date of the notice shall be the date of mailing, or service of the notice. A certification by counsel listing the persons notified and stating the date and manner of service, together with a copy of the notice given, shall be attached to the petition.

(3) If all potential creditors and/or parties in interest are in agreement and have signed consents to the proposed petition, the petitioner may attach said consents to the petition and advise the Court that all parties in interest have consented to the petition. Under these circumstances, the petitioner does not need to give twenty (20) days notice of the filing of the proposed petition. Upon receipt of the petition, wherein petitioner has advised the Court that all creditors and/or parties in interest have signed consents, and said consents are attached to the petition, the Court may rule on said petition without scheduling a hearing thereon, or may schedule a hearing if the Court believes a hearing is necessary for any reason.

(4) The above manner of proceeding (without a hearing) is not available in matters wherein the relevant statutes require a hearing.

Third: **Re: Local Rule 3.6A.**

The Committee recommends rescission of Local Rule 3.6 and passage of new Local Rule 3.6A, as follows:

**Local Rule 3.6A Practice as to Depositions, Discovery, Production of Documents and Perpetuation of Testimony.**

(1) Leave to take depositions, or to perpetuate testimony, or obtain discovery or the production of documents, may be granted only on petition upon cause shown except upon agreement of parties and counsel.

(2) Petitions filed pursuant to the Rule shall include a description of all efforts made to resolve discovery issues informally. Petitions shall also state the identity of the persons that are to be deposed; the testimony that is to be perpetuated; the documents that are to be produced; and a description of any other discovery requested. The Petition shall also state the reasons why the aforementioned discovery is necessary and relevant to the litigation.

Fourth: **Re: Local Rule 6.10B(2).**

The Committee recommends that reference to non-existent Local Rule 5.1C be deleted from Local Rule 6.10B(2), which should be amended accordingly to read as follows:

**Local Rule 6.10B(2).**

(2) *Service of Copy.* A copy of the objections shall be served contemporaneously after filing, on accountant's attorney or on the accountant if not represented, in the manner provided in Pa. O.C. Rule 5.1 and Del. Co. O.C.D. Rules 5.1A and 5.1B.

Fifth: **Re: Local Rule 6.10D(3) and Local Rule 6.9A.**

The Committee recommends rescission of Local Rule 6.10D(3)(a), (b) and (c), and placement of those subsections with Local Rule 6.9A, which deals with Petitions for Adjudication. (See Proposal Seventh, below, for proposed changes to Local Rule 6.9A.)

However, the subject matter contained in Local Rule 6.10D(3)(d) does concern Audits and Claims and, therefore, should remain with Local Rule 6.10D. The removal of subparagraphs (a), (b) and (c) would result in the slight restructuring of 6.10D(3), so that Local Rule 6.10D(3) would read in its entirety as follows:

**Local Rule 6.10D(3).**

(3) *Objections to Petitions for Adjudication.* Objections to the petition for adjudication may be made orally at the time of audit.

Sixth: **Re: Local Rule 6.10D(4).**

The Committee recommends rescission of Local Rule 6.10D(4) and the placement of that provision within Local Rule 6.9A, as set forth in Proposal Seventh, below.

Seventh: **Re: Local Rule 6.9A.**

The Committee recommends that the material presently contained at Local Rule 6.10D(3)(a), (b) and (c) and D(4) be added to present Local Rule 6.9A, and that the title of the Rule be amended, so that the Rule would read in its entirety as follows:

**Local Rule 6.9A Filing Petition for Adjudication and Statement of Proposed Distribution.**

(1) *Recital of Facts.* Accountant shall file with his account a petition for adjudication, setting forth all facts necessary to enter a proper decree.

(2) *Forms of Petitions.* The petition for adjudication shall be on forms provided by the clerk, or typewritten in conformity therewith, signed by the fiduciaries stating the account and verified by at least one of them. The statement of proposed distribution is the concluding paragraph of the printed forms of petition for adjudication to be filed with the account.

(3) *Additional Receipts and Disbursements.* Receipts and disbursements since the date to which the account was stated and to be included in the adjudication, shall be set forth in the petition for adjudication, or in a separate statement attached thereto, or in the appearance slip of the attorney for accountant.

(4) *Exhibits.* Accountants shall submit with the petition the several documents enumerated in the forms provided by the clerk. The accountant shall submit, at or prior to the audit, a copy of the audit notice under Del. Co. O.C.D. Rule 6.3A and an affidavit listing those to whom such audit notice was sent.

Eighth: **Re: Local Rule 6.1A(3).**

The Committee recommends rescission of Local Rule 6.1A(3).

Ninth: **Re: Local Rule 6.1C.**

The Committee recommends that Local Rule 6.1C be rewritten to state as follows:

**Local Rule 6.1C Forms of Account.**

All forms for fiduciaries' accounts should conform to the model account forms promulgated by the Pennsylvania Supreme Court. In the absence of a state-mandated form, the account should conform as nearly as possible to the forms provided for other fiduciaries.

Tenth: **Re: Local Rule 14.2B**

The Committee recommends that the typographical error in the heading to Local Rule 14.2B be corrected so that the **heading** will read as follows:

**Local Rule 14.2B Allowances from Incapacitated Persons' Estates.**

CYNTHIA A. McNICHOLAS, ESQUIRE,  
Chair, Orphans' Court Rules Committee

**COMMONWEALTH OF PENNSYLVANIA  
DELAWARE COUNTY**

IN THE ORPHANS' COURT DIVISION  
OF THE COURT OF COMMON PLEAS  
OF DELAWARE COUNTY, PENNSYLVANIA

NO.

**IN THE MATTER OF ESTATE OF JOHN DOE, DECEASED**

RE: PETITION FOR CITATION TO SHOW CAUSE, IF ANY, WHY THIS  
PETITION SHOULD NOT BE GRANTED

**CITATION**

**TO: JOE DOE**

**WHEREAS**, at a Court held and kept in the Borough of Media in and for the County of Delaware, Pennsylvania on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, before the Honorable JOSEPH P. CRONIN, JR., President Judge of said Court, a petition was presented and a Citation awarded in the above entitled matter.

**NOW THEREFORE**, a return date is fixed for the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by which date any party opposing the granting of the prayer of the petition shall file an answer admitting or denying the averments of facts of the petition, and specifically stating his objections thereto and averring the facts relied upon by him.

**FURTHERMORE, WE COMMAND YOU**, that you be and appear for a hearing before the Judge of the Court of Common Pleas, Orphans' Court Division, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, at \_\_\_\_\_, to show cause, if any you have, why the relief sought in the said petition should not be granted. Witness HUGH A. DONAGHUE, ESQUIRE, Clerk of Orphans' Court Division, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Chief Deputy Clerk  
Orphans' Court Division

[Pa.B. Doc. No. 09-979. Filed for public inspection May 29, 2009, 9:00 a.m.]

## FRANKLIN AND FULTON COUNTIES

## Amendment of Local Rule of Civil Procedure 39-1910.11; Miscellaneous Doc.; Volume 2009; Page 1990

## Order of Court

And Now this 7th day of May, 2009, It Is Hereby Ordered that Local Rule of Civil Procedure 39-1910.11 is amended as follows.

These changes shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DOUGLAS W. HERMAN,  
President Judge

**Rule 39-1910.11. Office Conference. Subsequent Proceedings. Order.**

39-1910.11(a). *Office Conference conducted by Conference Officer.* The office conference shall be conducted by a conference officer designated from time to time by the conference officer supervisor and/or the director of Domestic Relations.

39-1910.11(b). Rescinded.

39-1910.11(e). Rescinded.

39-1910.11(f)(1). *Instructions Mailed with Conference Order.* The Domestic Relations Section shall mail a copy of "How to Appeal Your Recently Obtained Support Order," to each party with the order entered following the conference at Domestic Relations.

39-1910.11(i)(1). *Demand for Appeal Hearing; filing fee.* Any party may seek review by the court of the order entered following the conference at Domestic Relations. Review by the court will act as an appeal of the decision made by the conference officer at the Domestic Relations Section. The hearing before the court will be a *de novo* hearing. An appealing party shall file a written demand for hearing using the form "Demand for Appeal Hearing," attached as Exhibit "A." Except as set forth in subsection (C) below, the party shall pay a \$25.00 filing fee to Franklin/Fulton County Domestic Relations Section at the time of filing the written demand for hearing.

(A) The demand for hearing shall not be accepted and/or scheduled by Domestic Relations if not accompanied by the filing fee.

(B) The filing fee for the written demand for hearing is non-refundable.

(C) If a party is poor and unable to pay the filing fee, the party must seek leave of court to have the fee waived.

39-1910.11(i)(2). *Content of "Demand for Appeal Hearing."* The party filing a written demand for hearing shall indicate on the form the reasons for or issues the party wishes the court to address at the hearing. The party must select the type of hearing being requested: routine hearing or specially assigned hearing.

(A) Routine Hearing is a hearing that does not need more than 30 minutes to complete and does not address complex questions of law or fact.

(B) Specially Assigned Hearing requires greater than 30 minutes to complete and does address complex questions of law or fact. Pa.R.C.P. 1910.11(j)(2) applies.

(C) Failure of the party to select either a routine hearing or a specially assigned hearing on the "Demand

for Appeal Hearing" will result in the Domestic Relations Section scheduling the matter for a routine hearing lasting no more than 30 minutes.

39-1910.11(i)(3). *Scheduling and Notice.* When any party files a written demand for hearing and pays the filing fee, the Domestic Relations Section shall schedule a hearing before the court and give notice to the parties.

39-1910.11(i)(4). *Mailing to both parties.* When the *de novo* hearing has been scheduled, the Domestic Relations Section shall mail to the parties a copy of the order scheduling the hearing before the court, a copy of the written demand for hearing, and the form "Pre-Trial Memorandum for Appeal Hearing," attached as Exhibit "B."

39-1910.11(i)(5). *Pre-Trial Memorandum for Appeal Hearing.* The "Pre-Trial Memorandum for Appeal Hearing" shall be filed at Domestic Relations at least seven (7) days before the hearing. The following shall apply:

(A) Failure of the appealing party to file a pre-trial hearing memorandum may be considered an abandonment of claims and a withdrawal of the appeal. The court may impose other sanctions as appropriate.

(B) Failure of the opposing/responding party to file a pre-trial hearing memorandum may be treated as not contesting the appellant's claims and will be deemed a waiver of all other issues on appeal. The court may impose other sanctions as appropriate.

(C) For a routine hearing, the pre-trial hearing memorandum shall contain the following: an explanation of each issue you expect to raise at the hearing; a description of the facts you plan to prove related to the support action; identification of witnesses and the facts to which each witness will testify; a description of exhibits other than those required by the Pennsylvania Rules of Civil Procedure; and the relief being sought.

(D) For a specially assigned hearing, the pre-trial hearing memorandum shall contain in addition to all the items listed in Rule 39-1910.11(i)(5)(C), the following information: identification of legal authority (statutes, court cases, or rules) relating to the party's position on each issue raised; and an indication of the length of hearing needed to present all the evidence and witnesses' testimony for both sides of the support action.

39-1910.11(i)(6). *Distribution of Copies.* Upon receiving the parties' "Pre-Trial Memorandum for Appeal Hearing," the Domestic Relations Section shall mail copies of the same to each party prior to the hearing before the court.

39-1910.11(j). Rescinded.

39-1910.11(j)(2). *Discovery.* When a hearing has been assigned a special time, discovery is available in accordance with Pa.R.C.P. 4001 through 4025. See Pa.R.C.P. 1910.11(j)(2). If discovery has been conducted, parties shall attach a statement of what discovery has been sought and responded to, shall identify issues related to failure to make discovery requested or failure to adequately respond, and shall suggest to the court whether the court should or should not review discovery prior to the *de novo* hearing.

(Revised 4/2009)

Exhibit "A."
In the Court of Common Pleas of the 39th Judicial District of Pennsylvania
Franklin / Fulton County Branch - Domestic Relations Section

Note: Use "tab" between fields

Plaintiff v. Defendant
Docket No. DRS
PACSES No.

Demand for Appeal Hearing
Notice: Appellants must pay the \$25 filing fee unless the Court waives it.

(name) demands an appeal hearing for the following reasons:
(continue on back if necessary)

Check one: [ ] Routine hearing needing not more than 30 minutes OR
[ ] Specially assigned Hearing requiring minutes (Pa.R.C.P. 1910.11(j)(2) applies)

Failure to select will cause the DRS to schedule the matter for a routine hearing lasting no more than 30 minutes.

Note: Multiple routine hearings are scheduled for not more than 30 minutes and do not have complex questions of law or fact. Hearings dealing with complex questions of law or fact are specially scheduled for times other than times set for routine hearings and are presumed to require more than 30 minutes trial time. For both types of hearing, all unrepresented parties and counsel for represented parties must file a pre-hearing memorandum detailing the following information: a list of issues for the court to decide, what facts you expect to establish, a list of witnesses and the expected testimony of each witness, a list of any exhibits you expect to use, and the requested outcome. In addition, for specially assigned hearings, all unrepresented parties and counsel for represented parties must also include in their pre-hearing memoranda a reference to governing legal authority and the anticipated length of the hearing.

Pre-trial memoranda for hearings shall be filed with the Domestic Relations Office at least seven (7) days prior to the hearing.

Failure of an appealing party to file a pre-trial hearing memorandum may be considered an abandonment of claims and a withdrawal of the appeal. Failure of the opposing party to file a pre-trial hearing memorandum may be treated as not contesting the appellant's claims and will be deemed a waiver of all other issues on appeal. The Court may impose other sanctions as appropriate.

Signature of party demanding hearing:
Check one: [ ] Plaintiff [ ] Defendant

Date:

Signature of attorney, if any, for party:
Counsel for (check one): [ ] Plaintiff [ ] Defendant

Notice to Counsel: Counsel whose signature appears above will be deemed to have entered an appearance in the matter and will be obligated to provide representation at the hearing absent leave of court to withdraw.

(Revised 04/2009)

Exhibit "B."
In the Court of Common Pleas of the 39th Judicial District of Pennsylvania
Franklin / Fulton County Branch—Domestic Relations Section

Plaintiff v. Defendant
DRS No.
PACSES No.

Pre-trial Memorandum for Appeal Hearing

IMPORTANT NOTICE: This Pre-trial memorandum must be filed with the DRS at least seven (7) days before the appeal hearing.

This pre-trial memorandum is being filed by (check one): [ ] Plaintiff [ ] Defendant

I (check one) [ ] did [ ] did not file a request for an appeal hearing.

I (check one) [ ] do [ ] do not have an attorney. My attorney's name is \_\_\_\_\_

A. Issues: The issues I raise on appeal are as follows (attach extra sheet if necessary):

- 1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

B. Facts: I expect to prove the following facts to make my case (attach extra sheet if necessary):

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

For Child Support matters, it is suggested that you include information including each child's name, birth date and age. State the incomes of both plaintiff and defendant and where each is employed. State whether either the plaintiff or the defendant is receiving any benefits such as welfare, social security, worker's compensation, unemployment compensation, etc. and if any child is receiving any benefits such as welfare or social security, and state the amount of each benefit. State whether either the plaintiff or the defendant has other child or spousal support obligations, if known and the amount. If one or both of the parties pay child care expenses, state how much each pays. State which parent is seeking reimbursement for child care expenses. If one of the parties is paying health insurance premiums for any child, state how much and state who is seeking reimbursement. If you have a current custody arrangement, write down what it is. The Court uses it for support purposes, but will not make a decision on custody or visitation or change the current custody or visitation schedule.

For Spousal Support/alimony pendente lite matters, it is suggested that you state the date of marriage and the date of separation, as well as the status of any divorce action pending. State the ages and dates of birth of both wife and husband. State whether there is a marital home, who lives there and who pays the mortgage and how much. Set forth the income for the wife and husband and if either is retired, unemployed, disabled, etc. Identify any benefits that either party is receiving such as welfare, social security, worker's compensation, unemployment compensation, etc. State whether parties are working part time or full time. Provide information about any other support obligations that either wife or husband has for child support, if known. State how much is paid for health insurance for spouse and/or children, which spouse is paying that expense and who is seeking reimbursement. List any other expenses, with amounts, as it relates to the marriage, such as private school tuition for children's education, etc., and state who is seeking reimbursement for such expense. Include any information regarding entitlement for spousal support.

C. Witnesses: I will have the following witnesses present to testify. For each witness I have included the witness's name, address and what facts the witness will testify to (attach extra sheet if necessary).

- 1. \_\_\_\_\_
2. \_\_\_\_\_



3. \_\_\_\_\_  
\_\_\_\_\_

**D. Exhibits:** *In addition to the documents which I am required to bring to the hearing, as listed below\**, I expect to use the following exhibits or documents at the hearing:

- |          |          |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

\* Each party **is required** to bring the following documentary evidence to the hearing and, if available, should provide the following evidence to the DRS office when this memorandum is filed:

1. a true copy of your most recent Federal Income Tax Return, including W-2's, as filed;
2. your pay stubs for the preceding six (6) months;
3. verification of child care expenses;
4. proof of medical coverage which you may have, or may have available to you, and the cost of it;
5. income and expense statements (for guideline cases showing only income and extraordinary expenses and for Melzer v. Witsberger cases—480 A.2d 991—completing entire income and expense statement).

**E. Requested outcome:** When the hearing is over and I have given all of my evidence to the judge, this is what I want the Judge to put in the order that will decide my case (use extra sheet if necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Any party may complete the following sections **but for parties who have been given a specially assigned time for your hearing, the following information is required:**

**F. Reference to governing legal authority:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**G. For scheduling purposes, please give your best estimate of the amount of time the Court will need to hear your case:** (check one):  thirty (30) minutes or less  
 45 minutes  one hour  1 1/2 hours  two hours  3 hours or more

Date: \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Signature of Unrepresented Party or Party's Attorney

If appropriate: **▶ ▶ ▶ ▶**

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No: \_\_\_\_\_

Supreme Ct. ID No: \_\_\_\_\_

Counsel for:

Plaintiff

Defendant

**Note:** Hearings have been assigned a special time when there are complex questions of law, fact or both; when the hearing will be protracted, or when the orderly administration of justice requires that the hearing be separately listed. When a hearing has been assigned a special time, discovery is available in accordance with Pa.R.C.P. 4001 through 4025. If discovery has been conducted, parties should attach a statement of what discovery has been sought and responded to, should identify issues related to failure to make discovery requested or failure adequately to respond, and should suggest to the Court whether it should or should not review discovery prior to the evidentiary hearing.

(Revised 04/2009)

[Pa.B. Doc. No. 09-980. Filed for public inspection May 29, 2009, 9:00 a.m.]

**LANCASTER COUNTY**  
**Lancaster County Rules of Criminal Procedure;**  
**No. 507.1; AD 9-2009**

**Administrative Order**

*And Now*, May 6th, 2009, effective 30 days after publication of this Order in the *Pennsylvania Bulletin*, Lancaster County Rule of Criminal Procedure No. 507.1 is adopted as follows:

**\*Rule No. 507.1. Approval of police complaint brought by the Warden, any Deputy Warden or Major of the Lancaster County Prison.**

The District Attorney of Lancaster County having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging the following crimes brought by the Warden, any Deputy Warden or Major of the Lancaster County Prison:

1. Any offense brought under Title 18 of the ***Pennsylvania Consolidated Statutes Annotated***.
2. Any offense brought as a violation of the Controlled Substance, Drug Device and Cosmetic Act, 35 P.S. Section 780-113. shall not hereafter be accepted by any

judicial officer unless the Complaint and Affidavit have the approval of an attorney for the Commonwealth prior to filing.

*By the Court*

LOUIS J. FARINA,  
*President Judge*

[Pa.B. Doc. No. 09-981. Filed for public inspection May 29, 2009, 9:00 a.m.]

**LUZERNE COUNTY**  
**Order Amending Rules of Civil Procedure 1038, 1301, 1308 and Rescinding Rules of Civil Procedure 1302(g) and 1311**

**Order**

*Now this 7th day of May, 2009, it is hereby Ordered and Decreed*, that the Order of March 11, 2009, order amending Luzerne County rules of civil procedure 1038, 1301, 1308 and rescinding Luzerne County rules of civil procedure 1302(g) and 1311, is amended as follows:

1. The rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.
2. Luzerne County rules of civil procedure 1038, 1301, 1308 and rescinding Luzerne County rules of civil procedure

dures 1302(g) and 1311 has been published in the *Pennsylvania Bulletin* Volume 39, Number 13, March 28, 2009, at page 1523.

3. Luzerne County District Court Administrator is Ordered to file seven (7) certified copies of this Order, along with a diskette with the Administrative Office of Pennsylvania Courts, two (2) certified copies of this Order with a diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

4. It is further Ordered that this Order shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

*By the Court*

CHESTER B. MUROSKI,  
*President Judge*

**AMENDMENTS TO LUZERNE COUNTY RULES OF  
CIVIL PROCEDURE  
MARCH 11, 2009**

I. Rule 1038 is amended in its entirety to provide as follows:

**Rule 1038. Trial without jury. Appeals from tax assessment of real estate.**

The following provisions shall govern the trial of appeals from the tax assessment of real estate:

1. Definitions.

(a) Residential property is defined as a single-family residence or a multi-family residential structure with an owner occupied unit and containing no more than four units.

(b) Non-Residential is defined as all other property.

2. Mediation.

All assessment appeals shall be referred by the Prothonotary to the court administrator for mediation. A report of mediation shall be filed in all cases.

3. Trial List. Case at issue. Certificate of Readiness.

(a) After the expiration of sixty (60) days from the date of service of the original appeal petition, and after the pleadings in the case are closed and whether or not mediation has yet occurred, any of the parties may place the case at issue by filing a certificate of readiness with the Prothonotary. The certificate shall classify the case as an assessment appeal and identify the nature of property as residential or non-residential as defined herein.

(b) The court administrator shall compile a trial/conciliation list for each term designated for the trial of assessment appeals. Separate trial/conciliation lists shall be compiled for residential and non-residential property.

(c) The court administrator shall notify the parties at least ninety (90) days prior to the beginning of the trial term that the appeal is scheduled to be conciliated/tried during that term.

4. Conciliation.

(a) All appeals shall be conciliated before trial by a conciliation judge or special master assigned thereto.

(b) At the time of conciliation, all parties or their counsel shall be present with full authority to effectuate a settlement of the appeal. Note: Parties and counsel are

advised to pay particular attention to the notice of conciliation. In appropriate cases, the conciliation and trial may be scheduled on the same day. In such instances, the parties must appear at the conciliation ready to move directly into trial if the conciliation does not result in settlement.

(c) If any party fails to comply with the provisions of this local rule, the court may impose sanctions or the special master may include in the report a recommendation for the imposition of appropriate sanctions, including but not limited to, attorneys' fees and costs against the party or parties failing to comply.

5. Pre-Trial Statement.

(a) Sixty days prior to the date scheduled for conciliation of tax assessment appeal, the appellant shall distribute to all counsel of record, or if counsel have not entered an appearance, on the party(ies), and to the court administrator a pre-trial statement. The pre-trial statement shall incorporate the following:

(i) a description of the use of the real estate and the nature of the real estate.

(ii) a list of all persons who will give testimony in the trial of this appeal.

(iii) a list of all exhibits which the party intends to use at trial.

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

(b) Twenty days prior to the date scheduled for conciliation of a tax assessment appeal, the appellee(s) shall distribute to all counsel of record, or if counsel have not entered an appearance, on the party(ies), and to the court administrator a pre-trial statement. The pre-trial statement shall incorporate the following information or documents:

(i) a description of the use of the real estate and the nature of the real estate.

(ii) a list of all persons who will give testimony in the trial of this appeal.

(iii) a list of all exhibits which the party intends to use at trial.

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

(c) All interested parties whose interests are aligned with the appellant shall distribute their Pre-Trial Statement in accordance with subsection (a) herein. All interested parties whose interests are aligned with the appellee(s) shall distribute their Pre-Trial Statement in accordance with subsection (b) herein.

(d) The failure to comply with subsections (a), (b) and (c) of this local rule shall result in appropriate relief, which may include the exclusion or limitation at trial of testimony or evidence which was not provided in the pre-trial statement or a recommendation for the imposition of attorneys' fees and costs against the party or parties failing to comply.

#### 6. Trial By Special Master.

(a) If a special master is assigned for trial, the special master shall schedule a trial and shall provide notice of the trial to all party(ies) and/or counsel of record.

The trial shall be open to the public and recorded by a court reporter.

The special master, in the discretion of the special master, may continue the trial.

#### (b) Report of Special Master.

Following the trial, the special master shall file a written report and recommendation which may be in narrative form stating the reasons for the recommendations and shall include a proposed final order. The special master shall serve a copy of the report and recommendation on all counsel of record or the party(ies), if not represented, by first class United States mail and the court administrator.

#### (c) Objections To Report and Recommendation of Special Master.

The parties shall file objections, if any, to the report and recommendation in writing within twenty days of the date of mailing of the report and recommendation by the special master. Objections must be accompanied by a certification of counsel that the trial transcript, or necessary portions thereof, has been ordered from the court reporter. Copies of the objections and certification shall be served on all counsel of record or if counsel have not entered their appearance on the party(ies), the special master and the court administrator.

#### (d) Briefs on Objections.

Within twenty days of the date on which the transcript is filed of record, the moving party shall file a brief in support of objections and shall serve a copy on all counsel of record or if counsel have not entered their appearance on the party(ies) and the court administrator. The brief in support of objections shall refer to transcript page numbers where possible. The moving party's failure to file a brief in support of objections shall constitute a waiver of all issues which could have been raised therein.

#### (e) Opposing Briefs.

Within twenty days after the moving party has filed a brief in support of objections, responding parties shall file their briefs in opposition to objections and serve a copy on all counsel of record or if counsel have not entered their appearance, on the party(ies), and the court administrator.

#### (f) Argument.

After the date set for briefs in opposition to objections has passed, the moving party shall notify the court administrator that the matter is ripe for argument by filing a notice that matter is ready for argument with the court administrator on the civil argument request form which shall be made available at the court administrator's office. The moving party shall serve a copy of this notice on all counsel of record or if counsel have not entered their appearance on the party(ies). Upon the filing of this notice, the court shall schedule oral argument if requested by a party; otherwise, the matter shall be decided upon briefs.

#### (g) Final Order.

Following oral argument the court may enter an appropriate final order. In the event that none of the parties file objections as described above to the report and recommendation, the court shall enter a final order consistent with the report, recommendation and proposed final order submitted by the special master.

II. Rule 1301 is amended in its entirety to provide as follows:

#### **Rule 1301. Arbitration. Scope.**

The following civil actions shall first be submitted to compulsory arbitration and heard by a board of arbitrators:

All civil actions and actions in replevin in which the amount in controversy, exclusive of interest and costs, is Fifty Thousand (\$50,000.00) Dollars or less shall be submitted to and heard and decided by a Board of Arbitrators pursuant to and in accordance with the provisions of 42 Pa.C.S. § 7361 and Pa.R.C.P. 1301 et seq.

III. Rule 1302(g) Assessment Appeals is rescinded.

IV. Rule 1308 is amended in its entirety to provide as follows:

#### **Rule 1308. Appeal—Praeceptum for Trial List.**

Appeals from an award of the board of arbitrators shall be ordered on the trial list on praecipe of either party.

V. Rule 1311 Procedure on Appeal is rescinded.

[Pa.B. Doc. No. 09-982. Filed for public inspection May 29, 2009, 9:00 a.m.]

## LUZERNE COUNTY

### Rule of Civil Procedure 206.4(c); No. 4448 of 2009

#### Order

Now this 7th day of May, 2009, it is hereby *Ordered and Decreed*, that the Order of March 11, 2009 adopting Luzerne County Rule of Civil Procedure 206.4(c) is amended as follows:

1. The rule shall be effective upon publication on the Pennsylvania Judiciary Web application portal.

2. Luzerne County Rule of Civil Procedure 206.4(c) has been published in the *Pennsylvania Bulletin* Volume 39, Number 13, March 28, 2009, at page 1522.

3. Luzerne County District Court Administrator is Ordered to file seven (7) certified copies of this Order, along with a diskette with the Administrative Office of Pennsylvania Courts, two (2) certified copies of this Order with a diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, One (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

4. It is further Ordered that this Order shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

*By the Court*

CHESTER B. MUROSKI,  
*President Judge*

**AMENDMENTS TO LUZERNE COUNTY RULE OF CIVIL PROCEDURE 206.4(c)**

**Rule 206.4(c). Procedure for Issuance of Rule to Show Cause. Issuance as of Course. Discretionary Issuance.**

(A) Procedure for Issuance of Rule to Show Cause. Issuance as of Course.

(1) With the exception of those matters governed by sub-section (B) of this Local Rule, a party seeking a Rule to Show Cause shall present the same along with the underlying Motion/Petition, a comprehensive Brief in Support and Proposed Order, to the Office of Court Administration.

**(a) All proceedings concerning the appointment of an arbitrator for claims arising under the under-**

**insured or uninsured motorist provisions of an automobile insurance policy are subject to this Rule.**

(2) . . . (no change to text) . . .

