



Volume 28 (1998)

Pennsylvania Bulletin
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June 13, 1998 (Pages 2677-2792)

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PENNSYLVANIA BULLETIN

Volume 28

Number 24

Saturday, June 13, 1998 • Harrisburg, Pa.

Pages 2677—2792

Part I

See Part II page 2761 for the
Environmental Quality Board's
Mine Subsidence Control, Subsidence
Damage Repair and Water Supply
Replacement

Agencies in this issue:

The Courts
Department of Banking
Department of Environmental Protection
Department of General Services
Department of Revenue
Department of Transportation
Environmental Quality Board
Health Care Cost Containment Council
Independent Regulatory Review Commission
Insurance Department
Liquor Control Board
Pennsylvania Public Utility Commission
Public School Employes' Retirement Board
State Board of Nursing
Turnpike Commission

Detailed list of contents appears inside.

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

No. 283, June 1998

PENNSYLVANIA



BULLETIN

(ISSN 0162-2137)

published weekly by Fry Communications, Inc. for the Commonwealth of Pennsylvania, Legislative Reference Bureau, 647 Main Capitol Building, State & Third Streets, 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 \$80.50 per year, postpaid to points in the United States. Individual copies \$2. Checks for subscriptions and individual copies should be made payable to "Fry Communications, Inc." Periodicals postage paid at Harrisburg, Pennsylvania.

Postmaster send address changes to:

FRY COMMUNICATIONS
Attn: *Pennsylvania Bulletin*
800 W. Church Rd.
Mechanicsburg, Pennsylvania 17055-3198
(717) 766-0211 ext. 340
(800) 334-1429 ext. 340 (toll free, out-of-State)
(800) 524-3232 ext. 340 (toll free, in State)

Orders for subscriptions and other circulation matters should be sent to:

Fry Communications, Inc.
Attn: *Pennsylvania Bulletin*
800 W. Church Rd.
Mechanicsburg, PA 17055-3198

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ISBN 0-8182-0004-9

Editorial preparation, composition, printing and distribution of the *Pennsylvania Bulletin* is effected on behalf of the Commonwealth of Pennsylvania by FRY COMMUNICATIONS, Inc., 800 W. Church Road, Mechanicsburg, Pennsylvania 17055-3198.

Contents

THE COURTS

LOCAL COURT RULES

Franklin and Fulton Counties

Amendment of Local Civil Action Rule 19; miscellaneous docket; volume CC, page 163 2685

Schuylkill County

Amendments to rules of civil procedure 2686

MINOR COURT CIVIL RULES

Proposed Rule 113 (use of facsimile signature) and amendment of Rule 317 (subpoena of witnesses) .. 2685

EXECUTIVE AGENCIES

DEPARTMENT OF BANKING

Rules and Regulations

Consumer discount companies 2687

Notices

Action on applications 2698
 Maximum lawful rate of interest for residential mortgages for the month of July 1998 2699

DEPARTMENT OF ENVIRONMENTAL PROTECTION

See also ENVIRONMENTAL QUALITY BOARD

Notices

Applications, actions and special notices 2700
 Availability of technical guidance 2727
 Proposed State plan to implement emission guidelines for hospital/medical/infectious waste incinerators; public hearing 2728
 Public notice of proposed strategy, NPDES permit and water quality management Part II permit for concentrated animal feeding operations (CAFOs) .. 2728

DEPARTMENT OF GENERAL SERVICES

Notices

Contract awards 2757
 Design professional selections; extension of deadline 2729
 State contracts information 2750

DEPARTMENT OF REVENUE

Notices

Notice of taxable and exempt property 2730

DEPARTMENT OF TRANSPORTATION

Notices

Findings:
 Beaver County 2739
 Pike County 2739

ENVIRONMENTAL QUALITY BOARD

Rules and Regulations

Mine subsidence control, subsidence damage repair and water supply replacement (Part II) 2761

HEALTH CARE COST CONTAINMENT COUNCIL

Notices

Mandated benefits (2 documents) 2739, 2740

INDEPENDENT REGULATORY REVIEW COMMISSION

Notices

Notice of filing of final-form rulemakings 2741

INSURANCE DEPARTMENT

Notices

Agency contract termination of Jacob's Agency under Act 143; United States Fidelity and Guaranty Company; doc. no. AT98-04-034 2741
 Application for consolidation of two domestic mutual fire insurance corporations 2742
 Pennsylvania Compensation Rating Bureau; Coal Mine Compensation Rating Bureau; workers' compensation loss based assessments filings 2742
 Public Document Room closed for renovations 2742
 Review procedure hearings; cancellation or refusal of insurance 2742
 Review procedure hearings under the Unfair Insurance Practices Act (2 documents) 2743

LIQUOR CONTROL BOARD

Notices

Expiration of leases 2744

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Notices

Gettysburg Railway Company—railroad 2744
 Service of notice of motor carrier applications 2744
 Vanguard Telecom Corporation—telecommunications 2748

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

Rules and Regulations

Benefit payment plan 2688

STATE BOARD OF NURSING

Proposed Rulemaking

Sexual misconduct 2693

TURNPIKE COMMISSION

Notices

Request for proposals 2749

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

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

4 Pa. Code (Administration)

Adopted Rules

1	466
5	471, 1746, 2128, 2366
7	356

Statements of Policy

9	49, 382, 1640, 1842, 2045, 2414, 2511
---------	---------------------------------------

10 Pa. Code (Banks and Banking)

Adopted Rules

11	14
13	14
17	14
35	14
41	14, 2687

Proposed Rulemaking

41	44
----------	----

Statements of Policy

41	1956
81	2049

12 Pa. Code (Community and Economic Development)

Proposed Rulemaking

33	1530
----------	------

Statements of Policy

61	1139
----------	------

19 Pa. Code (Corporations and Business Associations)

Adopted Rules

41	799
----------	-----

22 Pa. Code (Education)

Adopted Rules

14	1002
101	2580
213	2688
342 (with correction)	1004, 1135

Proposed Rulemaking

44	2148
121	1535
201	1543
211	1543
213	1543
215	1543

25 Pa. Code (Environmental Protection)

Adopted Rules

77 (with correction)	619, 801
78	1234
79	1234
80	1234
86	15, 2227
87	2215, 2227
88	2215, 2227
89	2227, 2761
90	2227
93	137, 1633
103	18
139	2035

245 (with correction)	1135
901	1136

Proposed Rulemaking

86	941
93	1635
102	769
109	2265
215	881
217	881
219	881
220	881
224	881
225	881
226	881
230	881
232	881
1021	807

28 Pa. Code (Health and Safety)

Adopted Rules

51	2643
136	2643
138	2643
139	2643
158	2643

Proposed Rulemaking

6	485, 1008
---------	-----------

31 Pa. Code (Insurance)

Adopted Rules

27	2406
71 (with correction)	1401, 1518
73 (with correction)	1401, 1518, 1941
113	1235, 1518
131	1314
137	1237

34 Pa. Code (Labor & Industry)

Adopted Rules

65	21
122	329
123	329
127	329
131	329

37 Pa. Code (Law)

Adopted Rules

81	2500
93	2501

Proposed Rulemaking

31	2037
33	2037

40 Pa. Code (Liquor)

Adopted Rules

3	1418
5	1418
9	279
11	279
13	1418
15	1418

Proposed Rulemaking

11 2591
 13 488

49 Pa. Code (Professional and Vocational Standards)

Adopted Rules

16 1315, 1316
 23 2586
 33 2589
 36 1941
 41 2412

Proposed Rulemaking

1 1559
 16 814
 21 2693
 31 2289
 36 2036
 41 1421

Statements of Policy

61 382

52 Pa. Code (Public Utilities)

Adopted Rules

1 647
 3 647
 5 647, 801
 21 647
 23 647
 29 647
 31 647
 37 801
 53 801
 55 801
 56 801
 58 25
 65 801, 804
 69 801
 71 801

Proposed Rulemaking

3 2143
 5 2143
 32 2146
 53 508
 53a 508
 54 490, 493, 501, 508, 514, 518, 2139
 57 493

Proposed Statements of Policy

69 1425

55 Pa. Code (Public Welfare)

Proposed Rulemaking

140 1531
 141 2287
 147 2287
 181 1531
 289 2287
 3480 1079
 3490 1079
 3680 953, 1320
 3710 953, 1320
 3760 953, 1320
 3800 (with correction) 953, 1138, 1320
 3810 953, 1320
 5310 953, 1320
 6400 953, 1320

Statements of Policy

1101 138
 1163 2150
 1187 138

58 Pa. Code (Recreation)

Adopted Rules

21 1238
 51 30, 1521, 1753
 53 30
 63 1753
 65 1754, 1755
 93 30, 34, 40, 1006
 109 30
 135 2504
 139 2504
 141 2504
 143 1316
 147 1316

Proposed Rulemaking

53 1837
 61 45, 1322, 1322, 1758, 1840
 65 45, 1322, 1322, 1758, 1937
 91 1533
 93 1837
 95 1533
 97 1533
 109 1533, 1954
 103 1533
 135 1243
 139 1243
 141 1243

61 Pa. Code (Revenue)

Adopted Rules

6 1522
 8a 1522
 35 (with correction) 1522, 1836
 71 979
 72 979
 73 979
 75 979
 76 979
 77 979
 79 979
 83 979
 85 979

Proposed Rulemaking

7 366
 31 366
 32 366, 1320
 33 366
 34 366
 42 366
 44 366
 45 366
 46 366
 47 366
 58 366
 101 1946
 155 380

64 Pa. Code (Securities)

Adopted Rules

203 2509

67 Pa. Code (Transportation)

Adopted Rules

71 364
 75 364
 83 364

Proposed Rulemaking

60 2139
 63 2139
 449 2510

70 Pa. Code (Weights, Measures and Standards)

Statements of Policy

39 2416

201 Pa. Code (Rules of Judicial Administration)

Adopted Rules

7 2283

204 Pa. Code (Judicial System General Provisions)

Adopted Rules

83 2024
 89 1834
 91 1933

207 Pa. Code (Judicial Conduct)

Adopted Rules

1 1632
 5 359
 21 1388
 119 2131
 303 2283

Proposed Rulemaking

1 795
 3 1632
 7 2025
 119 646

225 Pa. Code (Rules of Evidence)

Unclassified 2369

231 Pa. Code (Rules of Civil Procedure)

Adopted Rules

200 359
 1900 1391
 2950 2026
 3000 2026
 4000 2026, 2131

Proposed Rulemaking

1910 1216
 4000 2032

234 Pa. Code (Rules of Criminal Procedure)

Adopted Rules

50 1126
 100 1126
 1400 480

Proposed Rulemaking

20 475, 1505
 50 1510
 100 1505
 300 475
 305 276
 1100 475

246 Pa. Code (Minor Court Civil Rules)

Proposed Rulemaking

100 2685
 300 2685

249 Pa. Code (Philadelphia Rules)

Unclassified 997, 1516

252 (Allegheny County Rules)

Unclassified 133, 135, 1936

255 Pa. Code (Local Court Rules)

Unclassified 8, 9, 10, 135, 136, 277, 481,
 482, 646, 795, 796, 798, 1000, 1128, 1132, 1233,
 1312, 1516, 1750, 1751, 1834, 1835, 1939, 2033,
 2132, 2283, 2285, 2403, 2404, 2405, 2499, 2578,
 2685, 2686

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Part II

This part contains the
Environmental Quality Board's
Mine Subsidence Control,
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THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 100 AND 300]

Proposed Rule 113 (Use of Facsimile Signature) and Amendment of Rule 317 (Subpoena of Witnesses)

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt proposed new Rule 113 (Use of Facsimile Signature) and amend Rule 317 (Subpoena of Witnesses). The proposal set forth when a district justice can authorize the use of a facsimile signature in lieu of an original signature on certain documents listed by the Administrative Office of Pennsylvania Courts. The proposal also allows the district justice to issue subpoenas requiring the production of documents or things. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Please note that the Supreme Court does not adopt the Committee's *Comments* or *Explanatory Comments* to the Rules. Deletions are in bold and brackets, and additions are in bold.

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

District Justice Fred A. Pierantoni III
Interim Chair
Minor Court Rules Committee
City Hall
35 Broad Street
Pittston, PA 18640

no later than Wednesday, July 22, 1998.

By the Minor Court Rules Committee:

FRED A. PIERANTONI III,
Interim Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICES OF DISTRICT JUSTICES

[Proposed new Rule 113 of the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.]

Rule 113. Proposed {Use of Facsimile Signature}

A district justice may authorize the use of a facsimile signature in lieu of an original signature on certain documents listed by the Administrative Office of Pennsylvania Courts. Such list shall include, but not be limited to, district justice time payment orders, notices of hearing or judgment and DL-38 forms. An original signature shall be required on all checks, reports, dispositions, affidavits, arrest and search warrants, subpoenas, com-

mitments, complaints, court orders, emergency protection from abuse orders and certifications.

Comment

This is in recognition that offices that perform similar functions use signature stamps or signatures signed by a clerk. 42 Pa.C.S.A. 1303 provides for the use of a signature stamp for traffic court judges. Similar arrangements are used for the clerk of courts, prothonotary, and register of wills. In *Commonwealth v. Charles D. Emmanuel, Jr.*, 462 A.2d 653 (1983), the Pennsylvania Supreme Court, J. Flaherty, approved the use of a rubber stamp facsimile of the district attorney's signature on bills of information. Signature stamps are continually used by the clerks of courts, registers of wills, and prothonotaries for routine clerical functions.

Adopted _____, effective _____.

CHAPTER 300. CIVIL ACTION

[Proposed amended Rule 317 of the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.]

Rule 317. Subpoena of Witnesses.

A district justice may issue subpoenas throughout the Commonwealth to require the attendance of witnesses in any cause of action triable before [him] the district justice. The subpoena may also require the person to produce at the time of hearing documents or things that are under the possession, custody or control of that person.

Amended June 30, 1982, effective 30 days after July 17, 1982. Amended _____, effective _____.

(See Explanatory Comment—1969 following Rule 301)

Explanatory Comment—1998

In adding the second sentence of this Rule, it was felt that this would more fully explain the nature of the subpoena and was taken from the Pa. Rules of Civil Procedure, Rule 243.1(a). The district justice retains discretion to limit the production of documents or things to that which is relevant to the cause of action before the district justice.

[Pa.B. Doc. No. 98-919. Filed for public inspection June 12, 1998, 9:00 a.m.]

Title 255—LOCAL COURT RULES

FRANKLIN AND FULTON COUNTIES

Amendment of Local Civil Action Rule 19; Miscellaneous Docket; Volume CC, Page 163

Order of Court

May 20, 1998, Civil Action Rule 39-1920.3 is hereby amended as follows. This amendment is adopted for the Court of Common Pleas of the 39th Judicial District of Pennsylvania, both the Franklin and Fulton County

Branches and will be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN R. WALKER,
President Judge

Rule 39-1920.3. Commencement of the Action.

(c) All parties to a divorce action with children under the age of eighteen shall attend the Education Program for Divorcing Parents. The Program is a four-hour educational seminar which has been established by the Court to provide guidance to parents in helping their children adjust to the consequences of divorce. The procedures of the Program are as follows:

(1) Simultaneously with the filing of a Divorce Complaint, the moving party must file the vital statistics sheet along with two addressed envelopes for both parties who will then be notified by the Court establishing the program. A separate statement shall be filed with each Divorce Complaint listing the names, addresses and telephone numbers of the parties and the names and ages of all children under eighteen (18).

(2) Attendance at the seminar is mandatory and can only be waived for compelling reasons after presentation of a request to the Court.

(3) Within ten days of the notification of the Program as provided in paragraph 1 above, the parties are required to register by using the preprinted registration form contained in the Education Program for Divorcing Parents brochure. The Program shall be successfully completed by both parties within ninety days of the filing of the Complaint.

(4) A fee shall be assessed against each individual attending the seminar with said fee to be set on a regular basis by the Court. The fee must be paid and mailed in advance of the seminar along with the completed registration form to the address listed in the brochure. Any requests for a waiver or a reduction of the fee with proof of hardship must be presented to the Program Administrator as instructed in the brochure.

(5) Failure to register and complete the program will be brought to the attention of the court and may result in finding of contempt with the imposition of sanctions including a fine and/or imprisonment.

(6) Upon successful completion of the Program, the Program Administrator will provide a certificate directly to the Prothonotary's Office verifying the parties' participation in the course.

[Pa.B. Doc. No. 98-920. Filed for public inspection June 12, 1998, 9:00 a.m.]

SCHUYLKILL COUNTY
Amendments to Rules of Civil Procedure

Order

And Now, this 9th day of April, 1998, at 9:10 a.m., the Court hereby amends Schuylkill County Civil Rules of Procedure 206A(a) and (e), Rule 211 and Rule 1035 for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). These rules shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.

4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 206A. Motions.

(a) All motions or petitions for appointment, and for all miscellaneous matters, shall be governed by this rule. Motion for judgment of non pros shall follow petition practice and comply with PA State Rule 206.6.

(e) Every motion not certified as uncontested shall be accompanied by a memorandum containing a concise statement of the legal contentions and authorities relied upon in support of the motion and an affidavit of service upon the party against whom relief is sought, or to his attorney. Any party opposing the motion shall file and serve such answer or other response that may be appropriate, a memorandum in opposition, and an affidavit of service upon the other party within twenty (20) days after service of the originating motion and supporting brief, unless the Pennsylvania Rules of Civil Procedure mandate a period of time different than twenty (20) days. In the absence of timely response, the motion may be treated as uncontested. The Court may require or permit further briefing, if appropriate.

Rule 211. Argument/Oral Argument.