(3) The Court Administrator will assign a return date for the Rule to Show Cause, no less than 20 days, in accordance with internal operating procedures of the Court of Common Pleas and issue the Rule to Show Cause. **However, a rule to show cause issued upon a petition for appointment of an arbitrator shall be returnable in no less than 30 days.**

. . . (No further changes to the text of the Rule) . . .

[Pa.B. Doc. No. 09-983. Filed for public inspection May 29, 2009, 9:00 a.m.]

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# RULES AND REGULATIONS

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 54 ]

[ L-00070184/57-255 ]

#### Retail Electricity Choice Activity Reports

The Pennsylvania Public Utility Commission (PUC) on December 4, 2008, adopted a final rulemaking order which adopts reporting requirements regarding electric generation market activity to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.

#### Executive Summary

On April 12, 2006, the PUC entered an order soliciting comments on establishing reporting requirements on sales activity of the retail electric generation market. See 66 Pa.C.S. § 2811. The reporting requirements would apply to all electric distribution companies and active electric generation suppliers. Order entered April 12, 2006 at Docket No. M-00061939. Eight comments and two reply comments were filed.

After reviewing the comments, the PUC issued its proposed rulemaking on *Retail Electricity Choice Activity Reports* on April 13, 2007. The proposed order was published at 37 Pa.B. 5895 (November 3, 2007). The Independent Regulatory Review Commission (IRRC) and six other interested persons filed comments. The PUC issued its *Final Rulemaking Order* on August 7, 2008. On August 25, 2008, RESA filed a petition for reconsideration of the requirement that suppliers report data by customer class as defined in each distribution company's tariff. After notice and opportunity to be heard, the PUC granted RESA's request, and issued its *Final Rulemaking Reconsideration and Order* on December 4, 2008.

The regulations at 52 Pa. Code §§ 54.201—54.204 require that all electric distribution companies and active electric generation suppliers report sales activity information. A distribution company will file quarterly reports reporting by customer class as defined in its tariff. A supplier will file an annual report reporting for customer groups defined by annual usage. Reports must be filed using the appropriate report form that may be obtained from the PUC's Secretary's Bureau or the forms officer, or may be down-loaded from the PUC's Internet web site.

The PUC will use the sales activity information collected to monitor the retail electric generation market to prevent market power abuse and discriminatory conduct. The information will also be used to conduct milestone reviews of the development of the retail market for generation. See 66 Pa.C.S. § 2804(12).

The PUC contact persons are Charles F. Covage, (717) 783-3835 (technical), and Patricia Krise Burket, (717) 787-3463 (legal).

Public Meeting held  
December 4, 2008

*Commissioners Present:* James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; Robert F. Powelson; Kim Pizzingrilli; Wayne E. Gardner

*Petition for Reconsideration of the Retail Energy Supply Association: re: Final Rulemaking on Retail Electricity Choice Activity Reports; Doc. No. L-00070184*

#### Reconsideration and Order

*By the Commission:*

On August 8, 2008, the Commission entered a final rulemaking order at the above-captioned docket. These final regulations set forth reporting requirements for retail electricity sales for electric distribution companies (EDCs) and electric generation suppliers (EGSs). Two subsequent events occurred before our order moved from the Commission to the remaining stages of the regulatory review process. First, on August 25, 2008, the Retail Energy Supply Association (RESA)<sup>1</sup> filed a petition for reconsideration of the order's changes to the proposed EGS reporting requirements. The second event was the enactment of Act 129 of 2008 (Act 129) which adds certain defined terms to the Public Utility Code. By this order, we will: (1) grant RESA's petition for reconsideration; (2) revise certain definitions in the final regulations to be consistent with Act 129; (3) withdraw the order entered on August 8, 2008; and (4) issue the revised final regulations in this final rulemaking reconsideration and order.

#### Discussion

##### Background

On February 9, 2006, the Commission adopted an order soliciting comments at Docket No. M-00061939. *Development and Production of Retail Electricity Choice and Activity Reports*. Order entered April 12, 2006. The deadline for filing comments/reply comments was June 12, 2006, and July 11, 2006, respectively. Comments were filed by Constellation NewEnergy, Inc. (Constellation), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Energy Association of Pennsylvania (EAPA), Pike County Power & Light Company (Pike), Richards Energy Group, Inc. (Richards), RESA, First Energy Solutions Corp. (FirstEnergy). Two parties filed reply comments: Constellation and RESA.

On April 13, 2007, the Commission adopted a proposed rulemaking order and requested comments at Docket No. L-00070184. *Retail Electricity Choice Activity Reports*. Order entered April 17, 2007. The proposed regulations were published in the *Pennsylvania Bulletin* on November 3, 2007. Comments were received from EAPA, PECO, UGI, OCA, OSBA, RESA and the Independent Regulatory Review Commission (IRRC).

The final rulemaking order we adopted on August 8, 2008, established reporting requirements for electric generation suppliers and electric distribution companies regarding sales of electric generation. These reporting requirements will enable the Commission to collect data to monitor the development of Pennsylvania's competitive retail electricity market and to take steps, when necessary, to prevent anticompetitive or discriminatory conduct and the unlawful exercise of power in that market. As

<sup>1</sup> Commerce Energy, Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC; Gexa Eenergy, Hess Corporation, Integrys Energy Services, Inc., Liberty Power Corps, Reliant Energy Retail Services, LLC, Sempra Energy Solutions; Strategis Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp.

discussed above, we are withdrawing the prior order and issuing this new final rulemaking order.

This final rulemaking reconsideration and order first discusses and disposes of RESA's petition for reconsideration and the OSBA's answer in opposition. The substantive comments made in these two pleadings are discussed under the specific section of the proposed regulations to which they were directed together with comments previously filed to our Proposed Rulemaking Order. The changes made to the Public Utility Code by Act 129 will be incorporated within our discussion of the comments filed in response to § 54.202 (relating to definitions) of the proposed regulations.

### RESA Petition for Reconsideration

In its petition, RESA states that in the prior order the Commission incorporated the concerns raised by the Energy Association of Pennsylvania in its comments opposing the classification of customers for EDC reporting by Peak Load Contribution (PLC). RESA Pet. at ¶7. RESA asserts that the Energy Association did not oppose the Commission classifying customers for EGS reporting by PLC. RESA Pet. at ¶8. However, RESA asserts the Commission's final order changed both EGS and EDC reporting by PLC to EGS and EDC reporting by EDC rate class. RESA Pet. at ¶9.

Since there was no opportunity given to file reply comments, RESA now states that it would like the Commission to reconsider one issue in its final rules. The issue involves the requirement that EGSs report sales activity for commercial and industrial (C&I) or nonresidential customers based on the EDC's rate classification or, where applicable, the default service plan classification. RESA states that requiring EGSs, who report on a statewide basis, to modify their systems to classify customers based on specific EDC classifications would be costly, burdensome and time consuming and is not in accord with the PUC's stated goals in regard to this issue. *RESA Petition*, p. 3, ¶5.

### OSBA's Answer

OSBA opposes RESA's petition for reconsideration. OSBA's position is that granting the petition would further delay the collection of important shopping data while the Commission considers the possible revisions and seeks additional public comment. *OSBA Answer*, p. 4, ¶10. OSBA states that there is no support given for RESA's assertion that modifying the customer data base would be costly and burdensome. RESA also made no estimate of the costs or the time involved. *OSBA Petition*, p. 4, ¶11.

### Standard for Granting Reconsideration

Petitions for reconsideration are governed by the provisions of section 703(f) and (g) of the Public Utility Code, 66 Pa.C.S. § 703(f) and (g), which state respectively as follows:

**(f) Rehearing.**—After an order has been made by the commission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except as the commission may, by order, direct. If the application be granted, the commission may affirm, rescind, or modify its original order.

**(g) Rescission and amendment of orders.**—The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

The standard for determining whether the Commission should exercise its discretion to grant a petition for reconsideration under the provisions of 66 Pa.C.S. §§ 703(f) and (g) was stated in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982). *Duick* held that a petition for rehearing must allege newly-discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick* at 558. A petition for reconsideration under 66 Pa. Code § 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick* at 559.

### Discussion and Disposition

The Proposed Rulemaking Order noted that the issue of grouping retail customers into categories based on rate classes or on consumption has been debated in several Commission proceedings and no uniform solution has been reached. Proposed Rulemaking Order at 12. The Commission crafted the PLC classification method as its attempt for a workable solution to the issue. In addressing the EDCs' concerns, the Commission's prior final order did not review sufficiently the impact of the chosen classification method on the EGSs. Accordingly, after review of RESA's petition and OSBA's answer in opposition, we will grant reconsideration of our final rulemaking order.

The EDCs and EGSs each claim that classifying their reporting on the other's method will be unduly costly and burdensome. "[T]his change in reporting will require costly programming changes which will delay implementation and impose addition expenses plus a significant administrative burden on many of the EDCs." Comments of the Energy Association of Pennsylvania (EAPA) at p. 5. "Such data gathering and sorting will be very costly, logistically cumbersome and potentially impossible for EGSs, many of which operate on a National basis and each of which generally categorizes based on their own individual criteria." RESA Pet. at ¶13.

However, most EDCs and EGSs appear to agree that reporting is feasible when based on broad customer classifications. EAPA Comments at p. 6 (proposing broad classifications of residential, commercial and industrial); RESA Petition at ¶¶13, 14 (proposing EGS reporting of non-residential customers on a volumetric basis). Therefore, in the regulations we will direct reporting by EDCs and EGSs on these respective classifications.

At this early point in the development of competitive markets we are hesitant to impose a reporting requirement on either EDCs or EGSs when each believes it to be costly and burdensome. We are hopeful that the differences in classifications will provide sufficiently useful data. However, we are mindful that the differences may not provide sufficiently useful information and that we may have to return to this issue in the future.

Following is a discussion and disposition of additional comments to specific sections made by various parties as well as other Commission-initiated changes and corrections to the August 8, 2008 Rulemaking Order.

*Section 54.201. Purpose.*

An error was identified in the last sentence of this section regarding the scope of the milestone review. This error has been corrected by deleting the words “and distribution” so that this sentence now reads as follows:

The information shall be used to conduct milestone reviews of the development of the retail market for the supply of electricity. (See 66 Pa.C.S. § 2804(12) (relating to standards for restructuring of electric industry).)

*Section 54.202. Definitions.*

**A. Change in EDC and EGS Reporting Requirements and Definitions**

In the proposed rulemaking, the use of “peak load contribution” (PLC) was proposed as a means to classify customers for the purpose of reporting EDC and EGS sales activity. Because we have dropped the use of PLC to classify customers into groups for the purpose of reporting sales activity in § 54.203, we have deleted definitions for the terms “peak load contribution—PLC,” “small C&I customers,” “medium C&I customers” and “large C&I customers.”

On the other hand, we have added new definitions for “small nonresidential customers,” “medium nonresidential customers” and “large nonresidential customers” since we have adopted new customer classification criteria for EGS reporting of sales activity. The classification is based on usage on a volumetric basis (kWh) rather than on demand. See § 54.203(a)(4).

**B. Definitions and Uniform Data**

IRRC indicated that reporting requirements in § 54.203(a)(4) use undefined terms “hybrid rate customer accounts” in subparagraph (v) and “green power customer accounts” in subparagraph (vii). IRRC recommends defining these terms so that uniform data is reported. OSBA adds that Time-of-Use (TOU) should also be defined.

We agree with IRRC’s comments, and have added the following definitions: “capped electric generation rates,” “flat rate customer account,” “Green Power Customer account” and “hybrid rate customer account.” The addition of definitions relating to “time of use” is discussed in the next section.

**C. Definitions and Act 129**

Act 129 has made two revisions to the Public Utility Code that must be recognized in these final regulations. First, Act 129 has deleted as a named Commission unit the Bureau of Conservation, Economics and Energy Planning (CEEP), the bureau that has been designated to be recipient of these reports in § 54.203(a)(5) and (6). While we have not finalized any decision in regard to the continuation of CEEP as a bureau, the continuation of

our duty to monitor the market for anti-competitive behavior and abuse of market power is certain. Accordingly, we have revised the definition of “CEEP” in § 54.202 to provide for a successor unit that will receive and process/evaluate the EGS and EDC sales activity reports.

Act 129 also has added to the Public Utility Code a definition for the term “time-of-use rate.” See Act 129, Section 2, p. 62, amending 66 Pa. Code § 2806.1(m) (relating to energy efficiency and conservation program; definitions). Thus, we have added a definition for “time of use customer account” and the new statutory definition for “time-of-use rate.”

*Section 54.203. Reporting requirements.*

**A. Change in EDC and EGS Reporting Requirements**

In its comments, the EAPA expressed concerns regarding the proposed use of PLC for classifying customers for reporting purposes. Specifically, EAPA indicated that using PLC would require costly programming changes and impose administrative burdens on its member EDCs. In addition, EAPA noted that as energy use changes, the customer may move from one rate classification to another. UGI voiced similar concerns. Both EAPA and UGI believe that using the EDC’s traditional rate schedules for reporting purposes is understood by all parties and will not require costly programming changes. IRRC indicated the Commission should provide a dollar estimate of the costs to EDCs and EGSs for reporting data according to PLC. In addition, the Commission should explain why classifying customer classes based on existing rate schedules is not sufficient.

RESA opposed the proposed reporting scheme whereby EGSs would need to report sales activity data for customer groups as defined by individual EDC rate schedules (for its customers located in EDC service territories where rate caps have not yet expired) or default service programs (for its customers located in those EDC service territories where rate caps have expired). RESA argued that the requirement would be burdensome and cumbersome. *RESA Petition*, p. 5, ¶11. RESA also argued that the reporting scheme would not provide the Commission with any meaningful data on the status of competition in Pennsylvania since the commercial and industrial reporting buckets will vary drastically from one EDC to the next, resulting in an “apples to oranges” categorization that will obscure any trends in customer or EGS behavior. *RESA Petition*, pp. 6-7, ¶13.

As an alternative to requiring the EGSs to report sales activity for nonresidential customers divided into classes established in each EDC’s tariff or default program filing, RESA suggested that the Commission require EGSs to classify customers into the following categories: “small nonresidential,” “medium nonresidential” and “large nonresidential.” For each category, RESA recommended that the Commission require EGSs to report on a volumetric basis, for example, kWh basis rather than on a demand, for example, kW basis as follows:

Small Nonresidential	0 to 120,450 kWh annual usage (25 kW * 55% load factor *8,760 hours in the year
Medium Nonresidential	120,451 to 2,409,000 kWh annual usage (500 kW *55% load factor *8,760 hours in the year
Large Nonresidential	2,409,001 kWh annual usage and greater



RESA explained that all energy companies use kWh to determine the amount of energy consumed by a home or a business for billing purposes, this information is readily available to all EGSs (and EDCs as well). *RESA Petition*, p. 7, ¶15. RESA states that by adopting its suggestions, the Commission will be creating a manageable way for EGSs to report data on a Statewide basis to provide the Commission with the information that it needs. *RESA Petition*, p. 8, ¶16.

OSBA responded that adopting the customer classification proposed by RESA would cause confusion. For example, an EDC would report its shopping statistics by customer classification, for example, either the customer classes on which generation rates are capped or the customer classifications approved in EDC's most recent default service proceeding. *OSBA Answer*, p.6, ¶14. Under RESA's proposal, the EGSs would report on an entirely different basis. Consequently, it would be very difficult, if not impossible, to determine the portion of the EDC classification which is being served by each particular EGS and what product type is being purchased by a substantial number of customers in each classification. Without this information, it would be difficult to respond to arguments of a particular EGS in favor of pro-competition proposals in a default service proceeding. *OSBA Answer*, p. 6, ¶15.

### Disposition

The Commission accepts EAPA and UGI arguments on this issue regarding the classification of nonresidential customers for the purpose of EDC reporting. The Commission recognizes that using traditional rate classes is understood by all parties. Likewise, the Commission recognizes that using PLC would impose costs and administrative burden on the EDCs. Using PLC would also cause confusion by creating a fluid classification wherein a customer may move from one classification to another depending on peak usage at a specific time. For these reasons, we will abandon the use of PLC for purposes of customer classification.

The Commission however needs to have data reported in a way that will facilitate our understanding of default service policy and its impact on electric competition and customer shopping. The objective is to track the level of customer switching from the EDC to EGS for electric generation supply as well as customer preference for other products/services. To accomplish this objective, the Commission will require EDCs to report electric generation sales based on customer rate class. For an EDC under a generation rate cap<sup>2</sup>, the customer rate classes will be those defined in its tariffs. For an EDC not under a generation rate cap, the customer rate classes will be defined by the default service program approved by the Commission.

Accordingly, EDCs currently operating under electric generation rate caps will report data according to residential, commercial and industrial rate classes. For commercial and industrial customers, data will be reported according to the EDC's specific rate schedules within these rate classifications or according to customer groups that are defined in Commission-approved EDC default

<sup>2</sup> A rate cap is the set point above which a utility's regulated price for generation may not rise.

service programs. On the report form, EDCs must identify each rate schedule within these rate classes, briefly define criteria for customer inclusion in that rate class, and report the level of customer shopping for that rate class. Residential customer shopping data will be reported in the aggregate without using the rate schedule breakdown. The EDCs are also required to report the total number of commercial and industrial customers being served.

This adjustment to the reporting requirements will provide relevant data for the analysis of the impact of default service on electric customer shopping without requiring costly programming changes or imposing additional administrative burden on EDCs. The EDCs are already using these rate schedules and should have readily available data on customer counts, shopping, and the like.

For suppliers, we will adopt RESA's suggestion classifying customers for reporting purposes based on usage. Under this change, instead of reporting customers based on PLC, suppliers will report sales activity for "small nonresidential," "medium nonresidential" and "large nonresidential" classified by a volumetric basis, for example, kWh, rather than on a demand basis, for example, kW. This will not only make reporting more manageable for suppliers, but also will allow the Commission staff to make direct comparisons of supplier market share between NGDC service territories. Moreover, we are replacing a proposed EGS reporting requirement, which would have elicited substantially the same information as the EDC reporting requirement, with one that will provide different data. This will enable Commission staff to perform other analysis/evaluations that should provide us with a broader view of the retail market and greater insight into its operation.

To make this change in the proposed EGS reporting requirement, we added definitions for "small nonresidential customers," "medium nonresidential customers" and "large nonresidential customers" to § 54.202. We then revised § 54.203(a)(4) by inserting these now-defined terms for nonresidential customer groups and by deleting the references to the EDC tariff or EDC default service plan for purpose of reporting data for non-residential customers. We have also revised Form 5<sup>3</sup> to reflect the revisions made to § 54.203(a)(4).

Section 54.203(b)(2) has been revised by adding a sentence explaining that report forms will be available for downloading at the Commission's website, or will be provided in another medium upon request to the Commission's form officer.

### B. "Total sales," "total customers" and "total sales of all EGSs serving the territory"

IRRC suggests that the Commission consider the addition of "total sales," "total customers" and "total sales of all EGSs serving the territory" to the reporting requirements in § 54.203(a)(2). OCA provided specific language to address this concern.

### Disposition

The Commission agrees and has added these terms to the list of information that is to be reported. Annex A is amended accordingly. Also, for parallel construction, we have added an opening sentence to § 54.203(3) that is similar to the opening sentence of § 54.203(2). This

<sup>3</sup> These forms are not part of the regulation, but are provided to facilitate reporting. When the revised final regulations become effective, the forms will be made available on the Commission web site.

sentence states that an EDC shall report sales activity of EGSs operating in its service territory.

### C. EDC Deadlines for Submission of Quarterly Reports

EAPA, PECO and UGI suggest that § 54.203(a)(5) be changed to allow for an extension of 30 instead of 15 days for the submission of EDC quarterly reports. The parties argue that additional time is needed for the EDC to reconcile sales data. IRRC indicates that the Commission should explain why data is needed “no later than 15 days” after the end of the quarter and how EDCs can reasonably meet that requirement.

#### Disposition

The Commission agrees with the parties and has revised § 54.203(a)(5) in Annex A to reflect a 30 day period.

### D. Request for Clarification

EAPA requests clarification on § 54.203(a)(2)(v) “Number of time of use customer accounts served by EGSs;” on § 54.203(a)(2)(vii) “Number of hourly/real time priced customer accounts served by EGSs” and on § 54.203(a)(2)(ix) “Sales by EGSs to hourly/real time priced customer accounts (MWh).” EAPA suggests there are two interpretations of this request. One way would be to interpret § 54.203(2)(v) would be to provide the number of EDC’s TOU accounts being served by an EGS. A second way to interpret this request is to provide the number of accounts an EGS is serving and pricing on a TOU basis for each EDC. Similar interpretations can be made for subparagraph (vii) and (ix). EAPA indicates that EDCs will not have, and cannot readily obtain information for the second interpretation.

#### Disposition

The Commission agrees and has revised § 54.203(a)(2) to clarify that EDCs shall report the number of EDC “TOU customer accounts” and the hourly/real time priced customer accounts served by EGSs. EDCs are also required to report their sales volume (MWh) to these customers. Also, for clarity, we have revised subsections (a)(2)(i)—(xiii) so that the wording of the regulation and the report form will be consistent.<sup>4</sup> Subsection (a)(2)(i)—(xiii) lists the specific data that the EDCs are required to report. We have made similar revisions at subsection (a)(4) to ensure consistency between the regulations and the reporting form.<sup>5</sup>

### E. Consistent Reporting Requirements

Section 54.203(a)(5)(6) requires EDCs and EGSs to submit reports on a quarterly and annual basis respectively. EAPA and PECO argue that there should be consistent reporting requirements for EDCs and EGSs.

#### Disposition

The Commission will retain the existing reporting frequency. The majority of the comments received under the proposed rulemaking, including EAPA, favor quarterly reporting for EDCs. Therefore, the Commission retains the requirement that EDCs file quarterly reports with the Commission’s Secretary and CEEP. These reports are due 30 days after the end of the previous quarter.

The Commission will retain requirements that an EGS file its sales activity report with the Secretary and CEEP on an annual basis. The Commission previously ruled

<sup>4</sup> Citations to the regulations have been added to the corresponding line in the reporting form for EDCs for clarity. See Form at Tables 1—3.

<sup>5</sup> Citations to the regulations have been added to the corresponding line in the reporting form for EGSs for clarity. See Form at Tables 4 and 5.

that annual reports are appropriate for EGSs at 52 Pa. Code § 54.39(b) (relating to electricity generation supplier licensing; reporting requirements). The Commission will continue this schedule and require that EGSs file an annual report under these regulations at the same time as the annual report is to be filed at 52 Pa. Code § 54.39(b). This will enable the EGS to coordinate submission of the two separate reports. EGSs are therefore required to file an annual report for the previous calendar year on or before April 30 of each year.

*Section 54.204. Public Information.*

### Confidentiality

IRRC indicates that the Commission has not explained how confidentiality of EGS information will be accomplished. IRRC asks the Commission to establish protocols and procedures to protect the confidentiality of EGS information in its possession. EAPA, PECO, RESA and OSBA indicate that the regulations should ensure that EGS market share information is kept confidential. RESA adds that a confidential notation should be added to the EGS reporting form and Annex A.

#### Disposition

In the proposed rulemaking order on page 17, the Commission states that EDC information/data that does not disclose individual EGS market share is not confidential and may be made public.<sup>6</sup> See Annex A, § 54.204. Consistent with this determination, only page 2 (Section 6) of the attached EDC report form that solicits EGS market share information, reported as number of customer accounts served by EGS and the total sales in MWh that these accounts represent, will be marked as being “CONFIDENTIAL.” Section 6 of the EDC report form is entitled “EGS Market Share Reports.” See Annex A, report forms.<sup>7</sup> In addition, the Commission has added language in § 54.203(a)(3) ensuring this information is marked confidential. Likewise, a confidential notation has been added to the EGS reporting form and § 54.203 (a)(4) in Annex A.

### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the agency submitted a copy of the final-form rulemaking, which was published as proposed at 37 Pa.B. 5895 (November 3, 2007), and served on October 18, 2007, to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure (Committees) for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act (71 P. S. § 745.5b), the Commission also provided IRRC and the Committees with copies of all comments received.

This final-form regulation was deemed approved by the Committees and was approved by IRRC on April 23, 2009, in accordance with section 5(c) of the Regulatory Review Act.

### Conclusion

The Commission adopts the regulations revised herein as final and imposes reporting requirements on EDCs and EGSs consistent with our statutory duty to monitor the

<sup>6</sup> This decision is consistent with the Commonwealth’s new Right-to-Know Law at section 67.708(d) 65 P. S. § 67.708(d) (relating to exceptions for public records; aggregated data), that permits public access to aggregated data that is not otherwise protected. See 65 P. S. § 67.708(b)(1)—(5) (information related to the security of public utility facilities, service or operations is protected from public disclosure).

<sup>7</sup> The report forms will not be published as part of the regulations in Title 52. Instead, the Commission will provide electronic and paper copies upon request. The report forms will also be accessible on the Commission’s web site.

retail electric generation market in Pennsylvania. 66 Pa.C.S. §§ 2804(12) and 2811(a). To facilitate reporting, the Commission has developed separate forms—for EDCs and for EGSs—that shall be used for submitting the required information. The information will be used to monitor the retail electric generation market and to measure the impact of the Commission's default service policy on customer shopping. For this endeavor to be successful, cooperation is expected from all parties in timely submission of the reports.

Accordingly, under sections 501, 504 and 2801—2812 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504 and 2801—2812; sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201—1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we will adopt as final the proposed regulations to require reporting of data related to sales of electric generation that are set forth in Annex A, *Therefore*,

*It Is Ordered That:*

1. The *Petition for Reconsideration of the Retail Energy Supply Association: re: Final Rulemaking on Retail Electricity Choice Activity Reports* is granted.

2. The *Final Rulemaking on Retail Electricity Choice Activity Reports* entered August 8, 2008 is withdrawn.

3. The regulations of the Commission, 52 Pa. Code Chapter 54 are amended by adding §§ 54.201—54.204 to read as set forth in Annex A.

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

5. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

6. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

7. The Secretary shall duly certify this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

8. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

9. The contact persons for this final-form rulemaking are Charles F. Covage, CEEP, (717) 783-3835 (technical), Patricia Krise Burket, Assistant Counsel, (717) 787-3464. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

JAMES J. MCNULTY,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 2420 (May 9, 2009).)*

**Fiscal Note:** Fiscal Note 57-255 remains valid for the final adoption of the subject regulation.

## Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

##### Subchapter H. RETAIL ELECTRICITY CHOICE SALES ACTIVITY REPORTS

###### § 54.201. Purpose.

This subchapter establishes reporting requirements applicable to EDCs and active EGSs and requires the reporting of information related to retail electric generation sales activity. The Commission will use this information to fulfill its duty to monitor the Commonwealth's retail electric generation market and to police and arrest instances of market power abuse and discriminatory conduct. (See 66 Pa.C.S. § 2811 (relating to market power remediation).) The information shall be used to conduct milestone reviews of the development of the retail market for the supply of electricity. (See 66 Pa.C.S. § 2804(12) (relating to standards for restructuring of electric industry).)

###### § 54.202. Definitions.

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

*Active EGS*—An EGS that is licensed to provide retail electric generation service and is providing that service to one or more customers.

*CEEP*—The Bureau of Conservation, Economics and Energy Planning or a successor Commission Bureau assigned the task of monitoring the retail electric generation market for anti-competitive behavior and abuse of market power.

*Capped electric generation rates*—Electric Generation Rates established through restructuring plans approved by the Commission under 66 Pa.C.S. Chapter 28 (relating to the Electricity Generation Customer Choice and Competition Act).

*EDC*—*electric distribution company*—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

*EGS*—*electric generation supplier*—The term as defined in 66 Pa.C.S. § 2803.

*Flat Rate Customer Account*—A customer account that is charged a fixed cents per kwh rate that changes no more frequently than monthly, excluding seasonal rates.

*Green power customer account*—A retail customer account incorporating electric power supply that has greater than required renewable content as specified in section 3 of the Alternative Energy Portfolio Standards Act (73 P.S. § 1648.3).

*Hybrid rate customer account*—A retail customer account that is charged via an electric generation pricing arrangement that incorporates hourly and block rates.

*kW*—Kilowatts.

*kWh*—Kilowatthour.

*Large nonresidential customers*—Commercial and industrial customers with annual usage greater than 2,409,001 kWh.

*Medium nonresidential customers*—Commercial and industrial customers with annual usage ranging from 120,451 up to and including 2,409,000 kWh.

*MWh*—Megawatthours.

*Small nonresidential customers*—Commercial and industrial customers with annual usage ranging from 0 up to and including 120,450 kWh.

*TOU customer account*—*Time-of-use customer account*—A retail customer account that is charged a time of use rate.

*Time-of-use rate*—*TOU*—A rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour.

**§ 54.203. Reporting requirements.**

(a) *Reporting requirements.*

(1) An EDC or an active EGS shall report the information regarding retail sales of electric generation in accordance with this subchapter.

(2) An EDC shall report retail sales activity in its service territory. The EDC shall report information by customer class for residential, commercial, and industrial customers. An EDC with capped electric generation rates shall report information in the aggregate for residential customers, and by rate schedule and in the aggregate for commercial and industrial customers. An EDC that does not have capped electric generation rates shall report information for residential, commercial and industrial customers by rate class as defined by the default service program approved by the Commission. The EDC shall report the following information:

- (i) Total number of customer accounts served by EGSs.
- (ii) Total number of customer accounts being served by EGSs and the EDC.
- (iii) MWh sales of EGSs.
- (iv) MWh sales of EGSs and the EDC.
- (v) EGSs serving customer accounts by class.
- (vi) Total number of EDC TOU customer accounts served by EGSs.
- (vii) Total number of EDC TOU customer accounts served by EGSs and the EDC.
- (viii) MWh sales of EGSs to EDC TOU customer accounts.
- (ix) MWh sales of EGSs and the EDC to EDC TOU customer accounts.
- (x) Total number of EDC hourly/real time price customer accounts served by EGSs.
- (xi) Total number of hourly/real time price customer accounts served by EGSs and the EDC.
- (xii) MWh sales by EGSs to EDC hourly/real time priced customer accounts.
- (xiii) MWh sales by EGSs and the EDC to EDC hourly/real time priced customer accounts.

(3) An EDC shall report retail sales activity of EGSs operating in its service territory. An EDC shall report the following information for an EGS providing service in the EDC's service territory, marking the information as confidential:

- (i) Identity of the EGS.
- (ii) Number of customer accounts served by the EGS by customer class for residential, commercial and industrial customers.

(iii) Sales in MWh of customer accounts served by the EGS by customer class for residential, commercial and industrial customers.

(4) An active EGS shall report retail sales activity on a Statewide basis. The EGS shall report the following information by customer class for residential, small nonresidential customers, medium nonresidential customers and large nonresidential customers, marking the information as confidential:

- (i) Number of customer accounts.
- (ii) Number of flat rate customer accounts.
- (iii) Number of seasonal rate customer accounts.
- (iv) Number of TOU customer accounts.
- (v) Number of hybrid rate customer accounts.
- (vi) Number of fixed term contract customer accounts by length of the original primary contract, specifying the length in number of years.
- (vii) Number of green power customer accounts.
- (viii) Number of mandatory curtailable customer accounts.
- (ix) Number of voluntary curtailable customer accounts.
- (x) Number of customer accounts based on billing methods.
- (xi) Number of hourly/real time pricing customer accounts.

(5) An EDC shall file quarterly sales activity reports with the Commission's Secretary and CEEP. A quarterly report shall be filed no later than 30 days after the end of the previous quarter.

(6) An active EGS shall file an annual sales activity report for the previous calendar year with the Commission's Secretary and CEEP on or before April 30 of each year.

(b) *Report forms.*

(1) The Commission shall provide separate report forms for EDC and EGS use. An EDC or an active EGS shall use the applicable report form.

(2) Report forms shall be made available in both paper and electronic format. Report forms in electronic format may be downloaded at the Commission's web site, or will be provided in paper format upon request to the Commission's forms officer.

(3) An EDC or active EGS shall file an original and two copies of a completed paper report form with the Commission's Secretary and CEEP. When the report form is filed electronically, one paper copy of the report form shall be filed with the Commission's Secretary no later than 15 days after the report is due.

(c) *Compliance monitoring and enforcement.* CEEP is the Commission bureau responsible for retaining reports filed under this subchapter, and for monitoring and enforcing compliance with this subchapter.

**§ 54.204. Public information.**

The Commission will make available to the public on an aggregated basis information contained in sales activity reports that does not disclose individual EGS market shares.

[Pa.B. Doc. No. 09-984. Filed for public inspection May 29, 2009, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

[ 55 PA. CODE CH. 6200 ]

#### Social Security Economic Recovery One-Time Payment

##### Scope

This statement of policy applies to the following:

- (1) County mental health and mental retardation administrators.
- (2) Supports coordination organization directors.
- (3) Administrative entity administrators or directors
- (4) Providers of community mental retardation residential Services under 55 Pa. Code Chapters 3800, 5310, 6400 and 6500.

##### Purpose

The purpose of this statement of policy is to provide direction regarding the 2009 one-time stimulus check of \$250 for individuals who receive Supplemental Security Income (SSI) or Social Security benefits.

##### Background

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 115) (act) provides for a one-time payment of \$250 to disabled individuals, retirees and those who receive SSI from the Social Security Administration. Railroad retirement beneficiaries and disabled veterans who receive benefits from the Department of Veterans Affairs will also receive a stimulus check. According to the Internal Revenue Service (IRS), individuals will receive these payments from their respective agencies and not the IRS.

##### Discussion

Section 6200.3 (relating to definitions) states the following:

*SSI maximum rate*—The current maximum monthly Supplemental Security Income benefit rate.

Since the act provides for a one-time payment, the Department of Public Welfare has interpreted this one-time payment to be outside the scope of § 6200.3. Therefore, individuals residing within community residential homes licensed under Chapters 3800, 5310, 6400 and

6500 may keep the \$250 stimulus check for their own use. County mental health and mental retardation administrators, supports coordination organization directors, administrative entity administrators or directors and providers of community mental retardation residential services under Chapters 3800, 5310, 6400 and 6500 should not use the stimulus check payment to calculate an individual's room and board charges.

##### Regulation Interpretation

The regulation interpretation is contained in Annex A to this statement of policy.

##### Effective Date

This statement of policy is effective immediately upon publication in the *Pennsylvania Bulletin*.

##### Contact Person

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Policy Division  
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ESTELLE B. RICHMAN,  
*Secretary*

(*Editor's Note:* Title 55 of the *Pennsylvania Code* is amended by adding § 6200.3a to read as set forth in Annex A.)

**Fiscal Note:** 14-BUL-085. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 55. PUBLIC WELFARE

#### PART VIII. MENTAL RETARDATION MANUAL

#### Subpart C. ADMINISTRATION AND FISCAL MANAGEMENT

#### CHAPTER 6200. ROOM AND BOARD CHARGES

#### GENERAL PROVISIONS

#### § 6200.3a. Social Security economic recovery one-time payment—statement of policy.

The definition of "SSI maximum rate" does not include the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) one-time \$250 payment.

[Pa.B. Doc. No. 09-985. Filed for public inspection May 29, 2009, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF BANKING

### Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending May 19, 2009.

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

### BANKING INSTITUTIONS

#### Branch Applications

#### Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-7-2009	Susquehanna Bank Lititz Lancaster County	2290 South George Street York York County	Filed
5-7-2009	Susquehanna Bank Lititz Lancaster County	606 Arch Street Williamsport Lycoming County	Filed
5-7-2009	Susquehanna Bank Lititz Lancaster County	Strawberry Square 15 North 3rd Street Harrisburg Dauphin County	Filed
5-7-2009	Susquehanna Bank Lititz Lancaster County	Normandie Ridge 1700 Normandie Drive York York County (Limited Service Facility)	Filed
5-7-2009	Susquehanna Bank Lititz Lancaster County	271 Market Street Lemoyne Cumberland County	Filed
5-7-2009	Susquehanna Bank Lititz Lancaster County	Village at Sprenkle Drive 1802 Folkemer Circle York York County (Limited Service Facility)	Filed
5-7-2009	Susquehanna Bank Lititz Lancaster County	Fairmount Homes 333 Wheat Ridge Drive Ephrata Lancaster County (Limited Service Facility)	Filed
5-13-2009	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	604 Main Street Riverton Burlington County, NJ	Approved

NOTICES

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

Change of Principal Place of Business

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
5-14-2009	Bradford Area School Employees Credit Union Bradford McKean County	<i>To:</i> 32 York Street Bradford, PA 16701 McKean County  <i>From:</i> 660 West Washington Street Bradford, PA 16701 McKean County	Effective

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

STEVEN KAPLAN,  
*Secretary*

[Pa.B. Doc. No. 09-986. Filed for public inspection May 29, 2009, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

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

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

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

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

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

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

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final

determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

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

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

### I. NPDES Renewal Applications

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

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N ?
PA0070009 (Sewage)	Cove Village Community R. R. 1 Box 3024 Zion Grove, PA 17985	Schuylkill County North Union Township	Catawissa Creek 5E	Y

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

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

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N ?
PA0086541 (IW)	Denver Cold Storage 555A Sandy Hill Road Denver, PA 17517-0399	Lancaster County West Cocalico Township	UNT Indian Run 7-J	Y

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

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N ?
PA0114545 IW	Troy E. Schoenly P. O. Box 156 Sylvania, PA 16945	Bradford County Troy Township	South Branch Sugar Creek 4C	Y

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

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N ?
PA0100790	Rose M. DeLoreto 6059 Grubb Road Erie, PA 16506-4608	Millcreek Township Erie County	UNT to Thomas Run 16-D	Y
PA0033588	Country Estates Mobile Home Park 1101 South Lake Road Mercer, PA 16137	Jefferson Township Mercer County	UNT to Lackawannock Creek 20-A	Y

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

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

**PA0053538**, Industrial Waste, SIC 2834, 2836 and 2833, **Merck & Company, Inc.**, 770 Sumneytown Pike, P. O. Box 4, WP20-208, West Point, PA 19486-0004. This existing facility is located in Upper Gwynedd Township, **Montgomery County**.

Description of Proposed Activity: Renewal of NPDES permit to discharge stormwater to onsite detention basins. Detention Basins 4 and 3 discharge through Outfalls 001 and 003, respectively. Detention Basin 2 discharges through Outfall 002.

The receiving streams, UNTs to Wissahickon and Towamencin Creeks, are in the State Water Plan Watersheds 3F and 3E, respectively. Both streams are classified for: TSF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Philadelphia Water Department is located on the Schuylkill River approximately 20 miles below Outfalls 001 and 003. The nearest downstream public water supply intake for Aqua America is located on Perkiomen Creek approximately 14 miles below Outfall 002.



The proposed effluent limits for Outfalls 001—003 are based on a design flow of an average storm event.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Phosphorus as P			Monitor	Monitor	

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

1. Remedial Measures if Public Nuisance.
2. Dry Stream Discharge.
3. BAT/ELG Reopener.
4. Change in Ownership.
5. Stormwater Requirements.

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

**PA0012823-A1**, Industrial Waste, **PPL Martins Creek, LLC**, Two North Ninth Street, Allentown, PA 18101. This proposed facility is located in Lower Mt. Bethel Township, **Northampton County**.

Description of Proposed Activity: Amendment of existing NPDES permit.

The receiving stream, Delaware River, is in the State Water Plan Watershed 1F and is classified for: WWF. The nearest downstream public water supply intake for Easton Water Authority is located on the Delaware River and is 9 miles below the point of discharge.

*Outfall 010*—The proposed effluent limits based on a design flow of 0.024 (sewage treatment plant).

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N	20		40
Dissolved Oxygen	Minimum of 2 at all times.		
Fecal Coliform	200/100 ml Geometric Average		
Total Residual Chlorine	1.2		2.8
pH	6 to 9 at all times		
Dissolved Oxygen	Minimum 2.0 mg/L at all times		

*Outfall 011 (Stilling Pond)*

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	Monitor and Report		
Oil and Grease	Monitor and Report		
pH	Monitor and Report		

*Monitoring Point 213*

The proposed effluent limits based on a design flow of 5.09 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Weekly Average (mg/l)</i>
Free Available Chlorine	.2	.5
TSS	30	100
Oil and Grease	15	30
Arsenic	Monitor and Report	
Cadmium	Monitor and Report	
Total Chromium	0.2	0.2
Copper	Monitor and Report	
Lead	Monitor and Report	
Selenium	Monitor and Report	
Zinc	1.0	1.0
Nickel	Monitor and Report	
Vanadium	Monitor and Report	
Total Iron	Monitor and Report	
pH	Monitor and Report	

*Monitoring Point 413*

The proposed effluent limits based on a design flow of 2.68 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	100	
Oil and Grease	15	20	
Free Available Chlorine	0.2	0.5	
Arsenic	Monitor and Report		
Cadmium	Monitor and Report		
Total Chromium	Monitor and Report		
Copper	Monitor and Report		
Lead	Monitor and Report		
Selenium	Monitor and Report		
Zinc	Monitor and Report		
Nickel	Monitor and Report		
Vanadium	Monitor and Report		

*Outfall 013 (combined discharge of MP413 and MP213)*

The proposed limits based on a design flow of 7.77 mgd.

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Temperature	Monitor and Report		
pH	6 to 9 Standard Units at all times.		
Arsenic	Monitor and Report		
Cadmium	Monitor and Report		
Total Chromium	Monitor and Report		
Copper	Monitor and Report		
Lead	Monitor and Report		
Selenium	Monitor and Report		
Zinc	Monitor and Report		
Nickel	Monitor and Report		
Vanadium	Monitor and Report		

*Outfalls 015 and 101—103—Stormwater—No exposure.*

The EPA waiver in effect.

**PA#0060879**, Sewage, **Country Club Estates Condominium Association, Inc.**, 2930 Fairview Street, Allentown, PA 18104. This facility is located in Mahoning Township, **Carbon County**.

Description of Proposed Activity: This application is for renewal of an NPDES permit to discharge treated sewage and also proposes to increase the design flow from 0.0126 mgd to 0.030 mgd.

The receiving stream, UNT to Mahoning Creek, is in State Water Plan Watershed 02B and has an existing use of EV. The nearest downstream public water supply intake is for Northampton Borough Water Authority on the Lehigh River, approximately 27 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on the present design flow of 0.0126 mgd.

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)	200/100 ml as a Geometric Mean 2,000/100 ml as a Geometric Mean		
pH	6.0 to 9.0 Standard Units at all times.		
Total Residual Chlorine	1.2		2.4

The proposed effluent limits for Outfalls 001 based on the proposed design flow of 0.030 mgd:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	15		30
Total Suspended Solids	18		36
NH <sub>3</sub> -N (5-1 to 10-31) (11-1 to 4-30)	1.3 3.9		2.6 7.8
NO <sub>2</sub> + NO <sub>3</sub> -N	9.6		19

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Phosphorus as "P"	1.7		3.4
Dissolved Oxygen	A minimum of 7.0 mg/l at all times.		
Fecal Coliform (5-1 to 9-30)	200/100 ml as a Geometric Mean		
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean		
pH	6.0 to 9.0 Standard Units at all times.		
Total Residual Chlorine	Nondetectable		

The EPA waiver is in effect.

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

**Application No. PA 0261327**, Industrial Waste, SIC Code 4922, **Texas Eastern Transmission, LP**, 890 Winter Street, Suite 300, Waltham, MA 02451. This facility is located in Juniata and Harrison Townships, **Bedford County**; Ayr Township, **Fulton County**; and Peters Township, **Franklin County**.

Description of activity: The application is for issuance of an NPDES permit for a new discharge of treated industrial waste associated with hydrostatic testing of natural gas pipelines.

*Outfalls 001 and 002 (Juniata Township, Bedford County):* The receiving stream, UNT of Little Wills Creek, is in Watershed 13A, and classified for HQ-CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is in Hancock, MD located on the Potomac River. The discharge is not expected to affect the water supply.

*Outfall 003 (Juniata Township, Bedford County):* The receiving stream, Little Wills Creek, is in Watershed 13A, and classified for HQ-CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is in Hancock, MD located on the Potomac River. The discharge is not expected to affect the water supply.

*Outfall 004 (Harrison Township, Bedford County):* The receiving stream, UNT of Little Wills Creek, is in Watershed 13A, and classified for HQ-CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is in Hancock, MD located on the Potomac River. The discharge is not expected to affect the water supply.

*Outfall 005 (Ayr Township, Fulton County):* The receiving stream, Big Cove Creek, is in Watershed 13B, and classified for CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is in Hagerstown, MD located on the Potomac River. The discharge is not expected to affect the water supply.

*Outfall 006 (Peters Township, Franklin County):* The receiving stream, UNT to West Branch Conococheague Creek, is in Watershed 13C, and classified for TSF, MF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is in Hagerstown, MD located on the Potomac River. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfalls 001—006 are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	Report	Report	XXX	XXX	XXX
Duration (Hours)	XXX	Report	XXX	XXX	XXX
pH (Standard Units)	XXX	XXX	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	XXX	XXX	XXX
Suspended Solids	XXX	XXX	Report	XXX	60
Oil and Grease	XXX	XXX	Report	XXX	30
Iron	XXX	XXX	Report	XXX	7.0
Benzene	XXX	XXX	Report	XXX	0.0025
Ethylbenzene	XXX	XXX	Report	XXX	Report
Toluene	XXX	XXX	Report	XXX	Report
Xylenes, Total	XXX	XXX	Report	XXX	Report
BTEX	XXX	XXX	Report	XXX	0.25
PCBs (Total)	XXX	XXX	Report	XXX	Report
Total Residual Chlorine	XXX	XXX	Report	XXX	0.05

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

The EPA waiver is in effect.

**Application No. PA 0051641**, Sewage, **Daniel Boone Homestead**. This facility is located in Exeter Township, **Berks County**.

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

The receiving stream, Owatin, is in Watershed 3-D, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Borough of Pottstown Water and Sewer Authority is located on the Schuylkill River, approximately 8 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.008 mgd are:

Parameter	Average		Instantaneous Maximum (mg/l)
	Monthly (mg/l)	Weekly (mg/l)	
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N	20		40
Total Residual Chlorine	1.5		2.5
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform	200/100 ml as a Geometric Average		
(5-1 to 9-30)	2,000/100 ml as a Geometric Average		
(10-1 to 4-30)			

The proposed effluent limits for Outfall 001 for a design flow of 0.008 mgd are:

Parameter	Average		Instantaneous Maximum (mg/l)
	Monthly (mg/l)	Weekly (mg/l)	
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N	20		40
Total Residual Chlorine	0.5		1.6
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform	200/100 ml as a Geometric Average		
(5-1 to 9-30)	2,000/100 ml as a Geometric Average		
(10-1 to 4-30)			

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

The EPA waiver is not in effect.

**Application No. PA 0027189**, Sewage, **Lower Allen Township Authority**, 120 Limekiln Road, New Cumberland, PA 17070. This facility is located in Lower Allen Township, **Cumberland County**. The discharge is located in Fairview Township, **York County**.

Description of activity: The application for an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Susquehanna River, is in Watershed 7-E, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Wrightsville Water Supply is located on the Susquehanna River, approximately 25 miles downstream. The discharge is not expected to affect the water supply.

The proposed permit revises the milestone dates in the schedule for complying with the Chesapeake Bay nutrient cap loads.

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

The EPA waiver is not in effect.

**Application No. PA 0051781**, Industrial Waste, SIC Code 4941, **Reading Area Water Authority (Maiden Creek Water Filtration Plant)**, 815 Washington Street, Reading, PA 19601. This facility is located in Ontelaunee Township, **Berks County**.

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

The receiving stream, Maiden Creek, is in Watershed 3-B, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is the Borough of Pottstown Water and Sewer Authority located on the Schuylkill River, approximately 30 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 3.00 mgd are:

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
pH	From 6.0 to 9.0 inclusive				
Total Aluminum	31	62	1.25	2.5	3.12
Total Iron	50	100	2	4	5

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Total Manganese	25	50	1	2	2.5
Total Residual Chlorine			0.134		0.439
Total Suspended Solids	750	1,500	30	60	75

The proposed effluent limits for Outfall 002 for a design flow of 0.26 mgd are:

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
pH			From 6.0 to 9.0 inclusive		
Total Aluminum	Report	Report	Report	Report	Report
Total Iron	Report	Report	Report	Report	Report
Total Manganese	Report	Report	Report	Report	Report
Total Residual Chlorine			0.134		0.439
Total Suspended Solids	65	130	30	60	75

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

The EPA waiver is not in effect.

**Application No. PA 0024384**, Sewage, **North Middleton Authority**, 240 Clearwater Drive, Carlisle, PA 17013-1185. This facility is located in North Middleton Township, **Cumberland County**.

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

The receiving stream, Conodoguinet Creek, is in Watershed 7-B, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Pennsylvania American Water is located on the Conodoguinet Creek, approximately 14.7 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 1.3 mgd are:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	9.0		18
(11-1 to 4-30)	16		34
Total Residual Chlorine	0.5		1.6
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform		200/100 ml as a Geometric Average	
(5-1 to 9-30)		2,000/100 ml as a Geometric Average	
(10-1 to 4-30)			

#### Chesapeake Bay Requirements

	Concentration (mg/L)		Mass (lbs)	
	Monthly Average	Monthly	Monthly	Annual
Ammonia-N	Report	Report	Report	Report**
Kjeldahl-N	Report	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	Report	XXX
Total Nitrogen	Report	Report	Report	Report
Total Phosphorus	Report	Report	Report	Report
Net Total Nitrogen	XXX	Report	Report	16,895*
Net Total Phosphorus	XXX	Report	Report	2,253*

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

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2012. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2013. The 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, 2013.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2010.

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

The EPA waiver is not in effect.

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

**PA0204064**, Sewage, **Jeffrey S. and Laura A. Robson**, 829 Bailey's Run Road, Tarentum, PA 15084. This application is for renewal of an NPDES permit to discharge treated sewage from Robson Single-Residence STP in Frazer Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Bailey Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Cheswick Borough Water Department.

*Outfall 001:* existing discharge, design flow of 0.0004 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform	200/100 ml as a Geometric Mean			
(5-1 to 9-30)	2,000/100 ml as a Geometric Mean			
(10-1 to 4-30)				
Total Residual Chlorine	not less than 6.0 nor greater than 9.0			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0095010**, Industrial Waste, SIC, 4941, **Greater Johnstown Water Authority**, 640 Franklin Street, P. O. Box 1407, Johnstown, PA 15907. This application is for renewal of an NPDES permit to discharge treated process water and stormwater from the Riverside Water Plant in Stonycreek Township, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, Stony Creek, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Saltsburg Water Authority, located at Saltsburg, 52 miles below the discharge point.

*Outfall 001:* existing discharge, design flow of 0.243 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
TSS			30		60
Aluminum			4		8
Iron			2		4
Manganese			1		2
TRC			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

### III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

**WQM Permit No. 3909403**, Sewerage, **Upper Macungie Township Authority**, 8330 Schantz Road, Breinigsville, PA 18031. This proposed facility is located in Upper Macungie Township, **Lehigh County**.

Description of Proposed Action/Activity: This project consists of construction of a new 18" PVC sewer line for Upper Macungie Township Authority from Sanitary Manhole LW11 to Sanitary Manhole 1829 which will reroute a significant amount of the sewer flows contribution to the existing system. Lehigh County Authority will provide conveyance facilities for the project by means of the Iron Run Pump Station and Western Lehigh Interceptor.

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

**WQM Permit No. 3609403**, Sewerage, **West Earl Sewer Authority**, 157 West Metzler Road, P. O. Box 787, Brownstown, PA 17508. This proposed facility is located in West Earl Township, **Lancaster County**.

Description of Proposed Action/Activity: Construction of approximately 12,000 feet of a Lower Pressure Sewer System consisting of approximately 105 grinder pump units. The system will provide service to approximately 130 EDU's and serve the Village of Talmage.

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

**WQM Permit No. 1909401**, Sewage 4952, **Bloomsburg Municipal Authority**, 301 East Second Street, Bloomsburg, PA 17815. This proposed facility is located in Town of Bloomsburg, **Columbia County**.

Description of Proposed Action/Activity: The applicant proposes to renovate the Mary Avenue Pump Station and install a new force main.

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

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

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030709002	James and Deborah Faith R. R. 2 Box 583 A Hollidaysburg, PA 16648	Blair	Frankstown Township	New Creek HQ-CWF
PAI030607004-1	Curtis Morton 133 Benfield Road Macungie, PA 18062	Berks	Longswamp Township	Little Lehigh Creek HQ-CWF
PAI032109006	Residential Homes, Et Al Jefferson Court II 1545 Holly Pike Carlisle, PA 17015	Cumberland	South Middleton Township	Letort Spring Run EV

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

*Beaver County Conservation District, 156 Cowpath Road, Aliquippa, PA 15001, (724) 378-1701.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050409001	Newell Rubbermaid, Inc. 2707 Butterfield Road Suite 100 Oak Brook, IL 60523-1267	Beaver	Center Township	UNT Upper Ohio River WWF

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

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

### **STATE CONSERVATION COMMISSION**

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

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

Based upon preliminary reviews, the State Conservation Commission (SCC), or County Conservation Districts (CCD) working under a delegation agreement with the SCC, have completed an administrative review of NMPs described. These NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at [www.pacd.org/districts/directory.htm](http://www.pacd.org/districts/directory.htm) or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

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

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

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

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

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal/New</i>
Oscar Manbeck 10 Fort Henry Road Bethel, PA 17507	Berks	771.1	840.91	Swine	None	New
Jay Deiter 2040 River Road Bainbridge, PA 17502	Lancaster	135.8	612.5	Swine and Heifers	NA	Renewal

**PUBLIC WATER SUPPLY (PWS) PERMIT**

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

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

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

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

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

**SAFE DRINKING WATER**

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

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

**Permit No. 5608507 correction, Public Water Supply.**

Applicant **Jenner Township**  
2058 Lincoln Highway  
Boswell, PA 15531

Township or Borough	Jenners Township
Responsible Official	Keith Barnick, Chairperson Jenner Township 2058 Lincoln Highway Boswell, PA 15531
Type of Facility	Laurel Mountain Village
Consulting Engineer	The EADS Group, Inc. 1126 Eighth Avenue Altoona, PA 16602
Application Received Date	October 9, 2008
Description of Action	Construction of a well, addition of sodium hypochlorite system, polyphosphate sequestering system, a 2,000 gallon water storage tank and a 30,000 gallon water storage tank.

*Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335.*

**Wellhead Protection Program Approval** issued to Buhl Community Water Company, 372 Old Ash Road, Mercer, PA 16137, PWSID No. 6430049, Springfield Township, **Mercer County** on May 12, 2009.

**LAND RECYCLING AND ENVIRONMENTAL REMEDIATION**

**UNDER ACT 2, 1995**

**PREAMBLE 1**

**Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a



brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

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

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

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

*Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Lakeside Energy**, 10 Maplewood Drive, Hazle Township, **Luzerne County**. Jeffrey C. Thomas, Epsys Corp., 1414 North Cameron Street, Harrisburg, PA 17103 has submitted a Notice of Intent to Remediate (on behalf of his client, Lakeside Energy, LLC, 150 North Michigan Avenue, Suite 2930, Chicago, IL 60601), concerning the remediation of soils found to have been impacted by motor oil when discovered in December 2008. The applicant proposes to remediate the site to meet the Statewide Health Standard. The proposed future use of the property will be nonresidential for use as a power generation facility. 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.

**Reihman Property**, 739 East Emmaus Avenue, Salisbury Township, **Lehigh County**. Ronald F. Herrygers, Herrygers Environmental Services, LLC, 214 Beltrees Drive, Lexington, SC 29072 has submitted a Notice of Intent to Remediate (on behalf of his client, Greg Reihman, 739 East Emmaus Avenue, Allentown, PA 18103), concerning the remediation of No. 2 fuel oil as a result of a release from a basement heating oil tank due

to a loose tank cap. The applicant proposes to remediate the site to meet the Statewide Health Standard. The intended future use of the property is residential. 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.

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

**Hoyt's Fuel Service Petroleum Release/Geffken Residence**, Boggs Township, **Centre County**. Global Environmental Management, 416 Anthony Street, Carnegie, PA 15106 on behalf of Hoyt's Fuel Service, 965 Broadway Road, Shickshinny, PA 18655-3839 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with No. 2 fuel oil. The applicant proposes to remediate the site to meet the Statewide Health Standard. The intended future use of the property is residential.

**Jeff and Chris Jeanguenat Property**, Town of Bloomsburg, **Columbia County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, PA 17857 on behalf of Jeff and Chris Jeanguenat, 364 East Second Street, Bloomsburg, PA 17815 has submitted a Notice of Intent to Remediate soil contaminated with No. 2 heating oil. The applicant proposes to remediate the site to meet the Statewide Health Standard. The site will remain a residential property.

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

**YTI**, McKees Rocks Borough, **Allegheny County**. John Oberer, GZA GeoEnvironmental, Inc., 501 Office Center Drive, Suite 220, Forth Washington, PA 19034 on behalf of Ruben Byerley, YRC North American Transportation, 10990 Roe Avenue, Overland Park, KS 66211 has submitted a Notice of Intent to Remediate. The groundwater concentration profile is generally consistent with a release of chlorinated solvents at an up gradient offsite location. Several compounds were detected above the relevant MSCs in soil and groundwater samples below 20 feet below ground. A Background Standard has been proposed for groundwater, soils may not need to be remediated. The site will remain nonresidential and will require an environmental covenant.

**Bay Valley Foods, LLC**, City of Pittsburgh, **Allegheny County**. Mary M. Washko, P. G., Groundwater & Environmental Services, Inc., 800 Commonwealth Drive, Suite 201, Warrendale, PA 15086 on behalf of Tim Wolf, Bay Valley Foods, LLC, P. O. Box 19057 has submitted a Notice of Intent to Remediate. The Bay Valley Foods Facility is part of the former Heinz Plant in the North Side section of Pittsburgh. The characterization of sites 1 and 2 within the property identified various volatile and semi-VOCs and metals in soil and groundwater that exceed applicable used aquifer residential Statewide Health Standards. A combination of Statewide Health and Site-Specific Standards are being proposed to attain an Act 2 relief of liability. The site will remain industrial.