Unless otherwise requested by counsel in writing all matters will be decided based upon the written arguments set forth in the briefs of the litigants. Requests for oral argument shall be submitted in writing to the assigned judge, or when there has not been a specific assignment to the Court Administrator, and shall be submitted not later than the date that the last brief is due to be filed. Requests for oral argument shall include an explanation providing the reason that the argument contained in the brief does not adequately address the issue. Failure to request oral argument in writing, including matters in which argument is required by rule (e.g. Pa.R.C.P. 1910.12(g)), will be deemed by the court to constitute an agreement by the parties to waive oral argument, and allow disposition on the record.

Rule 1035. Motion for Summary Judgment.

A motion for summary judgment shall be accompanied by a praecipe to transmit pursuant to Sch.R.C.P. 205.3 indicating that the matter can be disposed of on the record and shall further be accompanied by the brief of the moving party. The answer and brief of any opposing party shall be filed within thirty (30) days after service of the original motion.

[Pa.B. Doc. No. 98-921. Filed for public inspection June 12, 1998, 9:00 a.m.]

RULES AND REGULATIONS

Title 10—BANKS AND BANKING

DEPARTMENT OF BANKING [10 PA. CODE CH. 41] Consumer Discount Companies

The Department of Banking (Department), under the authority contained in section 12 of the Consumer Discount Company Act (CDCA) (7 P. S. § 6212) amends the regulations to the CDCA codified in Chapter 41 (relating to consumer discount companies). The amendments implement the act of July 2, 1996 (P. L. 490, No. 80) (Act 80).

Purpose

The purpose of the amendments is to eliminate any discrepancy between the CDCA and its regulations.

Explanation of Regulatory Requirements

Act 80 amended the CDCA by raising the ceiling on permissible consumer discount company loans from \$15,000 to \$25,000. Act 80 amended the CDCA to permit licensed consumer discount companies to utilize a fictitious name as a substitute for, or in addition to, its corporate name. Act 80 removed the former requirement that a consumer discount company's corporate name contain the words "consumer discount company." The amendments remove the discrepancy between the CDCA and Chapter 41 as a result of the amendments to the CDCA in Act 80. Thus, the amendments make technical changes to Chapter 41. The amendments change "\$15,000" to "\$25,000" in several different provisions of the regulations. Additionally, the amendments set forth language which recognizes the new ability of a licensed consumer discount company to utilize a fictitious name as a substitute for, or in addition to, its corporate name.

Entities Affected

The final-form regulations will affect 76 licensed consumer discount companies in this Commonwealth, as well as any State or Federally-chartered banks or savings associations which originate loans under the CDCA. The final-form regulations also conform to the liberalized statutory requirements under which a licensed consumer discount company can extend credit to a consumer.

Public Comment

Written comments received by the Department were from the Independent Regulatory Review Commission (IRRC); J. W. Fleetwood, Vice President, Central Credit Fund, Inc.; Matthew Conlon, PHEA; James Novinger, Secretary/Treasurer, Jador, Inc.; and Linda S. Davis, Vice President and Deputy General Counsel, Commercial Credit.

Cost and Paperwork Requirements

These final-form regulations will impose no additional paperwork or costs to the Commonwealth, the Department or a political subdivision of this Commonwealth. The final-form regulations also will not impose additional costs or paperwork requirements upon the regulated community.

Effective/Sunset Date

The effective date is July 6, 1998.

There is no sunset date applicable to the regulations.

Summary of Comments and Responses on the Proposed Rulemaking

Notice of proposed rulemaking was published at 28 Pa.B. 44 (January 3, 1998).

The Department considered the written comments received in formulating the final-form regulations. The Department has completed a review of the comments and has prepared a Comment and Response Document that addresses each comment on the proposed amendments which is available from the Department.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 19, 1997, the Department submitted a copy of the proposed rulemaking to IRRC and the Chairpersons of the House Committee for Business and Economic Development and the Senate Committee on Banking and Insurance. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-form regulations were deemed approved by the House and Senate Committees on May 4, 1998. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 7, 1998, and approved the final-form regulations.

Findings

The Department finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 28 Pa.B. 44 (January 3, 1998).

Order

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

(a) The regulations of the Department, 10 Pa. Code Chapter 41, are amended by amending § 41.3 to read as set forth at 28 Pa.B. 44 (January 3, 1998) and by amending § 41.2 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order, 28 Pa.B. 44 and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary of the Department shall submit this order, 28 Pa.B. 44 and Annex A to IRRC and the Senate Committee on Banking and Insurance and House Committee on Business and Economic Development as required by the Regulatory Review Act.

(d) The Secretary of the Department of Banking shall certify this order, 28 Pa.B. 44 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect July 6, 1998.

RICHARD C. RISHEL,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)

Fiscal Note: Fiscal Note 3-36 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 41. CONSUMER DISCOUNT COMPANIES

§ 41.2. Advertising.

(a) In a printed or written advertisement, a licensee shall set forth its corporate or fictitious business name, or both, as designated in its license certificate; except that with respect to direct mail solicitation, it is only necessary for a licensee to set forth its corporate or fictitious business name, or both, once on any one of the pieces constituting a mail solicitation. A licensee shall set forth prominently its corporate or fictitious business name, or both, as designated in its license certificate on or at the entrance to its place of business. A licensee shall retain copies of advertising matter for at least 6 months following the final public dissemination of the advertising and shall make the advertising available upon request for inspection by the Administrator.

(b) The Administrator will prohibit the use of advertising matter by a licensee which, in his opinion, is false, misleading or deceptive or encourages the purchase of debt instruments from a licensee or its affiliates when the licensee knows or has reason to know that the debt instrument may not be paid at maturity. A licensee referring to payments on loans in an advertisement shall specify the amounts of the payments and the number of payments or period of time required to discharge the obligation.

(c) A licensee may not use the term "legal rates" in an advertisement, nor may similar phrases be used in an advertisement wherein the use might mislead the public into believing that the rate charged is the legal rate established by section 202 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 202). A licensee may not use the phrases "low rates," "lower rates," "lowest rate in the city" or other similar phrases unless the licensee is able to substantiate the statements to the satisfaction of the Department, upon request.

(d) Advertisements of a licensee shall be limited to the business contemplated by the act, except that a licensee may combine an advertisement of that business with an advertisement of another leading business if the advertisement clearly distinguishes the amounts of loans or the types of transactions offered by the respective businesses. The charges applicable to each type of loan or transaction shall be shown when reference is made to rates charged in combined advertising.

(e) On direct loans referred to licensees by dealers or merchants in which a part of the loan is paid to dealers or merchants in payment for goods or services, as authorized by a consumer, the Administrator reserves the right to ascertain whether the selling price of the goods or services is reasonable in order to detect the concealment of illegal commissions, fees or other charges to a consumer. A licensee who knowingly participates in the granting or solicitation of loans embodying illegal fees or in the granting or solicitation of loans where consumers are induced by a person to purchase merchandise to obtain a loan shall refund the charges to the consumer and shall be subject to the penal provisions of the act and revocation of license.

[Pa.B. Doc. No. 98-922. Filed for public inspection June 12, 1998, 9:00 a.m.]

Title 22—EDUCATION

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

[22 PA. CODE CH. 213]

Benefit Payment Plan

The Public School Employees' Retirement Board (Board) is adopting an amendment to § 213.45 (relating to change in benefit payment plan) to read as set forth in Annex A, by removing the requirement that once an application for an annuity (benefit payment plan) has been filed, the option selection is irrevocable.

Purpose of the Final-Form Rulemaking

The amount of a member's retirement annuity depends on many factors, chief of which are the member's final average salary and years of service. Although the Public School Employees' Retirement System (PSERS) maintains records on these factors for each of its 300,000 members, the source of this information is the members' employers. The collection and verification of this data, particularly when a member retires, has the potential to delay a member's annuity.

As a consequence, PSERS, in an effort to provide an immediate source of income to newly retired members, calculates the amount of a member's annuity using the information then available to the PSERS. This results in a member receiving his first annuity check within 2—3 weeks of retirement and thus avoids a major disruption in a member's lifestyle. Once benefit payments commence, PSERS proceeds to audit the final salary and service information from the member's annuity. If this final audit shows that the initial annuity payments made to the member were either over or under stated, then an adjustment is made prospectively to reflect the correct final annuity. Further, all over or under payments, if any, made to the member from the date of retirement to the date of the final audit of the annuity are collected from or paid to the member, as the case may be.

Because of this delay between the initial payment and final audit of the member's account, a trap is created to the unwary member by the current regulation. The purpose of the final-form regulation is to eliminate that trap. The final-form rulemaking has not enlarged the scope of the proposed rulemaking.

Specifically, the present regulation requires a member to finalize the retirement contract (by selecting from a

series of complex retirement options) when the member files the retirement application. Because this application is what commences PSERS' process in determining a member's initial and final annuity, the member is, in effect, forced to make irrevocable choices which could adversely affect a member's pension for the rest of the member's life, without full knowledge of the final status of his account. For example, a member may decide to retire believing that he has 30 years of service and thus is eligible to retire below the normal retirement age (known as "30 and out") without suffering an early retirement reduction in his pension. Having made the decision to retire with expectations of an annuity at a certain amount, the member learns for the first time after the final audit is conducted that, in fact, he has only 29.9 years of service. The result is that the member suffers a large and permanent reduction in his pension benefit.

The final-form rulemaking seeks to correct this problem by making the member's retirement contract final, not when the retirement application is filed with incomplete knowledge, but when the final audit has occurred. The amendment will allow the member a reasonable period of time to make an informed and final election. In short, PSERS is seeking to revise the present regulation to conform its rule on the finality of retirement application with its current practice on the payment of final, audited retirement benefits. By doing so, PSERS will not only have a consistent operating procedure but, more important, will eliminate a potential significant hardship for its members.

Statutory Authority

The Board's authority to promulgate rules and regulations for the uniform administration of the PSERS is in the Public School Employees' Retirement Code (Retirement Code) 24 Pa.C.S. § 8502(h).

The final-form rulemaking is authorized by 24 Pa.C.S. §§ 8307(a), 8345(a), 8505(g) and 8507(j). The Board's authority to promulgate rules and regulations for the uniform administration of the PSERS is under 24 Pa. C.S. § 8502(h).

Public Comment

The Board received no comments from the public on the proposed amendment.

Comments from IRRC, the House Education Committee and the Senate Finance Committee

The Board received comments from the standing committees, the Public Employee Retirement Commission (Retirement Commission) and IRRC. These comments are considered as follows:

1. IRRC commented that the definition of "effective date of retirement" provided in the proposed amendment contained substantive requirements rather than defining the term in question.

To remedy this concern, the amendment to the definition of "effective date of retirement" has been deleted from the final-form regulation. Further definition of "effective date of retirement" is not necessary to the administration of the change in benefit payment plan regulation.

2. The House Education Committee recommended that PSERS "provide language to limit the discretionary nature of the benefit." The Committee was concerned that the regulation was providing a general right to all members, even though only 21 out of approximately 20,000 members who filed an application for an annuity

since February 1994 have appealed their retirement elections to the Board.

To address these concerns, subsection (a) in the final-form regulation has been redrafted to limit eligibility to annuitants who file an intent to change the final terms of the benefit payment plan within 30 days of the member's receipt of the initial benefit letter sent to the member by the PSERS. The letter is deemed received by the member 3 business days after mailing by the PSERS. This change in the final-form regulation was deemed necessary to address the issue of the members having to make a complicated set of retirement decisions in a short time frame, which was part of the rationale for the proposed amendment.

Subsection (b) of the final-form regulation has been added to address the issue of limiting the discretionary nature of the ability to file an intent to change the benefit payment plan. Subsection (b) allows the filing of an intent to change the benefit payment plan within 30 days after the member's receipt of the statement provided in 24 Pa.C.S. § 8505(g) (relating to the initial annuity payment and certification of accumulated deductions, service credit, final average salary and total annuity payable). The statement is deemed received 3 business days after mailing. An intent to change may be filed, only if: (1) the annuitant's retirement records contain a mistake and the mistake results: (i) either in a change in the monthly annuity of 5% or more; or (ii) the member losing eligibility for a benefit other than an annuity; or (2) there is a written error on the application.

3. IRRC commented that the window of opportunity for an annuitant to request a change in annuity payment has been left wide open because the Board has not established any time limit within which annuitants must take advantage of the opportunity. IRRC suggested a 60-day window. This would limit the amount of time that the Board could expect 2-year old accounts to resurface for consideration. The Retirement Commission also commented that it is not clear why the regulation was proposed to be retroactive to February or April 1994.

To address this concern, subsection (j) of the final-form regulation has been redrafted. The regulation will be effective upon final promulgation in the *Pennsylvania Bulletin*, except for the relatively few annuitants, who, prior to the effective date: (1) requested a change in their benefit payment plan; (2) appealed the PSERS's denial; and (3) otherwise qualify under the regulations.

4. Both IRRC and the Retirement Commission commented that the proposed amendment should be clarified so it is clear that the PSERS shall provide counseling to the annuitant within 30 days after the Board receives the declaration of intent to change the benefit payment plan. The proposed amendment did not impose a counseling duty on anyone.

IRRC also commented that since a member is not required to go through counseling prior to the initial election, counseling is not necessary for every member requesting a change in benefit payment plan. IRRC suggested a revision to allow members options, such as telephone counseling sessions, to lessen the potential burdensomeness of this requirement.

In response to these comments, the counseling subsection (d) has been rewritten to: (1) make clear that the PSERS has a duty to counsel; and (2) allow the member to waive counseling, or receive telephone counseling. The long paragraphs in the proposed amendment have been simplified in the final-form regulation.

5. The proposed amendment provided that a document is not filed with the PSERS until the PSERS has actual, physical receipt in its offices. The Retirement Commission recommended that at least a 'modified mailbox rule' be adopted.

In response to this concern, subsection (i) of the regulation has been rewritten to allow the PSERS to accept the postmark date as the date of filing if a document has been properly sent certified mail, return-receipt requested. The regulation also allows the PSERS to accept the date a document is sent by facsimile as the filing date if the original is received by the Board within 10 days.

6. The proposed amendment lacked language indicating that the so-called "accelerated benefit option" is not available to annuitants who retired after January 1, 1995.

In response, subsection (a)(2) of the proposed rule-making (subsection (c) of the final-form regulation) has been deleted in the final-form regulation. A change to the "accelerated benefit option" will not be an allowable change under the final-form regulation.

7. During the final-form regulation review process, several minor technical corrections were made to the proposal, as follows: (i) subsection (a) gives the member 30 days (rather than the originally proposed 15) days to elect to change an option after the member's receipt of the PSERS's initial benefit letter. Receipt is presumed 3 business days after mailing; (ii) the member has another option to change within 30 days after the member's receipt of the PSERS's final benefit letter, if one of the two listed conditions has been met. Receipt is presumed 3 business days after mailing of the final benefit letter; and (iii) the word "scrivener's" in the second condition has been changed to "written" to clarify that the member can change an option if the member demonstrates that a written error was made on the application for annuity.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 232 (January 20, 1996), to IRRC and the Chairpersons of the House Education Committee and the Senate Finance Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

IRRC disapproved the final-form regulation at its March 12, 1998, meeting for several minor technical corrections. The revised final-form regulation was deemed approved by the House Education Committee and the Senate Finance Committee on May 6, 1998. IRRC met on May 7, 1998, and approved the final-form regulation in accordance with section 5(c) of the Regulatory Review Act.

Fiscal Impact and Paperwork Requirements

The final-form regulation does not impose increased costs or increased paperwork requirements on the Commonwealth, local governments, the private sector or the general public. The Board will be required to provide additional benefit counseling to members seeking to amend their original retirement contract.

Persons Affected

The final-form regulation affects all retiring members of PSERS, including those members who have multiple service membership.

Effective Date

This section shall be effective immediately upon final promulgation in the *Pennsylvania Bulletin*. This regulation also applies to those annuitants who, prior to the effective date: (1) requested a change in their benefit payment plan; (2) appealed the PSERS's denial; and (3) otherwise qualify under these regulations.

Sunset Date

A sunset date is not being established for this regulation because it is necessary for the administration of the substantive provisions of the Retirement Code. The Board will closely monitor the regulation for its effectiveness.

Further Information

Individuals who need information about the final-form regulation may contact Frank Ryder, Director, Government Relations, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17101.

Finding

The Board finds that:

(1) Public notice of the Board's intention to adopt the regulation herein was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form regulation is necessary and appropriate for the administration of the Public Retirement Code.

Order

The Board, acting under its authorizing statute orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 213, are amended by amending § 213.45 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel as required by law.

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

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

JAMES A. PERRY,
Secretary

(Editor's Note: The proposal to amend § 211.2 (relating to definitions) included in the proposed rulemaking published at 26 Pa.B. 232 (January 20, 1996) has been withdrawn by the Board.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)

Fiscal Note: 43-6. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

CHAPTER 213. CONTRIBUTIONS AND BENEFITS

§ 213.45. Change in benefit payment plan.

(a) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the initial benefit letter sent to the member by the System. The letter will be deemed to be received by the annuitant 3 business days after the date of mailing.

(b) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the statement provided for in section 8505(g) of the code (relating to statement will be deemed to be received by the annuitant 3 business days after the date of mailing), if one of the following conditions are met:

(1) The annuitant's retirement records contain an error regarding service credit, salary or accumulated deductions which was not corrected by the System until after the application for an annuity was filed, and one of the following applies:

(i) The difference between the monthly annuity as corrected and the monthly annuity calculated with the error is more than 5%.

(ii) The error results in the member losing eligibility for a benefit other than an annuity.

(2) The annuitant demonstrates that the annuitant, or the annuitant's agent, made a written error on the application for an annuity. The System will not consider a change in the life circumstances of the annuitant, beneficiaries or survivor annuitants (for example—death, divorce, illness and accident) as evidence of a written error.

(c) The intended changes may include one or a combination of the following:

(1) A change in the amount of money withdrawn under Option 4.

(2) A change in the retirement annuity type, if the member is otherwise eligible for the annuity.

(3) A change in the retirement option, including a change in the survivor annuitant under the existing option selection.

(4) A voiding of the application for an annuity.

(5) A change in the effective date of retirement, if the date is not:

(i) Before the earliest date the annuitant was eligible to select on the date the original application for an annuity was filed.

(ii) Later than 90 days after the intent to change is filed.

(d) An annuitant who has declared an intent to change under subsection (a) or (b) will not be permitted to complete the change unless the annuitant receives counseling on the benefits available under the code, or

executes a written waiver of counseling on a form prescribed by the System. The counseling is subject to the following rules:

(1) The counseling shall be provided by an employee or an authorized representative of the System.

(2) Counseling, or a written waiver, shall take place within 30 days of the filing of the intent to change.

(3) The Secretary of the Board may extend the period for counseling upon written request filed within the 30-day period, but the period for counseling may not be greater than 90 days.

(4) If counseling takes place over several sessions, the sessions shall take place within the allowed time period.

(5) If the annuitant fails to receive counseling, or to file a written waiver, within the allowed time period, the intent to change will be deemed withdrawn.

(6) Counseling may be conducted by telephone when approved, and under conditions specified, by the Secretary.

(e) A formal request to void or change the application for an annuity shall be filed with the System within 30 days of the date of completion of counseling, or within 30 days of the filing of the written waiver of counseling. If the System does not receive the formal request to void or change the application for an annuity within the prescribed time period, the intent to change will be deemed withdrawn.

(f) The right to void or change a benefit payment plan is personal to the annuitant and may only be exercised by the annuitant or the annuitant's attorney in fact. The estate, spouse, alternate payee, survivor annuitants or beneficiaries of an annuitant may neither file nor complete an intent to void or change the benefit payment plan. If an annuitant dies before filing or completing an intent to void or change the benefit payment plan, the intent will be deemed withdrawn.

(g) An annuitant may file an intent to change one time under subsection (a) and one time under subsection (b).

(h) Changes will be retroactive to the member's original effective date of retirement unless the date is changed as part of the changed application for an annuity.

(1) For a changed application to become effective, the annuitant shall return any excess monthly annuity payments or moneys withdrawn under Option 4 by one of the following methods:

(i) A lump sum payment within 30 days after the date of certification of the amount due

(ii) Actuarial reduction.

(2) For an annuity to be voided, the annuitant shall either return all moneys received in a lump sum within 30 days after the date of certification of the amount due or elect a debt to be applied to the annuitant's account.

(3) If the annuitant fails to return the required amounts or elect a debt as the case may be, the intent to change or void will be deemed withdrawn.

(i) For purposes of this section, the System will consider a document as filed only upon actual receipt by the System. For a document properly sent certified mail, return receipt requested, the System will deem the postmark date to be the date of filing. For a document sent by facsimile, the System will accept the date of the

facsimile as the date of filing, if the original document is actually received within 10 days of the date of the facsimile.

(j) This section is effective June 13, 1998. This section also applies to annuitants who, prior to June 13, 1998:

- (1) Requested a change in their benefit payment plan.
- (2) Appealed the System's denial.

(3) Otherwise qualify under this section.

(k) Nothing in this section allows the annuitant to change a benefit payment plan in a manner inconsistent with the terms of an approved domestic relations order under sections 8533.1—8533.4 of the code.

[Pa.B. Doc. No. 98-923. Filed for public inspection June 12, 1998, 9:00 a.m.]

PROPOSED RULEMAKING

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Sexual Misconduct

The State Board of Nursing (Board) proposes to adopt amendments regarding sexual misconduct committed by registered and licensed practical nurses by amending §§ 21.1 and 21.141 (relating to definitions) and §§ 21.18 and 21.148 (relating to standards of nursing conduct) and adopting §§ 21.4a and 21.146a (relating to procedural matters), §§ 21.18a and 21.148a (relating to post-adjudication reporting) and §§ 21.18b and 21.148b (relating to impaired professional program) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statutes under section 2.1(k) of the Professional Nursing Law (63 P. S. § 212.1(k)) and section 17.6 of the Practical Nurse Law (63 P. S. § 667.6).

Background and Purpose

This proposed rulemaking was developed against a background of increasing complaints of sexual misconduct against health care professionals who are licensed by the Bureau of Professional and Occupational Affairs. A presentation by Dr. Kenneth Pope, a National authority on sexual misconduct committed by health care practitioners, to a joint session of various health boards on April 25 and 26, 1996, made clear that the sexual exploitation of patients by health care practitioners presents a threat to public health and safety.

The proposed amendments seek to better protect consumers of nursing services and to provide guidance to the profession by defining terms such as "behavioral/mental health nurse therapist," "patient," "professional relationship," "sexual impropriety" and "sexual violation." The proposed amendments guide nurses by informing them that conduct defined as a sexual violation or impropriety with a patient during the course of a professional relationship violates standards of nursing conduct. The proposed amendments guide behavioral/mental health nurse therapists by informing them that their professional relationship with a patient extends for 2 years after services are discontinued. The proposed amendments notify nurses that the consent of a patient to a sexual impropriety or violation cannot be a defense in a disciplinary proceeding before the Board and that a nurse who engages in conduct prohibited by the proposed amendments will not be eligible for placement into an impaired professional program under either the Professional Nursing Law or the Practical Nurse Law.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

In compliance with Executive Order 1996-1, prior to drafting these proposed amendments, the Board invited interested associations to comment on a preliminary draft. The Board reviewed and considered all comments and suggestions received by interested parties during the regulatory development process. The interested associations included the American Association of Neuroscience Nurses, American Nephrology Nurses' Association, Association of Operating Room Nurses, Inc., Council on Health Professions Education, Emergency Nurses Association, Forum for Nurse Executives, GPC-Oncology Nursing Society, Hospital Association of Pennsylvania, Intravenous Nurses Society, Licensed Practical Nurses Association of Pennsylvania, Northeastern Pennsylvania League of Licensed Practical Nurses, Pennsylvania Association of Home Health Agencies, Pennsylvania Association of Non-Profit Homes for the Aging, Pennsylvania Association of Nurse Anesthetists, Pennsylvania Association of Occupational Health Nurses, Pennsylvania Association of Practical Nursing Program Coordinators, Pennsylvania Coalition of Nurse Practitioners, Pennsylvania College of Associate Degree Nursing, Pennsylvania Higher Education Nursing Schools Association, Pennsylvania League for Nursing, Inc., Pennsylvania Nurses Association, Pennsylvania Organization of Nurse Leaders, Pennsylvania Society of Gastroenterology Nurses and Associates and School Nurse Section of Pennsylvania State Education Association.

Description of Proposed Amendments

§§ 21.1 and 21.141 (relating to definitions)

The amendments proposed for both registered and practical nurses contain identical definitions of "sexual impropriety" and "sexual violation."

The term "patient" includes resident and client and is defined to mean a person other than a spouse or immediate family member, who receives professional services from a registered nurse or a licensed practical nurse, regardless of whether the nurse receives remuneration for the services.

The term "sexual impropriety" is defined as making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments; unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or the patient specifically requests assistance; examining or touching genitals without the use of gloves when performing an otherwise appropriate examination; discussing or commenting on a patient's sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care; soliciting a date from a patient; and volunteering information to a patient about one's sexual problems, preferences or fantasies.

The term "sexual violation" is defined as offenses including, but not limited to, sexual intercourse, genital to genital contact, and oral to genital contact between a nurse and a patient during the period of the professional relationship; touching breasts, genitals, or any other body part for any purpose other than appropriate examination or treatment; using prolonged or improper examination

techniques, or examining a patient after the patient has refused or withdrawn consent; encouraging a patient to masturbate in the presence of the nurse or masturbating while a patient is present; providing or offering to provide drugs or treatment in exchange for sexual favors; and using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in any conduct that would constitute a sexual impropriety or violation.

The term "behavioral/mental health nurse therapist" is defined as a registered nurse engaged in a specialized practice involving the assessment, diagnosis, counseling or treatment, including psychotherapy, of any mental or emotional problem, impairment, dysfunction or illness.

The term "professional relationship" for a registered nurse who is not a behavioral/mental health nurse therapist means the period of time beginning with the first professional contact or consultation with the patient and ending with the patient's discharge from or discontinuance of services by the nurse or the nurse's employer. For the behavioral/mental health nurse therapist, the professional relationship extends to 2 years after discharge or discontinuance of services. If the patient is a minor, the professional relationship extends 2 years or until 1 year after the age of majority, whichever is longer, after discharge from or discontinuance of services. For a practical nurse the professional relationship begins with the first professional contact between the nurse and a patient and ends with the final professional contact. An exception to the existence of a professional relationship is made for a nurse who administers emergency medical treatment or transitory trauma care.

§§ 21.4a and 21.146a (relating to procedural matters)

These proposed amendments pertaining to registered and practical nurses address procedural issues in disciplinary matters before the Board. Subsection (a) would put all licensees on notice that the consent of a patient to a sexual impropriety or violation may not be a defense in a sexual misconduct proceeding. A patient cannot consent to unprofessional forms of treatment. Subsection (b) would put all licensees on notice that neither evidence of specific instances, nor opinion evidence, nor reputation evidence of a patient's past sexual conduct is admissible in proceedings alleging a sexual impropriety or violation. Subsection (c) puts all licensees on notice that if a licensee accused of a sexual impropriety or violation raises the defense that his conduct was appropriate to the treatment, the licensee will have to demonstrate that he is competent in practice which relates directly to the treatment of sexual function or dysfunction.

§§ 21.18 and 21.148 (relating to standards of nursing conduct)

The provisions of the regulations pertaining to registered and practical nurses are proposed to be amended to specifically prohibit a nurse from engaging in conduct defined as a sexual violation or impropriety. These proposed amendments further inform licensees that the failure to comply with an obligation or prohibition under this section is subject to disciplinary and corrective measures, including the imposition of civil penalties, under the Professional Nursing Law and the Practical Nurse Law.

§§ 21.18a and 21.148a (relating to post-adjudication reporting)

The provisions of the regulations pertaining to registered and practical nurses are proposed to be amended to allow the Board to require a licensee whose license had

been suspended or revoked for committing a sexual impropriety or violation to be reinstated subject to the condition that the licensee obtains the written consent of patients before providing nursing services. The consent would inform patients of the date and duration of the disciplinary action; the text of the law that was violated; and the address and telephone number of the Board. The consent form would have to be maintained in the licensee's primary practice location and would be subject to the Board's inspection.

§§ 21.18b and 21.148b (relating to impaired professional program)

These provisions of the regulations pertaining to registered and practical nurses are proposed to be added to inform licensees that a licensee subject to disciplinary action for a sexual impropriety or violation will not be eligible for an impaired professional program under either the Professional Nursing Law or the Practical Nurse Act.

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact and will not impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 28, 1998, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Professional Licensure and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed amendments, the Board has provided the Committees and IRRC with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Board, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Edward Vavro, Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed amendments in the *Pennsylvania Bulletin*. Please reference (16A-5110) Sexual Misconduct, when submitting comments.

M. CHRISTINE ALICHNIE, Ph.D., R.N.,
Chairperson

Fiscal Note: 16A-5110. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.1. Definitions.

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

* * * * *

Behavioral/mental health nurse therapist—A registered nurse engaged in a specialized practice involving assessment, diagnosis, counseling or treatment, including psychotherapy, of any mental or emotional problem, impairment, dysfunction or illness.

* * * * *

Patient (includes residents and clients)—A person, other than a spouse or immediate family member, who receives professional services from a registered nurse, regardless of whether or not the nurse receives remuneration for the services.

* * * * *

Professional relationship—

(i) Except for a behavioral/mental health nurse therapist, the relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a registered nurse and a patient and ending with the patient's discharge from or discontinuance of services by the nurse or by the nurse's employer, except that a professional nurse may administer necessary emergency medical treatment or transitory trauma care.

(ii) For a behavioral/mental health nurse therapist, the therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between the behavioral/mental health nurse therapist and patient and ending 2 years after discharge from or discontinuance of services, except for a minor, when the term means 2 years or until 1 year after the age of majority, whichever is longer, after discharge from or discontinuance of services.

* * * * *

Sexual impropriety—The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or when a patient specifically requests assistance.

(iii) Examining or touching genitals without the use of gloves when performing an otherwise appropriate examination.

(iv) Discussing or commenting on a patient's potential sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.

(v) Soliciting a date from a patient.

(vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

Sexual violation—The term includes the following offenses:

(i) Sexual intercourse between a registered nurse and a patient during the period of the professional relationship.

(ii) Genital to genital contact between a nurse and a patient during the professional relationship.

(iii) Oral to genital contact between a nurse and a patient during the period of the professional relationship.

(iv) Touching breasts, genitals or another body part for purpose other than appropriate examination or treatment, or using prolonged or improper examination techniques, or after the patient has refused or withdrawn consent.

(v) Encouraging a patient to masturbate in the presence of the nurse or masturbating while a patient is present.

(vi) Providing or offering to provide drugs or treatment in exchange for sexual favors.

(vii) Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in conduct that would constitute a sexual impropriety or sexual violation.

* * * * *

§ 21.4a. Procedural matters.

(a) The consent of the patient to a sexual impropriety or violation is not a defense to a disciplinary charge for violation of the act or this subchapter.

(b) Evidence of specific instances, opinion evidence or reputation evidence of a patient's past sexual conduct is not admissible in proceedings brought under § 21.18(b)(9) (relating to standards of nursing conduct). The Board may consider sexual relationships between the nurse and the patient occurring prior to the professional relationship.

(c) A nurse who attempts to raise as a defense an argument that conduct prohibited as a sexual violation or sexual impropriety was necessary or appropriate to the treatment of a patient shall be required to demonstrate competency in practice which relates directly to the treatment of sexual function or dysfunction. This competence may be demonstrated through educational training and supervised clinical experience. Appropriate discussions of sexual matters between a nurse and a patient shall be fully documented in patient records.

RESPONSIBILITIES OF THE REGISTERED NURSE

§ 21.18. Standards of nursing conduct.

* * * * *

(b) A registered nurse may not:
* * * * *

(9) Engage in conduct defined as a sexual violation or sexual impropriety in the course of a professional relationship.

(c) A registered nurse who fails to comply with an obligation or prohibition under this section is subject to disciplinary [action under section 14(a)(3) of the act (63 P. S. § 224(a)(3))] and corrective measures under section 14 of the act (63 P. S. § 224).

(d) The Board may, in addition to another disciplinary or corrective measure set forth in this section, levy appropriate civil penalties as authorized by law upon a nurse found to have engaged in conduct constituting a sexual impropriety or sexual violation.

§ 21.18a. Post-adjudication reporting.

(a) As a condition to reinstatement of a license from a disciplinary measure arising out of a violation of § 21.18(b)(9) (relating to standards of nursing conduct), the Board may require the nurse to obtain the prior, written, informed consent of patients treated by the nurse on a form approved by the Board. The form shall set forth the following:

- (1) The effective date and duration of the suspension, revocation or other sanction.
- (2) A citation to the statutory provisions under which the sanction was issued, and a copy of the specific text of the act cited.
- (3) The address and telephone number of the Board.
- (b) The form shall be maintained on file in the nurse's primary practice location and shall be subject to inspection, with or without notice, by representatives of the Board.

§ 21.18b. Impaired professional program.

When the Board is empowered to take disciplinary or corrective action against a nurse for conduct defined as a sexual violation or sexual impropriety, the nurse will not be eligible for placement into an impaired professional program under section 15 of the act (63 P. S. § 224.1).

Subchapter B. PRACTICAL NURSES
GENERAL PROVISIONS

§ 21.141. Definitions.

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

* * * * *

Patient (includes residents and clients)—A person, other than a spouse or immediate family member, who receives professional services from a licensed practical nurse, regardless of whether or not the nurse receives remuneration for the services.

* * * * *

Professional relationship—The relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a licensed practical nurse and a patient and ending with the final professional contact between them, except that a licensed

practical nurse may administer necessary emergency medical treatment or transitory trauma care.

* * * * *

Sexual impropriety—The term includes the following offenses:

- (i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.
- (ii) Unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or when a patient specifically requests assistance.
- (iii) Examining or touching genitals without the use of gloves when performing an otherwise appropriate examination.
- (iv) Discussing or commenting on a patient's potential sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.
- (v) Soliciting a date from a patient.
- (vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

Sexual violation—The term includes the following offenses:

- (i) Sexual intercourse between a licensed practical nurse and a patient during the period of the professional relationship.
- (ii) Genital to genital contact between a nurse and a patient during the period of the professional relationship.
- (iii) Oral to genital contact between a nurse and a patient during the period of the professional relationship.
- (iv) Touching breasts, genitals or another body part for a purpose other than appropriate examination or treatment, or using prolonged or improper examination techniques, or after the patient has refused or withdrawn consent.
- (v) Encouraging a patient to masturbate in the presence of the nurse or masturbating while the patient is present.
- (vi) Providing or offering to provide drugs or treatment in exchange for sexual favors.
- (vii) Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in any conduct that would constitute a sexual impropriety or sexual violation.

§ 21.146a. Procedural matters.

- (a) The consent of the patient to a sexual impropriety or violation is not a defense to a disciplinary charge for violation of the act or this subchapter.
- (b) Evidence of specific instances, opinion evidence or reputation evidence of a patient's past sexual conduct is not admissible in proceedings brought under § 21.148(b)(9) (relating to standards of nursing conduct). The Board may consider

sexual relationships between the nurse and the patient occurring prior to the professional relationship.