**Norwin Towne Square Dry Cleaners**, North Huntingdon Township, **Westmoreland County**. Bruce Shaw, American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668 on behalf of Steven Kasunich, Soffer Organization, 424 South 27th Street, Pittsburgh, PA 15203 has submitted a Notice of Intent to Remediate. A former dry cleaner in Norwin Towne Square was the subject of Phase I and Phase II investigations. These investigations identified soil and groundwater im-

pacted by PCE, TEC, CIS-1,2-Dichloroethene and Vinyl Chloride. Activity dry cleaning is no longer performed at the property, however, it is used as a drop off and pick up of dry-cleaned material. A nonresidential Site-Specific Standard is proposed for the site.

#### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Application Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

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

**Permit Application No. 101468. TransRiver Philadelphia, LLC**, 3600 South 26th Street, Philadelphia, PA 19145. This application is for a permit reissuance of the existing permit for Girard Point Transfer Station from Republic Services, Inc. to TransRiver Philadelphia, LLC. The Girard Point Transfer Station is a municipal waste transfer facility located at 3600 South 26th Street in the City of Philadelphia, **Philadelphia County**. The application was received by the Southeast Regional Office on May 1, 2009.

**Permit Application No. 101477. TransRiver Philadelphia, LLC**, 2209 South 58th Street, Philadelphia, PA 19143. This application is for a permit reissuance of the existing permit for 58th Street Transfer Station from BFI Transfer System of Pennsylvania, LLC to TransRiver Philadelphia, LLC. The 58th Street Transfer Station is a municipal waste transfer facility, formerly known as, Philadelphia Transcyclery facility, located at 2209 South 58th Street in the City of Philadelphia, **Philadelphia County**. The application was received by the Southeast Regional Office on May 1, 2009.

### AIR QUALITY

#### PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30

days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

#### PLAN APPROVALS

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

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2507.*

**13-316-001: Keystone Pellet, Inc.** (5405 Hoffman Drive S, Schnecksville, PA 18078) for construction of a new wood pellet process at their facility in Lower Towamensing Township, **Carbon County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**10-356A: Linde North America, Inc.** (575 Mountain Avenue, Murray Hill, NJ 07974) for construction of an air separation unit in Butler Township, **Butler County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department of Environmental Protection intends to issue a plan approval for construction of an air separation unit, which includes an oxygen vaporizer and mole sieve regenerator, both fired by natural gas burners at the their facility in Butler Township, Butler County. This facility is a support facility to AK Steel's Butler Works.

This plan approval will, in accordance with 25 Pa. Code § 127.450, will be incorporated into the State-only operating permit through an administrative amendment at a later date.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.*

**AMS 09064: Seravalli, Inc.** (10059 Sandmeyer Lane, Philadelphia, PA 19116) for operation of a nonmetallic mineral processing plant consisting of an Extec Megabyte C-12 concrete crusher with a 366 horsepower diesel engine and an Extec Robotrac screener powered by a 111

horsepower diesel engine in the City of Philadelphia, **Philadelphia County**. There will be a potential annual emission increase of 2 tons of NO<sub>x</sub> and 2 tons of PM for the facility. The Plan Approval will contain operating, testing, monitoring, recordkeeping and reporting requirements to ensure operation within all applicable requirements.

#### OPERATING PERMITS

##### **Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Barbara Hatch, Facilities Permitting Chief, (412) 442-4174.*

**56-00232: Shade Landfill, Inc.** (625 Cherrington Parkway, Moon Township, PA 15108) for a Title V renewal operating permit for their municipal solid waste landfill in Shade Township, **Somerset County**. The Company operates a landfill, a gas control system and a soil processing system at this site.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.*

**V05-004: Temple University—Main Campus** (1009 West Montgomery Avenue, Philadelphia, PA 19122) for operation of a college, university and professional school in the City of Philadelphia, **Philadelphia County**. The Title V facility's air emission sources include the following: five 41.24—63.9 mmBtu/hr boilers firing natural-gas (NG) or No. 6 fuel oil; one 20.92 mmBtu/hr boiler firing NG; three 86.8—91.3 mmBtu/hr boilers firing NG or No. 2 fuel oil; three 9.996 mmBtu/hr boilers firing NG or No. 2 fuel oil; two 2.396 2.887—2.887 mmBtu/hr boilers firing NG or No. 2 fuel oil; 11 boilers or water heaters, each rated 2.0 mmBtu/hr or less, firing NG; 10 2,250 horsepower standby generators firing natural gas; 12 emergency generators, each rated 170 kW or less, firing NG; 32 emergency generators, each rated 1,825 kW or less, firing No. 2 fuel oil; and one 110 horsepower fire pump firing No. 2 fuel oil.

The operating permit will be reissued under the 25 Pa. Code, 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 (215) 685-9426.

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

##### **Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**15-00132: Cephalon, Inc.** (145 Brandywine Parkway, West Chester, PA 19380) for a non-Title V, State-only, Synthetic Minor Operating Permit in West Goshen Township, **Chester County**. Cephalon, Inc. operates a pharmaceutical research and development facility where a number of boilers and electric generators operated and have the potential to exceed major source thresholds of NO<sub>x</sub>. The facility has elected to take appropriate operating and emission restrictions to restrict NO<sub>x</sub> emissions to below 25 tpy and maintain a minor operating status. Monitoring, recordkeeping and reporting requirements have been added to the permit to address applicable limitations.

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

**06-05079: United Corrstack, LLP** (720 Laurel Street, Reading, PA 19602) for production of roll stock paper from recycled paper at their facility in the City of Reading, **Berks County**. This is a renewal of the State-only operating permit issued in December 2004.

**36-03054: Esbenshades Greenhouses, Inc.** (546 East 28th Division Highway, Lititz, PA 17543) for their greenhouse operation in Elizabeth Township, **Lancaster County**. This is a renewal of the State-only operating permit issued in 2004.

#### COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District Mining Office indicated above each application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for the certification.

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

Written comments or objections related to a mining permit application should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of suffi-

cient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

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

Where a National Pollutant Discharge Elimination System (NPDES) number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. The Department has made a tentative determination to issue the NPDES permit in conjunction with the mining activity permit, but the issuance of the NPDES permit is contingent upon the approval of the associated mining activity permit.

For coal mining activities, NPDES permits, when issued, will contain effluent limits that do not exceed the technology-based effluent limitations. The proposed limits are listed in Table 1.

For noncoal mining activities, the proposed limits are found in Table 2. Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description below specifies the parameters. The limits will be in the ranges specified in Table 1.

More restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining that may occur, will be incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91–96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation—Memorandum of Understanding Concerning Water Quality Management, NPDES Program Implementation and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Loads (TMDLs).

Persons wishing to comment on an NPDES permit application should submit a statement to the Department at the address of the district mining office indicated previously each application within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92.61. The request or petition for a public hearing shall be filed within 30 days of this public notice and shall contain the name, address, telephone number and the interest of the party filing the request, and shall state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. In the case where a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

#### *Coal Applications Received*

*Effluent Limits*—The following range of effluent limits will apply to NPDES permits issued in conjunction with the associated coal mining activity permit and, in some cases, noncoal mining permits:

<i>Parameter</i>	<i>Table 1</i>		
	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (Total)	1.5 to 3.0 mg/l	3.0 to 6.0 mg/l	3.5 to 7.0 mg/l
Manganese (Total)	1.0 to 2.0 mg/l	2.0 to 4.0 mg/l	2.5 to 5.0 mg/l
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Aluminum (Total)	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l
pH <sup>1</sup>		greater than 6.0; less than 9.0	
Alkalinity greater than acidity <sup>1</sup>			

<sup>1</sup> The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; and mined areas backfilled and revegetated; and drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

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

**3201011 and NPDES No. PA0249050. Alverda Enterprises, Inc.**, P. O. Box 87, Alverda, PA 15710, revision of an existing bituminous surface mine to add 4.3 acres to

the total SMP acres in Pine Township, **Indiana County**, affecting 34.6 acres. Receiving stream: UNT to Yellow Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received May 7, 2009.

**56050104 and NPDES No. PA 0249777. Hoffman Mining, Inc.**, 118 Runway Road, P. O. Box 130, Friedens, PA 15541, permit revision of an existing bituminous surface auger mine to change land use from woodland to unmanaged natural habitat in Paint Township, **Somerset County**, affecting 161.7 acres. Receiving stream: Shade Creek, classified for the following use: CWF. There are no

potable water supply intakes within 10 miles downstream. Application received April 16, 2009.

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

**10080103 and NPDES Permit No. PA0258661. Ben Hal Mining Company** (389 Irishtown Road, Grove City, PA 16127). Revision to an existing bituminous surface strip and auger operation in Concord Township, **Butler County** affecting 123.5 acres. Receiving streams: Two UNTs to Pine Run, classified for the following use: WWF and Two UNTs to Connoquenessing Creek, classified for the following use: HQ-WWF. The first downstream potable water supply intake from the point of discharge is Pennsylvania American Water Company. Revision to include a request to add 7.5 acres of mining area to the permit. Application received May 14, 2009.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17090104 and NPDES No. PA0257141. RES Coal, LLC** (224 Grange Hall Road, P. O. Box 228, Armagh, PA 15920). Commencement, operation and restoration of a bituminous surface and auger mine in Woodward Township, **Clearfield County**, affecting 236.0 acres. Receiving streams: Whiteside Run and Moshannon Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received May 12, 2009.

#### *Noncoal Applications Received*

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

**26090601. John Joseph** (470 Vanderbilt Road, Conellsville, PA 15425). Application for commencement, operation and reclamation of large noncoal surface mine, located in Dunbar Township, **Fayette County**, affecting 14.6 acres. Receiving stream: UNT to Dickerson Run, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received May 5, 2009.

**65092801. Gary M. Sukala** (1723 Ridge Avenue, Arnold, PA 15068). Application for commencement, operation and reclamation of a small noncoal surface mine, located in Lower Burrell City, **Westmoreland County**, affecting 4.0 acres. Receiving stream: Allegheny River, classified for the following use: WWF. There is not potable water supply intake within 10 miles downstream from the point of discharge. Application received May 1, 2009.

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

**20870304. Heritage Excavating & Stone** (P. O. Box 462, Wampum, PA 16157). Renewal of NPDES Permit No. PA0242578, South Shenango Township, **Crawford County**. Receiving streams: UNT to Shenango River, classified for the following use: CWF. The first downstream potable water supply intakes from the point of discharge are Borough of Jamestown and Borough of Greenville Water Authority. NPDES Renewal application received May 14, 2009.

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

**22880301C10 and NPDES Permit No. PA0223948. Rocky Licensing Corp.**, (P. O. Box 3331, Harrisburg, PA 17105), correction to an existing quarry operation to increase the NPDES discharge rate for discharge of treated mine drainage from 0.144 mgd to 1.5 mgd in

Lower Swatara Township, **Dauphin County**, receiving stream: Swatara Creek, classified for the following use: WWF. Application received May 8, 2009.

## **FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401**

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

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

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

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**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 Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).**

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### **WATER OBSTRUCTIONS AND ENCROACHMENTS**

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

**E46-1040. Hatfield Township Municipal Authority**, 3200 Advance Lane, Hatfield Township, **Montgomery County**, United States Army Corps of Engineers, Philadelphia District.

#### **Neshaminy Interceptor Replacement Project.**

To perform the following water obstruction and encroachment activities along the West Branch of the Neshaminy Creek (WWF, MF) associated with Neshaminy Interceptor Replacement Project:

1) To relocate/replace an existing 21-inch diameter sanitary sewer pipe and associated manholes with the proposed 36-inch diameter PV pipe and associated man-

holes, away from the edge of the stream temporarily impacting 0.30 acre of wetlands.

2) To modify, restore and maintain an existing stormwater swale at approximately station 0+50 associated with the proposed sewer crossing.

3) To modify and maintain two existing culverts associated with the proposed sewer crossing.

4) To stabilize and maintain portions of the existing streambank along the length of this project.

The project commences approximately 1,047 feet north-east of the intersection of SR 0463 and Orvilla Road and runs parallel to the stream in the south easterly direction and ends at the Hatfield Township Municipal Authority Wastewater Treatment Plant approximately 1,582 feet east of SR 0309 in Hatfield Township, Montgomery County (Telford, PA USGS Quadrangle N: 3.43 inches; W: 2.56 inches).

**EA15-007. PREIT Services, LLC**, 200 Broad Street, Philadelphia, PA 19102-3803, New Garden Township, **Chester County**, United States Army Corps of Engineers, Philadelphia District.

A request for an Environmental Assessment approval for impacts associated with the stream enhancement for an 800 feet reach of a UNT to Broad Run (CWF). Stream enhancement includes controlling the stormwater, removal of existing road crossing, removal of fill material, restore the channel with natural grades and plant with the native trees.

The site is located about 500 feet southeast of the intersection of Sunny Dell Road and Route 41, Kennett Square, PA Quadrangle (N: 8.89 inches; W: 14.49 inches).

**E15-734. Department of Transportation**, 7000 Geerdes Boulevard, King of Prussia, PA 19406, East Whiteland and Tredyffrin Townships, **Chester County**, United States Army Corps of Engineers, Philadelphia District.

To perform the following Water Obstruction and Encroachment activities:

1. To extend and maintain an existing bridge and impact Valley Creek (EV) at Mainline Station 357+00 (Malvern, PA Quadrangle N: 9.4 inches; W: 7.3 inches, Latitude: 40° 03' 05.01"; Longitude: 75° 33' 04.61"). This work temporarily impacts 190 linear feet of stream to install temporary sheet piles during construction and permanently impacts 190 linear feet of stream for the installation of rock gabion scour protection.

2. To place and maintain fill and excavate within the 100-year floodplain of Valley Creek at Mainline Station 357+00 L (Malvern, PA Quadrangle N: 9.4 inches; W: 7.16 inches, Latitude: 40° 03' 06.59"; Longitude: 75° 33' 02.91"). This work includes temporary floodplain impacts of 0.152 acre (6,637 ft<sup>2</sup>), permanent floodplain impacts of 0.047 acre (2,027 ft<sup>2</sup>) and 200 yd<sup>3</sup> of fill due for the proposed construction of Stormwater Mitigation Site 14.

3. To place and maintain fill in the 100-year floodplain of Valley Creek (EV) at Mainline Station 357+50 R (Malvern, PA Quadrangle N: 9.3 inches; W: 7.2 inches, Latitude: 40° 03' 04.21"; Longitude: 75° 33' 04.30"). This work includes permanent impacts of 0.057 acre (2,486 ft<sup>2</sup>) and 920 yd<sup>3</sup> of fill due to the proposed placement of roadway embankment fill.

4. To temporarily impact 24 linear feet of stream and permanently impact 24 linear feet of stream due to the proposed installation of a J-Hook in stream structure in

Valley Creek (EV) at Mainline Station 358+50 L (Malvern, PA Quadrangle N: 9.4 inches; W: 7.1 inches, Latitude: 40° 03' 06.49"; Longitude: 75° 33' 02.35").

5. To place and maintain fill and impact an emergent wetland (H), which drains to Valley Creek (EV) at Mainline Station 378+00 R (Malvern, PA Quadrangle N: 9.2 inches; W: 6.2 inches, Latitude: 40° 03' 02.49"; Longitude: 75° 32' 37.40"). This work includes permanent impact of 0.011 acre due to the proposed installation of a noise wall and roadway drainage structures.

6. To place and maintain fill and excavate for a proposed stormwater management mitigation pond along Valley Creek (EV) at Mainline Station 390+00 L (Malvern, PA Quadrangle N: 9.5 inches; W: 0.6 inch, Latitude: 40° 03' 08.93"; Longitude: 75° 32' 22.78"). This work includes permanent floodplain impact of 0.092 acre (3,996 ft<sup>2</sup>) due to the construction for proposed Stormwater Mitigation Site 21. Also, to place and maintain fill and impact an emergent wetland (K), which drains to Valley Creek (EV) at Mainline Station 441+42 R (Malvern, PA Quadrangle N: 9.3 inches; W: 6.2 inches, Latitude: 40° 03' 03.47"; Longitude: 75° 31' 16.46"). This work includes Temporary impact of 0.24 acre and permanent impact of 0.066 acre due to grading for proposed roadway embankments and construction of Stormwater Management Basin 16.

7. To place and maintain fill in the 100-year floodplain of Little Valley Creek (EV) at Mainline Station 495+00 R (Malvern, PA Quadrangle N: 9.4 inches; W: 0.4 inch, Latitude: 40° 03' 15.56"; Longitude: 75° 30' 09.37"). This work includes temporary floodplain impacts of 0.129 acre (5,632 ft<sup>2</sup>), permanent floodplain impacts of 0.065 acre (2,852 ft<sup>2</sup>) and 400 yd<sup>3</sup> of fill due to construction of a berm for proposed Stormwater Mitigation Site 24.

8. To place and maintain fill in the 100-year floodplain of Little Valley Creek (EV) at Mainline Station 508+60 to 520+80 R (Valley Forge, PA Quadrangle N: 10.1 inches; W: 17.0 inches, Latitude: 40° 03' 20.35"; Longitude: 75° 29' 44.86"). This work includes temporary floodplain impacts of 0.151 acre (6,584 ft<sup>2</sup>), permanent floodplain impact of 0.182 acre (7,931 ft<sup>2</sup>) and 300 yd<sup>3</sup> of fill due to highway embankment.

9. To place and maintain fill in the 100-year floodplain of Little Valley Creek (EV) at Mainline Station 522+50 R (Valley Forge, PA Quadrangle N: 10.2 inches; W: 16.7 inches, Latitude: 40° 03' 22.63"; Longitude: 75° 29' 39.00"). This work includes temporary floodplain impacts of 0.247 acre (10,775 ft<sup>2</sup>), permanent floodplain impact of 0.025 acre (1,106 ft<sup>2</sup>) and 450 yd<sup>3</sup> of fill due to the proposed construction of Stormwater Mitigation Site 23.

10. To place and maintain fill in the 100-year floodplain of Little Valley Creek (EV) at Mainline Station 525+50 L (Valley Forge, PA Quadrangle N: 10.3 inches; W: 16.6 inches, Latitude: 40° 03' 24.37"; Longitude: 75° 29' 34.02"). This work includes temporary floodplain impacts of 0.220 acre (9,591 ft<sup>2</sup>), permanent floodplain impact of 0.165 acre (7,180 ft<sup>2</sup>) and 250 yd<sup>3</sup> of fill and excavation due to proposed construction of Stormwater Mitigation Site 16A.

11. Provide conveyance to maintain surface hydrology and to place and maintain fill and excavate for a proposed stormwater management mitigation pond along Valley Creek (EV) at Mainline Station 563+50 L (Valley Forge, PA Quadrangle N: 11.0 inches; W: 14.8 inches, Latitude: 40° 03' 37.22"; Longitude: 75° 28' 46.54"). This work temporarily impacts 20 linear feet of stream and permanently impacts 20 linear feet of stream due to construc-

tion of a proposed outlet apron for a 6' by 6' RC box culvert and due to the construction of proposed Stormwater Mitigation Site 17-1.

The site is located in Malvern and Valley Forge, PA USGS quadrangle, in Tredyffrin and East Whiteland Townships, **Chester County**.

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

**E67-866: Lower Windsor Township**, 2425 Craley Road, Wrightsville, PA, 17368, Southern Heights, Trinity Road North, Lower Windsor Township, **York County**, United States Army Corps of Engineers, Baltimore District.

To construct and maintain two outfall structures, one 36 inches and the other 15 inches into a UNT of Canadochly Creek (WWF) and a road, a portion of which is in the floodway of the UNT to Canadochly Creek Watershed 7I. The project also involves the lengthening of an existing twin 48-inch CMP Culvert under North Trinity Road as part of the new road construction. The project is located on North Trinity Road approximately 500 feet from Cool Creek Road (Red Lion, PA Quadrangle N: 20 inches; W: 4.75 inches, Latitude: 39° 59' 33"; Longitude: 76° 32' 0.96") in Lower Windsor Township, **York County**. The purpose of the project is for a subdivision resulting in 7 lots for residential development.

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

**E02-1614. Fox Chapel Golf Club**, 426 Fox Chapel Road, Pittsburgh, PA 15238. To construct and maintain surface water intake in Fox Chapel Borough, **Allegheny County**, United States Army Corps of Engineers, Pittsburgh District (Glenshaw, PA Quadrangle North: 4.7"; West: 0.6", Latitude: 40° 30' 34.4"; Longitude: 79° 52' 59.8"). The applicant proposes to construct and maintain a surface water intake on Glade Lake (HQ, CWF), seven water line stream crossings on Glade Run, (HQ-CWF) and the construction of a water pumping station in the floodway of Glade Run, all for the purpose of installing a golf course irrigation system.

**E32-489. Department of Transportation D-10**, P. O. Box 429, Indiana, PA 15701. To remove and replace bridge in Conemaugh Township, **Indiana County** and Loyalhanna Township, **Westmoreland County**, United States Army Corps of Engineers, Pittsburgh District (Saltsburg, PA Quadrangle Latitude: 40° 27' 12"; Longi-

tude: 79° 23' 30"). The applicant proposes to remove the existing SR 3003, two lane, 25.7 ft wide, single span, steel through truss bridge having a total length of 390 ft, and having maximum underclearance of 27.7 ft; and to construct and maintain 22 ft downstream a 31.5 ft total width, two lane, four span, prestressed concrete beam replacement bridge having a total length of 400 ft on three piers centered 100 ft apart, and maximum underclearance of 21.4 ft over the Conemaugh River (WWF). In addition, for construction of the replacement bridge and removal of the existing bridge install a temporary full width crossing; and construct and maintain associated replacement stormwater outfalls to the Conemaugh River (WWF). The bridge improvement and relocation project is located between Loyalhanna Township, Westmoreland County and Conemaugh Township, Indiana County approximately 1.6 miles downstream of the Conemaugh Dam.

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

**E25-727. Erie-Western Pennsylvania Port Authority**, to construct a road, north of the Bayfront Highway, remove existing fill materials occupying the bottom of Presque Isle Bay, to fill a portion of Presque Isle Bay to accommodate the proposed roadway, and to construct two 12' by 50' fishing piers, in the City of Erie, **Erie County**, United States Army Corps of Engineers, Pittsburgh District (Erie North, PA Quadrangle Latitude: 42° 7' 50"; Longitude: 80° 6' 2").

The applicant proposes to construct a 24 foot wide, two-way frontage road, with 26 parallel parking spaces, and a 10 foot wide pedestrian bike path, along the north side of the Bayfront Parkway between Walnut and Cherry Streets. The road will provide public access between Bay Harbor Marina and the Chestnut Street Boat Launch Ramp. The proposed land disturbance will cover approximately 0.42 acre.

The project also proposes the construction of two, 12' wide and 50' long fishing piers, providing approximately 1,200 square feet of cover habitat.

This project proposes to impact approximately 6,933 square feet of the bottom of Presque Isle Bay. However, this project proposes to remove 9,061 square feet of existing concrete, blocks, docks, fill and foundations, from the bottom of Presque Isle Bay. Therefore, a net increase of approximately 2,128 square feet of the bottom of Presque Isle will occur (approximately .049 acre). All work is proposed to be done on water lots in Presque Isle Bay and not in or on submerged lands of this Commonwealth.

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## ACTIONS

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### THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

#### FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

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

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

## **I. NPDES Renewal Permit Actions**

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0063878 (Municipal Sewage)	Northeastern Schuylkill Joint Municipal Authority P. O. Box 170 Barnesville, PA 18214	Schuylkill County Rush Township	Pine Creek 03A	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0007536 (IW)	Wilbur Chocolate Company d/b/a Cargill Cocoa and Chocolate 48 North Broad Street Lititz, PA 17543	Lancaster County Lititz Borough	Lititz Run 7-J	Y
PA0085782 (Sew)	Ruscombmanor Township 204 Oak Lane Fleetwood, PA 19522	Berks County Ruscombmanor Township	UNT to Furnace Creek 3-D	Y
PA0247502 (Sew)	Mr. and Mrs. John Kauffman 227 Conway Street Carlisle, PA 17013-3602	Cumberland County North Newton Township	UNT Conodoguinet Creek 7-B	Y
PA0080713 (Sew)	Pennsy Supply, Inc. One Clearspring Road Annville, PA 17003	Lebanon County North Londonderry Township	Killing Creek 7-B	Y



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**II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions**


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

**NPDES Permit No. PA0051161**, Sewage, **Southco, Inc.**, 210 North Brinton Lake Road, Concordville, PA 19331. This proposed facility is located in Concord Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge from the facility into a UNT to West Branch Chester Creek in Watershed 3G.

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

**NPDES Permit No. PA0043052**, Sewage, **Spring Township**, 2800 Shillington Road, Sinking Spring, PA 19608-1682. This proposed facility is located in Spring Township, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to Cacoosing Creek in Watershed 3-C.

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**III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)**


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

**WQM Permit No. 1507412**, Sewerage, **London Britian Township**, P. O. Box 215, Kemblerstown, PA 19347-0215. This proposed facility is located in London Britian Township, **Chester County**.

Description of Action/Activity: Construction and operation of a wastewater treatment plant utilizing onsite drip dispersal system.

**WQM Permit No. 5108402**, Sewerage, **Philadelphia Water Department**, 1101 Market Street, The Aramark Tower, Philadelphia, PA 19107. This proposed facility is located in City of Philadelphia, **Philadelphia County**.

Description of Action/Activity: construction and operation of a sewer extension for a casino resort/commercial entertainment district.

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

**WQM Permit No. 4506409**, Sewerage, **Joshmor, Inc.**, HC 1, Box 405A, Brodheadsville, PA 18322. This proposed facility is located in Jackson Township, **Monroe County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

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

**WQM Permit No. 0608405**, Sewage, **Ruscombmanor Township**, 204 Oak Lane, Fleetwood, PA 19522. This proposed facility is located in Ruscombmanor Township, **Berks County**.

Description of Proposed Action/Activity: Permit approval for the construction and modification of sewerage facilities consisting of an equalization tank with duplex transfer pumps, six new aeration tanks, two new final clarifiers, one aerobic digester, new emergency generator blower building, blowers, outfall sewer, piping controls and appurtenances.

**WQM Permit No. 2806404, Transfer 1**, Sewage, **Christian H. Sease**, 248 South Church Street, Waynesboro, PA 17268. This proposed facility is located in Greene Township, **Franklin County**.

Description of Proposed Action/Activity: Transfer of Permit.

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

**WQM Permit No. WQG018692**, Sewerage, **David L. Ames**, 263 Moody Run Road, Oil City, PA 16301. This proposed facility is located in Cranberry Township, **Venango County**.

Description of Proposed Action/Activity: Issuance of a Single-Residence Sewage Treatment Plant.