(c) A nurse who attempts to raise as a defense an argument that conduct prohibited as a sexual violation or sexual impropriety was necessary or appropriate to the treatment of a patient shall be required to demonstrate competency in practice which relates directly to the treatment of sexual function or dysfunction. This competence may be demonstrated through educational training and supervised clinical experience. Appropriate discussions of sexual matters between a nurse and a patient shall be fully documented in patient records.

§ 21.148. Standards of nursing conduct.

* * * * *

(b) A licensed practical nurse may not:

* * * * *

(9) Engage in conduct defined as a sexual violation or sexual impropriety in the course of a professional relationship.

(c) Failure to comply with an obligation or prohibition imposed by this section is subject to disciplinary [action under section 16(a)(3) of the act (63 P. S. § 666(a)(3))] and corrective measures under section 16 of the act (63 P. S. § 666).

(d) The Board may, in addition to another disciplinary or corrective measure set forth in this section, levy appropriate civil penalties as authorized by law upon a nurse found to have engaged in

conduct constituting a sexual impropriety or sexual violation.

§ 21.148a. Post-adjudication reporting.

(a) As a condition to reinstatement of a license from a disciplinary measure arising out of a violation of § 21.148(b)(9) (relating to standards of nursing conduct), the Board may require a practical nurse to obtain the prior, written, informed consent of patients treated by the nurse on a form approved by the Board. The form shall set forth the following:

(1) The effective date and duration of the suspension, revocation or other sanction.

(2) A citation to the statutory provisions under which the sanction was issued, and a copy of the specific text of the act cited.

(3) The address and telephone number of the Board.

(b) The form shall be maintained on file in the nurse's primary practice location and shall be subject to inspection, with or without notice, by representatives of the Board.

§ 21.148b. Impaired professional program.

When the Board is empowered to take disciplinary or corrective action against a practical nurse for conduct defined as a sexual violation or sexual impropriety, the nurse will not be eligible for placement into an impaired professional program under section 16.2 of the act (63 P. S. § 666.2).

[Pa.B. Doc. No. 98-924. Filed for public inspection June 12, 1998, 9:00 a.m.]

NOTICES

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending June 2, 1998.

BANKING INSTITUTIONS

Mutual Holding Company Reorganizations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-1-98	Standard Bank, PaSB Murrysville Allegheny County	Murrysville	Effective
	Represents reorganization into a mutual holding company to be known as "Standard Mutual Holding Company," Murrysville, PA.		

New Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-27-98	Susquehanna Interim Bank York York County	2951 Whiteford Road York York County	Filed

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-27-98	Hollidaysburg Trust Company Hollidaysburg Blair County	Morrison's Cove Home 429 S. Market St. Martinsburg Blair County	Approved
5-28-98	Investors Trust Company Wyomissing Berks County	The Atrium 234 Mall Boulevard King of Prussia Montgomery County	Approved
5-29-98	Citizens & Northern Bank Wellsboro Tioga County	1085 South Main St. Mansfield Richmond Township Tioga County	Approved
6-1-98	Jonestown Bank and Trust Company Jonestown Lebanon County	421 East Penn Avenue Cleona Lebanon County	Filed

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-29-98	The York Bank and Trust Company York York County	To: 2801 East Market St. York York County	Filed
		From: York Mall Shopping Center 2801 East Market St. York York County	

Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-27-98	First Commonwealth Bank Indiana Indiana County	Route 913 Broad Top City Huntingdon County	Filed
5-29-98	Dauphin Deposit Bank and Trust Company Harrisburg Dauphin County	20 East Main St. Fairfield Adams County	Application Withdrawn

Articles of Amendment

<i>Date</i>	<i>Name of Bank</i>	<i>Purpose</i>	<i>Action</i>
5-28-98	The Fidelity Deposit and Discount Bank Dunmore Lackawanna County	To provide for an increase in the number of authorized shares of common stock from 1,000,000 at \$1.5625 par value to 5,000,000 at \$1.5625 par value.	Approved and Effective

SAVINGS ASSOCIATIONS**Branch Applications**

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
5-29-98	North Penn Savings and Loan Association Scranton Lackawanna County	651 Northern Boulevard Clarks Summit South Abington Township Lackawanna County	Filed

CREDIT UNIONS

No activity.

RICHARD C. RISHEL,
Secretary

[Pa.B. Doc. No. 98-925. Filed for public inspection June 12, 1998, 9:00 a.m.]

Maximum Lawful Rate of Interest for Residential Mortgages for the Month of July 1998

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of July, 1998, is 8 1/2%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221). Further preemption was instituted with the signing of Pub. L. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which such individual owns and which such

individual occupies or has occupied as his principal residence.

Each month the Department of Banking is required by State law to compute and announce the ceiling rate on residential mortgages in this Commonwealth. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 5.99 to which was added 2.50 percentage points for a total of 8.50% that by law is rounded off to the nearest quarter at 8 1/2%.

RICHARD C. RISHEL,
Secretary

[Pa.B. Doc. No. 98-926. Filed for public inspection June 12, 1998, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

(Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.

Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.

PA 0051730. Sewage, **Philadelphia Country Club**, 1601 Spring Mill Road, Gladwyne, PA 19035.

This application is for renewal of an NPDES permit to discharge treated sewage from the Philadelphia Country Club in Lower Merion Township, **Montgomery County**. This is an existing discharge to Sawmill Run.

The receiving stream is classified for the following uses: warm water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.3 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Suspended Solids	30	60
Ammonia (as N)		
(5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Total Residual Chlorine		
(0—2 years)	monitor/report	monitor/report
(3—5 years)	0.5	1.2
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 4.0 mg/l at all times	
pH	within limits of 6.0—9.0 standard units at all times	

The EPA waiver is in effect.

Northeast Region: Environmental Protection Manager, Water Management, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2553.

PA 0042170. Sewerage, **Deer Lake Municipal Authority**, P. O. Box 30, Auburn, PA 17922.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into Pine Creek in West Brunswick Township, **Schuylkill County**.

The receiving stream is classified for the following uses: cold water, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for NO₂-NO₃, the existing downstream potable water supply (PWS) considered during the evaluation is Pottstown Water Supply on Schuylkill River.

The proposed effluent limits for Outfall 001, based on a design flow of .153 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N (5-1 to 10-31)	9		18
Dissolved Oxygen	a minimum of 5 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—9.0 standard units at all times		
Total Residual Chlorine (1st Month—24th Month)	monitor and report		monitor and report
(25th Month—Expiration Date)	1		2

The EPA waiver is in effect.

WQM—Public Notice for NPDES permit (industrial) 11-318.dot

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

PA 0023540. Sewerage, SIC: 4952, **Berks Montgomery Municipal Authority**, P. O. Box 370, Gilbertsville, PA 19525.

This application is for amendment of an NPDES permit for an existing discharge of treated sewage to Ironstone Creek, in Colebrookdale Township, **Berks County**.

The receiving stream is classified for trout stocking, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Pennsylvania American Water Company located on the Schuylkill River. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.40 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N (5-1 to 10-31)	2.5		5.0
(11-1 to 4-30)	7.5		15.0
Total Residual Chlorine (Interim)	monitor and report		monitor and report
(Final)	0.21		0.68
Dissolved Oxygen	minimum of 5.0 at all times		
pH	from 6.0—9.0 inclusive		
Fecal Coliforms (5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	3,460/100 ml as a geometric average		

The EPA waiver is in effect.

PA 0087840. Industrial waste, SIC: 2086, **JMH, Inc.**, 1090 Spring Street, Wyomissing, PA 19610.

This application is for issuance of an NPDES permit for an existing discharge of stormwater in Muhlenberg Township, **Berks County**.

The proposed effluent limits for Stormwater Outfalls 001, 002, 003, 004, 005 and 006 are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			
Total Suspended Solids		monitor and report	monitor and report
Fecal Coliform		monitor and report	monitor and report
Total Copper		monitor and report	monitor and report
Total Iron		monitor and report	monitor and report
Total Manganese		monitor and report	monitor and report
Total Zinc		monitor and report	monitor and report
Total Aluminum		monitor and report	monitor and report
pH		monitor and report	monitor and report

The EPA waiver is in effect.

PA 0014591. Industrial waste, SIC: 4941, **City of Coatesville Authority**, 114 East Lincoln Highway, Coatesville, PA 19320.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to West Branch Octoraro Creek, in Colerain Township, **Lancaster County**.

The receiving stream is classified for high quality cold water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was the Naval Training Center located in Bainbridge, Maryland. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.076 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	75
Total Aluminum	4	8	10
Total Iron	2	4	5
Total Manganese	1	2	2.5
pH		6—9	

The EPA waiver is in effect.

PA 0010201. Industrial waste, SIC: 4941, **Columbia Water Company**, 220 Locust Street, Columbia, PA 17512.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to the Susquehanna River, in Columbia Borough, **Lancaster County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Lancaster Municipal Water Authority located in Manor Township, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.1128 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	75
Total Aluminum	4	8	10
Total Iron	2	4	5
Total Manganese	1	2	2.5
pH		6—9	

The EPA waiver is in effect.

PA 0087815. Sewage, SIC: 6515, **Char-Mar Properties**, 420 East Conestoga Street, New Holland, PA 17557.

This application is for issuance of an NPDES permit for a new discharge of treated sewage to an unnamed tributary of the Conestoga River, in Caernarvon Township, **Lancaster County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Lancaster Municipal Water Authority located in Lancaster City, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.041 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Total Suspended Solids	30	60
NH ₃ -N		
(5-1 to 10-31)	1.5	3.0
(11-1 to 4-30)	4.5	9.0
Total Residual Chlorine	0.2	0.7
Dissolved Oxygen	minimum of 5.0 at all times	
pH	from 6.0—9.0 inclusive	
Fecal Coliforms		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	

The EPA waiver is in effect.

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

PA 0026905. Sewage, **Connellsville Municipal Authority**, P. O. Box 925, Municipal Lane, Connellsville, PA 15425.

This application is for renewal of an NPDES permit to discharge treated sewage from the Connellsville Waste Water Treatment Plant in the City of Connellsville, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as the Youghiogheny River, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the McKeesport Municipal Water Authority.

Outfall 001: existing discharge, design flow of 3.24 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25	38		50
Suspended Solids	30	45		60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	10,000/100 ml as a geometric mean			
Total Residual Chlorine	1.0			3.3
pH	not less than 6.0 nor greater than 9.0			

Other Conditions: Outfalls 002—017 will serve as combined sewer overflows.

The EPA waiver is not in effect.

PA 0206067. Sewage, **Pennsylvania Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106-7676.

This application is for renewal of an NPDES permit to discharge treated sewage from the Mon Valley/Fayette Expressway Northern Toll Plaza STP in California Borough, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as South Branch of Maple Creek, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Charleroi Municipal Authority on the Monongahela River.

Outfall 001: existing discharge, design flow of 0.00024 mgd.

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

The EPA waiver is in effect.

Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

PA 0222445. Sewage. **L. Scott Pepperman (Boyles, Pepperman, & Main)**, 178C Eccles Road, Sugar Grove, PA 16350.

This application is for a new NPDES permit, to discharge treated sewage from a small flow sewage treatment facility to Unnamed Tributary to Stillwater Creek in Sugar Grove Township, **Warren County**. This is a new discharge.

The receiving water is classified for the following uses: high-quality cold water fish, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the State of New York on Stillwater located at 11.92 which is approximately 3.78 miles below point of discharge.

The proposed discharge limits for Outfall No. 001, based on a design flow of 0.001200 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10	20
TSS	20	40
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
Total Residual Chlorine	1.5	40
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0041564. Sewage. **S-2 Properties**, P. O. Box 24509, Pittsburgh, PA 15234.

This application is for renewal of an NPDES permit to discharge treated sewage to the Unnamed Tributary to Hereford Manor Lake in Lancaster Township, **Butler County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is Beaver River located at Beaver Falls, approximately 10 miles below point of discharge.

The proposed effluent limits for Outfall No. 001, based on a design flow of 0.02 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
TSS	30	60
Phosphorus		
(4-1 to 10-31)	2.0	4.0
Ammonia-Nitrogen		
(5-1 to 10-31)	1.5	3
(11-1 to 4-30)	4.5	9
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
Total Residual Chlorine	.2	.5
Dissolved Oxygen	minimum of 5 mg/l at all times	
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

NPDES Minor Renewals

Southcentral Regional Office: Water Management Program, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA 0036285	MGM Enterprises, Inc. Brookhaven MHP One Waterford Prof. Center, York, PA 17402	York Hellam Twp.	Dee Run	TRC

**DISCHARGE OF CONTROLLED INDUSTRIAL
WASTE AND SEWERAGE WASTEWATER**

**Applications under the Pennsylvania Clean
Streams Law**

(Part II Permits)

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department). Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed; and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest. Each writer will be notified in writing of the time and place if a hearing or conference concerning the plan, action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

**Industrial waste and sewerage applications under
The Clean Streams Law (35 P. S. §§ 691.1—
691.1001).**

Northwest Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.

A. 5298402. Sewerage. **Wallenpaupack Area School District**, HC 6, Box 6075, Hawley, PA 18428-9045. Application for modification of an existing sewage treatment plant located in Palmyra Township, **Pike County**. Application received in the Regional Office—March 30, 1998.

Southcentral Regional Office: Water Management Program Manager, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110-8200, (717) 705-4707.

A. 0198403. Sewage, submitted by **Gettysburg Municipal Authority**, 601 East Middle Street, P. O. Box 3307, Gettysburg, PA 17325-3307 in Cumberland Township, **Adams County** to construct and operate the National Park Service Sewer System was received in the Southcentral Region on May 20, 1998.

A. 0698201. Industrial waste, submitted by **NGK Metals Corporation**, P. O. Box 13367, Reading, PA 19612-3367 in Muhlenberg Township, **Berks County** to construct and operate facilities to treat groundwater prior to discharge to the Laurel Run was received in the Southcentral Region on May 22, 1998.

A. 6798407. Sewage, submitted to **West Manheim Township**, 31 Fairview Drive, Hanover, PA 17331 in West Manheim Township, **York County** to construct a

sewer extension and pumping station to serve South Pointe was received in the Southcentral Region on May 22, 1998.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

WQM Permit No. 2098406. Sewage, **Dwight R. and Yolanda E. Williams**, SRSTP, 17027 Townhouse Rd., Saegertown, PA 16433. This project is for the construction of a single residence sewage treatment plant in Hayfield Township, **Crawford County**.

**INDIVIDUAL PERMITS
(PAS)**

NPDES Individual

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. These proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision of 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construction activity, are on file and may be inspected at the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.

NPDES Permit PAS10-G319. Stormwater. **352 Associates**, 50 Exeter Avenue, Haverford, PA 19041, has

applied to discharge stormwater from a construction activity located in East Whiteland Township, **Chester County**, to Valley Creek.

NPDES Permit PAS10-G320. Stormwater. **Malvern Preparatory School**, 418 South Warren Avenue, Malvern, PA 19355-2707, has applied to discharge stormwater from a construction activity located in Malvern Borough, **Chester County**, to Crumm Creek.

NPDES Permit PAS10-S10-G321. Stormwater. **Liberty Property Trust**, 65 Valley Stream Parkway, Great Valley Corporate Center, Malvern, PA 19355, has applied to discharge stormwater from a construction activity located in Tredyffrin Township, **Chester County**, to Valley and Little Valley Creeks.

Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.

Lehigh County Conservation District, District Manager, Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.

NPDES Permit PAS10Q155. Stormwater. **Pitcairn Properties, Inc.**, Cliff Zimmerman, 165 Township Line Rd., Ste. 1500, Jenkintown, PA 19046-3599, has applied to discharge stormwater from a construction activity located in Upper Macungie Township, **Lehigh County**, to Little Lehigh Creek.

Monroe County Conservation District, District Manager, 8050 Running Valley Road, Stroudsburg, PA 18360, (717) 629-3060.

NPDES Permit PAS10S017-2. Stormwater. **Crossings Outlet Square**, Outletter Associates, 285 Crossings Outlet Square, Tannersville, PA 18372, has applied to discharge stormwater from a construction activity located in Pocono Township, **Monroe County**, to Pocono Creek.

NPDES Permit PAS10S069. Stormwater. **Mountain View Park**, Pocono Township, P. O. Box 197, Tannersville, PA 18372, has applied to discharge stormwater from a construction activity located in Pocono Township, **Monroe County**, to Pocono Creek.

Pike County Conservation District, District Manager, HC 6, Box 6770, Hawley, PA 18428, (717) 226-8220.

NPDES Permit PAS10V021. Stormwater. **Sunrise Lake—Sect. 19**, Robert Ramagosa, Sunrise Ventures, Inc., 3000 Sunrise Lake, Milford, PA 18337, has applied to discharge stormwater from a construction activity located in Dingman Township, **Pike County**, to ground-water within the Rattlesnake Creek watershed (HQ).

SAFE DRINKING WATER

Applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Bureau of Water Supply Management: Division of Drinking Water Management, 400 Market Street, Harrisburg, PA 17105. Contact: Godfrey C. Maduka, (717) 787-9037.

A. 9996460. **Le Bleu Corporation**, 3134 Cornatzer Road, Advance, NC 27006-2093, Keith Hester, Executive Vice President. Applicant requests Department approval to sell bottled water in Pennsylvania under the brand names: Winston Cup Drinking Water and Le Bleu Ultra Pure Drinking Water.

Southeast Regional Office: Sanitarian Regional Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.

A. 1598502. Public water supply. **Willowdale Water Company**, 721 Unionville Road, Kenneth Square, PA 19348. This proposal involves the permitting of the addition of Well No. 6 to the Willowdale Water Company's system. Well No. 6 will serve as backup to Well No. 2 in East Marlborough Township, **Chester County**.

Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

A. 1789505-T1. The Department has received an operating permit application from **Deville Estates Mobile Home Park** (Sandy Township, **Clearfield County**) for transfer of ownership from Leo Karoleski, 264 Treasure Lake, DuBois, PA 15801 to Daniel J. Russell, P. O. Box 96, Curwensville, PA 16833.

A. M. A. The Department has received a construction permit application from **State College Borough Water Authority** (1201 West Branch Road, State College, PA 16801-7697, Harris Township, **Centre County**) for installation of piping/valves, and the like to interconnect to Well No. 25 to the Authority's Water treatment plant to enable filtration of Well No. 25.

A. 1498503. The Department has received a construction permit application from **Milesburg Borough** (416 Front Street, Milesburg, PA 16853, Milesburg Borough, **Centre County**) for construction of pump station, force main and .5 mg water storage tank. Water source will be Bellefonte Big Spring via a line constructed by others. (Aqua Penn)

A. 4146292-A9. The Department has received a construction permit application from **Aqua Penn Spring Water Company** (One Aqua Penn Drive, P. O. Box 938, Milesburg, PA 16853-0938, Bellefonte Borough, **Centre County**) for construction of approximately 27,000 linear feet of ductile iron pipe and appurtenances for the purpose of providing potable water for both Milesburg Borough and the AquaPenn Spring Water Company Bottling Plant.

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

0298505. **Western Allegheny County Municipal Authority**, 403 Virginia Drive, Oakdale, PA 15071-9105. Construction of a pump station which will replace the existing Tonidale pump station serving North Fayette, **Allegheny County**.

3298501. **Blairsville Municipal Authority**, 203 East Market Street, Blairsville, PA 15717. Construction of a water storage tank serving Blairsville Borough, **Indiana County**.

0298506. **West View Borough Municipal Authority**, 210 Perry Highway, Pittsburgh, PA 15229. Construction of a 5,000,000 gallon water storage tank serving the Town of McCandless, **Allegheny County**.

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 and 303 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate identifies 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 or Statewide health standard to remediate a site must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department must provide a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

For further information concerning the content of a Notice of Intent to Remediate, contact the Department Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

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

Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

National Label Co., Whitmarsh Township, **Montgomery County**. William F. Beers, Tetrahedron Consultants, Inc., has submitted a Notice of Intent to Remediate site soil contaminated with petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet Statewide health standards.

Ross Matico Property, Yardley Borough, **Bucks County**. Ross Matico, 52 Canal Street, Yardley, PA 19067, has submitted a Notice of Intent to Remediate site soil contaminated with petroleum hydrocarbons. The applicant proposes to remediate the site to meet Statewide health standards.

Ultra Precision Facility (Former), Middletown Township, **Bucks County**. Hugh V. Dzenis, ENSR, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047, has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet Statewide health standards.

Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.

Golden Triangle Shopping Center, Manheim Township, **Lancaster County**. Triangle Center Associates, c/o Brentway Management, 44 South Bayles Avenue, Port Washington, NY 11050, has resubmitted a Notice of Intent to Remediate site soils contaminated with heavy metals, BTEX and PAHs. The applicant proposes to remediate site soils to meet the Statewide health stan-

dard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lancaster New Era* and *Intelligencer Journal* during the week of May 25, 1998.

D. L. Martin Company, Mercersburg Borough, **Franklin County**. D. L. Martin Company, 25 Harbaugh Drive, Mercersburg, PA 17236, has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with heavy metals. The applicant proposes to remediate site soils to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Public Opinion* during the week of May 25, 1998.

Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.

Corning Consumer Products Co., Borough of Charleroi, **Washington County**. C. R. Springer, Borden, Inc., 180 East Broadcast Street, 28th Floor, Columbus, OH 43215-3799. J. Cherill, Corning, Inc. HP-ME-03-055, Corning, NY 14831 and Steve E. Johnson, Weston, 1 Weston Way, West Chester, PA 19380 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with PCB's, lead, heavy metals, pesticides, solvents, BTEX, PHCs and PAHs. The applicant proposes to remediate the site to meet the Statewide health standard.

Northeast Regional Field Office: Joseph A. Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.

Pennsylvania Power & Light Company (PP&L)—Honesdale (former) Manufactured Gas Plant, Honesdale Boro, **Wayne County**. PP&L, Inc., Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101-1179 has submitted a Notice of Intent to Remediate concerning the remediation of site soils and groundwater suspected to be contaminated with BTEX (benzene, toluene, ethylbenzene and xylene) components and polyaromatic hydrocarbon compounds. The applicant proposes to remediate the site to meet the Statewide human health standard in combination with remediation according to the site-specific standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 2

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

Sections 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use a site-specific standard or who intend to remediate a site in a Special Industrial Area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department

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

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific cleanup standard, in whole or in part, and for sites determined to be located in Special Industrial Areas. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area by the person conducting remediation. For the sites identified, a municipality may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period a municipality may request that the person identified, as the remediator of a site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of a site. For further information concerning the content of a Notice of Intent to Remediate, contact the Department Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

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

Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

Collegeville Associates, L. P., Collegeville Borough, **Montgomery County**. Darryl D. Borrelli, Manko, Gold & Katcher, Suite 500, 401 City Avenue, Bala Cynwyd, PA 19004, has submitted a Notice of Intent to Remediate site soil contaminated with lead, solvents, BTEX and petroleum hydrocarbons; and groundwater contaminated with solvents, BTEX and petroleum hydrocarbons. The applicant proposes to remediate the site to meet Statewide health and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Times Herald* on May 27, 1998.

Northeast Regional Field Office: Joseph A. Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.

Pennsylvania Power & Light Company (PP&L)—Honesdale (former) Manufactured Gas Plant, Honesdale Boro, **Wayne County**. PP&L, Inc., Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101-1179 has submitted a Notice of Intent to Remediate concerning the remediation of site soils and groundwater suspected to be contaminated with BTEX (benzene, toluene, ethylbenzene and xylene) components and polyaromatic hydrocarbon compounds. The applicant proposes to remediate the site to meet the site-specific standard in combination with remediation according to the Statewide human health standard. A

summary of the Notice of Intent to Remediate was reportedly published in the *Wayne Independent* newspaper on or about May 27, 1998.

Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.

Golden Triangle Shopping Center, Manheim Township, **Lancaster County**. Triangle Center Associates, c/o Brentway Management, 44 South Bayles Avenue, Port Washington, NY 11050 has resubmitted a Notice of Intent to Remediate site groundwater contaminated with heavy metals, BTEX and PAHs. The applicant proposes to remediate the groundwater to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lancaster New Era* and *Intelligencer* during the week of May 25, 1998.

Northcentral Regional Office: Environmental Cleanup Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (717) 321-6525.

Former Lawrenceville Exxon, Lawrenceville Borough, **Tioga County**. Howard M. Rutledge, Jr., KeyTec Remediation, Inc., on behalf of his client, Brad Robinson, R. R. 1, Box 413, Mansfield, PA 16933 has submitted a Notice of Intent to Remediate soil contaminated with heavy metals, BTEX PHCs and PAHs; and groundwater contaminated with undetermined contaminants. The applicant proposes to reuse the site as a Special Industrial Area. Based upon identification of contamination, all immediate, direct or imminent threats which would prevent the property from being occupied for its intended reuse will be remediated. A summary of the Notice of Intent to Remediate was reported to have been published in *The Wellsboro Gazette* on April 15, 1998.

Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.

Beaver County Detention Facility, Hopewell Township, **Beaver County**. Bet-Tech International, 1150 Broadhead Road, Monaca, PA 15061-2500, County of Beaver, 810 Third Street, Beaver, PA 15009-2191 and Brian E. Davis, P. G., Baker Environmental Inc., APO Building 3, 420 Rouser Road, Coraopolis, PA 15108 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with lead, heavy metals and PAHs. The applicant proposes to remediate the site to meet a site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Beaver County Times* on May 6, 1998.

AIR POLLUTION

Notice of Plan Approval and Operating Permit Applications

Non-Major Sources and Modifications

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

The Department has received applications for plan approvals and/or operating permits from the following facilities. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not trigger major new source review or prevention of significant deterioration requirements.

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

Persons wishing to file protests or comments on the proposed plan approval and/or operating permits must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with the Department Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior to the date of the hearing.

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

OPERATING PERMITS

Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

28-03004: Bri-Mar Mfg., Inc. (330 Wolf Avenue, Chambersburg, PA 17201) for operation of two paint spray booths controlled by dry filters in Chambersburg, **Franklin County**.

38-310-017C: Carmeuse Pennsylvania, Inc. (P. O. Box 160, Annville, PA 17003) for the operation of a portable rock crushing plant controlled by a wet suppression system in North Londonderry Township, **Lebanon County**.

36-313-074: Wyeth-Ayerst Laboratories (P. O. Box 304, Marietta, PA 17547) to operate two influenza vaccine production lines located in East Donegal Township, **Lancaster County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.

59-304-007A: Ward Mfg., Inc. (P. O. Box 9, Blossburg, PA 16912-0009) for the operation of five spin blast machines and a fabric collector at Plant No. 3 in Blossburg Borough, **Tioga County**.

12-399-009A: GKN Sinter Metals, Inc. (R. R. 2, Box 47, Emporium, PA 15834) for the operation of a powdered metal parts oil impregnation and centrifuge unit (PK No. 20) at Plant No. 1 in Shippen Township, **Cameron County**.

Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code § 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the following facilities. These facilities are major facilities subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

Copies of the Title V application, proposed permit and other relevant information are available for public inspection and additional information may be obtained by contacting the regional office noted.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of objections to the permit issuance and the relevant facts upon which the objections are based.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearing at least 30 days in advance of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

Southeast Regional Office: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, Attn: Edward Brown, (610) 832-6242.

46-00060: Department of Public Welfare—Norristown State Hospital Facility (1001 Sterigere Street, Norristown, PA 19401) located in Norristown Borough, **Montgomery County**. This facility is primarily providing psychiatric services. The facility's major air emission sources are four large boilers. All of them are anthracite coal fired boilers which emit major levels of nitrogen oxide compounds (NOx), sulfur oxide compounds (SOx) and particulate matter (PM). There are also 11 diesel fired and one propane gas fired small emergency generators located at the facility.

Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, Attn: Michael Safko, (717) 826-2531.

40-00021: Williams Generation Co. (R. R. 1, Box 409-D, Humboldt Industrial Park, Hazleton, PA 18201) Hazleton Cogeneration Facility located in Hazle Township, **Luzerne County**. The facility's major sources of emissions include a natural gas turbine, a small boiler, two natural gas heaters and an emergency diesel generator which primarily emit nitrogen oxides (NOx).

48-00016: Lehigh University (Facilities Services, 461 Webster Street, Bethlehem, PA 18015-1755) facility located in the City of Bethlehem, **Northampton County**. The facility's major sources of emissions include six No. 6 oil-fired boilers and 115 small, natural gas and oil-fired combustion units which primarily emit sulfur oxides (SOx) and nitrogen oxides (NOx).

58-00001: Tennessee Gas Pipeline (P. O. Box 2511, Houston, TX 77252-2511) 321 West Clifford Station located in Clifford Township, **Susquehanna County**. The

facility's major sources of emissions include three natural gas compressor turbines and 15 small, natural gas-fired combustion units which primarily emit nitrogen oxides (NO_x).

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Attn: Kanubhai L. Patel, (717) 705-4702.

36-05028: New Holland North America, Inc. (500 Diller Avenue, New Holland, PA 17557) located in New Holland, **Lancaster County**. The facility's major sources of emissions are several surface coating operations which primarily emit volatile organic compounds (VOC).

44-05002: New Holland North America, Inc. (P. O. Box 868, Belleville, PA 17004) located in Union Township, **Mifflin County**. The facility's major sources of emissions are several surface coating operations which primarily emit volatile organic compounds (VOC).

PLAN APPROVALS

Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

67-304-024A: R. H. Sheppard Co., Inc. (101 Philadelphia Street, P. O. Box 877, Hanover, PA 17331) for installation of a sand cooler and magnetic separator at the facility located in Hanover Borough, **York County**.

01-310-033A: ISP Minerals, Inc. (P. O. Box O, Blue Ridge Summit, PA 17214) for installation of two fabric collectors at the facility located in Hamiltonban Township, **Adams County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.

08-316-013A: Masonite Corp. (P. O. Box 311, Towanda, PA 18848) for the modification of a hardboard press (Line II) in Wysox Township, **Bradford County**.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

Source

#4 lime kiln

#5 lime kiln

The Department has additionally determined that the following nitrogen oxides emission limitations are needed to ensure the maintenance of the National Ambient Air Quality Standard for nitrogen dioxide and is consequently also proposing to establish these limitations as a condition of the proposed operating permit issuance:

Source

#4 lime kiln

#5 lime kiln

One public hearing will be held for the purpose of receiving comments on the proposed operating permit and the proposed SIP revision. The hearing will be held on July 23, 1998, at 1 p.m. at the Department Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA. The public is invited to comment on the proposal. Persons interested in commenting are invited to appear at the public hearing.

PA-56-239A: PBS Coals, Inc. (P. O. Box 260, Friedens, PA 15541) for installation of a coal crushing facility at the Hartman Mine (Job 205) in Brothersvalley Township, **Somerset County**.

PA-65-860B: Fansteel Hydro Carbide (P. O. Box 363, Latrobe, PA 15650) for installation of a rota-cone dryer and attritors (2) at the Latrobe Plant in Unity Township, **Westmoreland County**.

REASONABLY AVAILABLE CONTROL TECHNOLOGY

(RACT)

Notice of Proposed Revision to the State Implementation Plan for Oxides of Nitrogen and Volatile Organic Compounds, Notice of Proposed Establishment of Emission Limitations to Ensure Maintenance of the National Ambient Air Quality Standard for Nitrogen Dioxide and Notice of Public Hearing

Approval of Reasonably Available Control Technology (RACT) plan for Bellefonte Lime Company in Spring Township, Centre County.

The Department of Environmental Protection (Department) has made a preliminary determination to approve a Reasonably Available Control Technology (RACT) plan and an amendment to the State Implementation Plan (SIP) for a line production facility (Bellefonte Plant) owned and operated by Bellefonte Lime Company in Spring Township, Centre County.

The proposed SIP revision does not adopt any new regulations. It incorporates the provisions and requirements contained in the RACT approval for the facility to comply with current regulations.

The preliminary RACT determination, if finally approved, will be incorporated into an operating permit for the facility and will be submitted to the United States Environmental Protection Agency (EPA) as a revision to Pennsylvania's State Implementation Plan.

The following is a summary of the preliminary RACT determination for this operation:

Nitrogen oxides emission limit

4.20 pounds per ton of lime produced

7.90 pounds per ton of lime produced

Nitrogen oxides emission limit

69.9 pounds per hour

106.9 pounds per hour

Persons wishing to present testimony at the hearing should contact Daniel Spadoni at (717) 327-3659 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to a maximum of 10 minutes per individual and two written copies of the oral testimony are requested. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Daniel Spadoni at (717) 327-3659 or the Pennsylvania AT&T relay service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Those unable to attend the hearing, but wishing to comment, should provide written comments to David Aldenderfer, Program Manager, Pennsylvania DEP, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448. Comments should be submitted by August 7, 1998.

All pertinent documents are available for review from 8 a.m. to 4 p.m. in the Department Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling (717) 327-3693.

MINING

APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

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

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

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance

with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.

Coal Applications Received

17980111. K & J Coal Company, Inc. (P. O. Box 189, Westover, PA 16692), commencement, operation and restoration of bituminous strip-auger mine in Chest Township, **Clearfield County**, affecting 41.0 acres, receiving stream Chest Creek. Application received May 15, 1998.

32880104. Permit Renewal. M. B. Energy, Inc. (250 Airport Road, P. O. Box 1319, Indiana, PA 15701-1319), commencement, operation and restoration of bituminous strip mine, valid for reclamation, only in Brushvalley and Buffington Townships, **Indiana County**, affecting 148.0 acres, receiving stream unnamed tributary to Blacklick Creek and Blacklick Creek. Application received May 26, 1998.

Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.

26930102R. Pennsylvania Coal Co., Inc. (105 26th Street, Suite 200, Pittsburgh, PA 15222). Renewal application received for continued reclamation of an existing bituminous surface mine located in Upper Tyrone Township, **Fayette County**. Receiving streams: unnamed tributary to Jacobs Creek to the Youghiogheny River. Renewal application received: May 18, 1998.

65930104R. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Renewal application received for continued reclamation of an existing bituminous surface mine located in East Huntingdon Township, **Westmoreland County**. Receiving streams: unnamed tributary to Stauffer Run to Stauffer Run to Jacobs Creek to the Youghiogheny River. Renewal application received: May 21, 1998.

03880107R. M. B. Energy, Inc. (250 Airport Road, P. O. Box 1319, Indiana, PA 15701-1319). Renewal application received for continued reclamation of an existing bituminous surface mine located in Kittanning Township, **Armstrong County**. Receiving streams: unnamed tributaries to Mill Run and Cowanshannock Creek to the Allegheny River. Renewal application received: May 26, 1998.

26830201R. Carbon Fuel Resources, Inc. (P. O. Box 275, West Leisenring, PA 15489-0275). Renewal application received for continued reclamation of an existing coal refuse reprocessing site located in Dunbar Township, **Fayette County**. Receiving streams: unnamed tributary to Opossum Run to the Youghiogheny River. Renewal application received: May 26, 1998.

Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.

17820151. Junior Coal Contracting, Inc. (R. D. 3, Box 225-A, Philipsburg, PA 16866), revision to an existing bituminous surface mine permit for a change in permit acreage from 250.2 to 274.2 acres, Bradford Township, **Clearfield County**. Application received May 20, 1998.

Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.