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**IV. NPDES Stormwater Discharges from MS4 Permit Actions**


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**V. NPDES Waiver Stormwater Discharges from MS4 Actions**


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


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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI021308003	Turnpike Commission 700 South Eisenhower Boulevard Middletown, PA 17057-5529	Carbon	Penn Forest Township	Stony Creek EV
PAI026405006(1)	Russell Palmer 1103 Texas Palmyra Highway Honesdale, PA 18431	Wayne	Texas Township	Lackawaxen River HQ-TSF, MF

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030708006	Sam McCloskey 419 North Second Street Altoona, PA 16601	Blair	Antis Township	Sandy Run HQ-CWF
PAI030608019	East Penn Manufacturing Co., Inc. Bryan Miller P. O. Box 147 Lyon Station, PA 19536	Berks	Richmond Township	Moselem Creek HQ-CWF
PAI034407003	Mifflin County Airport Authority 547 Airport Road Reedsville, PA 17084	Mifflin	Brown Township	Tea Creek HQ-CWF
PAI035008002	Christine Mathna 6525 Creek Road Newport, PA 17074	Perry	Juniata Township	Buffalo Creek HQ-CWF

### **VII. Approvals to Use NPDES and/or Other General Permits**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

#### **List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Small Flow Treatment Facilities
PAG-5	General Permit for Discharges From Gasoline Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

#### *General Permit Type—PAG-2*

##### *Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Hanover Township Lehigh County	PAG2003908013	Hal Lubsen Newpro, II 824 Eighth Avenue Bethlehem, PA 18018	Lehigh River TSF	Lehigh County Conservation District (610) 391-9583
City of Bethlehem Northampton County	PAG2004808028	Department of Transportation Engineering District 5-0 Attn: Gerald Fry 1002 Hamilton Street Allentown, PA 18101	Lehigh River WWF	Northampton County Conservation District (610) 746-1971

*Facility Location:  
Municipality &  
County**Permit No.**Applicant Name &  
Address**Receiving  
Water/Use**Contact Office &  
Phone No.*

Londonderry Township Dauphin County	PAG2002209003	Lucy Karanja Lucciventures, LLC 2251 Ionoff Road Harrisburg, PA 17110	Iron Run— Conewago Creek WWF, TSF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Southampton Township Franklin County	PAG2002809007	Roxbury Treatment Center Bill Niles 601 Roxbury Road Shippensburg, PA 17257	Middle Spring Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Greene Township Franklin County	PAG2002809011	Guilford Water Authority Larry Heck 115 Spring Valley Road Chambersburg, PA 17201	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Southampton and Shippensburg Townships Franklin County	PAG2002809003-1	Volvo Road Machinery 312 Volvo Way Shippensburg, PA 17257	Rowe Run CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Chambersburg Borough Franklin County	PAG2002804019-R	Armstrong-Heinz Warehouse Sam Armstrong 9523 Lincoln Way West St. Thomas, PA 17252	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Greene Township Franklin County	PAR10M175R-R	Franklin Square Randy Kessler S&A Homes 2966 Philadelphia Avenue Chambersburg, PA 17201	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Clay Township Huntingdon County	PAG2003109002	Robert Trego P. O. Box 373 Three Springs, PA 17264	Spring Creek CWF	Huntingdon County Conservation District 10605 Raystown Road Suite A Huntingdon, PA 16652-9603 (814) 627-1627
Morris Township Huntingdon County	PAG2003109001	Jeff Long R. D. 1 Box 426 Tyrone, PA 16686	Frankstown Branch Juniata River WWF	Huntingdon County Conservation District 10605 Raystown Road Suite A Huntingdon, PA 16652-9603 (814) 627-1627
Brecknock Township Lancaster County	PAG2003606117	Church of Jesus Christ Latter Day Saints P. O. Box 318 NYNY Project Management Office Ramsey, NJ 07446	Muddy Creek WWF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 (717) 299-5361, Ext. 5
Rapho Township Lancaster County	PAG2003609022	Kasun & Associates 125 Oak Ridge Drive Suite 125 Mountville, PA 17554	Chiques Creek TSF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 (717) 299-5361, Ext. 5

## NOTICES

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<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Jackson and Millcreek Townships Lebanon County	PAG2003809001	Gwen Boltz Eastern Lebanon County School District 180 ELCO Drive Myerstown, PA 17067	Tulpehocken Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 Ext. 4
North Heidelberg Township Berks County	PAG2000609016	Ernie Gelsing Gel-Bare Farm 438 Kricks Mill Road Robesonia, PA 19551	UNT to Tulpehocken Creek TSF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
South Heidelberg Township Berks County	PAR10C2331R-R	Rick Kundrat RLC Electronics Systems 141 South 2nd Street Womelsdorf, PA 19567	Cacoosing Creek WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Maidencreek Township Berks County	PAG2000604036-1R	Peter Giorgio F&P Holding Co., Inc. P. O. Box 96 Blandon Road Temple, PA 19560	Willow Creek CWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Amity Township Berks County	PAG2000608067-1	Charles Lyon Amity Township 2004 Weavertown Road Douglassville, PA 19518	Leaf Creek WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
South Heidelberg Township Wernersville Borough Berks County	PAG2000605014-2	Walter Greth Greth Development Group, Inc. 253 Snyder Road Reading, PA 19605	Manor Creek TSF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Bethel Township Berks County	PAG2000609012	Lamar Lehman 161 Manbeck Road Bernville, PA 19506	UNT to Meck Creek—Susquehanna River/CWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Fairview Township York County	PAG2006707016	Ian S. Wewer Vanguard Development 2214 Market Street Camp Hill, PA 17011	UNT to Marsh Run/WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 755-0301
Columbia County Hemlock Township	PAG2001908003(1)	Richard T. Hardy Geisinger Health System 100 North Academy Avenue Danville, PA 17822	Little Fishing and Hemlock Creeks CWF	Columbia County Conservation District 702 Sawmill Road Suite 204 Bloomsburg, PA 17815 (570) 784-1310, Ext. 102

*General Permit Type—PAG-4**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Plumstead Township Bucks County	PAG040115	Steve and Julianne Fleischer 5552 Tollgate Road Pipersville, PA 18947	UNT to Geddes Run Watershed 2D- Three Mile Run	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
Cumberland County Lower Mifflin Township	PAG043617	Mark Lehman 694 Center Run Road Newville, PA 17241	7B	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Cranberry Township Venango County	PAG049514	David L. Ames 263 Moody Run Road Oil City, PA 16301	Allegheny River 16-E	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG 7**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Stream Body of Water or Site Name &amp; Address</i>	<i>Contact Office &amp; Phone No.</i>
Out-of-State	PAG079903	Milwaukee Metropolitan Sewerage District 260 West Seeboth Street Milwaukee, WI 53204-1446	Out-of-State	BWSFR RCSOB 400 Market Street Harrisburg, PA 17105 (717) 787-8184
Mobile sludge processing unit	PAG079914	Kyler Environmental Services, Inc. 1269 Piedmont Road Somerset, PA 15501	Mobile unit, various	BWSFR RCSOB 400 Market Street Harrisburg, PA 17105 (717) 787-8184

*General Permit Type—PAG-8**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Bellefonte Borough 615 Pleasant View Boulevard Bellefonte, PA 16823 Spring Township Centre County	PAG084814	Bellefonte Borough 236 West Lamb Street Bellefonte, PA 16823	Bellefonte WWTP Spring Township Centre County	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664

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

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

Persons aggrieved by any action may appeal under section 517 of Act 38, 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) to the Environmental Hearing Board, Second Floor, Rachael Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

**CAFO PUBLIC NOTICE SPREADSHEET—ACTIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
David Strause Pheasant Run Farm 48 Rehrersburg Road Richland, PA 17087	Berks	18.5	413.5	Layers	None	Approved
Donald Burkholder 5153B Route 419 Womelsdorf, PA 19567	Berks	294	668.2	Layers	None	Approved
Roy Diem 3409 Smoketown Road Spring Grove, PA 17362	York	13	1,367	Layer	NA	Approved
Mach Farm 651 Pine Road Palmyra, PA 17078	Lebanon	0	712.04	Swine	NA	Approved
Swatara Swine 1921 Black's Bridge Road Annville, PA 17003	Lebanon	0	798.85	Swine	NA	Approved
Jeffery Werner 897 North Lancaster Street Jonestown, PA 17038	Lebanon	476.5	489.6	Turkey	NA	Approved
Elvin Nolt 11 Seth Erb Road Richland, PA 17087	Lebanon	9	707	Swine	NA	Approved

**PUBLIC WATER SUPPLY (PWS) PERMITS**

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once.

Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**SAFE DRINKING WATER**

**Actions taken under the Pennsylvania Safe Drinking Water Act**

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

**Permit No. 0709502 MA, Minor Amendment, Public Water Supply.**

Applicant	<b>Blair Township Water &amp; Sewer Authority</b>
Municipality	Blair Township
County	<b>Blair</b>
Type of Facility	Interconnection with Altoona Water Authority.
Consulting Engineer	Daniel J. Carbaugh, P. E. Keller Engineers, Inc. 420 Allegheny Street Hollidaysburg, PA 16648
Permit to Construct Issued	May 13, 2009

**Operations Permit** issued to The Meadows at Bethel Manufactured Housing Community, 3060106, Bethel Township, **Berks County** on May 15, 2009 for the operation of facilities approved under Construction Permit No. 0608512 MA.

**Operations Permit** issued to Windsor Borough, 7670065, Windsor Borough, **York County** on May 8, 2009 for the operation of facilities approved under Construction Permit No. 6709502 MA.

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

**Permit No. MA-4496231(A8)—Construction and Operation, Public Water Supply.**

Applicant	<b>Dutch Valley Food Company, Inc.</b>
Township or Borough	City of Sunbury
County	<b>Northumberland</b>
Responsible Official	Susan E. Hoover Dutch Valley Food Company, Inc. P. O. Box 471 Sunbury, PA 17801-0471
Type of Facility	Public Water Supply— Construction and Operation
Consulting Engineer	Ralph A. Lambert, Jr., P. E. LAR Enterprises 363 West High Street Gettysburg, PA 17325
Permit Issued Date	May 7, 2009
Description of Action	For deletion of Ozone from the treatment process.

**Beech Creek Borough Water and Sewer Authority (Public Water Supply), Clinton County:** On May 12, 2009, the Department of Environmental Protection (Department) approved the Wellhead Protection (WHP) program for this community water system. The personnel involved with the development of this WHP program are to be commended for taking these proactive steps to protect these water sources for their community. Development of the program was funded by the Department (David W. Garg, (570) 321-6581).

**Selinsgrove Borough Municipal Authority (Public Water Supply), Snyder County:** On May 12, 2009, the Department of Environmental Protection (Department) approved the Source Water Protection (SWP) program for this community water system. The personnel involved with the completion of this SWP program are to be commended for taking these proactive steps to protect these water sources for their community. Development of the program was funded by the Department (David W. Garg, (570) 321-6581).

**Penn Township Municipal Authority (Public Water Supply), Snyder County:** On May 12, 2009, the Department of Environmental Protection (Department) approved the Source Water Protection (SWP) program for this community water system. The personnel involved with the completion of this SWP program are to be commended for taking these proactive steps to protect these water sources for their community. Development of the program was funded by the Department (David W. Garg, (570) 321-6581).

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

**Permit No. 1109501, Public Water Supply.**

Applicant	<b>Jackson Township Water Authority</b> 2949 William Penn Avenue Johnstown, PA 15909
Borough or Township	Jackson Township
County	<b>Cambria</b>
Type of Facility	Swigle Mountain Road water project
Consulting Engineer	Gwin, Dobson & Foreman, Inc. 3121 Fairway Drive Altoona, PA 16602
Permit to Construct Issued	May 13, 2009

**Permit No. 0409503MA, Minor Amendment, Public Water Supply.**

Applicant	<b>New Sewickley Township Municipal Authority</b> 233 Miller Road Rochester, PA 15074
Borough or Township	New Sewickley Township
County	<b>Beaver</b>
Type of Facility	Highview Circle water storage tank
Consulting Engineer	Michael Baker, Jr., Inc. 4301 Dutch Ridge Road Beaver, PA 15009
Permit to Construct Issued	May 3, 2009

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

**Permit No. 4208501, Public Water Supply.**

Applicant	<b>Bradford City Water Authority</b>
Township or Borough	City of Bradford
County	<b>McKean County</b>
Type of Facility	Public Water Supply
Consulting Engineer	Michael T. Marino, P. E.
Permit to Construct Issued	May 15, 2009

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 2

**The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for se-

lecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a Site-Specific Standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Fabian Residence**, 615 North Muhlenberg Street, Allentown City, **Lehigh County**. Jeremy W. Boly, Environmental Maintenance Company, Inc., 1420 East Mermaid Lane, Glenside, PA 19038 has submitted a Final Report (on behalf of his client, Matthew Fabian, 615 North Muhlenberg Street, Allentown, PA 18102), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of the over-pressurization of the property's aboveground storage tank. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard. A public notice regarding the submission of the Final Report was published in *The Morning Call* on May 5, 2009.

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

**Brookside Village Mobile Home Park**, North Centre Township, **Columbia County**, R. J. Walsh Assoc., Inc., P. O. Box 119, Allentown, NJ 08501 on behalf of Marty Mancini, Affordable Residential Communities, 1 Mark Lane, Honey Brook, PA 19344 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with fuel 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.*

**1215 Federal Street Property**, City of Pittsburgh, **Allegheny County**. Wendy Noe, American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668-1848 (on behalf of Andrew Stewart, The Silk & Stewart Development Group, 5812 Darlington Road, Pittsburgh, PA 15217 and Andrew Stewart, Federal North Associates, LP, 5812 Darlington Road, Pittsburgh, PA

15217) has submitted a Remedial Investigation Report concerning remediation of site soil and groundwater contaminated with chlorinated solvents and other organics. The report is intended to document remediation of the site to meet the Site-Specific Standard.

**Heinrich Residence**, City of Windber, **Somerset County**. Michael Schirato, Mountain Research, LLC, 825 25th Street, Altoona, PA 16601 (on behalf of Ernest Heinrich, 1306 Paint Street, Windber, PA 15963) has submitted a Final Report concerning remediation of site soil contaminated with fuel oil No. 2. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Cornell Residence**, South Huntingdon Township, **Westmoreland County**. Jeremy Boly, Environmental Maintenance Company, 1420 East Mermaid Lane, Glenside, PA 19038 (on behalf of Jean Cornell, 248 Fitz Henry Road, Smithtown, PA 15479) has submitted a Final Report concerning remediation of site soil contaminated with fuel oil No. 2. The report is intended to document remediation of the site to meet the Statewide Health Standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

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**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

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Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and in-



clude a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

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

**Bulkmatic**, Old Lycoming Township, **Lycoming County. Northridge Group, Inc.**, 1172 Ridge Road, Northumberland, PA 17857 on behalf of Bulkmatic, 2001 North Cline Avenue, Griffith, IN 46319 has submitted a Final Report within 90-days of the release concerning remediation of site soil contaminated with diesel fuel at the Stroehman's Bakery facility. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on May 12, 2009.

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

**Warehousing Services**, City of Jeannette, **Westmoreland County**. Alan Halperin, D'Appolonia Engineering, 275 Center Road, Monroeville, PA 15146 on behalf of Douglas Johnston, T.S. Quatro, Inc., 215 North Fourth Street, Jeannette, PA 15644 has submitted a Remedial Investigation Report and Cleanup Plan concerning the remediation of site soil contaminated with lead. The Remedial Investigation Report and Cleanup Plan was approved by the Department of Environmental Protection on March 10, 2009

**Curtiss Wright Electro Mech. Corp.**, Cheswick Borough, Harmar Township, **Allegheny County**. Bruce Geno, Cummings Riter Consultants, Inc., 10 Duff Road, Suite 500, Pittsburgh, PA 15235 on behalf of Paul Patchin, Westinghouse Government Services, LLC (and or its successors), P. O. Box 73, Boise, ID 83729 and Frank Meledandri, Curtiss-Wright Electro-Mechanical Corporation, 1000 Cheswick Avenue, Cheswick, PA 15024-1300 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with other organics. The Final Report demonstrated attainment of the Site-Specific and Statewide Health Standards and was approved by the Department of Environmental Protection on April 9, 2009.

#### HAZARDOUS WASTE TRANSPORTER LICENSE

**Actions on applications for Hazardous Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

#### *Hazardous Waste Transporter License Renewed*

**Hazmat Environmental Group, Inc.**, 60 Commerce Drive, Buffalo, NY 14218-1040. License No. PA-AH 0315. Effective March 18, 2009.

**Wade Salvage, Inc.**, 382 Jackson Road, Atco, NJ 08004. License No. PA-AH S246. Effective March 27, 2009.

**Hittman Transport Services, Inc.**, 628 Gallaher Road, Kingston, TN 37763. License No. PA-AH S239. Effective March 30, 2009.

**Republic Environmental Systems**, 21 Church Road, Hatfield, PA 19440. License No. PA-AH 0317. Effective April 3, 2009.

**EQ Industrial Services, Inc.**, 2701 North I-94 Service Drive, Ypsilanti, MI 48198. License No. PA-AH 0615. Effective April 9, 2009.

**Nortru, LLC**, 515 Lycaste, Detroit, MI 48214. License No. PA-AH 0451. Effective April 14, 2009.

**Lionetti Oil Recovery, Inc.**, d/b/a Lorco, 450 South Front Street, Elizabeth, NJ 07202. License No. PA-AH 0567. Effective April 14, 2009.

**Weavertown Transport Leasing, Inc.**, 2 Dorrington Road, Carnegie, PA 15106. License No. PA-AH 0263. Effective April 16, 2009.

**Bio-Team Mobile, LLC**, 6 East Kendig Road, Willow Street, PA 17584. License No. PA-AH 0733. Effective April 14, 2009.

**Horwith Trucks, Inc.**, P. O. Box 7, 1440 Nor-Bath Boulevard, Northampton, PA 18067. License No. PA-AH 0176. Effective April 23, 2009.

**Brenntag Northeast, Inc.**, P. O. Box 13788, Reading, PA 19612. License No. PA-AH 0082. Effective April 30, 2009.

**Bethlehem Apparatus Co., Inc.**, P. O. Box Y, 890 Front Street, Hellertown, PA 18055. License No. PA-AH 0681. Effective May 4, 2009.

**Marcor Remediation, Inc.**, 246 Cockeysville Road, Suite 1, Hunt Valley, MD 21030. License No. PA-AH 0568. Effective May 7, 2009.

**Fred Pugliese, d/b/a Plainfield Motor Services**, One Genstar, Joliet, IL 60435. License No. PA-AH 0573. Effective May 7, 2009.

**Joseph Moving and Storage Co.**, P. O. Box 5, Woodland, PA 16881. License No. PA-AH 0390. Effective May 8, 2009.

**Waste Recovery Solutions, Inc.**, 343 King Street, Myerstown, PA 17067. License No. PA-AH 0683. Effective May 12, 2009.

#### *Hazardous Waste Transporter License Issued*

**A & D Environmental Services, Inc.**, 2718 Uwharrie Road, Archdale, NC 27263. License No. PA-AH 0760. Effective April 3, 2009.

**Hazardous Waste Transporter License, actions taken under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

*Hazardous Waste Transporter License Voluntarily Terminated*

**F.T. Silfies, Inc.**, 250 Reese Road, Suite 200, State College, PA 16801. License No. PA-AH 0726. Effective May 1, 2009.

**REGISTRATION FOR GENERAL PERMIT—RESIDUAL WASTE**

Registration received under the **Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Residual Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash.**

*Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.*

**General Permit Registration No. WMGR25NC001. The Pennsylvania State University**, 113 Office of Physical Plant, University Park, PA 16802-1118. Registration to operate under General Permit No. WMGR025NC001 for a facility to compost yard waste and food waste located in College Township, **Centre County**. The registration was received by the Williamsport Regional Office on May 11, 2009

Persons interested in reviewing the general permit should contact James E. Miller, Environmental Program Manager, Waste Management Program, Williamsport Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. TDD users should contact the Department of Environmental Protection through the Pennsylvania AT&T Relay Service, (800) 654-5984.

**AIR QUALITY**

**General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**GP11-46-0037: Allied Recycling Co.** (1725 Limeklin Pike, Suite 3A, Dresher, PA 19025) on May 15, 2009, to operate a nonroad engine in Lower Gwynedd Township, **Montgomery County**.

**GP1-09-0093: Philadelphia Park Casino and Race-track** (3331 Street Road, No. 200, Bensalem, PA 19020) on May 15, 2009, to operate a small gas/No. 2 oil fired combustion units in Bensalem Township, **Bucks County**.

**GP3-46-0081: Allied Recycling Co.** (1725 Limeklin Pike, Suite 3A, Dresher, PA 19025) on May 15, 2009, to operate a portable nonmetallic mineral processing plant in Lower Gwynedd Township, **Montgomery County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2507.*

**58-310-016GP3: Damascus 535 Quarry & Stone Products, LLC** (R. R. 3, Box 324A-1, Montrose, PA 18801) on May 13, 2009, to construct and operate a Portable Crushing Operation with water sprays at their site in New Milford Township, **Susquehanna County**.

**58-329-006GP9: Damascus 535 Quarry & Stone Products, LLC** (R. R. 3, Box 324A-1, Montrose, PA

18801) on May 13, 2009, to install and operate Diesel I/C Engines at their site in New Milford Township, **Susquehanna County**.

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**23-0003K: ConocoPhillips Co.** (4101 Post Road, Trainer, PA 19061-3812) on May 18, 2009, for modification of previously issued Plan Approval No. PA-23-0003G for a platformer feed heater revamp project at their Trainer facility in Trainer Borough, **Delaware County**. This facility is a Title V facility. This modification will result in NOx emission increase of 21.89 tpy. The Plan Approval and Operating Permit will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**46-0147A: Chemalloy Co., Inc.** (P. O. Box 350, Bryn Mawr, PA 19010) on May 14, 2009, to operate two new manganese compound processing lines and controls in Plymouth Township, **Montgomery County**.

**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).**

*Coal Applications Returned*

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

**10080204 and NPDES Permit No. PA0258687. U.S. Operating Services Company** (9405 Arrowpoint Boulevard, Charlotte, NC 28273-8110) Commencement, opera-

tion and restoration of a coal refuse reprocessing operation in Clinton Township, **Butler County** affecting 99.6 acres. Receiving streams: UNT to Lardintown Run. Application received November 25, 2008. Permit withdrawn May 13, 2009.

*Coal Permits Actions*

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17020113 and NPDES No. PA0243353. Junior Coal Contracting, Inc.** (2330 Six Mile Road, Philipsburg, PA 16866), permit renewal for the continued operation and restoration of a bituminous surface mine in Decatur Township, **Clearfield County**, affecting 114.0 acres. Receiving streams: UNT A to UNT E, UNT B to UNT E, UNT C to Laurel Run, UNT D to UNT E, UNT E to Laurel Run and Laurel Run to Moshannon Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received March 13, 2009. Permit issued May 6, 2009.

*Noncoal Permits Actions*

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

**11940301 and NPDES No. PA0212873. Pheasant and Shearer**, 1922 Ohio Street, Johnstown, PA 15904, renewal of NPDES permit in East Taylor Township, **Cambria County**, affecting 201.2 acres. Receiving streams: UNTs to/and Hinckston Run, classified for the following use: WWF. There are no potable water supply intakes within 10 miles downstream. NPDES renewal application received February 23, 2009. Permit issued May 13, 2009.

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

**42092802. G. L. Carlson, Inc.** (P. O. Box 97, Turtlepoint, PA 16750) Commencement, operation and restoration of a small noncoal topsoil operation in Annin Township, **McKean County** affecting 5.0 acres. Receiving streams: Allegheny River. Application received January 27, 2009. Permit issued May 11, 2009.

**20090801. Shain Bowers** (14872 Mackey Hill Road, Waterford, PA 16441) Commencement, operation and restoration of a small noncoal sand and gravel operation in Rockdale Township, **Crawford County** affecting 5.0 acres. Receiving streams: UNT to Kelly Run. Application received January 13, 2009. Permit issued May 13, 2009.

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

**58090803. Jeff Spadine**, (R. R. 2, Box 2631, Nicholson, PA 18446), commencement, operation and restoration of a quarry operation in Springville Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received February 3, 2009. Permit issued May 12, 2009.

**58080813. Shannon Hill Stone Company**, (R. R. 2, Box 293A, Meshoppen, PA 18630), commencement, operation and restoration of a quarry operation in Bridgewater Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received February 6, 2008. Permit issued May 13, 2009.

**64082803. Robert A. Coleman**, (P. O. Box 3, Susquehanna, PA 18847), commencement, operation and restoration of a quarry operation in Preston Township,

**Wayne County** affecting 5.0 acres, receiving stream: none. Application received September 8, 2008. Permit issued May 14, 2009.

**ACTIONS ON BLASTING ACTIVITY APPLICATIONS**

**Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151–161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.**

*Blasting Permits Actions*

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

**63094002. Dana Explosives, Inc.** (945 Brisbin Street, Houtzdale, PA 16651). Blasting activity permit for the Best 3D natural gas exploration, located in Mt. Pleasant, Hopewell and Canton Townships **Washington County**. The duration of blasting is expected to be for 1 year. Blasting activity permit issued May 11, 2009.

**02094001. Controlled Demolition, Inc.** (2737 Merymans Mill Road, Phoenix, MD 21131). Blasting activity permit for the demolition of the Penn Circle Hi-Rise, located in the City of Pittsburgh, **Allegheny County**. The blasting is scheduled for May 10, 2009. Blasting activity permit issued May 14, 2009.

**26094003. Precision Geophysical, Inc.** (2695 SR 83 South, Millersburg, OH 44654). Blasting activity permit for gas exploration, located in South Union Township, **Fayette County**. The duration of blasting is expected to be 90 days. Blasting activity permit issued May 14, 2009.

**02094002. KESCO, Inc.** (P. O. Box 95, Adrian, PA 16210). Blasting activity permit for construction of the Cobble Stone Site Development, located in Ohio Township, **Allegheny County**. The duration of blasting is expected to be 6 months. Blasting activity permit issued May 14, 2009.

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

**20094003. Precision Geophysical, Inc.** (2695 SR 83 South, Millersburg, OH 44654) Blasting activity permit for well exploration in Summerhill, Spring and Conneaut Townships, **Crawford County**. This blasting activity permit will expire on July 14, 2009. Application received May 7, 2009. Permit issued May 12, 2009.

**27094002. Demtech, Inc.** (65 Bald Mountain Road, DuBois, WY 82513) Blasting activity permit for demolition of a water tower in Jenks Township, **Forest County**. This blasting activity permit will expire on November 11, 2009. Application received May 1, 2009. Permit issued May 14, 2009.

**27094003. Appalachian Geophysical Services, LLC** (2695 SR 60, P. O. Box 426, Killbuck, OH 44637-0426) Blasting activity permit for well exploration in Kingsley and Green Townships, **Forest County**. This blasting activity permit will expire on December 31, 2009. Application received May 7, 2009. Permit issued May 14, 2009.

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

**06094106. Warren's Excavating & Drilling, Inc.**, (P. O. Box 214, Myerstown, PA 17067), construction blast-

ing for Perkiomen Avenue Project in Exeter Township, **Berks County** with an expiration date of May 7, 2010. Permit issued May 12, 2009.

**36094123. Keystone Blasting Service**, (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for Hempfield Crossings in East Hempfield Township, **Lancaster County** with an expiration date of December 30, 2010. Permit issued May 12, 2009.

**67094111. J Roy's, Inc.**, (P. O. Box 125, Bowmansville, PA 17507), construction blasting for Booth Driveway in the City of York, **York County** with an expiration date of May 31, 2010. Permit issued May 12, 2009.

**67094112. M & J Explosives, Inc.**, (P. O. Box 608, Carlisle, PA 17013), construction blasting for Danner Sanitary Sewer Project in Penn Township, **York County** with an expiration date of May 10, 2010. Permit issued May 12, 2009.

**40094109. Ed Wean Drilling & Blasting, Inc.**, (112 Ravine Road, Stewartsville, NJ 08886), construction blasting for The Highlands—Highland Main Street in Freeland Borough, **Luzerne County** with an expiration date of May 12, 2010. Permit issued May 14, 2009.

**48094106. Austin Powder Northeast, LLC**, (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Chrin Commerce Center in Palmer Township, Tatamy Borough and the City of Bethlehem, **Northampton County** with an expiration date of May 12, 2010. Permit issued May 14, 2009.

## FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

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**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 P. S. §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

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*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

### WATER OBSTRUCTIONS AND ENCROACHMENTS

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

**E46-1028. Montgomery Township**, 1001 Stump Road, Montgomeryville, PA 18936, Montgomery Township **Montgomery County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a proposed 90-foot long, 8-foot span and 9.5-foot underclearance pedestrian bridge across Little Neshaminy Creek (WWF-MF) associated with the modification of the existing recreational trail. The site is located approximately 500 feet northeast of the intersection of Kenas Road and Davis Drive (Ambler, PA USGS Quadrangle N: 20.25 inches; W: 11.00 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)) of the Federal Water Pollution Control Act.

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

**E64-278. Department of Transportation, Engineering District 4-0**, 55 Keystone Industrial Park, Dunmore, PA 18512, Palmyra Township, **Wayne County**, United States Army Corps of Engineers, Philadelphia District.

To remove the existing structure and to construct and maintain a two-span, composite steel I-beam bridge having a normal span of 102 feet and a minimum underclearance of 12 feet over Middle Creek (HQ-CWF, MF). The project also includes the relocation of 132 feet of a tributary to Middle Creek (HQ-CWF, MF). The project is located at SR 2004, Segment 0030, Offset 0000, approximately 1.1 miles west of the intersection of SR 2004 and SR 2006 (Hawley, PA Quadrangle Latitude: 41° 28' 49"; Longitude: 75° 12' 04").

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

**E06-644. Metropolitan Edison Co.—Schuylkill River Crossing, Kathryn Kunkel**, 2800 Pottsville Pike, P. O. Box 16001, Reading, PA 19612-6001, Tilden Township and Hamburg Borough, United States Army Corps of Engineers, Philadelphia District.

To remove and existing aerial electric line consisting of two wooden poles and wires having a normal span of 261.5-feet and to construct and maintain an aerial electric line crossing consisting of two wooden poles and three wires having a normal span of 290.0 feet and underclearances of 62.0 feet, 68.0 feet and 72.0 feet across the Schuylkill River (WWF) (Hamburg, PA Quadrangle N: 9.375 inches; W: 16.0 inches, Latitude: 40° 33' 21"; Longitude: 76° 59' 49"), for the purpose of relocating an existing aerial electric line crossing in Tilden Township and the Borough of Hamburg, **Berks County**.

**E36-841: Lancaster County Conservancy**, 117 South West End Avenue, P. O. Box 716, Lancaster, PA 17608-0716, Lancaster Township, **Lancaster County**, United States Army Corps of Engineers, Baltimore District.

To: (1) construct and maintain a minor road crossing of a UNT to Conestoga River (WWF) by extending an existing 36-inch diameter by 14-foot long DIP pipe with a 20-foot long pipe and placing upstream and downstream rock aprons for a cumulative impact length of 69.0 feet (Lancaster, PA Quadrangle N: 6.4 inches; W: 5.0 inches, Latitude: 40° 2' 7" N; Longitude: 76° 17' 8" W); and (2) construct and maintain a minor road crossing of a UNT to Conestoga River (WWF) with a 24-inch diameter by 25-foot long RCP pipe and placing upstream and downstream rock aprons for a cumulative impact length of 50.0 feet (Lancaster, PA Quadrangle N: 6.0 inches; W: 5.1 inches, Latitude: 40° 2' 0" N; Longitude: 76° 17' 12" W) all for the purpose of constructing a 1.3 mile, 12 foot wide bituminous walking trail within the floodway of the Conestoga River (WWF) known as the Conestoga Greenway Trail in Lancaster Township and Lancaster City, **Lancaster County**.

**E36-847: Mount Joy Borough Authority, Terry Kauffman**, 21 East Main Street, Mount Joy, PA 17552, Mount Joy Borough, **Lancaster County**, United States Army Corps of Engineers, Baltimore District.

To: (1) remove a 40.0-foot diameter intermediate clarifier, a 13.0-foot long by 9.0-foot wide recirculation pump station in the floodway of Little Chickies Creek (TSF); (2) remove a 67.0-foot diameter trickling filter; (3) remove a 29.0-foot 4.0-inch long by 28.0-foot by 4.0-inch wide chlorine tank in the floodplain of Little Chickies Creek (TSF); and (4) add a 41.0-foot 8.0-inch long by 20.0-foot wide UV channel and post aeration basin within the floodplain of Little Chickies Creek (TSF), at a point just west of the intersection of Garfield and Longenecker Roads, for the purpose of upgrading the existing Mount Joy Borough's Wastewater Treatment Plant (WWTP) (Columbia East, PA Quadrangle N: 18.10 inches; W: 16.75 inches, Latitude: 40° 5' 58" N; Longitude: 76° 29' 40" W) in Mount Joy Borough, Lancaster County.

**E05-350: Bedford Borough, John Montgomery, Manager**, 244 West Penn Street, Bedford, PA 15522, Bedford Borough, **Bedford County**, United States Army Corps of Engineers, Baltimore District.

To: (1) raze the existing Watson Street (SR 7401) P/S adjacent plank beam bridge having three spans, a width of 18.5 feet, a total span of 56.0 feet and an underclearance of 6.7 feet over Shobers Run (HQ-CWF) (Everett West, PA Quadrangle N: 2.5 inches; W: 16.7 inches, Latitude: 40° 00' 50"; Longitude: 78° 29' 40"); (2) construct and maintain a P/S Box Beam bridge having a width of 37.5 feet, a total span of 52.0 feet and an underclearance of 6.8 feet carrying Watson Street (SR 7401) over Shobers Run (HQ-CWF) (Everett West, PA Quadrangle N: 2.5 inches; W: 16.7 inches, Latitude: 40°

00' 50"; Longitude: 78° 29' 40"); (3) construct and maintain an 18-inch outfall structure on the upstream left side of the bridge discharging to Shobers Run (HQ-CWF) (Everett West, PA Quadrangle N: 2.5 inches; W: 16.7 inches, Latitude: 40° 00' 50"; Longitude: 78° 29' 40"); (4) construct and maintain an 18-inch outfall structure on the downstream left side of the bridge discharging to Shobers Run (HQ-CWF) (Everett West, PA Quadrangle N: 2.5 inches; W: 16.7 inches, Latitude: 40° 00' 50"; Longitude: 78° 29' 40"); and (5) construct and maintain a 27-inch outfall structure on the upstream right side of the bridge discharging to Shobers Run (HQ-CWF) (Everett West, PA Quadrangle N: 2.5 inches; W: 16.7 inches, Latitude: 40° 00' 50"; Longitude: 78° 29' 40"). The project involves the use of a temporary causeway and cofferdams and is located in Bedford Borough, Bedford County.

*Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335.*

**E33-234, Department of Transportation, District 10-0**, 2550 Oakland Avenue, P. O. Box 429, Indiana, PA 15701. SR 0080, Section 545 Brookville Interchange in Brookville Borough and Rose Township, **Jefferson County**. United States Army Corps of Engineers, Pittsburgh District (Brookville, PA Quadrangle N: 41° 10' 13.4"; W: 79° 05' 53.5").

To construct and maintain the following as part of the improvements to the Brookville Interchange, SR 0080, Section 545:

1. Fill 0.233 acre of wetland (PEM) associated with roadway embankment for the extension of the eastbound exit ramp (Ramp D).

2. Install a 40-inch diameter HDPE lining within the existing 270-foot long, 48-inch diameter corrugated metal pipe stream enclosure in a tributary to Clement Run at station 23+44.21 associated with extension of the westbound entrance ramp (Ramp A).

3. Install a 40-inch diameter HDPE lining within the existing 243-foot long, 48-inch diameter corrugated metal pipe stream enclosure and extend by 17 feet on the downstream end bringing the structure to a total length of 260 feet in a tributary to Clement Run at station 112+40.08 associated with extension of the eastbound exit ramp (Ramp D).

4. To extend the existing 160-foot long, 54-inch diameter corrugated metal pipe stream enclosure at station 35+64.76 associated with extension of the eastbound entrance ramp (Ramp A) by adding an additional 12 feet onto upstream end bringing the structure to a total length of 172 feet in Clement Run.

5. To extend the existing 174-foot long, 54-inch diameter corrugated metal pipe stream enclosure at station 106+41.43 associated with the extension of the westbound exit ramp (Ramp D) by adding an additional 31 feet onto the downstream end, bringing the structure to a total length of 205 feet in Clement Run.

Project includes deduction of 0.233 acre from Department of Transportation's Jefferson County Advance Wetland Mitigation Bank.

#### **EROSION AND SEDIMENT CONTROL**

The following Erosion and Sediment Control Permits have been issued.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth

agencies), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board

at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If individuals want to challenge this action, their appeal must reach the Board within 30 days. Individuals do not need a lawyer to file an appeal with the Board. Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. If individuals cannot afford a lawyer, individuals may qualify for free pro bono representation. Call the Secretary to the Board (717) 787-3483 for more information.

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

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<i>ESCP No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
3508801(1)	UGI Penn Natural Gas, Inc. One UGI Center Wilkes-Barre, PA 18711-0601	Lackawanna	Throop, Olyphant, Jessup and Archbald Boroughs	Eddy Creek WWF Sterry Creek CWF Grassy Island Creek HQ-CWF

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

<i>ESCP No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
ESCGP-1 0809816	Patrick Myers Appalachia Midstream Services, LLC 100 IST Center Horseheads, NY 14845	Bradford	Granville Township	North Branch Towanda Creek CWF
ESCGP-1 4109801-1	Ted Wurfel Chief Gathering, LLC 700 Fairfield Road Montoursville, PA 17754	Lycoming	Penn Township	Sugar Run CWF Big Run HQ-CWF Little Muncy Creek CWF

[Pa.B. Doc. No. 09-987. Filed for public inspection May 29, 2009, 9:00 a.m.]

### Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) web site at <http://www.depweb.state.pa.us> (DEP Key-words: "Technical Guidance"). The "Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2009.

#### *Ordering Paper Copies of Department Technical Guidance*

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### *Changes to Technical Guidance Documents*

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

#### *Draft Guidance*

DEP ID: 392-0900-001. Title: Trading of Nutrient and Sediment Reduction Credits—Policy and Guidelines. Description: Credit trading is a market-based program that provides incentives for entities to earn nutrient reduction credits by going beyond legal obligations to remove nutrients from a watershed. The credits can be traded to help others more cost-effectively meet their nutrient reduction obligations or goals. The primary purpose of the Trading Program is to provide for more efficient ways for National Pollutant Discharge Elimina-

tion System permittees to meet their effluent limits for nutrients and sediment. Currently, the focus of the program is on the Chesapeake Bay Watershed. The Department has determined that the Farmland Preservation component of the current policy as it relates to the acceptance of land conversion proposals should be revised. This proposed revision is based on the Department's review of the scientific basis for granting land conversion credits and the potential conflicts the current policy may have with other Commonwealth policies and directives, including the Governor's Executive Order on Farmland Preservation. The guidance is now changed to clarify that land conversion proposals that seek to generate nutrient reduction credits from the conversion of agricultural land to another development type (that is, commercial, residential and the like) will no longer be accepted for review. Written Comments: The Department is seeking comments on the Farmland Preservation revision of draft technical guidance 392-0900-001. Interested persons may submit written comments on this the substantive changes to the draft technical guidance document by June 29, 2009. Comments submitted facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Ann Smith, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4726, annsmith@state.pa.us. Contact: Questions regarding the draft technical guidance should be directed to Ann Smith at (717) 787-4726 or annsmith@state.pa.us. Effective Date: Upon publication of notice as final in the *Pennsylvania Bulletin*.

JOHN HANGER,  
Secretary

[Pa.B. Doc. No. 09-988. Filed for public inspection May 29, 2009, 9:00 a.m.]

### Bid Opportunity

**BOGM 08-13, Cleaning out and plugging 17 abandoned and orphan oil wells (John Cattoni and Mary Knoll, Alan Poyer, Ronald Burrit, National Fuel Gas Corp. (c/o Roger Duffey), Sharon Long, Jackie Adams, Mr. and Mrs. Richard Thomas, Dave Feely, Mr. and Mrs. Millard Taylor and Mr. and Mrs. Jeffrey Holly Properties) Bradford City and Bradford Township, McKean County.** The principal items of work include cleaning out and plugging 17 abandoned and orphan oil wells, estimated to be between 1,200 and 1,350 feet in depth, to Department of Environmental Protection specifications, preparing and restoring well sites and mobilizing and demobilizing plugging equipment. This project issues on May 29, 2009, and bids will be opened on July 7, 2009, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. A prebid conference is planned for this project but a date has not been set. Use the contact information contained in this advertisement to find out more about the prebid. Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

JOHN HANGER,  
Secretary

[Pa.B. Doc. No. 09-989. Filed for public inspection May 29, 2009, 9:00 a.m.]

### Blythe Township v. Commonwealth of Pennsylvania, Department of Environmental Protection and the Borough of St. Clair; EHB Doc. No. 2008-165-L; Notice of Settlement

The Commonwealth of Pennsylvania, Department of Environmental Protection (Department) and Blythe Township (Township) have agreed to a settlement of the named matter. The Commonwealth denied, by letter dated April 11, 2008, Township's application for a waste management permit (No. 101679) for a construction and demolition waste disposal and recycling facility in Blythe Township, Schuylkill County.

The Department and the Township have agreed to a settlement, the major provisions of which are summarized as follows and includes:

1. The Department acknowledges that the concerns raised in its April 11, 2008, letter have been sufficiently addressed to allow the Department to complete its review and issue a written decision on the Phase I, Environmental Assessment Process (EAP) "harms/benefit" review to Township under 25 Pa. Code §§ 271.126 and 271.127 (relating to requirement for environmental assessment; and environmental assessment).

2. The Township will comply with 25 Pa. Code § 271.211 (relating to term of permits) by accepting a permit condition with a 10-year permit term with an average daily volume of 1,500 tons per day.

3. The Township will continue to pursue a direct stream discharge and an NPDES permit with respect to the management of leachate at the site. The Township has agreed to submit a Part II water quality management permit application to the Department and obtain an NPDES permit and Part II water quality management permit in coordination with the solid waste management permit.

4. The Township submitted an air quality plan approval for an active gas system to the Department on December 10, 2007, which, in part, includes the collection of landfill gas and its destruction by flare. The Township will install the gas collection system as operations occur and has committed to take a number of specific measures for dealing with odors and other emissions as necessary. The Township also will provide site-specific meteorological data and will submit information to address the scope of the soil/rock/borrow material processing operations at the facility.

5. The Township has submitted information to evaluate the potential for mine subsidence damage to the facility. The Township has committed to perform any necessary mitigation to the underground mine conditions to reduce the potential for mine subsidence impact to the site prior to the construction of Cell 4, should a waste management permit be issued to the Township.

6. The Township has committed to take measures to mitigate potential harm to identified impacts to the ridgetop dwarf tree forest and fossil plants in the project area. The Township has confirmed that municipal and municipal authority uses are authorized on the project area under the Township Zoning Code.

7. The Department will complete its EAP review and issue a written decision on the EAP review within 60 days from the date of publication of this settlement in the *Pennsylvania Bulletin*, but no later than July 30, 2009.

8. The settlement will be published in the *Pennsylvania Bulletin* and open for public comment for 30 days.

Comments may be submitted to: Waste Program Manager, Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18711-0790.

9. The Environmental Hearing Board (Board) will retain jurisdiction over the settlement agreement until the Department renders a final action on the Township's waste management application, No. 101679.

Copies of the full agreement are in the hands of:

David R. Stull, Esquire  
 Assistant Regional Counsel  
 Commonwealth of Pennsylvania  
 Department of Environmental Protection  
 Northeast Regional Office  
 2 Public Square  
 Wilkes-Barre, PA 18711-0790  
 (570) 826-2519

and

David J. Brooman, Esquire  
 Drinker Biddle & Reath LLP  
 1000 Westlakes Drive  
 Suite 300  
 Berwyn, PA 19312  
 (610) 993-2210

and at the office of the Board, and may be reviewed by any interested party on request during normal business hours.

JOHN HANGER,  
*Secretary*

[Pa.B. Doc. No. 09-990. Filed for public inspection May 29, 2009, 9:00 a.m.]

**Nutrient and Sediment Reduction Credit Trading Program; Notice of Actions**

The Department of Environmental Protection (Department) provides notice of the following actions regarding the Nutrient and Sediment Reduction Credit Trading Program (Trading Program). These actions were taken in relation to the Final Trading of Nutrient and Sediment Reduction Credits—Policy and Guidelines (Policy) (DEP ID No. 392-0900-001). See 36 Pa.B. 7999 (December 30, 2006). The Policy called for a transparent system of credit reviews and approvals.

Trading is a market-based program that provides incentives for entities to create nutrient reduction credits by going beyond statutory, regulatory or voluntary obligations and goals by removing nutrients from a watershed. The credits can be traded to help others more cost-effectively meet their obligations or goals. The primary purpose of the Trading Program is to provide for more efficient ways for National Pollutant Discharge Elimination System (NPDES) permittees to meet their effluent limits for nutrients and sediment. Currently, the focus of the program is on the Chesapeake Bay Watershed.

The actions described in this notice relate to: (1) submitted proposals; (2) approved proposals; and (3) registered credits, through May 18, 2009.

*Background*

Before a credit can be used by an NPDES permittee, a three-step process is followed. First, the credit or offset proposal must be approved, second, it must be verified and third, it must be registered.

Approval is also known as certification, which is a written approval by the Department for the use of proposed or implemented activities to generate credits (in some cases the person generating the credits is not permitted to transfer them to another person, in which case they are called "offsets"). Certifications are based on at least: (1) a credit or offset proposal to be submitted describing the qualifying activities that will reduce the nutrient loadings delivered to the applicable watershed; (2) the calculation to quantify the pounds of reductions expected; and (3) a verification plan that, when implemented, ensures that the qualifying nutrient reduction activities have taken place. All of the proposals, certifications and registrations described in this Notice apply to the Chesapeake Bay Watershed.

Once the credits or offsets are certified, they must be verified. Verification means implementation of the verification plan contained in a certified credit or offset proposal as required by the Department. Verification plans require annual submittal of documentation to the Department that demonstrates that the qualifying nutrient reduction activities have taken place for the applicable compliance year.

The credits or offsets also need to be registered by the Department before they can be used in an NPDES permit. Registration occurs only after credits or offsets have been certified and verified, and a trading contract for credits has been submitted to the Department. For the Chesapeake Bay Watershed, the Department will register credits on an annual basis for use during the compliance year in which the qualifying nutrient reduction activities have taken place and will provide the credits with an annual registry number for reporting and tracking purposes.

The Department has received 69 proposals that have been submitted for review to generate nutrient reduction credits in the Chesapeake Bay Watershed. Of those, 45 have been approved, three are in review, one has been withdrawn and the remaining need additional clarification prior to certification.

*Proposals under Review*

The following proposals are being reviewed by the Department. Comments will be received on these projects for 30 days.

*Proposal Applicant Proposal Description*

- 1. EnergyWorks BioPower, Inc. Nitrogen and Phosphorus credits to be generated by treating poultry manure from farms located in Adams County. This treatment includes the installation of an Energy and Nutrient Recovery Facility.
- 2. Capital RC & D Nitrogen and Phosphorus credits generated by implementation of no-till in Bradford County.

*Certifications:*

<i>Applicant and proposal description</i>	<i>Nitrogen Credits</i>	<i>Phosphorus Credits</i>
1. Chesapeake Nutrient Management Environmental Planners: credits generated by exporting poultry manure from Lancaster to location outside of the watershed.	184,714	23,089



*Verifications and Registrations:*

To date, there are no verifications and registrations.

For further information about the previous information or the Department's Nutrient Trading Program, contact Ann Smith, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4726, annsmith@state.pa.us or visit the Department's web site at <http://www.depweb.state.pa.us> (DEP Keywords: "Nutrient Trading").

JOHN HANGER,  
*Secretary*

[Pa.B. Doc. No. 09-991. Filed for public inspection May 29, 2009, 9:00 a.m.]

### **Proposed Revision to the State Implementation Plan for the Pennsylvania Portion of the Philadelphia-Wilmington-Atlantic City 8-Hour Ozone Nonattainment Area; Public Hearing**

The proposed revision to the Pennsylvania State Implementation Plan (SIP) amends the 2002 Base Year Inventory for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City 8-hour Ozone Nonattainment Area (Philadelphia Nonattainment Area). On August 29, 2007, the Department of Environmental Protection (Department) submitted the 2002 Base Year Inventory to the United States Environmental Protection Agency (EPA) along with the attainment demonstration for the 8-hour ozone National Ambient Air Quality Standard (NAAQS) for the Philadelphia Nonattainment Area, for approval as a SIP revision. The values for stationary sources in the 2002 Base Year Inventory submitted on August 29, 2007, are incorrect because name changes were not fully incorporated into the Department's databases, causing some facilities to be included multiple times during the inventory development. Therefore, the emissions estimated for 2002 were too high.

The DEP is seeking comment on the proposed changes to the 2002 Base Year Inventory for the Philadelphia Nonattainment Area. This proposed SIP revision substitutes the corrected table and appendix. This proposal is available on the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (choose "Air Topics") or through the contact persons listed below. After consideration of comments received, the Department intends to withdraw the incorrect portion of the August 29, 2007, submittal and submit the corrected portion to the EPA for approval.

The Department will hold a public hearing to receive comments on the proposed SIP revision only if a request for a public hearing is received from a member of the public. A request for a public hearing must be received by 4 p.m. on Monday, July 6, 2009. If a request for a public hearing is received by 4 p.m. on Monday, July 6, 2009, the public hearing will be held on Thursday, July 9, 2009, at 1 p.m. at the Department's Southeast Regional Office, 2 East Main Street, Norristown, PA. If no request for public hearing is received by 4 p.m. on Monday, July 6, 2009, the hearing will be cancelled and notice of the cancellation will be published on Tuesday, July 7, 2009, at 12 p.m., on the DEP's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords: Air Plans). Interested parties may also call (717) 787-9495 to find out if the hearing has been cancelled.

Persons wishing to request a public hearing or who wish to present testimony at a scheduled hearing should

contact Yvette House, P. O. Box 8468, Harrisburg, PA 17105, (717) 787-9495, [yhouse@state.pa.us](mailto:yhouse@state.pa.us) to reserve a time. The Department will consider a request to present testimony at a scheduled hearing to be a request for a public hearing. Persons who do not reserve a time will be able to testify as time allows. Witnesses should keep testimony to 10 minutes and should provide two written copies of their statement at the hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Yvette House at (717) 787-9495 or [yhouse@state.pa.us](mailto:yhouse@state.pa.us). TDD users may contact the Pennsylvania AT&T Relay Service at (800) 654-5984 to discuss how the Department can best accommodate their needs.

Persons interested in this proposed SIP revision are invited to submit written comments on the proposed SIP revision. Written comments must be received by the Department no later than July 10, 2009. Written comments should be sent to the attention of Arleen Shulman, Division of Air Resource Management, Bureau of Air Quality, Department of Environmental Protection, P. O. Box 8468, Harrisburg, PA 17105-8468, [ashulman@state.pa.us](mailto:ashulman@state.pa.us). Use "Philadelphia Base Year Inventory Revision" as the e-mail addressee or in the subject line.

JOHN HANGER,  
*Secretary*

[Pa.B. Doc. No. 09-992. Filed for public inspection May 29, 2009, 9:00 a.m.]

### **Solar Workgroup Meeting**

The Solar Workgroup (Workgroup) will hold a meeting on June 1, 2009, at 10 a.m. in the 2nd Floor Training Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

The agenda and materials for the June 1, 2009, meeting will be available at the meeting. Questions concerning this meeting should be directed to Libby Dodson, Office of Energy and Technology Deployment, Division of Energy Promotion, 400 Market Street, Harrisburg, PA 17101, (717) 772-8907, [libdodson@state.pa.us](mailto:libdodson@state.pa.us).

Persons with a disability who require accommodations to attend the June 1, 2009, meeting of the Workgroup should contact Angela Rothrock at (717) 772-8911 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department of Environmental Protection may accommodate their needs.

JOHN HANGER,  
*Secretary*

[Pa.B. Doc. No. 09-993. Filed for public inspection May 29, 2009, 9:00 a.m.]

### **Water Resources Advisory Committee; Special Meeting Notice**

The Water Resources Advisory Committee (WRAC) will have a special committee meeting on Friday, June 19, 2009, at 9:30 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The

WRAC will be discussing Chapters 95 and 96 (relating to wastewater treatment requirements; and water quality standards implementation).

Questions concerning the meeting may be directed to Phil Consonery at (717) 772-2184 or pconsonery@state.pa.us.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Phil Consonery at (717) 772-2184 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Department of Environmental Protection may accommodate their needs.

JOHN HANGER,  
Secretary

[Pa.B. Doc. No. 09-994. Filed for public inspection May 29, 2009, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Memorial Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Memorial Medical 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: 3.4.2.1(1) (relating to room space).

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 and 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).

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-995. Filed for public inspection May 29, 2009, 9:00 a.m.]

## Health Research Advisory Committee Meeting

The Health Research Advisory Committee of the Department of Health will hold a public meeting on November 23, 2009, from 9:30 a.m. to 4 p.m. The meeting will be held at the Bureau of Health Statistics and Research, Forum Place Building, 555 Walnut Street, 6th Floor, Harrisburg, PA.

There are two primary aims for the meeting: (1) to review the findings of the 2006 nonformula health research projects, which were designed to reduce health disparities related to gene-environment interactions and vaccine development; and (2) to recommend the State Fiscal Year 2010-2011 health research priorities for the Commonwealth Universal Research Enhancement (CURE) Program.

This meeting is open to the public. No reservations are required. The meeting is not a public hearing and therefore public testimony or comments, or both, are not part of the meeting agenda.

For additional information, contact Patricia W. Potrzebowski, Ph.D., Director, Bureau of Health Statistics and Research or Violet Witmer, Administrative Officer, Bureau of Health Statistics and Research, 555 Walnut Street, 6th Floor, Harrisburg, PA 17101-1914 or (717) 783-2548.

Persons with disabilities who wish to attend the meeting and requiring an auxiliary aid, service or other accommodation should contact Patricia W. Potrzebowski or Violet Witmer at (717) 783-2548 or for speech and/or hearing impaired persons at V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-996. Filed for public inspection May 29, 2009, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania \$3 Million Gold Nugget 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 \$3 Million Gold Nugget.

2. *Price:* The price of a Pennsylvania \$3 Million Gold Nugget instant lottery game ticket is \$25.

3. *Play Symbols:* Each Pennsylvania \$3 Million Gold Nugget instant lottery game ticket will contain one play area featuring a "NUGGET NUMBERS" area, a "GOLDEN NUMBERS" area a "Fast \$50" area, a "Fast \$100" area, a "Fast \$200" area and a "Fast \$500" area. The play symbols and their captions located in the "NUGGET 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 (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) and 40 (FORTY). The play symbols and their captions located in the "GOLDEN 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 (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), Pick symbol (PICK) and a Minecar symbol (MINECAR). The prize play symbol and the play symbols and their captions located in the "Fast \$50" area are: \$50<sup>00</sup> (FIFTY), NO BONUS (TRY AGAIN) and TRY AGAIN (NO BONUS). The prize play symbol and the play symbols and their captions located in the "Fast \$100" area are: \$100 (ONE HUN), NO BONUS (TRY AGAIN) and TRY AGAIN (NO BONUS). The prize play symbol and the play symbols and their captions located in the "Fast \$200" area are: \$200 (TWO HUN), NO BONUS (TRY AGAIN) and TRY AGAIN (NO BONUS). The prize play symbol and the play symbols and their captions located in the "Fast \$500" area are: \$500 (FIV HUN), NO BONUS (TRY AGAIN) and TRY AGAIN (NO BONUS). Each play area is played separately.

4. *Prize Symbols:* The prize symbols and their captions located in the "GOLDEN NUMBERS" area are: \$25<sup>00</sup> (TWY FIV), \$50<sup>00</sup> (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$400 (FOR HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$2,500 (TWYFIVHUN), \$10,000 (TEN THO), \$100,000 (ONEHUNTHO), \$300,000 (THRHUNTHO), and \$3MILL (\$120K/25PMT).

5. *Prizes:* The prizes that can be won in this game are: \$25, \$50, \$100, \$200, \$400, \$500, \$1,000, \$2,500, \$10,000, \$100,000, \$300,000 and \$3,000,000. The \$3,000,000 prize shall be paid by an initial cash payment of \$120,000 plus equal annual installments of \$120,000 over a specified term of 24 years. The prize that can be won in the "Fast \$50" area is \$50. The prize that can be won in the "Fast \$100" area is \$100. The prize that can be won in the "Fast \$200" area is \$200. The prize that can be won in the "Fast \$500" area is \$500. A player can win up to 21 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 4,800,000 tickets will be printed for the Pennsylvania \$3 Million Gold Nugget instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$3MILL (\$120K/25PMT) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$3,000,000. This prize shall be paid by an initial cash payment of \$120,000 plus equal

annual installments of \$120,000 over a specified term of 24 years continuing under the provisions of 61 Pa. Code § 811.16 (relating to prizes payable after death of prize winner) until the \$3,000,000 has been paid.

(b) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$300,000 (THRHUNTHO) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$300,000.

(c) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears under the matching "GOLDEN 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 "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$10,000 (TEN THO) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(e) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$2,500 (TWYFIVHUN) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$2,500.

(f) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols is a Minecar symbol (MINECAR) and a prize symbol of \$100 (ONE HUN) appears under that Minecar symbol (MINECAR), on a single ticket, shall be entitled to a prize of \$1,000.

(h) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(i) Holders of tickets with a \$500 (FIV HUN) prize play symbol in the "Fast \$500" area, on a single ticket, shall be entitled to a prize of \$500.

(j) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols is a Minecar symbol (MINECAR) and a prize symbol of \$50<sup>00</sup> (FIFTY) appears under that Minecar symbol (MINECAR), on a single ticket, shall be entitled to a prize of \$500.

(k) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$400 (FOR HUN) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$400.

(l) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols is a Pick symbol (PICK), and a prize symbol of \$200 (TWO HUN) appears under the Pick symbol (PICK), on a single ticket, shall be entitled to a prize of \$400.

(m) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols is a Minecar symbol (MINECAR) and a prize symbol of \$25<sup>00</sup> (TWY FIV) appears under that Minecar symbol (MINECAR), on a single ticket, shall be entitled to a prize of \$250.

(n) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$200 (TWO HUN) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$200.

(o) Holders of tickets with a \$200 (TWO HUN) prize play symbol in the "Fast \$200" area, on a single ticket, shall be entitled to a prize of \$200.

(p) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols is a Pick symbol (PICK), and a prize symbol of \$100 (ONE HUN) appears under the Pick symbol (PICK), on a single ticket, shall be entitled to a prize of \$200.

(q) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(r) Holders of tickets with a \$100 (ONE HUN) prize play symbol in the "Fast \$100" area, on a single ticket, shall be entitled to a prize of \$100.

(s) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols is a Pick symbol (PICK), and a prize symbol of \$50<sup>00</sup> (FIFTY) appears under the Pick symbol (PICK), on a single ticket, shall be entitled to a prize of \$100.

(t) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$50<sup>00</sup> (FIFTY) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(u) Holders of tickets with a \$50<sup>00</sup> (FIFTY) prize play symbol in the "Fast \$50" area, on a single ticket, shall be entitled to a prize of \$50.

(v) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols is a Pick symbol (PICK), and a prize symbol of \$25<sup>00</sup> (TWY FIV) appears under the Pick symbol (PICK), on a single ticket, shall be entitled to a prize of \$50.

(w) Holders of tickets upon which any one of the "GOLDEN NUMBERS" play symbols matches any of the "NUGGET NUMBERS" play symbols and a prize symbol of \$25<sup>00</sup> (TWY FIV) appears under the matching "GOLDEN NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$25.