Noncoal Applications Received

26980601. Commercial Stone Co., Inc. (2200 Springfield Pike, Connellsville, PA 15425-9503). Application received for a large noncoal (sandstone) surface mining permit for a site located in Bullskin Township, **Fayette County**, affecting 466 acres. Receiving streams: unnamed tributaries of Polecat Hollow Run, then into Breakneck Run. Application received: May 15, 1998.

Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.

Large Industrial Mineral Permit Applications Received

59880301. Clifford Cross, Jr. (Box 240, Mainesburg, PA), renewal of an existing NPDES permit, Clymer Township, **Tioga County** affecting 4.4 acres. Application received May 4, 1998.

59880302. Clifford Cross, Jr. (Box 240, Mainesburg, PA), renewal of an existing NPDES permit, Richmond Township, **Tioga County** affecting 12.4 acres. Application received May 4, 1998.

APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

ENCROACHMENTS

Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E09-771. Encroachment. **Department of Conservation and Natural Resources, Bureau of State Parks**, 400 RCSOB, Harrisburg, PA 17105-8451. To construct and maintain two picnic areas (Virginia Forest and Teddy Roosevelt) in and along the 100 year floodplain of the Delaware River and adjacent to the Pennsylvania Canal (AKA Delaware Canal). The proposed work for each picnic area will include: 1) The construction of 100 linear feet of access road; 2) The construction of a paved parking area for 30 cars; 3) The construction of a well and water supply system; 4) The construction of wastewater treatment system; 5) The construction of 5 temporary access crossings of the Delaware Canal. The Virginia Forest picnic area is located 5,600 feet west of the intersection of Cuttallusa Road and SR 32 (Lumberville, PA-NJ quadrangle N: 5.75 inches; W: 0.55 inch) in Solebury Township, **Bucks County**. The Teddy Roosevelt Picnic Area is located along the Delaware Canal approximately 3,000 feet south of the intersection of Hellertown Rd. and Rt. 611 (Easton, NJ-PA Quadrangle N: 0.4 inch; W: 9.2 inches) in Williams Township, **Northampton County**.

E46-806. Encroachment. **Towamencin Township**, P. O. Box 303, Kulpsville, PA 19443. To construct and maintain two stream crossings of unnamed tributaries to Skippack Creek (TSF) associated with the proposed Towamencin Avenue construction. The proposed road will connect Sumneytown Pike (SR 0063) and Forty Foot Road to alleviate increased traffic congestion in the Village of

Kulpsville. One crossing will utilize a 107-foot long, 36-inch and 42-inch diameter RCP stream enclosure with concrete endwall attached at the downstream end. The other crossing will consist of a 162-foot long, 6-foot wide by 3-foot high R. C. box stream enclosure with concrete endwalls. The project will also require modification of a non-scope dam and an environmental assessment approval. The project is located near the intersection of Sumneytown Pike (SR 0063) and Forty Foot Road, immediately east of the Lansdale exit on PA Turnpike (Lansdale, PA Quadrangle N: 22.3 inches; W: 12.5 inches) in Towamencin Township, **Montgomery County**.

Northeast Regional Office: Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.

E52-155. Encroachment. **Delaware Water Gap National Recreation Area**, River Road, Bushkill, PA 18324. (1) To repair and maintain the Route 209 Bridge across Sawkill Creek (EV), with work consisting of the repair of spalled concrete on the substructure. The bridge is located at M. P. 21.3 (Milford, PA-NJ Quadrangle N: 12.2 inches; W: 6.9 inches), in Milford Borough and Dingman Township, **Pike County**. (2) To repair and maintain the Route 209 bridge across Raymondskill Creek (HQ-CWF), with work including scour repair and repair of a crack in the north abutment wall. The bridge is located at M. P. 18.3 (Milford, PA Quadrangle N: 6.7 inches; W: 11.6 inches), in Dingman Township, **Pike County**. (3) To repair and maintain the Route 209 Bridge across Adams Creek (EV), with work including scour repair and repair of a crack in one abutment wall. The bridge is located at M.P. 14.6 (Culvers Gap, NJ-PA Quadrangle N: 20.7 inches; W: 16.0 inches), in Delaware Township, **Pike County**. (4) To remove the existing structure and to construct and maintain a road crossing of Hornbecks Creek (HQ-CWF), consisting of a precast concrete open-bottomed culvert, having a span of 9.765 m (32.0 feet) and an underclearance of approximately 2.05 m (6.7 feet). The crossing is located at M. P. 10.9 of Route 209 (Lake Maskenozha, PA-NJ Quadrangle N: 11.8 inches; W: 1.3 inches), in Delaware Township, **Pike County**. (5) To remove the existing structure and to construct and maintain a road crossing of a Tributary to the Delaware River (HQ-CWF), consisting of a precast concrete open-bottomed culvert, having a span of 4.880 m (16.0 feet) and an underclearance of approximately 1.80 m (5.9 feet). The crossing is located at M. P. 7.8 of Route 209 (Lake Maskenozha, PA-NJ Quadrangle N: 5.2 inches; W: 5.7 inches), in Lehman Township, **Pike County**. The project also includes modification/maintenance of three minor road crossings, to be accomplished using the Department's General Permit BDWM-GP-7 (Minor Road Crossings). The project limits extend from M. P. 7.8 to M. P. 21.3, along Route 209 (Philadelphia District, U. S. Army Corps of Engineers).

E35-296. Encroachment. **Lackawanna County Rail Authority**, 701 Wyoming Avenue, Scranton, PA 18509. To construct and maintain a 26 foot high, 162 foot long sheet pile retaining wall along the left bank of Roaring Brook (CWF). The project is located approximately 0.66 mile east of the intersection of S. R. 0435 and S. R. 0084 (Olyphant, PA Quadrangle N: 4.5 inches; W: 10.0 inches) in Roaring Brook Township, **Lackawanna County** (Baltimore District, U. S. Army Corps of Engineers).

E39-352. Encroachment. **Lower Macungie Township**, 3400 Brookside Road, Macungie, PA 18062. To construct and maintain three stormwater outfall structures as follows: 66-inch diameter R.C.P. (HS); 36-inch

diameter R.C.P. (A30); and a 21-inch diameter R.C.P. (C9) within the floodway of Little Lehigh Creek (HQ-CWF). The project is associated with the Rolling Meadows Estates Development and is located south of the intersection of S. R. 2012 (Lower Macungie Road) and S. R. 3001 (Spring Creek Road) (Allentown West, PA Quadrangle N: 7.7 inches; W: 9.5 inches) in Lower Macungie Township, **Lehigh County** (Philadelphia District, U. S. Army Corps of Engineers).

E39-353. Encroachment. **Pennsylvania Department of Transportation, District 5-0**, 1713 Lehigh Street, Allentown, PA 18103. To place fill in 0.22 acre of PEM wetlands; to construct and maintain a 185 foot long, 72 inch diameter stream enclosure in a tributary to Upper Saucon Creek; to relocate a tributary to Upper Saucon Creek with work consisting of the construction and maintenance of approximately 450 linear feet of channel change. The project, associated with the S. R. 2044, Section 002 roadway extension, is located on S. R. 2044 approximately 1.2 miles northeast of the intersection of S. R. 0309 and S. R. 2044 (Allentown East, PA Quadrangle N: 11.5 inches; W: 3.6 inches) in Upper Saucon Township, **Lehigh County** (Philadelphia District, U. S. Army Corps of Engineers).

E39-354. Encroachment. **Jaindl Land Company**, 3150 Coffeetown Road, Orefield, PA 18069. To construct and maintain two culvert crossings each consisting of 1.2-foot x 7.5-foot and three 22-foot x 6.0-foot concrete box culverts, depressed 0.5 foot below the stream bed elevation in Iron Run (HQ-CWF). The project, associated with the Lehigh Valley West/to Industrial Park, is located on the west side of S. R. 0100 approximately 1 mile south of S. R. 0078 (Allentown West, PA Quadrangle N: 11.9 inches; W: 16.4 inches) in Upper Macungie Township, **Lehigh County** (Philadelphia District, U. S. Army Corps of Engineers).

E40-500. Encroachment. **Robert Cook**, R. R. 3, Box 3054, Harveys Lake, PA 18618. To modify and maintain an existing pile-supported dock in Harveys Lake, increasing the areal coverage from approximately 900 square feet to approximately 1,680 square feet. As modified, the dock will have dimensions of approximately 40 feet lakeward by 42 feet. The project is located at Pole No. 281 (Harveys Lake, PA Quadrangle N: 18.2 inches; W: 6.5 inches), in Harveys Lake Borough, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers).

E45-355. Encroachment. **David S. Weiss**, R. R. 3, Box 3890, East Stroudsburg, PA 18301-9579. To place fill in a de minimis area of wetlands equal to 0.05 acre for the purpose of constructing a private shale driveway to access an upland portion of a property located southwest of the intersection of S. R. 1003 (Hallet Road) and Township Road T509 (Bog Road) (East Stroudsburg, PA Quadrangle N: 8.9 inches; W: 17.1 inches) in Pocono Township, **Monroe County** (Philadelphia District, U. S. Army Corps of Engineers).

E45-356. Encroachment. **Nature Conservancy**, Lee Park—Suite 470, 1100 East Hector Street, Conshohocken, PA 19428. To place fill in a de minimis area of PFO wetlands equal to 0.02 acre for the purpose of constructing a raised, stone walkway having a length of 215' and with 5' to provide access to the existing Tannersville cranberry bog nature trail system. The project is located on the east side of S. R. 1001 (Cherry Lane) approximately 0.6 mile south of Township Road T509 (Mount Pocono, PA Quadrangle N: 7.4 inches; W: 2.6 inches) in Pocono Township, **Monroe County** (Philadelphia District, U. S. Army Corps of Engineers).

Southcentral Regional Office: Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

E01-193. Encroachment. **Adams County Commission**, 111—117 Baltimore St., Gettysburg, PA 17325. To construct and maintain an 80-foot single span bridge with an underclearance of 7 feet over Willoughby Run on Waterworks Road to replace a bridge destroyed in the 1996 flood in the same located west of Red Rock Road (Fairfield, PA Quadrangle N: 8.8 inches; W: 2.3 inches) in Cumberland Township, **Adams County**.

E06-513. Encroachment. **Eli Burkholder**, Box 64, 315 Bowers Road, Bowers, PA 19511. To widen an existing bridge by 10 feet, 4 inches to allow crossing with farm equipment across the channel of Sacony Creek at a point approximately 2,300 feet downstream of Bowers Road (Manatawny, PA Quadrangle N: 20.75 inches; W: 16.75 inches) in Maxatawny Township, **Berks County**.

E07-292. Encroachment. **PA Department of Transportation, District 9-0**, Robert Heim, 1620 N. Juniata Street, Hollidaysburg, PA 16648. To remove a single span bridge and to construct and maintain a single span prestressed adjacent box beam bridge having a clear span of 48.40 feet and an underclearance of 8.64 feet over Sinking Run for purposes of highway maintenance located on SR 1013, Section 005, about 1.0 mile from its intersection with SR 0350 (Spruce Creek, PA Quadrangle N: 20.2 inches; W: 8.7 inches) in Tyrone Township, **Blair County**.

E07-293. Encroachment. **PA Department of Transportation, District 9-0**, Robert Heim, 1620 N. Juniata Street, Hollidaysburg, PA 16648. To remove an existing two span bridge and to construct and maintain a two span prestressed concrete spread box beam bridge having two clear spans of 43.11 feet and a minimum underclearance of 7.92 feet over Sinking Run and to temporarily place fill in a de minimis amount of associated wetlands for purposes of highway maintenance located on SR 1013, Section 010 about 0.7 mile west of its intersection with SR 0350 (Spruce Creek, PA Quadrangle N: 20.6 inches; W: 7.9 inches) in Tyrone Township, **Blair County**.

E22-384. Encroachment. **Roy Brubaker**, 4146 Colebrook Road, Elizabethtown, PA 17022. To construct and maintain a bridge having a span of 38 feet and a clearance of 5 feet across the channel of Hoffer Creek at a point approximately 3,000 feet downstream of Route 341 (Elizabethtown, PA Quadrangle N: 15.8 inches; W: 14.1 inches) in Conewago Township, **Dauphin County**.

E28-253. Encroachment. **Metal Township Municipal Authority**, Wilmer Lehman, P. O. Box 226, Willow Hill, PA 17271. To construct and maintain an embankment of a proposed waste water lagoon at the authority's treatment plant located along the right bank's 100-year floodplain of the West Branch Conococheague Creek about 250 feet upstream of the SR 4004 Bridge (Fannettsburg Road) (Fannettsburg, PA Quadrangle N: 11.22 inches; W: 9.4 inches) in Metal Township, **Franklin County**.

E31-45. Encroachment. **PA Dept. of Transportation, District 9-0**, 1620 N. Juniata Street, Hollidaysburg, PA 16648. To remove an existing bridge and to construct and maintain concrete adjacent box beam bridge having a normal horizontal clearance of 34.88 feet and an underclearance of 4.4 feet across an unnamed tributary to Three Spring Creeks for purposes of highway maintenance located on SR 0655, Section 003, about 1.5 miles south of its intersection with SR 0994 (Saltillo, PA Quadrangle N: 9.7 inches; W: 3.0 inches) in Clay Township, **Huntingdon County**.

E67-628. Encroachment. **York County Commissioners**, One West Marketway, 4th Floor, York, PA 17401. To construct and maintain a 5 foot wide by 40 foot long pedestrian bridge adjacent to an existing vehicular bridge located on Cross Mill Road at the Cross Mill Historical site over a tributary to Rambo Run (Stewartstown, PA Quadrangle N: 8.9 inches; W: 5.8 inches) in East Hopewell Township, **York County**.

Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third St., Suite 101, Williamsport, PA 17701.

E14-323. Encroachment. **Pa. Dept. of Transportation**, 1924-30 Daisy St., Clearfield, PA 16830. To remove the existing structure and to construct and maintain a prestressed concrete box beam bridge with a span of 80 feet and underclearance of 8 feet across Spring Creek located on SR 3006, Section A01 just west of SR 0150 (Bellefonte, PA Quadrangle N: 6.6 inches; W: 4.3 inches) in Bellefonte Borough, **Centre County**. Estimated stream disturbance is 100 feet with no wetland impact; stream classification is Cold Water Fishery.

E41-424. Encroachment. **Alex Bobotas**, R. R. 4, Box 412, South Williamsport, PA 17701. To construct and maintain: 1) a 97 foot by 16 foot clean fill boat ramp in the right floodway of the West Branch Susquehanna River; 2) a 1,127.5 square foot wooden boat dock system in the West Branch Susquehanna River located 1.8 miles east on Sylvan Dell Road from the railroad crossing in South Williamsport (Montoursville South Quadrangle N: 21.5 inches; W: 11.0 inches) in Armstrong Township, **Lycoming County**. The project proposes to disturb 90 linear feet of stream with is classified a Warm Water Fishery.

E41-425. Encroachment. **Jay R. Alexander, Wayne Alexander and Joseph L. Reighard**, R. R. 2, Box 600, Montoursville, PA 17754. To construct and maintain a single span steel beam bridge with a span of 55 feet and underclearance of 8 feet across with a span of 55 feet and underclearance of 8 feet across Wallis Run off SR 1006 opposite Frymire Road (Barbours, PA Quadrangle N: 7.0 inches; W: 16.0 inches) in Cascade Township, **Lycoming County**. Estimated stream disturbance is 100 feet with no wetland impacts; stream classification is HQ-CWF.

E59-367. Encroachment. **Deerfield Township Supervisors**, R. R. 1, Box 990, Knoxville, PA 16928. To realign and maintain the channel of Troups Creek to protect private and public property from flooding. The realignment work shall consist of the periodic removal of two gravel deposition areas that shall not exceed the depth of normal, historic streambed elevation or a maximum of 4 feet. The first deposition area for periodic removal is upstream of the bridge that carries T-404 across Troups Creek and its removal shall not exceed a maximum area of 600 feet long \times 100 feet wide. The second deposition area is downstream of the bridge that carries T-404 across Troups Creek and its removal shall not exceed a maximum area of 800 feet long \times 40 feet wide. The project is located along the eastern right-of-way of SR 0249 approximately 750 feet northeast of the T404 and SR 0249 intersection (Knoxville, PA Quadrangle N: 19.9 inches; W: 13.0 inches) in Deerfield Township, **Tioga County**. This permit shall be void 5 years from the date of issuance. As proposed, the realignment of Troups Creek will not impact wetlands while impacting 1,400 linear feet of waterway; stream classification is Cold Water Fishery.

E59-368. Encroachment. **Deerfield Township Supervisors**, R. R. 1, Box 990, Knoxville, PA 16928. To realign

and maintain the channel of Troups Creek to protect private and public property from flooding. The realignment work shall consist of the periodic removal of gravel deposition areas that shall not exceed the depth of normal, historic streambed elevation or a maximum of 4 feet. The deposition area for periodic removal is downstream of the confluence of Abbot Hollow Run along the eastern streambank of Troups Creek and its removal shall not exceed a maximum area of 400 feet long \times 50 feet wide. The project is located along the eastern right-of-way of SR 0249 approximately 1.5 miles northwest of the SR 0049 and SR 0249 intersection (Knoxville, PA Quadrangle N: 17.9 inches; W: 11.4 inches) in Deerfield Township, **Tioga County**. This permit shall be void 5 years from the date of issuance. As proposed, the realignment of Troups Creek will not impact wetlands while impacting 400 linear feet of waterway; stream classification is Cold Water Fishery.