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 The Golden Numbers Match Any Of The Nugget Numbers, Win With Prize(s) Of:</i>	<i>Fast \$50</i>	<i>Fast \$100</i>	<i>Fast \$200</i>	<i>Fast \$500</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 4,800,000 Tickets</i>
\$25					\$25	5.26	912,000
\$25 × 2					\$50	60	80,000
\$25 w/PICK					\$50	60	80,000
	\$50				\$50	30	160,000
\$50					\$50	30	160,000
\$25 × 4					\$100	300	16,000
(\$25 w/PICK) + \$50					\$100	300	16,000
\$25 × 2	\$50				\$100	300	16,000
\$50	\$50				\$100	300	16,000
\$100					\$100	300	16,000
		\$100			\$100	300	16,000
(\$25 w/PICK) + (\$25 × 2)		\$100			\$200	600	8,000
\$50	\$50	\$100			\$200	600	8,000
\$50 w/ PICK		\$100			\$200	600	8,000
\$100 w/ PICK					\$200	600	8,000
\$200					\$200	600	8,000
			\$200		\$200	600	8,000
(\$25 w/ PICK) + (\$25 × 12)	\$50				\$400	6,000	800
(\$25 w/MINECAR) + (\$25 × 2)		\$100			\$400	6,000	800
\$25 × 10	\$50	\$100			\$400	6,000	800
\$50 × 5	\$50	\$100			\$400	6,000	800

When Any Of The Golden Numbers Match Any Of The Nugget Numbers, Win With Prize(s) Of:

	Fast \$50	Fast \$100	Fast \$200	Fast \$500	Win:	Approximate Odds Are 1 In:	Approximate No. Of Winners Per 4,800,000 Tickets
(\$50 w/ PICK) + (\$50 × 4)		\$100			\$400	6,000	800
\$50 × 8					\$400	6,000	800
\$100 w/ PICK			\$200		\$400	6,000	800
\$100 × 4					\$400	6,000	800
\$200			\$200		\$400	6,000	800
\$400					\$400	6,000	800
(\$25 w/PICK) + (\$25 × 18)					\$500	12,000	400
(\$25 w/MINECAR) + (\$50 × 5)					\$500	12,000	400
\$25 × 20					\$500	12,000	400
(\$50 w/ PICK) + (\$50 × 8)					\$500	12,000	400
\$50 × 3	\$50	\$100	\$200		\$500	12,000	400
\$50 × 4		\$100	\$200		\$500	12,000	400
\$50 × 6			\$200		\$500	12,000	400
\$50 w/MINECAR					\$500	12,000	400
\$100 w/ PICK		\$100	\$200		\$500	12,000	400
\$100 × 3			\$200		\$500	12,000	400
(\$200 w/ PICK) + \$100					\$500	12,000	400
\$500					\$500	12,000	400
				\$500	\$500	12,000	400
\$25 × 6	\$50	\$100	\$200	\$500	\$1,000	9,231	520
\$50 × 4		\$100	\$200	\$500	\$1,000	9,231	520
\$50 × 20					\$1,000	9,231	520
\$100 w/ PICK		\$100	\$200	\$500	\$1,000	9,231	520
\$100 w/MINECAR					\$1,000	9,231	520
\$500				\$500	\$1,000	9,231	520
\$1,000					\$1,000	9,231	520
\$100 × 20				\$500	\$2,500	60,000	80
\$500 × 4				\$500	\$2,500	60,000	80
\$2,500					\$2,500	60,000	80
\$10,000					\$10,000	30,000	160
\$100,000					\$100,000	240,000	20
\$300,000					\$300,000	480,000	10
\$3,000,000					*\$3,000,000	800,000	6

Pick (PICK) = Win double the prize shown under that symbol.

Minecar (MINECAR) = Win 10 times the prize shown under that symbol.

\*25-year annuity estimated cost = \$1,606,541.

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 \$3 Million Gold Nugget 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 \$3 Million Gold Nugget, prize money from winning Pennsylvania \$3

Million Gold Nugget 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 \$3 Million Gold Nugget 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 \$3 Million Gold Nugget or through normal communications methods.

STEPHEN H. STETLER,  
Secretary

[Pa.B. Doc. No. 09-997. Filed for public inspection May 29, 2009, 9:00 a.m.]

### Pennsylvania High Card '09 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 High Card '09.

2. *Price:* The price of a Pennsylvania High Card '09 instant lottery game ticket is \$1.

3. *Play Symbols:* Each Pennsylvania High Card '09 instant lottery game ticket will contain one play area consisting of HAND 1, HAND 2, HAND 3 and HAND 4. Each "HAND" is played separately. Each "HAND" features a "YOUR" card area and a "DEALER'S" card area. The play symbols and their captions located in the "YOUR" card area are: 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), Jack (JCK), Queen (QUN), King (KNG), Ace (ACE) and Joker (JKR) card play symbols. The play symbols and their captions located in the "DEALER'S" card area are: 2 (TWO), 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), Jack (JCK), Queen (QUN) and King (KNG) card play symbols. Cards are ranked in value from high to low: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2.

4. *Prize Symbols:* The prize symbols and their captions located in the "PRIZE" area of each "HAND" are: FREE (TICKET), \$1<sup>00</sup> (ONE DOL), \$2<sup>00</sup> (TWO DOL), \$4<sup>00</sup> (FOR DOL), \$5<sup>00</sup> (FIV DOL), \$10<sup>00</sup> (TEN DOL), \$20<sup>00</sup> (TWENTY), \$40<sup>00</sup> (FORTY), \$100 (ONE HUN), \$400 (FOR HUN), \$1,000 (ONE THO) and \$2,000 (TWO THO).

5. *Prizes:* The prizes that can be won in this game are: Free \$1 Ticket, \$1, \$2, \$4, \$5, \$10, \$20, \$40, \$100, \$400, \$1,000 and \$2,000. The player can win up to 4 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 12,720,000 tickets will be printed for the Pennsylvania High Card '09 instant lottery game.

#### 7. *Determination of Prize Winners:*

(a) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$2,000 (TWO THO) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$2,000.

(b) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$1,000 (ONE THO) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$1,000.

(c) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$400 (FOR HUN) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$400.

(d) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$100 (ONE HUN) appears in each of the four "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$400.

(e) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$100 (ONE HUN) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$100.

(f) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$20<sup>00</sup> (TWENTY) appears in three of the "PRIZE" areas, and a prize symbol of \$40<sup>00</sup> (FORTY) appears in one of the "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$100.

(g) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears in two of the "PRIZE" areas, and a prize symbol of \$40<sup>00</sup> (FORTY) appears in two of the "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$100.

(h) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$40<sup>00</sup> (FORTY) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$40.

(i) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears in each of the four "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$40.

(j) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$20<sup>00</sup> (TWENTY) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$20.

(k) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears in each of the four "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$20.

(l) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$10.

(m) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$2<sup>00</sup> (TWO DOL) appears in three of the "PRIZE" areas, and a prize symbol of \$4<sup>00</sup> (FOR DOL) appears in one of the "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$10.

(n) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$1<sup>00</sup> (ONE DOL) appears in two of the "PRIZE" areas, and a prize symbol of \$4<sup>00</sup> (FOR DOL) appears in two of the "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$10.

(o) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$5.<sup>00</sup> (FIV DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$5.

(p) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$1.<sup>00</sup> (ONE DOL) appears in three of the "PRIZE" areas, and a prize symbol of \$2.<sup>00</sup> (TWO DOL) appears in one of the "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$5.

(q) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$4.<sup>00</sup> (FOR DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$4.

(r) Holders of tickets upon which any one of the "YOUR" card play symbols is a Joker symbol (JKR), and a prize symbol of \$1.<sup>00</sup> (ONE DOL) appears in each of the four "PRIZE" areas, on a single ticket, shall be entitled to a prize of \$4.

(s) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$2.<sup>00</sup> (TWO DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$2.

(t) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$1.<sup>00</sup> (ONE DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$1.

(u) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of FREE (TICKET) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of one Pennsylvania High Card '09 instant game ticket or one Pennsylvania Lottery instant game ticket with a \$1 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:

*When Your Card Beats The Dealer's Card In The Same Hand, Win Prize Shown For That Hand. Win With Prize(s) Of:*

	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 12,720,000 Tickets</i>
FREE	FREE \$1 TICKET	11.54	1,102,400
\$1	\$1	75	169,600
\$1 x 2	\$2	37.50	339,200
\$2	\$2	35.29	360,400
JOKER w/\$1 x 4	\$4	100	127,200
\$2 x 2	\$4	300	42,400
\$4	\$4	150	84,800
JOKER w/(\$1 x 3) + \$2	\$5	200	63,600
(\$2 x 2) + \$1	\$5	300	42,400
\$5	\$5	200	63,600
JOKER w/(\$1 x 2) + (\$4 x 2)	\$10	500	25,440
JOKER w/(\$2 x 3) + \$4	\$10	500	25,440
\$5 x 2	\$10	500	25,440
\$10	\$10	500	25,440
JOKER w/\$5 x 4	\$20	1,000	12,720
(\$5 x 2) + \$10	\$20	1,500	8,480
\$10 x 2	\$20	1,500	8,480
\$20	\$20	1,000	12,720
JOKER w/\$10 x 4	\$40	3,429	3,710
\$10 x 4	\$40	8,000	1,590
\$20 x 2	\$40	4,800	2,650
\$40	\$40	4,706	2,703
JOKER w/(\$10 x 2) + (\$40 x 2)	\$100	9,600	1,325
JOKER w/(\$20 x 3) + \$40	\$100	9,600	1,325
\$20 + (\$40 x 2)	\$100	9,600	1,325
\$100	\$100	8,000	1,590
JOKER w/\$100 x 4	\$400	120,000	106
\$400	\$400	120,000	106
\$1,000	\$1,000	80,000	159
\$1,000 x 2	\$2,000	240,000	53
\$2,000	\$2,000	240,000	53

Joker (JKR) = Win all four prizes shown.

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 High Card '09 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 High Card '09, prize money from winning Pennsylvania High Card '09 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 High Card '09 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 High Card '09 or through normal communications methods.

STEPHEN H. STETLER,  
*Secretary*

[Pa.B. Doc. No. 09-998. Filed for public inspection May 29, 2009, 9:00 a.m.]

## HEALTH CARE COST CONTAINMENT COUNCIL

### Special Reports and Requests for Data

The Health Care Cost Containment Council (Council), according to Act 89 as amended by Act 14, is required to publish a list of all special reports and data that have been prepared during the previous calendar year. The following represents a summary of the reports and requests for data generated by the Council in calendar year 2008. Questions about procedures for obtaining access to the Council data should be addressed to JoAnne Z. Nelson, Supervisor of Special Requests Unit, Health Care Cost Containment Council, 225 Market Street, Suite 400, Harrisburg, PA 17101, (717) 232-6787, jnelson@phc4.org.

DAVID H. WILDERMAN,  
*Acting Executive Director*

<i>Applicant</i>	<i>Project Description</i>
Allegheny County Medical Examiners Office	A custom 1995 through 2006 inpatient discharge data set linked with Department of Health death data to be used for their Forensic Epidemiology of Suicides following Bariatric Surgery for the Treatment of Obesity study.
Allied Medical Software, Inc.	A standard 2006 inpatient discharge data set by regions 8 and 9 and inpatient revenue code detail data set to be used as part of the AMS Performance Based Incentive Program, a methodology used by commercial payors and as part of the CMS/Medicare Gainsharing Demonstration project.
Allied Services	A custom 2006 through second quarter 2007 inpatient discharge data report of stroke cases from three hospitals by discharge status to be used to assist their stroke team in developing follow-up programs to better meet the needs of stroke patients.
Center for Rural Pennsylvania	A standard 1997 through 2006 financial data report to be used for analysis on the financial viability of the Commonwealth's rural hospitals. The results of the research will be made available to the General Assembly, executive branch agencies, and other interested parties, such as rural academics, rural health clinics, rural health advocates, and the general public. The results are expected to provide policy considerations on steps to be taken to improve the financial health of rural hospitals.
Central Montgomery Medical Center	A custom 2007 inpatient discharge data report and ambulatory/outpatient procedure data set to be used for supporting documentation for market share analysis for their 2009 Business Plan.
Charles Cole Memorial Hospital	A custom second quarter 2007 through fourth quarter 2007 inpatient discharge data report to be used for market share trend analysis.
Community Health Systems	A standard Statewide 2007 inpatient discharge and ambulatory/outpatient procedure data set to be used to create utilization rates and market share information that will be used for strategic and facilities planning for nine facilities: Berwick Hospital, Brandywine Hospital, Easton Hospital, Jennersville Regional Hospital, Pottstown Memorial Hospital, Lock Haven Hospital, Chestnut Hill Hospital, Phoenixville Hospital, and Sunbury Community Hospital.
Cooper Hospital/UMC	A standard 2006 inpatient discharge data set by regions 8 and 9 to be used for studies in the epidemiology of health services, in order to estimate demand for health and hospital services and measure the level of morbidity in the population related to different underlying clinical conditions.



<i>Applicant</i>	<i>Project Description</i>
DataBay Resources	A standard statewide second quarter 2007 through fourth quarter 2007 inpatient discharge and ambulatory/outpatient procedure data set to be used in commercial healthcare software products.
Delaware Valley Health Care Coalition	A custom fourth quarter 2006 through third quarter 2007 hospital performance report to be used to mitigate inefficiency in the present configuration of health care service systems by establishing an Exclusive Provider Network for its member health funds in the Commonwealth of Pennsylvania.
Drexel University School of Public Health	A standard Statewide 2006 inpatient discharge data set to be used for several internal research projects centered around healthcare quality, healthcare access, and training of students on the use of administrative data. The data will be used to support analysis of births throughout the state and for other health service research projects.
Eagleview Hospital	A custom third quarter 2006 through second quarter 2007 inpatient discharge data report of records with a psychiatric diagnosis, age 55 and over, and from nine selected counties to be used to determine current and projected demand for geropsychiatric inpatient and outpatient volumes within a nine county region.
Good Shepherd Rehabilitation Hospital	A standard 2007 inpatient discharge data set for regions 5, 6, 7, 8 and 9 to be used for an internal analysis of the demand for their services.
Governor's Office of Healthcare Reform	A custom 2005 inpatient discharge data set. The client will share the data with the Department of Public Welfare in examining quality of care issues in the Medicaid population.
Governor's Office of Healthcare Reform	A custom third quarter 2006 through second quarter 2007 inpatient discharge data report of avoidable admissions by chronic condition. The client, through the Chronic Care Commission, will use the data in issuing its strategic plan to the Pennsylvania Governor and leadership in the General Assembly.
Governor's Office of Healthcare Reform	A custom 2006 inpatient discharge data report of chronic care conditions to be used for a Chronic Care report.
Governor's Office of Healthcare Reform	A custom third quarter 2006 through second quarter 2007 inpatient discharge data report of the top 20 hospitals by inpatient volume.
Governor's Office of Healthcare Reform	A custom 2007 financial data report of occupancy rates to be used for utilization rates and patterns.
Governor's Office of Healthcare Reform	A custom 2003 fiscal year financial data report to be used by the Governor's Office of Health Care Reform.
Harvard University	A standard 2004 CABG Surgery data set to be used to analyze the role of information in health care quality. The data will be combined with prior purchased CABG data sets to extend the analysis of the earlier data to more waves of quality reporting. The study will examine how hospitals select surgeons depending on their risk adjusted mortality rate as they face more competition and to attempt to isolate patient response to quality information using the techniques of discrete choice analysis. In summary, the study will review the different waves of new information and its effect on the market.
HCR ManorCare	A standard Statewide 2005 through 2007 inpatient discharge data set to be used to understand Pennsylvania patients' needs for skilled nursing or assisted living services. The data also supports HCR ManorCare to develop new products or expand existing products.
HEALTHSOUTH	A standard Statewide 2007 inpatient discharge data set to be used to create utilization rates and market share information to be used in strategic market planning.
Hospital & Healthsystem Association of Pennsylvania	A standard Statewide 2007 inpatient discharge data set to be used to conduct ongoing monitoring of Statewide, regional and hospital-specific quality outcomes primarily utilizing the AHRQ Windows Quality Indicator software. HAP may publicly release the aggregate results of its quality monitoring research.
Ingenix	A standard Statewide 2007 inpatient discharge data set to be used to provide consumers with hospital inpatient quality and efficiency information to assist them in making more informed decisions on where to seek hospital inpatient care.

<i>Applicant</i>	<i>Project Description</i>
Kaleida Health	A custom second quarter 2007 through fourth quarter 2007 inpatient discharge and ambulatory/outpatient procedure data report to be used for the purpose of organizational planning. Kaleida Health is researching where patients from Western New York area (Erie, Niagara, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee and Orleans Counties) are receiving their health care services.
Lancaster NeuroScience & Spine Associates	A custom 2006 through 2007 inpatient discharge and ambulatory/outpatient procedure data set to be used to provide an analysis of the practice's surgical outcomes compared to insurer's region-wide experience. Specifically, the data will be used to compare the overall outcomes/experience of physicians in this practice to that of the provider panels of Highmark Blue Shield, Capital Blue Cross and HealthAmerica/Health Assurance at hospitals in regions 5 and 7.
Lehigh Valley Hospital	A custom 2007 inpatient discharge data set, standard statewide first and second quarter 2007 ambulatory/outpatient procedure data and inpatient and outpatient revenue code detail data sets to be used for market share analysis and sharing the data with Lehigh University Department of Economics for Physician product studies.
Memorial Medical Center	A standard Statewide fourth quarter 2007 inpatient discharge data set to be used internally to evaluate Memorial Medical Center's current performance, its competitors' performance and future opportunities.
New Solutions, Inc.	A custom 2007 inpatient discharge data set to be used to provide market share analysis to its clients.
Oconco Healthcare Consultants	A custom 2006 and 2007 inpatient discharge data set to summarize into logical groupings, e.g. by DRG, by Product Line, by Patient Age, by Service, etc. and create reports for their own in-house use.
Pennsylvania Department of Health	A custom second quarter 2007 through fourth quarter 2007 inpatient discharge and ambulatory/outpatient procedure data set to be used to support the Department of Health's Licensing and Quality Assurance process.
Pennsylvania Department of Health	A custom 1990 through 2006 inpatient discharge data set of patient records with a diabetes-related diagnosis. The client will use the data in support of the goals of the Diabetes Prevention and Control Program, which is to reduce the burden of diabetes in Pennsylvania by preventing and controlling its complications. The data will be monitored over a 21-year time period, 1990 through 2010. The data will be analyzed by the Bureau of Health Statistics and Research to provide surveillance data to the Diabetes Prevention and Control Program, to prepare county monographs and fact sheets, and to respond to requests for aggregate data at the local or state level and to provide the data for immediate use by the Bureau of Epidemiology.
Pennsylvania Department of Health	A custom 2007 inpatient discharge and ambulatory/outpatient procedure data set to be used for the Injury Prevention Program. The client will use the data to prepare injury prevention statistical reports, monographs, and fact sheets, respond to requests for aggregate injury data at the state and local level, and provide to the Department Bureau of Epidemiology. The data will be used by state and local agencies to identify specific segments of the population at highest risk for injury, specific types and causes of injury, and to assist in statewide injury prevention, emergency medical services, traumatic brain injury and youth suicide prevention planning, and evaluation.
Pennsylvania Department of Health	A custom 2007 inpatient discharge data reports of select ICD-9-CM codes to be used as part of the Department of Health web page series that correspond to the Healthy People 2010 objectives.
Pennsylvania Department of Health	A custom 1999 through 2006 inpatient discharge and ambulatory/outpatient procedure data set of osteoporosis cases and a custom updated Osteoporosis Facts and Figures, November 19, 1997 PHC4 Issue Brief with 2006 data. The data will be used to prepare statistical reports, monographs and fact sheets in order to respond to requests for aggregated osteoporosis data at the state and local level. The data set will also be provided to the Department's Bureau of Epidemiology for analysis. The reports generated from the data will be used to identify specific segments of the population at highest risk for osteoporosis and assist in statewide osteoporosis prevention planning and evaluation.

<i>Applicant</i>	<i>Project Description</i>
Pennsylvania Department of Public Welfare	A custom 2004 through second quarter 2007 inpatient discharge and ambulatory/outpatient procedure data set of children with life-limiting illnesses/life-threatening conditions. The data will be used to estimate the Pennsylvania population in need of pediatric palliative or hospice care and to model projected costs involved in caring for these children for the Pediatric Palliative and Hospice Care Task Force.
Pennsylvania Department of Public Welfare	A custom 1990 through 2006 inpatient discharge data set and 1996 through 2006 custom financial data of psychiatric beds to be used for a joint project with the University of PA. Psychiatric discharges by county will be examined over time to identify trends in admissions and length of stay as it relates to state mental hospital bed reductions. The study, An Analysis of the Mental Health Resource Capacity in Pennsylvania, is to examine the adequacy of inpatient resources in meeting the demand for care by individuals with serious mental illness in PA.
Pennsylvania Department of Public Welfare	A custom 2004 through 2006 financial data set and a custom third quarter 2005 through second quarter 2006 inpatient discharge data set to be used to compute payments to hospitals for the Hospital Uncompensated Care and Extraordinary Expense programs established with the Tobacco Settlement Act of 2001.
Pennsylvania Department of Public Welfare	A custom third quarter 2005 through second quarter 2006 risk-adjusted inpatient discharge data report for Medical Assistance readmissions for four conditions to be used to compute payments to hospitals for the Hospital Quality Care Incentive Payment.
Pennsylvania Department of Public Welfare	A custom third quarter 2006 through second quarter 2007 inpatient discharge data set of DRG 370-391 records to be used in calculating the payments to hospitals for obstetrical and neonate services.
Pennsylvania Department of Public Welfare	A custom 2007 financial data set to be used for the hospital assessment program for certain hospitals in Philadelphia County.
Pennsylvania Office of the Attorney General	A standard Statewide first quarter 2004 ambulatory/outpatient procedure data set and ambulatory/outpatient revenue code detail data set to be used in analyzing physician practice mergers pursuant to the Office of Attorney General's authority to enforce the antitrust laws on behalf of the Commonwealth and its citizens.
Pennsylvania Office of the Attorney General	A standard Statewide second quarter 2007 through fourth quarter 2007 inpatient discharge data set, inpatient revenue code detail data set and second quarter 2007 market share report to be used in analyzing hospital mergers pursuant to the Office of Attorney General's authority to enforce the antitrust laws on behalf of the Commonwealth and its citizens.
Penn State College of Medicine	A custom 1990 through second quarter 2007 inpatient discharge data set of patients with end-stage heart failure to be used to develop a better understanding of peripheral vascular complications, which in turn may lead to better care of these patients.
Pennsylvania Patient Safety Authority	A custom third quarter 2006 through second quarter 2007 inpatient discharge and ambulatory/outpatient procedure data report of colonoscopy procedures to be used in determining rates of colonoscopy perforation errors in their study.
Pennsylvania State Data Center	A custom 2006 financial data report to be used in the annual publication titled, The 2008 Pennsylvania Abstract, a Statistical Factbook.
Philadelphia Inquirer	A standard second quarter 2007 through fourth quarter 2007 inpatient discharge and ambulatory/outpatient procedure data set by regions 8 and 9 to be used in news stories.
Saint Catherine Medical Center Fountain Springs	A custom fourth quarter 2006 through third quarter 2007 inpatient discharge and ambulatory/outpatient procedure data report to be used to determine healthcare needs of its service area and where those needs are currently being met. This is part of a feasibility study for possible development of a cancer program.
Saint Catherine Medical Center Fountain Springs	A custom 2006 through 2007 inpatient discharge and ambulatory/outpatient procedure data report to be used to determine market share/community needs for planning physician recruitment.

<i>Applicant</i>	<i>Project Description</i>
SDI Health	A standard statewide 2007 inpatient discharge data set to be combined with other states' data and used to estimate diagnoses procedures at the hospital and National level.
SDI Health	A standard Statewide 2007 ambulatory/outpatient procedure data set to be combined with other states' data and used to estimate diagnoses and procedures at the hospital and national level for commercial healthcare software products.
Senator John N. Wozniak	A standard second quarter 2003 through first quarter 2004, second quarter 2005 through first quarter 2006 and 2007 inpatient discharge and ambulatory/outpatient procedure data set for regions 2, 3, 4 and 5 to be used for evaluating the Philipsburg region health care services needs.
Southwest Regional Medical Center	A standard second quarter 2007 through fourth quarter 2007 inpatient discharge data set for region 1 and Statewide inpatient revenue code detail data set to be used to address healthcare service shortages, investigate quality of care objectives, and promote strategic decisions to benefit healthcare beneficiaries requiring acute care service.
Susquehanna Health	A standard third quarter 2004 through 2007 inpatient discharge and ambulatory/outpatient procedure data set for regions 4 and 6 to be used to assess future utilization service lines, which will be incorporated into the financial feasibility study that supports Susquehanna Health's \$150M tax exempt bond issue in July 2009.
Temple University Health System	A custom third quarter 2006 through second quarter 2007 inpatient discharge data report to be used to evaluate the primary and secondary service areas of hospitals in its immediate vicinity, which is to support the analysis that will be included in a submission to the Montgomery County Orphan's Court.
Temple University, Economic Department	A custom 1992 through second quarter 2007 inpatient discharge data set to be used to study the hospital and patient characteristics which may be related to the diffusion of gastric bypass surgery in the state of Pennsylvania for a doctoral dissertation.
The Eye Surgery Center	A standard first and second quarter 2007 market share report to be used to analyze the market share that the Eye Surgery Center has in the Statewide area and within the counties.
Thomson Medstat	A standard Statewide second quarter 2007 through fourth quarter inpatient discharge and ambulatory/outpatient procedure data set to be used in commercial software products.
Treo Solutions	A standard statewide 2007 inpatient discharge and inpatient revenue code detail data set to be used to analyze market share hospital clinical cost and performance for clients.
Tripp Umbach	A custom 2006 inpatient discharge and ambulatory/outpatient procedure data report to be used for a strategic planning study that will assist Clearfield Hospital make important decisions related to its service line offerings.
University of Pittsburgh, Pennsylvania Medicaid Policy Center	A standard Statewide 2007 inpatient discharge data set to be used in assessing the importance of Medicaid to hospitals; the quality of care provided to Medicaid patients relative to other patients, and at patterns of utilization.
University of Pennsylvania School of Medicine	A custom third quarter 2004 through second quarter 2006 inpatient discharge data set to be used to investigate current inter-hospital transfer networks and the feasibility of creating a tiered, regional system of care for patients with critical illness.
University of Pennsylvania	A custom 2006 inpatient discharge data set to be linked with Department of Health death data to study the effect of nurse staffing and organizational attributes on the outcomes of hospitalized patients.
University of Pittsburgh, Department of Medicine	A custom third quarter 2005 through 2006 inpatient discharge data set to be used to study the effectiveness of a multi-modal patient medication education system and its impact on hospital readmission.
University of Pittsburgh Medical Center	A standard Statewide third and fourth quarter 2007 inpatient discharge and ambulatory/outpatient procedure data set to be used to produce various market share research reports.
University of Pittsburgh School of Medicine	A custom 1995 through 2005 inpatient discharge data set linked with Department of Health death data to be used to analyze further liver-related hospitalizations and patients' access to transplant services, by the rates of disease progression and death.

<i>Applicant</i>	<i>Project Description</i>
University of Pittsburgh School of Medicine	A custom 2001 through 2006 inpatient discharge data and corresponding revenue data set of Pennsylvania residents hospitalized for pulmonary embolism, deep vein thrombosis, cancer, and sickle cell disease to be used to study and perform analysis of pulmonary embolism and deep vein thrombosis.
University of Pittsburgh School of Medicine	A custom 2001 through 2006 inpatient discharge data and corresponding revenue data set of Pennsylvania residents hospitalized for atherosclerotic cardiovascular disease, ischemic heart disease or hemophilia and bleeding disorder to be used to study and perform analysis of atherosclerotic cardiovascular disease.
US Senator Bernard Sanders	A custom 2005 through 2007 inpatient discharge data report of weather related hospitalizations in Pennsylvania to be used for supporting an emergency legislation to help senior citizens on fixed-incomes, persons with disabilities and families with small children pay their air conditioning bills in the summer and the heating bills in the winter.
Veterans Affairs Pittsburgh Healthcare System, Center for Health Equity Research and Promotion	A third quarter 2001 through second quarter 2007 standard Statewide inpatient revenue code detail data set and a custom inpatient discharge data set of patients receiving a hip or knee replacement and their readmissions linked with Department of Health death data. The data will be used for a pilot study titled, Gender Differences in Knee and Hip Joint Replacement, which will assess surgical outcomes by gender in patients who underwent knee or hip arthroplasty and to provide health services research-based evidence to improve quality of care and access to joint replacement for women with end-stage knee or hip osteoarthritis.
WebMD Health	A standard statewide 2007 inpatient discharge and revenue code detail data set to be used in healthcare consulting commercial products that are used by health plans, hospitals, consulting organizations and consumers.
WellSpan Health	A standard 2007 inpatient discharge and ambulatory/outpatient procedure data set by region 5 to be used for the internal assessment of the delivery of healthcare services within its region.
Wyoming Valley Health Care System	A standard statewide second quarter 2007 through fourth quarter 2007 inpatient discharge and ambulatory/outpatient procedure data set to be used to generate quality improvement, benchmarking and marketing analysis.

[Pa.B. Doc. No. 09-999. Filed for public inspection May 29, 2009, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Senior Choice, Inc.

Senior Choice, Inc. has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at The Patriot, a Choice Community in Somerset, PA. The initial filing was received on May 12, 2009, and was made under the requirements set forth under the Continuing Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3225). Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 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 to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345

Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, syerger@state.pa.us.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-1000. Filed for public inspection May 29, 2009, 9:00 a.m.]

### Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional offices in Pittsburgh, PA. Failure by an appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Pittsburgh Regional Office, Room 304, State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222.

Appeal of John B. Farley; file no. 09-302-69560; State Farm Mutual Automobile Insurance Company; Doc. No. PI09-04-035; August 27, 2009, 9 a.m.

Appeal of Christina Scipione; file no. 09-302-66563; Infinity Insurance Company; Doc. No. PI09-03-016; August 27, 2009, 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, contact Donna R. Fleischauer, Human Resources Director, at (717) 705-3873.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-1001. Filed for public inspection May 29, 2009, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insured has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their companies' termination of the insureds' policies. The administrative hearing will be held in the Insurance Department's regional office in Pittsburgh, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Pittsburgh Regional Office, Room 304, State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222.

Appeal of Thomas P. O'Toole; file no. 09-183-68532; Homesite Insurance Company of Pennsylvania; Doc. No. P09-05-006; August 27, 2009, 1 p.m.

Parties may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending.

Reimbursement is available only when the insured is successful on appeal and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Donna R. Fleischauer, Human Resources Director, at (717) 705-3873.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-1002. Filed for public inspection May 29, 2009, 9:00 a.m.]

## PATIENT SAFETY AUTHORITY

### Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error Act (40 P. S. § 1303.303), enacted on March 20, 2002, announces a meeting of the Authority's Board to be held at the Harrisburg Area Community College, One HACC Drive, Harrisburg, PA at 10 a.m. on Tuesday, June 9, 2009.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

MICHAEL C. DOERING,  
*Executive Director*

[Pa.B. Doc. No. 09-1003. Filed for public inspection May 29, 2009, 9:00 a.m.]

# PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY

## Meetings Scheduled and Application Cut-Off Dates

The Fiscal Year 2009-2010 regular meetings and application cut-off dates of the Pennsylvania Infrastructure Investment Authority (PENNVEST) have been scheduled. The Board meetings will begin at 10:30 a.m. on the stated meeting dates.

<i>Application Cut-Off Dates</i>	<i>Board Meeting Dates</i>	<i>Locations</i>
May 18, 2009	July 21, 2009	Governor's Residence
May 18, 2009	July 21, 2009	Governor's Residence
November 17, 2009	January 26, 2010	Governor's Residence
February 16, 2010	April 20, 2010	Dixon University Center

Governor's Residence  
2035 North Front Street  
Harrisburg, PA

Dixon University Center  
Richards Hall Recital Room  
2986 North Second Street  
Harrisburg, PA

Funding applications must be received by 5 p.m. on the stated cut-off dates following PENNVEST procedures.

Persons requiring ADA accommodations at the Board meetings should contact Kathlyn Domitrovich at (717) 783-4494.

PAUL K. MARCHETTI,  
*Executive Director*

[Pa.B. Doc. No. 09-1004. Filed for public inspection May 29, 2009, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Rescission Order

Public Meeting held  
May 14, 2009

*Commissioners Present:* James H. Cawley, Chairperson;  
Tyrone J. Christy, Vice Chairperson; Kim Pizzingrilli;  
Wayne E. Gardner; Robert F. Powelson

*Pennsylvania Public Utility Commission, Law Bureau  
Prosecutory Staff v. Airnex Communications, Inc. (2006  
Annual Rpt); Doc. No. C-2008-2036566; A-310794*

### Rescission Order

On March 12, 2009, the Commission entered a Default Order at this docket against Airnex Communications, Inc. (the "Respondent"), a reseller of interexchange toll services certificated at A-310794, for failure to file its 2006 Annual Report. The Default Order was published in the *Pennsylvania Bulletin* on March 28, 2009, at 39 Pa.B. 1783. The Respondent, on April 17, 2009, submitted its 2006 Annual Report and a check in the amount of \$250 payable to the Commonwealth of Pennsylvania to satisfy the late fee previously assessed against the Respondent for failure to file its 2006 Annual Report in a timely manner. The Respondent also filed a Petition to Overturn Default Order. In its petition, based upon its own internal

investigation, the Respondent stated that the 2006 Annual Report was not filed due to transition of some State regulatory tasks, such as filing annual reports, to a third party administrator in early 2006. However, Airnex and the third party administrator failed to incorporate the procedure of filing the Pennsylvania annual reports as part of this process. In addition, the Respondent stated that on March 18, 2009, it asked the third party administrator to complete and submit the 2006 Annual Report. On April 16, 2009, when it discovered nothing had happened, Airnex took over the filing of the Annual Report, discharged its third party administrator, and revised the reporting requirements to ensure that all reports are routed to the proper Airnex personnel for timely response in the future; *Therefore,*

*It Is Ordered That:*

1. The Default Order entered March 12, 2009, is hereby rescinded.

2. The Secretary serve a copy of this Rescission Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, and also cause a copy of this Rescission Order be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 09-1005. Filed for public inspection May 29, 2009, 9:00 a.m.]

**Rescission Order**

Public Meeting held  
May 14, 2009

*Commissioners Present:* James H. Cawley, Chairperson;  
Tyrone J. Christy, Vice Chairperson; Kim Pizzingrilli;  
Wayne E. Gardner; Robert F. Powelson

*Pennsylvania Public Utility Commission, Law Bureau  
Prosecutory Staff v. Conneaut Lake Park, Inc. (2006  
Annual Rpt); Doc. No. C-2008-2036689; A-210096*

**Rescission Order**

On March 17, 2009, the Commission entered a Default Order at this docket against Conneaut Lake Park, Inc. (the "Respondent"), a water utility certificated at A-210096, for failure to file its 2006 Annual Report. The Default Order was published in the *Pennsylvania Bulletin* on April 4, 2009, at 39 Pa.B. 1786. On April 29, 2009, the Respondent submitted its 2007 and 2008 Annual Reports. The Respondent also filed on the same date a Petition to Rescind Default Order.

In its petition, based upon its own internal investigation, the Respondent stated that it is impossible for it to file the 2006 Annual Report because of a catastrophic loss experienced by the Respondent on February 1, 2008, when an Arsonist fire destroyed one of its buildings housing most of its accounting records. In addition, the Respondent stated that the present trustees were appointed by the court on June 29, 2007, and have been charged with the task of saving the Respondent from its encumbering over \$3 million in debt. According to the new trustees, the prior trustees were lax in following the laws and regulations regarding the preparation and submission of proper filings such as the Commission's annual reports for 2003-2006 and Federal tax returns. The current trustees also state in the petition that they are confident that the past problems causing lack of compliance will not happen again and that all obligations will be met in the future.

Given the Arsonist fire, the Respondent's precarious financial condition, and the appointment of new trustees who have pledged to comply with all laws and regulations in managing the day-to-day business activities of the Respondent, we will grant Respondent's request to rescind the Default Order as well as waive the filing of annual reports from 2003 through 2006; *Therefore,*

*It Is Ordered That:*

1. The Default Order entered March 17, 2009, is hereby rescinded.

2. The Secretary serve a copy of this Rescission Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, and also cause a copy of this Rescission Order be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 09-1006. Filed for public inspection May 29, 2009, 9:00 a.m.]

**Tentative Order**

Public Meeting held  
May 14, 2009

*Commissioners Present:* James H. Cawley, Chairperson;  
Tyrone J. Christy, Vice Chairperson; Kim Pizzingrilli;  
Wayne E. Gardner; Robert F. Powelson

*Petition of Cochranon Borough For A Declaratory Order;  
Doc. No. P-2008-2035741*

**Tentative Order**

*By the Commission:*

On April 11, 2008, Cochranon Borough (the "Borough" or "Cochranon") filed the above-captioned petition for declaratory order. In accordance with 52 Pa. Code § 5.42, the Borough served a copy of its petition on the Office of Consumer Advocate, the Office of Trial Staff, the Office of Small Business Advocate and each of the 75 affected customers located outside of Cochranon's corporate boundaries. Cochranon also served a copy of the petition on the Boards of Supervisors of the two townships in which the 75 affected customers reside, namely, Fairfield and Wayne Townships. No answers were filed to Cochranon's petition.

Section 331(f) of the Public Utility Code, 66 Pa.C.S. § 331(f), provides that the Commission "may issue a declaratory order to terminate a controversy or remove uncertainty." By its petition, the Borough seeks a determination that its provision of water service to the 75 customers that are physically proximate to the Borough, but not within the corporate boundaries of the Borough, is not subject to Commission jurisdiction. The Borough asserts that the service it provides to these 75 customers is not service "to or for the public" within the meaning of section 102 of the Public Utility Code, 66 Pa.C.S. § 102.

In its petition, the Borough states that it has a total of 582 customers. The Borough has 1,148 residents concentrated in a 1.2 square mile area, and 507 customers within the Borough.<sup>1</sup> The Borough also states that it is surrounded on two sides by Fairfield and Wayne Townships. The Borough provides water service to 71 customers in Fairfield Township, which is overwhelmingly rural and agricultural, and four customers in Wayne Township, which is also overwhelmingly rural and agricultural. Of the four customers in Wayne Township, two are businesses (a restaurant and a machine shop), one is a permanent residence, and one is a seasonal cottage. Of the 71 customers in Fairfield Township, three are non-residential (two churches and one Laundromat/car wash). The remaining 68 are residences, with 53 being permanent dwellings and the remaining 15 being seasonal cottages.

According to the Borough, the Fairfield Township customers are all in close proximity to the Borough's two water mains that run from its two wells, across French Creek and into the Borough. The Wayne Township customers are similarly close to the Borough's water mains. The two customers on the east of the Borough are close to a water main running from the present water tank; and the two customers on the south of the Borough are at the end of a water main that terminates at the Borough line. As to these 75 customers, Cochranon explains that beginning more than 50 years ago, customers living in close proximity to the water mains were permitted to connect to the Borough's system in lieu of drilling indi-

<sup>1</sup> Cochranon is a borough in Crawford County, PA. The Borough was founded in 1800 and incorporated in 1855.



vidual private wells. However, within the last 25 years, only two connections have been made, the last connection occurring in 2007.<sup>2</sup> Since that time, there have been no additional connections outside of the Borough's corporate limits.

By letters dated September 24, 2008 and April 23, 2009, the Borough indicated that while the 75 customers outside of the Borough's corporate limits generally receive service at the same terms as customers residing inside Borough boundaries, the rates to customers outside of the Borough's corporate limits are slightly lower than the rates charged to Borough residents.<sup>3</sup>

Finally, the Borough has stated that the Borough does not, and never has held itself out as engaged in the business of supplying water to the public. As stated previously, the customers in Fairfield and Wayne Townships were permitted to connect to the Borough mains because the customers were in close proximity to existing Borough water mains, and expressed a desire to save the cost of drilling their own wells. Moreover, the Borough has never built or extended a water line or water main in order to serve or obtain more customers in Fairfield or Wayne Townships.

The Borough has requested by this petition a declaration that Cochranton is not subject to the Commission's jurisdiction so that it may save the cost and time burdens of tariff and reporting requirements, while simultaneously ensuring that these nonresident customers continue to receive water service under terms that are acceptable to the Commission and the customers.

Based upon our consideration of these facts and circumstances, the Commission finds that it is appropriate to issue a Declaratory Order in response to the subject petition.

Initially, it should be emphasized that the Borough has passed a resolution, dated April 7, 2008, that provides that the Borough will apply the same rules, regulations, and rates to the customers outside as those within Borough limits.<sup>4</sup> Additionally, attached to the petition is an affidavit of the President of Borough Council stating that the Borough will not repeal or modify the aforementioned resolution without providing advance notice to the Commission. These commitments were made to ensure that the 75 extraterritorial customers will not be subject to potential discrimination without the opportunity for Commission oversight.

In the Commission's judgment, the circumstances here are similar to those presented to the Commission in the matters of *Lehigh Valley Cooperative Farmers v. City of Allentown*, 54 Pa. P.U.C. 495 (1980), *Petition of New Albany Borough*, Docket No. P-00991775, 200 Pa. PUC Lexis 34 (2000) and *Petition of Laceyville Borough*, Docket No. P-2008-2064117 (2008), wherein the Commission concluded that service to a number of isolated individuals outside of the municipal boundaries under special circumstances did not constitute public utility service subject to the Commission's jurisdiction.

In *Lehigh Valley, New Albany Borough and Laceyville Borough*, the Commission reiterated that the test to determine whether a party is rendering service to the public is set forth in *Borough of Ambridge v. Pa. Public*

*Service Commission*, 165 A. 47 (Pa. Super. 1933). In *Ambridge*, the Commission noted,

We find the distinction between public and private rendition of such service put definitely on the readiness to serve all members of the public to the extent of capacity: The test is, therefore whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals. The public or private character of the enterprise does not depend, however, upon the number of persons by whom it is used, but upon whether or not it is open to the use and service of all members of the public who may require it, to the extent of its capacity; and the fact that only a limited number of persons may have occasion to use it does not make it a private undertaking if the public generally has a right to such use.

See also, *Petition of Chicora Borough*, P-00981355 (May 22, 1998).

More recently, the Commission applied the same rationale in *Joint Application of Seven Fields Development Corporation*, A-220007 and A-210062F2000 (October 1, 1999). In that case, the Commission granted an application filed by a jurisdictional utility seeking to transfer its assets used in the operation of its water system to the Borough of Seven Fields. The Commission noted that the borough would be providing water service to three customers that were located outside of the borough's limits. Moreover, the Commission took note of the fact that the borough committed to continue providing water service solely to these three customers at the same terms of service as are or will be offered to customers within the boundaries of the borough. Also, as in the instant case, the Borough of Seven Fields presented an affidavit to the effect that it did not intend to offer service to the general public outside of its boundaries in the future. In the *Seven Fields* case, the Commission concluded that the limited nature of water service to such a defined group of customers should not realistically be subject to its jurisdiction. (Order at p.4).

Most recently, in *Pilot Travel Center, LLC v. Pa. Public Utility Commission*, 933 A.2d 123 (Pa. Cmwlth. 2007), appeal denied, 938 A.2d 1054 (Pa. 2007), the Commonwealth Court, in affirming the Commission's view on this issue, concluded:

The test for determining whether utility services are being offered "for the public" is whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as distinguished from holding himself out as serving or ready to serve particular individuals. The private or public character of a business does not depend upon the number of persons who actually use the service; rather, the proper characterization rests upon whether or not the service is available to all members of the public who may require it.

933 A.2d at 128.

In applying the standards enunciated in *Ambridge, Lehigh Valley, Seven Fields, Laceyville Borough* and *Pilot Travel Center* to the facts of the case *sub judice*, we find that the limited extraterritorial service provided by the Borough is not subject to Commission jurisdiction. The extraterritorial service being provided by the Borough is

<sup>2</sup>In its petition, the Borough states that some Fairfield individuals connected without notifying the Borough in advance, and one Fairfield customer actually connected and took water for nearly 2 years without informing the Borough.

<sup>3</sup>Borough residents pay \$78.70 for the first 7,000 gallons. The 75 customers outside of the Borough pay \$64.25 for the first 7,000 gallons. Thereafter, the rates are the same, regardless of where the customer is located.

<sup>4</sup>By the letter dated April 23, 2009, Cochranton confirmed that the resolution remains in full force and effect.

provided to a limited number of customers and is not available to the general public. Moreover, the Borough clearly states that it will continue to provide service solely to the 75 customers that it is presently serving outside of its boundaries and that it is not soliciting additional customers nor will it provide service to any additional extraterritorial customers in the future. Indeed, Cochranton, by way of this petition, has assured the Commission that it has no intention of ever offering water service to any customers that are located outside of the Borough corporate limits.<sup>5</sup> Moreover, the Borough is not holding itself out as providing service to the public. See *Bethlehem Steel Corp. v. Pa. Public Utility Commission*, 713 A.2d 1110 (Pa. 1998). Based upon the facts as stated in the Borough's petition, the service by the Borough to the 75 customers in Fairfield and Wayne Townships that are located in close proximity to the Borough's mains does not constitute the provision of water service to or for the public.

Finally, we note that an express condition of this exemption is that the Borough apply the same rates outside as well as within the Borough corporate limits and that the Borough does not add any additional customers outside of the Borough corporate limits. Absent any contrary responses from concerned parties, the Commission herein concludes that the extraterritorial service provided by the Cochranton Borough is not subject to the jurisdiction of this Commission; *Therefore*,

*It Is Ordered That:*

1. The Petition for Declaratory Order filed by Cochranton Borough on April 11, 2008, at P-2008-2035741 is hereby granted.

2. The provision of water service by Cochranton Borough to the 75 customers located outside of the Borough's boundaries is deemed to be non-jurisdictional because it is not service "to or for the public" within the intentment of Section 102 of the Public Utility Code, 66 Pa.C.S. § 102.

3. A copy of this Tentative Order shall be served upon Cochranton Borough and each of the individuals and offices listed in Cochranton's certificate of service.

4. The Secretary shall certify this Tentative Order and deposit it with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. Cochranton Borough is directed to cause to be published in a newspaper of general circulation in the Cochranton Borough area notice of this Tentative Order.

6. That if no objection to this Tentative Order is filed with the Commission within 20 days of the publication date in the *Pennsylvania Bulletin*, this Tentative Order shall become final.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 09-1007. Filed for public inspection May 29, 2009, 9:00 a.m.]

## Water Service

**A-2009-2107694. Aqua Pennsylvania, Inc.** Application of Aqua Pennsylvania, Inc. for approval to begin to offer, render, furnish and supply water service to the public in an area known as Trailwood, located in a portion of Bear Creek Township, Luzerne County, PA.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before June 15, 2009. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicant:* Aqua Pennsylvania, Inc.

*Through and By Counsel:* Thomas T. Niesen, Esquire, Thomas, Long, Niesen and Kennard, 212 Locust Street, Suite 500, P. O. Box 9500, Harrisburg, PA 17108

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 09-1008. Filed for public inspection May 29, 2009, 9:00 a.m.]

## Water Service

**A-2009-2107711. Pennsylvania-American Water Company.** Application of Pennsylvania-American Water Company for approval of: 1) the transfer, by sale, of the water works property and rights of the Amwell Township Water Authority to Pennsylvania-American Water Company; and 2) the rights of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in additional portions of Amwell Township, Washington County, PA.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before June 15, 2009. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between hours of 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicant:* Pennsylvania-American Water Company

*Through and By Counsel:* Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, Seth A. Mendelsohn, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 09-1009. Filed for public inspection May 29, 2009, 9:00 a.m.]

<sup>5</sup> At various points around the Borough's boundaries, there is a large amount of vacant land that could be developed for housing or commercial use. If that occurs, the Borough has indicated that will not allow any connections to its mains. Similarly, there are occupied structures situated close to, but beyond, the Borough boundaries that are not, but could be connected. They are served by their own well. Again, the Borough has indicated that they will not allow these individuals to connect to the Borough mains. Petition at 4.

## PHILADELPHIA REGIONAL PORT AUTHORITY

### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project No. 09-020.6, Building 1A infill and site—fire protection upgrade, Packer Avenue Marine Terminal (PAMT) until 2 p.m. on Thursday, June 25, 2009. The bid documents can be obtained from the PRPA web site [www.philaport.com](http://www.philaport.com) and available June 2, 2009. PRPA is an Equal Opportunity Employer. Contractor must comply with all applicable EOE laws. Mandatory prebid job site meeting will be held June 11, 2009, 10 a.m. at PAMT, Columbus Boulevard and Packer Avenue, Pier Entrance South Gate on Service Road, Philadelphia, PA. Bidders must provide to the Procurement Department in writing (24 hours prior to the meeting), the names of individuals that will be attending, fax to (215) 426-6800, Attn: Procurement Department.

JAMES T. MCDERMOTT, Jr.,  
*Executive Director*

[Pa.B. Doc. No. 09-1010. Filed for public inspection May 29, 2009, 9:00 a.m.]

## STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

Bureau of Professional and Occupational Affairs v.  
James Vincent Johnson; Doc. No. 2070-60-2007

On April 14, 2009, James Vincent Johnson, license number MV-100215-L, of York, York County, was revoked and ordered to pay a civil penalty of \$1,000 based upon his criminal conviction for crimes of moral turpitude.

Individuals may obtain a copy of the adjudication by writing to C. William Fritz, II, Board Counsel, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) final decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court, must serve the Board with a copy of their petition for review. The Board contact for receiving service of the appeal is the previously-named Board counsel.

GARY M. BARBERA,  
*Chairperson*

[Pa.B. Doc. No. 09-1011. Filed for public inspection May 29, 2009, 9:00 a.m.]

## SUSQUEHANNA RIVER BASIN COMMISSION

### Public Hearing and Meeting

The Susquehanna River Basin Commission (Commission) will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on June 18, 2009, at the Holiday Inn Binghamton-Downtown, 2-8 Hawley Street, Binghamton, NY. At the public hearing, the Commission will consider: 1) action on certain water resources projects; 2) action on two projects involving diversions; 3) the rescission of one previous docket approval; 4) enforcement actions against three projects; and 5) two requests for an administrative hearing on projects previously approved by the Commission. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

For further information contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, [rcairo@srbc.net](mailto:rcairo@srbc.net) or Stephanie L. Richardson, Secretary to the Commission, (717) 238-0423, Ext. 304, fax (717) 238-2436, [srichardson@srbc.net](mailto:srichardson@srbc.net).

#### *Supplementary Information*

In addition to the public hearing and its related action items identified as follows, the business meeting also includes actions or presentations on the following items: 1) hydrologic conditions of the basin; 2) the Commission "Priority Management Area" on flooding; 3) presentation of the Maurice K. Goddard award; 4) an Application Fee Policy for Mine Drainage Withdrawals to guide the granting of fee waivers or reductions to projects using water impaired by abandoned mine drainage; 5) proposed rulemaking regarding Federal licensing/relicensing of projects and other revisions; 6) revision of the Fiscal Year (FY) 2010 budget; 7) adoption of a FY 2011 budget; 8) ratification of a contract agreement; and 9) election of a new Chairperson and Vice Chairperson to serve in the next FY. The Commission will also hear a Legal Counsel's report.

#### *Public Hearing—Projects Scheduled for Actions*

1. Project Sponsor and Facility: ALTA Operating Company, LLC (Turner Lake), Liberty Township, Susquehanna County, PA. Application for surface water withdrawal of up to 0.393 mgd.
2. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, PA. Application for groundwater withdrawal of 0.099 mgd from Laurel Springs.
3. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, PA. Application for consumptive water use of up to 0.099 mgd.
4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Chemung River), Athens Township, Bradford County, PA. Application for surface water withdrawal of up to 0.999 mgd.
5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Sugar Creek), Burlington Township, Bradford County, PA. Application for surface water withdrawal of up to 0.499 mgd.

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River—Newton), Terry Township, Bradford County, PA. Application for surface water withdrawal of up to 0.999 mgd.
7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River—McCarthy), Wyalusing Township, Bradford County, PA. Application for surface water withdrawal of up to 1.440 mgd.
8. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek—Monroe Hose), Monroe Township, Bradford County, PA. Application for surface water withdrawal of up to 0.400 mgd.
9. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek—DeCristo), Leroy Township, Bradford County, PA. Application for surface water withdrawal of up to 0.499 mgd.
10. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek—Wells), Wyalusing Borough, Bradford County, PA. Application for surface water withdrawal of up to 0.999 mgd.
11. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek—Vanderfeltz), Rush Township, Susquehanna County, PA. Application for surface water withdrawal of up to 0.499 mgd.
12. Project Sponsor and Facility: Citrus Energy (Inez Moss Pond), Benton Township, Columbia County, PA. Application for surface water withdrawal of up to 0.099 mgd.
13. Project Sponsor and Facility: East Resources, Inc. (Tioga River—Greer), Richmond Township, Tioga County, PA. Application for surface water withdrawal of up to 0.107 mgd.
14. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Black Moshannon Creek), Snow Shoe Township, Centre County, PA. Application for surface water withdrawal of up to 0.140 mgd.
15. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (East Branch Tunkhannock Creek), Clifford Township, Lackawanna County, PA. Application for surface water withdrawal of up to 0.130 mgd.
16. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Little Muncy Creek—LYC-01, Jordan), Franklin Town, Lycoming County, PA. Application for surface water withdrawal of up to 0.041 mgd.
17. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Little Muncy Creek—LYC-02, Temple), Franklin Town, Lycoming County, PA. Application for surface water withdrawal of up to 0.091 mgd.
18. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (South Branch Tunkhannock Creek—WSC), Benton Township, Lackawanna County, PA. Application for surface water withdrawal of up to 0.091 mgd.
19. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (West Branch Susquehanna River—Sprout State Forest), Burnside Township, Centre County, PA. Application for surface water withdrawal of up to 1.080 mgd.
20. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Three Mile Island Generating Station, Unit 1, Londonderry Township, Dauphin County, PA. Modification to project features of the consumptive water use approval (Docket No. 19950302).
21. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek—Franklin Township Volunteer Fire Department), Franklin Township, Bradford County, PA. Application for surface water withdrawal of up to 2.000 mgd.
22. Project Sponsor and Facility: Grand Water Rush, LLC (Grand Farm Pond), Dunnstable Township, Clinton County, PA. Application for surface water withdrawal of up to 0.022 mgd.
23. Project Sponsor and Facility: J-W Operating Company (Abandoned Mine Pool—UNT to Finley Run), Shippen Township, Cameron County, PA. Application for surface water withdrawal of up to 0.090 mgd.
24. Project Sponsor: Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Hollywood AMD Treatment Plant, Huston and Jay Townships, Clearfield and Elk Counties, PA. Application for groundwater withdrawal of up to 2.890 mgd from six deep mine complexes.
25. Project Sponsor: Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, PA. Application for groundwater withdrawal of up to 7.400 mgd from Recovery Wells 1-3, and D Seam Discharge.
26. Project Sponsor: PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, PA. Applications for redevelopment modifications of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.
27. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, PA. Application for a withdrawal of up to 0.432 mgd from the Gordon Well.
28. Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek—Price), Gibson Township, Susquehanna County, PA. Application for surface water withdrawal of up to 0.380 mgd.
29. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek—Stang 1), Rush Township, Susquehanna County, PA. Application for surface water withdrawal of up to 0.750 mgd.
30. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek—Stang 2), Rush Township, Susquehanna County, PA. Application for surface water withdrawal of up to 0.750 mgd.
31. Project Sponsor and Facility: Susquehanna Gas Field Services, LLC (Meshoppen Creek), Meshoppen Borough, Wyoming County, PA. Application for surface water withdrawal of up to 0.145 mgd.
32. Project Sponsor: Titanium Metals Corporation. Project Facility: Titanium Hearth Technologies, Inc., d/b/a TIMET North American Operations, Caernarvon Township, Berks County, Pa. Application for groundwater withdrawal of up to 0.099 mgd from Well 1.
33. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, PA. Application for surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

34. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, PA. Application for consumptive water use of up to 0.870 mgd.

35. Project Sponsor and Facility: Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, PA. Application for surface water withdrawal of up to 0.021 mgd.

36. Project Sponsor and Facility: Valley Country Club, Sugarloaf Township, Luzerne County, PA. Applications for groundwater withdrawal of up to 0.090 mgd from the Pumphouse Well and 0.090 mgd from the Shop Well.

*Public Hearing—Projects Scheduled for Action Involving a Diversion*

1. Project Sponsor: Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, PA. Application for an into-basin diversion of up to 10.000 mgd from the Ohio River Basin.

2. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, PA. Applications for: 1) an out-of-basin diversion of up to 0.432 mgd to the Delaware River Basin for water supply; and 2) an existing into-basin diversion of up to 0.485 mgd from the Delaware River Basin.

*Public Hearing—Projects Scheduled for Rescission Action*

1. Project Sponsor: Corning Incorporated. Project Facility: Fall Brook Facility (Docket No. 19960301), Corning, Steuben County, NY.

*Public Hearing—Enforcement Actions*

1. Project Sponsor: Belden & Blake Corporation (EnerVest Operating, LLC). Project Facility: Sturdevant No. 1 Well, Smithfield Township, Bradford County, PA.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Lancaster and Chester Counties, PA.

3. Project Sponsor: East Resources, Inc. (Tioga River). Project Facility: American Truck Stop Site, Tioga County, PA.

*Public Hearing—Request for Administrative Hearing*

1. Petitioner Mark A. Givler; RE: Chief Oil and Gas, Docket No. 20081203, approved December 4, 2008.

2. Petitioner Delta Borough, York County, PA; RE: Delta Borough Public Water Supply Well No. DR-2; Docket No. 20090315, approved March 12, 2009.

*Opportunity to Appear and Comment*

Interested parties may appear at the previously listed hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, srichardson@srbc.net. Comments mailed or electronically submitted must be received prior to June 16, 2009, to be considered.

*Authority:* Pub. L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808.

Dated: May 18, 2009.

THOMAS W. BEAUDUY,  
*Deputy Director*

[Pa.B. Doc. No. 09-1012. Filed for public inspection May 29, 2009, 9:00 a.m.]