E59-369. Encroachment. **Deerfield Township Supervisors**, R. R. 1, Box 990, Knoxville, PA 16928. To realign and maintain the channel of Cowanesque River to protect private and public property from flooding. The realignment work shall consist of the periodic removal of five gravel deposition areas that shall not exceed the depth of normal, historic streambed elevation or a maximum of 4 feet. The first three deposition areas for periodic removal are upstream of the bridge that carries T-889 across the Cowanesque River and their removal shall not exceed a maximum area of 400 long \times 60 feet wide along the southern streambank; a maximum area of 600 feet long \times 70 feet wide along the northern streambank; a maximum area of 70 feet long \times 40 feet wide immediately below the confluence of Troups Creek. The second two deposition areas are downstream of the bridge that carries T-889 across the Cowanesque River and their removal shall not exceed a maximum area of 300 feet long \times 40 feet wide center stream; a maximum area of 300 feet long \times 25 feet wide along the southern streambank. The project is located along the southern right of way of SR 0049 approximately 1,800 feet south of the T-889 and SR 0049 intersection (Knoxville, PA Quadrangle N: 14.0 inches; W: 8.9 inches) in Deerfield Township, **Tioga County**. This permit shall be void 5 years from the date of issuance. As proposed, the realignment of Troups Creek will not impact wetlands while impacting 400 linear feet of waterway; stream classification is Cold Water Fishery. As proposed, the realignment of the Cowanesque River will not impact wetlands while impacting 1,670 linear feet of waterway; stream classification is Warm Water Fishery.

E59-370. Encroachment. **Deerfield Township Supervisors**, R. R. 1, Box 990, Knoxville, PA 16928. To realign and maintain the channel of Cowanesque River to protect private and public property from flooding. The realignment work shall consist of the periodic removal of five gravel deposition areas that shall not exceed the depth of normal, historic streambed elevation or a maximum of 4 feet. The first two deposition areas for periodic removal are upstream of the bridge that carries T-402 across the Cowanesque River and their removal shall not exceed a maximum area of 800 long \times 40 feet wide along the northern streambank; a maximum area of 600 feet long \times 80 feet wide along the southern streambank. The remaining deposition area is downstream of the bridge that carries T-889 across the Cowanesque River and its removal shall not exceed a maximum area of 400 feet long \times 60 feet wide along the southern streambank. The project is located along the southern right-of-way of SR 0049 approximately 2,000 feet south of the T-402 and SR 0049 approximately 2,000 feet south of the T-402 and SR

0049 intersection (Knoxville, PA Quadrangle N: 13.4 inches; W: 11.5 inches) in Deerfield Township, **Tioga County**. This permit shall be void 5 years from the date of issuance. As proposed, the realignment of the Cowanesque River will not impact wetlands while impacting 1,400 linear feet of waterway; stream classification is Warm Water Fishery.

E59-371. Encroachment. **Deerfield Township Supervisors**, R. R. 1, Box 990, Knoxville, PA 16928. To realign and maintain the channel of Cowanesque River to protect private and public property from flooding. The realignment work shall consist of the periodic removal of two gravel deposition areas that shall not exceed the depth of normal, historic streambed elevation or a maximum of 4 feet. The first deposition area for periodic removal are upstream of the bridge that carries T-824 across the Cowanesque River and their removal shall not exceed a maximum area of 1,400 long × 40 feet wide. The second deposition area is downstream of the bridge that carries T-824 across the Cowanesque River and its removal shall not exceed a maximum area of 600 feet long × 40 feet wide. The project is located along the southern right-of-way of SR 0049 approximately 400 feet south of the T-824 and SR 0049 intersection (Knoxville, PA Quadrangle N: 14.4 inches; W: 6.0 inches) in Deerfield Township, **Tioga County**. This permit shall be void 5 years from the date of issuance. As proposed, the realignment of the Cowanesque River will not impact wetlands while impacting 2,000 linear feet of waterway; stream classification is Warm Water Fishery.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1232. Encroachment. **Pleasant Hills Construction Company, Inc.**, 60 Terence Drive, Pittsburgh, PA 15236. To construct and maintain an 8 foot diameter culvert in an unnamed tributary to Lick Run; to widen and maintain the channel of said stream, and to place and maintain fill in the floodway of and on the left bank of an unnamed tributary to Lick Run for the purpose of developing a parcel for office buildings. The project is located just northwest from the intersection of Brushglenn Drive and Woodrift Lane (Glassport, PA Quadrangle N: 13.8 inches; W: 13.6 inches) in Pleasant Hills Borough, **Allegheny County**.

E32-391. Encroachment. **PA Department of Transportation, Engineering District 10-0**, P. O. Box 429, Indiana, PA 15701. To expand an embankment within the floodplain of the Conemaugh River (WWF) for the purpose of increasing the vertical clearance of a railroad bridge replacement over SR 0056. The project is located along SR 0056 at its intersection with SR 0711 near Robindale Heights (New Florence, PA Quadrangle N: 8.4 inches; W: 3.6 inches) in East Wheatfield Township, **Indiana County**.

Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

E10-279. Encroachment. **Mr. and Mrs. Jeffrey Domhoff**, 105 Zeigler Street, Zelienople, PA 16063-1075. To construct and maintain a single span I-beam bridge with a clear span of approximately 20 feet and a maximum underclearance of 5.5 feet across Semiconon Run (CWF) to be utilized for private residential access. This project is located across Semiconon Run approximately 3,400 feet southwest of the intersection of Dick Road (S. R. 3029) and Purvis Road (County Lane Road S. R. 3034) located in Connoquenessing Township, **Butler County**.

E43-267. Encroachment. **PA Department of Transportation**, Engineering District 1-0, 1140 Liberty Street, Franklin, PA 16323-1251. To remove the existing structure and to construct and maintain a twin cell precast reinforced concrete box culvert with each waterway opening having a clear span of 20 feet and an average underclearance of 6.33 feet on SR 3022 across Lackawannock Creek (TSF). The project is located on SR 3022 across Lackawannock Creek approximately 2,200 feet northwest of the intersection of SR 3022 and SR 3039 adjacent to the Big Bend Church. This project will include placement of the bottom of this box culvert approximately 1.67 feet below existing streambed elevations to provide unobstructed access for aquatic organisms (Fredonia, PA Quadrangle N: 4.7 inches; W: 8.6 inches) located in Jefferson Township, **Mercer County**.

ENVIRONMENTAL ASSESSMENT

Requests for Environmental Assessment approval under 25 Pa. Code § 105.15 and requests for certification under section 401 of the Federal Water Pollution Control Act.

Central Office: Bureau of Waterways Engineering, 400 Market Street, 6th Floor, P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.

EA09-014C0. Environmental Assessment. **Pickertown Partnership**, G. P. (2421 Bristol Road, Warrington, PA 18914). To construct and maintain a nonjurisdictional dam across a tributary to Mill Creek (TSF, MF) and modify an existing nonjurisdictional dam for the purpose of stormwater management at the proposed Urwiler tract subdivision located approximately 2,900 feet east of the intersection of Lower State Road and Pickertown Road (Doylestown, PA Quadrangle N: 2.05 inches; W: 5.85 inches) in Warrington Township, **Bucks County**.

D56-005EA. Environmental Assessment. **Windber Area Authority** (1700 Stockholm Avenue, Windber, PA 15963-2061). To breach and remove a jurisdictional dam across Clear Shade Creek (HQ-CWF) for the purpose of restoring the stream to a free flowing condition. The dam is located approximately 2.0 miles upstream of the confluence of Dark Shade Creek and Clear Shade Creek (Windber, PA Quadrangle N: 4.45 inches; W: 4.55 inches) in Shade and Logan Townships, **Somerset County**.

ACTIONS

FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

(Part I Permits)

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Envi-

ronmental Hearing Board, Second Floor, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.

NPDES Permit No. PA-0021873. Sewerage. **Borough of Jim Thorpe**, 101 East 10th Street, Jim Thorpe, PA 18229 is authorized to discharge from a facility located in Jim Thorpe Borough, **Carbon County**, to the Lehigh River.

NPDES Permit No. PA-0051551. Industrial waste. **Ecolaire, Inc.**, 1550 Lehigh Drive, Easton, PA 18042 is authorized to discharge from a facility located in West Easton Borough, **Northampton County**, to the Lehigh River.

Northwest Regional Office: Regional Water Management

Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

NPDES Permit No. PA0210781. Sewerage. **Hamlin Township**, R. D. 1, Box 185A, Kane, PA 16735 is authorized to discharge from a facility located in Hamlin Township, **McKean County** to Potato Creek.

NPDES Permit No. PA0210803. Sewerage. **Star Route Estates—MHP**, 2182 Beulah Road, Pittsburgh, PA 15235 is authorized to discharge from a facility located in East Mead Township, **Crawford County** to an unnamed tributary to Little Sugar Creek.

NPDES Permit No. PA0222399. Industrial waste. **Decker Transportation, Inc.**, R. D. 3230, Route 957, Russel, PA 16345 is authorized to discharge from a facility located in Farmington Township, **Warren County** to an unnamed tributary to Kiantone Creek.

WQM Permit No. 4398412. Sewerage, **Gerald S. Pacifico**, SRSTP, 126 Shenango Park Rd., Transfer, PA 16154. Construction of Gerald S. Pacifico SRSTP located in Pymatuning Township, **Mercer County**.

WQM Permit No. 4398413. Sewerage, **Larry D. and Joanne I. Cramer**, SRSTP, 25 Maple Rd., Greenville, PA 16125. Construction of Larry D. and Joanne I. Cramer SRSTP located in West Salem Township, **Mercer County**.

WQM Permit No. 2598403. Sewerage. **Erie Sewer Authority/City of Erie**, c/o Knox, McLaughlin, Gornall & Sennett, P. E., 120 West 10th Street, Erie, PA 16501-1461. This project is for the construction of headworks facility and overflow retention facility and associated onsite piping in the City of Erie, **Erie County**.

WQM Permit No. 2093405. Sewerage. **Star Route Estates—MHP**, 2182 Beulah Road, Pittsburgh, PA 15235. This project is for a hydraulically related treatment plant in East Mead Township, **Crawford County**.

INDIVIDUAL PERMITS

(PAS)

The following NPDES Individual Permits for Discharges of Stormwater from Construction Activities have been issued.

Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10-D104	AT&T Corporation Promenade Annex PA 189 1200 Peachtree Street, NE Atlanta, GA 30309	Tinicum, Bedminster, East Rockhill, Richland, Milford and Springfield Twps., and Quakertown Borough, Bucks County, Upper Saucon and Salisbury Townships, Lehigh County	Delaware River, Tinicum and, Tohickon Creeks, Mink Run, Deer Run, Unnamed Tributary to East Branch Perkiomen Crk., Three Mile Run, Morgan Creek, Unnamed Tributaries to Unami Crk. and Beaver Run, Unnamed Tributaries to Tumble Run, Saucon and Trout Crks.
PAS10-G247	Irish Oaks Development Corp. 1316 West Chester Pike, Suite 198 West Chester, PA 19382	West Brandywine Twp. Chester Co.	East Branch Brandywine Creek, Tributary to Indian Crk.
PAS10-G303	Belle Capital Corporation, Inc. 30-1 Lindenwood Drive, Suite 1 Malvern, PA 29355	West Bradford Twp. Chester Co.	Unnamed Tributaries to Valley Run and Broad Run

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10-G306	TPT Partners, Inc. P. O. Box 866 Kimberton, PA 19442	North Coventry Twp. Chester Co.	Unnamed Tributary to Schuylkill River
PAS10-G310	Owen J. Roberts School District 901 Ridge Road Pottstown, PA 19464-9341	North Coventry Twp. Chester Co.	Unnamed Tributaries to Pigeon Creek and Schuylkill River
PAS10-G311	Wooldridge Construction of PA 1500 Green Hill Rd. West Chester, PA 19380	East Goshen Twp. Chester Co.	West Branch Ridley Crk.
PAS10-G312	Cornerstone Communities, Inc. Radnor Bldg. 717 Lancaster Ave. Villanova, PA 19085	Willistown Twp. Chester Co.	Crumm Crk.

INDIVIDUAL PERMITS

(PAR)

The following parties have submitted Notices of Intent (NOIs) for Coverage under (1) General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania. The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection approves the following coverages under the specified General Permit.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

List of NPDES and/or other General Permit Type

PAG-1	General Permit For Discharges From Stripper Oil Well Facilities
PAG-2	General Permit For Discharges of Stormwater From Construction Activities
PAG-3	General Permit For Discharges of Stormwater From Industrial Activities
PAG-4	General Permit For Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit For Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit For Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application
PAG-8	General Permit For Beneficial Use of Non-Exceptional Sewage Sludge By Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

General Permit Type—PAG 2

Facility Location

<i>County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Columbia County Briar Creek Borough	PAR102132	Lyon Properties 433 South Main St. West Hartford, CT 06110	E. Branch Briar Crk.	Columbia CCD 702 Sawmill Rd., Suite 105 Bloomsburg, PA 17815

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Chadds Ford Township Delaware County	PAR10-J110	Dr. Thomas P. O'Dea Harvey Road Chadds Ford, PA 19317	Harvey Run	Southeast Regional Office 555 North Lane Suite 6010, Lee Park Conshohocken, PA (610) 832-6131
Aston Township Delaware County	PAR10-J106	D & D Developers, Inc. c/o Jack Donald 510 East Baltimore Pk. Media, PA 19063	West Branch Chester Creek	Southeast Regional Office 555 North Lane Suite 6010, Lee Park Conshohocken, PA (610) 832-6131
City of Philadelphia Philadelphia County	PAR10-5317	Philadelphia Naval Shipyards Philadelphia Naval Business Center QTRS M-2 Philadelphia, PA 19221-5094	Reserve Basin flowing into Schuylkill River	Southeast Regional Office 555 North Lane Suite 6010, Lee Park Conshohocken, PA (610) 832-6131
Clarion County Piney Creek Twp.	PAR101509	Piney Creek Limited Partnership R. D. 2, Box 56 Clarion, PA 16214	Piney Creek	Northwest Region Water Mgt. Program Manager 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
Erie County Summit Township	PAR10K106	Joyce Pfadt 9550 Donation Road Erie, PA 16509	UNT to Walnut Creek	Erie Conservation District 12723 Route 19 P. O. Box 801 Waterford, PA 16441 (814) 796-4203
Erie County North East Twp. & Boro.	PAR10K107	North East School District 50 Division St. North East, PA 16428	UNT to 16-Mile Creek	Erie Conservation District 12723 Route 19 P. O. Box 801 Waterford, PA 16441 (814) 796-4203

General Permit Type—PAG 7

<i>Facility Location County and Municipality (If Applicable)</i>	<i>General Permit No.</i>	<i>Applicant Name and Address</i>	<i>Contact Office and Telephone No.</i>
	PAG079901	Lang EnviroVenture, Inc. 60 Lake Street Narrowsburg, NY 12764	Bureau of Water Quality Protection (717) 787-8184

General Permit Type—PAG 8

<i>Facility Location County and Municipality (If Applicable)</i>	<i>General Permit No.</i>	<i>Applicant Name and Address</i>	<i>Contact Office and Telephone No.</i>
Montgomery County Upper Dublin Twp.	PAG080010	Nutrecon, Inc. P. O. Box 442 South Main at Randolph Amler, PA 19004	Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130

SEWAGE FACILITIES ACT PLAN APPROVAL

The Department of Environmental Protection (Department) has taken actions on municipal requests for Act 537 Plan Approval.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Actions under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

Southeast Regional Office: Sewage Planning Specialist Supervisor; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

The Plan Approval is granted for a revision to the Official Sewage Facilities Plan of **Upper Chichester Township, Delaware County** to provide for sewage currently being treated at the New Castle County's City of Wilmington Wastewater Treatment Plant to be diverted for treatment at the Southwest Delaware County Municipal Authority's (SWDCMA's) Baldwin Run Pollution Control Facility. The diversion is planned in the amount of 2,218 edus or 554,500 gpd. This will be accomplished by the construction of a 12 inch force main from the existing Beech Street pump station to the existing SWDCMA's Baldwin Run interceptor, as shown on Exhibit 34.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northwest Regional Office: Regional Manager, 230 Chestnut Street, Meadville, PA, (814) 332-6899.

Permit No. 2598502. Public water supply. **Pleasant Ridge Manor—West**, 8300 West Ridge Road, Girard, PA 16417-9802 has been issued a permit to upgrade their existing water system in Fairview Township, **Erie County**.

Type of Facility: Community Water Supply.

Consulting Engineer: Eugene G. Hlifka, 151 West 14th St., Erie, PA 16501.

Permit to Construct Issued: May 27, 1998.

Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

A. 0888503-T1. The Department issued an operating permit to **Claymac Equities, L.L.C.** (P. O. Box 1346, Southeastern, PA 19399, Athens Township, **Bradford County**) for operation of the water system at Blue Spruce Mobile Home Park.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 3

The following final 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 any final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed, and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program in the Department Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

The Department has received the following final report:

Southeast Regional Office: Environmental Cleanup Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

Ross Matico Property, Yardley Borough, **Bucks County**. Ross Matico, 52 Canal Street, Yardley, PA 19067, has submitted a Final Report concerning remediation of site soil contaminated with petroleum hydrocarbons. The report is intended to document remediation of the site to meet Statewide health standards.

SOLID AND HAZARDOUS WASTE

RESIDUAL WASTE PROCESSING FACILITIES

Permit modification issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and residual waste regulations for a general permit to operate residual waste processing facilities and the beneficial use of residual waste other than coal ash.

Central Office: Division of Municipal and Residual Waste, 14th Floor, Rachel Carson State Office Building, 400 Market St., Harrisburg, PA 17101-2301.

General Permit Application No. WMGR043. **Atlas Environmental Services & Equipment Company**, 6801 State Road, Building A, Philadelphia, PA 19135. A permit modification has been issued to allow the processing of nonhazardous petroleum contaminated soils at a fixed stationary location. The original general permit was issued to Atlas only for mobile use of their soil processing

technology. The fixed stationary location has been indicated as 6801 State Road, Building A, Philadelphia, PA. The permit modification was issued by the Central Office on May 22, 1998.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a solid waste processing or disposal area or site.

Northcentral Regional Office: Regional Solid Waste Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3653.

Permit No. 100963. Permit Modification. **Lycoming County Landfill, Lycoming County Resource Management Service** (P. O. Box 187, Montgomery, PA 17752). Approval of Form R, Waste Analysis and Classification Plan for existing municipal waste landfill located in Brady Township, **Lycoming County**, issued in the regional office on May 18, 1998.

Permit No. 301626. Permit Modification. **White Pines Landfill, White Pines Corporation** (R. R. 1, Box 69, Millville, PA 17846). Permit modification for revisions to the landfill gas collection and additional wastestreams to an existing residual waste landfill located in Pine Township, **Columbia County**, issued in the regional office on May 26, 1998.

Override Justification

On November 12, 1997, the Department received comments from the Columbia County Planning Commission concerning this major permit modification application. After full review of the permit modification application and the Planning Commission's comments, the Department has made a decision to issue the permit modification. Following are the relevant comments pertaining to the application and the basis for overriding these comments:

Comment no. 1: The County requests to be provided with a copy of all monitoring information submitted to the DEP.

Response: All information with respect to monitoring is public information and is available for review by the County at the DEP Regional Office.

Comment no. 2: Attachment A-2 and Attachment A-4 do not contain executed return receipts as required.

Response: Copies of the executed return receipts were required from the applicant and were received by the DEP.

Comment no. 3: Attachment A-3 does not contain a proof-of-publication as required.

Response: Copies of the proof-of-publication were required from the applicant and were received by the DEP.

Comment no. 4: The submission indicated that the reanalysis frequency contained in Table R-2 is a modification of that which was originally permitted, using information provided by the DEP subsequent to original issuance. The subsequent information was not identified nor included in this submission. Additionally, certification in lieu of sampling and analysis for interim years is acceptable only if the permit for the facility authorizes such interim year certification.

Response: The information provided by the DEP was the result of meetings and discussions between the

applicant and the DEP Waste Program Chemist. The Chemist made the suggestions, which were agreed to by the applicant and were written into the permit modification. Also, the issue of certifications in lieu of sampling and analysis has been agreed to and has been written into the permit modification.

Comment no. 5: Attachment R-4 requests approval to dispose of municipal like residual waste for certain waste streams. For all these wastes, the applicant has stated that chemical analysis should not be required given the fact that these wastes contain known materials. The County questions the accuracy of this reasoning since some of the waste streams could contain substances in the form of dyes, curing agents and additives which are not generic and which could alter the chemical composition normally anticipated to be present in these wastes.

Response: In order for wastes to be considered municipal like residual waste, they must be one of the categories listed on the Department's Form S. The Department has determined that for wastes to be considered for this classification they are nonimpacting. Therefore, even though these wastes may have dyes and additives, in order for them to be accepted under the Form S classification, they must be nonimpacting.

Comment no. 6: The application indicates that an application for Air Quality Plan Approval was submitted to the DEP. A copy of the Air Quality Application was not included in the documentation submitted for our review.

Response: Applications for Air Quality Plan Approval are submitted to the Air Quality Control Program of the Department and would not be included in an application to the Waste Management Program. Therefore, the Air Quality application was not included in the Waste Management application. The County was notified through the Act 14 Notification process that the Department received an Air Quality Plan Approval application.

AIR POLLUTION

OPERATING PERMITS

General Plan Approval and Operating Permit issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

GP1-01-3008: Gettysburg College (300 N. Washington Street, Gettysburg, PA 17235) issued for a Natural Gas/No. 2 fuel oil boilers in Gettysburg Borough, **Adams County**.

GP3-05-03007: New Enterprise Stone & Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16648) issued for a portable nonmetallic mineral processing plant in Snake Spring Township, **Bedford County**.

Minor Modification of Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.

08-316-014: Masonite Corp. (P. O. Box 311, Towanda, PA 18848) modified on May 14, 1998, to specify the required performance of stack testing on a molded hardboard press (Die Form press) within 360 days of plan approval issuance rather than 180 days in Wysox Township, **Bradford County**.

PLAN APPROVALS

Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southcentral Regional Office: Air Quality Program, 909 Emlerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

06-10070: Carpenter Technology Corp. (P. O. Box 14662, Reading, PA 19612-4662) issued May 14, 1998, for modification of the press forge facility in Reading/Muhlenberg Township, **Berks County**.

06-5063B: EAFCO, Inc. (Spring and Schaeffer Streets, Boyertown, PA 19512) issued May 29, 1998, for construction of the surface coating line controlled by dry filters at the Eastern Foundry, Boyertown/Colebrookdale Township, **Berks County**.

21-303-001B: Hempt Brothers, Inc. (205 Creek Road, Camp Hill, PA 17011) issued May 22, 1998, for modification of the three asphalt plants at the Camp Hill Quarry in Lower Allen Township, **Cumberland County**.

21-320-010B: Fry Communications, Inc. (800 West Church Road, Mechanicsburg, PA 17055) for construction of one 9-unit double web offset press controlled by dryers/afterburners at Building 3, in Mechanicsburg Borough, **Cumberland County**.

22-301-062: Humane Society of Harrisburg Area, Inc. (7790 Grayson Road, Harrisburg, PA 17111) issued May 21, 1998, for construction of the animal crematory incinerator with an afterburner at the East Shore Shelter in Swatara Township, **Dauphin County**.

28-302-049B: Knouse Foods Cooperative, Inc. (P. O. Box 709, Biglerville, PA 17307-0709) issued June 1, 1998, for the installation of a backup/emergency natural gas fired boiler at their Chambersburg Plant in Chambersburg Borough, **Franklin County**.

28-310-006D: New Enterprise Stone & Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) issued May 21, 1998, for modification of the limestone crushing plant controlled by a wet suppression system at the Dry Run Quarry in Fannett Township, **Franklin County**.

44-304-009: Donsco, Inc. (P. O. Box 2001, Wrightsville, PA 17368-0040) issued May 22, 1998, for the installation of two cold-box core machines at the Belleville Foundry in Union Township, **Mifflin County**.

67-301-080: Golden Lake Pet Memorial Gardens (210 Andersontown Road, Mechanicsburg, PA 17055) issued May 21, 1998, for construction of the animal crematory incinerator with an afterburner in Monaghan Township, **York County**.

67-304-034B: R. H. Sheppard Co., Inc. (101 Philadelphia Street, Hanover, PA 17331) issued May 22, 1998, for the installation of a cold-box core process in Hanover Borough, **York County**.

67-320-026A: GTY, Inc. (2075 Loucks Road, York, PA 17404) issued May 27, 1998, for construction of the printing operations in West Manchester Township, **York**

County. This source is subject to 40 CFR 60, Subpart FFF, Standards of Performance for New Stationary Sources.

MINING

APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.

Coal Permits Issued

32860106. Permit Revision. **Kent Coal Mining Company** (P. O. Box 729, Indiana, PA 15701), to change the post-mining land use from cropland to forestland on the Rochester & Pittsburgh Coal Company property in Blacklick Township, **Indiana County**, affecting 233.1 acres, receiving stream four unnamed tributaries to Aultmans Run and Aultmans Run. Application received February 20, 1998. Application issued May 14, 1998.

56823008. Permit Renewal. **Croner, Inc.** (P. O. Box 157, Berlin, PA 15530), commencement, operation and restoration of a bituminous strip mine in Brothersvalley Township, **Somerset County**, affecting 176.0 acres, receiving stream unnamed tributaries to Buffalo Creek and to Tubs Run. Application received March 26, 1998. Permit issued May 26, 1998.

Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.

03970109. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Permit issued for commencement, operation and reclamation of a bituminous surface/ auger mining site located in Cowanshannock Township, **Armstrong County**, affecting 97 acres. Receiving streams: Huskins Run and two unnamed tributaries to Huskins Run. Application received: October 28, 1997. Permit issued: May 22, 1998.

03880109R. Terry Coal Sales, Inc. (Box 58, Distant, PA 16223). Renewal permit issued for continued reclamation of a bituminous surface mine located in Cowanshannock Township, **Armstrong County**, affecting 254.0 acres. Receiving streams: unnamed tributaries to Cowanshannock Creek to the Allegheny River. Renewal application received: March 9, 1998. Renewal permit issued: May 28, 1998.

Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.

17820181. Larson Enterprises, Inc. (P. O. Box 96, Kylertown, PA 16847), revision to an existing bituminous surface mine permit for a change in permit acreage from 172.1 to 181 acres, Cooper Township, **Clearfield County**, receiving streams: Sulphur Run, tributary to Moshannon

Creek and Flat Run. Application received January 14, 1998. Permit issued May 6, 1998.

17930117. Al Hamilton Contracting Company (R. R. 1, Box 87, Woodland, PA 16881), revision to an existing bituminous surface mine permit to apply biosolids (stabilized sewage sludge) to enhance vegetation. A variance is also being requested for the application of biosolids within the 100 foot barrier for Surveyor Run and the unnamed tributaries to Surveyor Run. This variance is to apply only to those areas affected by the reclamation activity, Goshen and Girard Townships, **Clearfield County** affecting 345.6 acres. Application received December 3, 1997. Permit issued May 12, 1998.

17960107. Waroquier Coal Company (P. O. Box 128, Clearfield, PA 16830), transfer of an existing bituminous surface mine-auger permit from Bermuda Triangle, Inc., Greenwood Township, **Clearfield County** affecting 40.7 acres, receiving streams: unnamed tributary to West Branch of the Susquehanna River. Application received March 3, 1998. Permit issued May 20, 1998.

17950113. Waroquier Coal Company (P. O. Box 128, Clearfield, PA 16830), transfer of an existing bituminous surface mine-auger permit from Bermuda Triangle, Inc., Greenwood Township, **Clearfield County** affecting 60.2 acres, receiving streams: unnamed tributary #1 and #2 to Watts Creek to Watts Creek to Clearfield Creek to West Branch Susquehanna River. Application received March 3, 1998. Permit issued May 20, 1998.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

54871303R2. D & D Coal Company (139 East Independence Street, Shamokin, PA 17872), renewal of an existing anthracite underground mine operation in Cass Township, **Schuylkill County** affecting 2.8 acres, receiving stream—none. Renewal issued May 29, 1998.

Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.

Large Industrial Mineral Permits Issued

4673SM5. Fink & Stackhouse, Inc. (515 Princeton Avenue Ext., Williamsport, PA 17701), permit revision to an existing large industrial mineral surface mine permit to apply biosolids (stabilized sewage sludge) to enhance vegetation, Beech Creek Township, **Clinton County** affecting 52.7 acres. Application received December 29, 1997. Permit issued May 15, 1998.

Hawk Run District Office, P. O. Box 209, Hawk Run, PA 16840.

Small Industrial Mineral Authorizations Granted

08970822. Robert J. Johnson (R. R. 2, Box 310, Wyalusing, PA 18853), commencement, operation and restoration of a small industrial mineral (bluestone) permit in Orwell Township, **Bradford County** affecting 2 acres, receiving streams: unnamed tributary to South Creek. Application received December 18, 1997. Authorization granted May 18, 1998.

ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

ENCROACHMENTS

The Department of Environmental Protection (Department) has taken the following actions on previously received Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval

and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, 400 Market Street, Floor 2, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 1 (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)). (*Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.*)

Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E46-801. Encroachment Permit. **Sandy Run Country Club**, 200 East Valley Green Road, Oreland, PA 19075-0116. To maintain a 120 foot long, 12-foot high, gabion wall that has been previously constructed. Also to construct and maintain an additional 96 feet of a 12-foot high gabion wall adjacent to an irrigation pond, located within the floodway of Sandy Run Creek (TSF). This site is situated at the Sandy Run Country Club, located near Walnut Avenue and east of Valley Green Road (Germantown, PA Quadrangle N: 21.9 inches; W: 10.1 inches) in Springfield Township, **Montgomery County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

Northeast Regional Office: Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.

E45-335A. Encroachment. **Anthony Ponder**, 860 Penn Estates, East Stroudsburg, PA 18301. To amend Permit No. E45-335 to include the placement of fill in an additional 0.03 acre of wetlands for the purpose of constructing an attached 1-car garage and wooden deck. The total wetland encroachment is approximately 0.08 acre. The project is located at Lot 154 of Penn Estates residential subdivision, Section D, approximately 1.7 miles west of the intersection of S. R. 0447 and S. R. 0191 (East Stroudsburg, PA Quadrangle N: 6.7 inches; W: 15.9 inches) in Stroud Township, **Monroe County**. The permittee is required to provide for 0.08 acre of replacement wetlands by participating in the Pennsylvania Wetland Replacement Project.

Southcentral Regional Office: Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

E22-369. Encroachment. **American Investors Realty Association**, Barry Geftman, 608 Robinson Lane, Haverford, PA 17041. To place fill in 0.14 acre of wetlands along a tributary to Paxton Creek at a point along Crums Mill Road (Harrisburg East, PA Quadrangle N: 14.4 inches; W: 12.1 inches) in Lower Paxton Township, **Dauphin County**. American Investors Realty Association is required to provide mitigation for 0.24 acre of wetland onsite. This permit also includes 401 Water Quality Certification.

E36-633. Encroachment. **Brecknock Township**, 1026 Dry Tavern Road, Denver, PA 17517. To remove sediment deposits and alter the existing channel bottom for 195 linear feet, to construct a low-flow channel in a tributary to Muddy Creek. Rock slope protection will be constructed along 50 linear feet of stream bank, at the upstream work limit. Project will begin at the upstream edge of Horning Road culverts, near its intersection with Maple Grove Road (Terre Hill, PA Quadrangle N: 13.4 inches; W: 4.25 inches) in Brecknock Township, **Lancaster County**. A de minimis area of wetlands less than or equal to 0.05 acre will be filled to construct the low-flow channel configuration. This permit also includes 401 Water Quality Certification.

E36-649. Encroachment. **Earl Township**, Clarence Buch, 517 N. Railroad Ave., New Holland, PA 17557. To remove three existing road structures, construct and maintain new road culverts. Project includes (1) four 30-inch pipe culverts at Station 41+49, with 30 linear feet of riprap channel lining at the inlet and outlet ends. To realign a tributary of Mill Creek by construction of a 3-foot wide trapezoidal channel, beginning 125 feet upstream and 150 feet downstream of the pipe culverts; (2) to realign the tributary and construct about 450 linear feet of 4-foot bottom width trapezoidal channel and to construct a 2-foot diameter cross-drain culvert at Station 32+25; and (3) twin cell concrete box culverts, each having a 9-foot span \times 1.5-foot rise on a 50 degree skew, with 30 linear feet of riprap inlet and outlet protection will be constructed at Station 12+36. The proposed activities are a part of the South Custer Avenue Road realignment and channel improvement project (New Holland, PA Quadrangle N: 16 inches; W: 12 inches) located south of New Holland Borough in Earl Township, **Lancaster County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

E44-093. Encroachment. **James Aumiller, Sr.**, 193 Sigler St., P. O. Box 368, Milroy, PA 17063. To construct and maintain a steel stringer bridge having a span of 21.0 feet and an underclearance of 7.0 feet across Treaster Run for the purpose of creating a private access drive for transporting timber located about 1.7 miles east by northeast of the village of Siglerville (Burnham, PA Quadrangle N: 6.2 inches; W: 0.4 inch) in Armagh Township, **Mifflin County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

E50-191. Encroachment. **Kelly Ragan**, 1050 Dellville Road, Duncannon, PA 17020. To construct and maintain a 4-foot by 8-foot arch culvert in the channel of a tributary to Shermans Creek and to fill 0.002 acre of wetlands at a point along Dellville Road (Shermansdale, PA Quadrangle N: 24.1 inches; W: 0.3 inch) in Wheatfield Township, **Perry County**. The amount of wetland impact is considered to be de minimis and wetland mitigation is not required. This permit also includes 401 Water Quality Certification.

Northcentral Region: Water Management, Soils and Waterways, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.

E08-331. Encroachment. **Corry Sickler**, R. R. 6, Box 6040, Towanda, PA 18840. To place and maintain fill in 0.15 acre of a 1.0 acre palustrine emergent/scrub-shrub wetland for the purpose of constructing a commercial business. The development encompassed 3.6 acres of undeveloped land. The site is located approximately 0.5 mile west of the SR 006/SR0187 intersection, just south of SR 006 (Towanda, PA Quadrangle N: 4 inches; W: 4.5 inches) in Wysox Township, **Bradford County**.

E14-316. Encroachment. **Pa. Dept. of Transportation**, 1924-30 Daisy St., Clearfield, PA 16830. To remove the existing structure and to construct and maintain a twin cell precast concrete box culvert with each cell having a span of 14 feet and rise of 9 feet, depressed 1 foot below the stream bed in Six Mile Run located on SR 504 next to Six Mile Road (Black Moshannon, PA Quadrangle N: 6.12 inches; W: 2.75 inches) in Rush Township, **Centre County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

E18-250. Encroachment. **James Nestlerode**, 685 Pennsylvania Ave., South Renovo, PA 17764. To construct and maintain a 13 foot by 24 foot by 12 foot high gazebo style structure with deck and concrete pad in the floodway of the West Branch Susquehanna River. The project is located about 2,500 feet west of Farrandville Rd. and 6,500 feet south of the intersection of Queens Run Road with Farrandville Road (Lock Haven, PA Quadrangle N: 6.0 inches; W: 13.2 inches) in Woodward Township, **Clinton County**. This permit was issued under section 105.13(e) Small Projects.

E53-311. Encroachment. **DCNR, Bureau of Forestry**, 3150 E. Second St., Coudersport, PA 16915-0673. To construct and maintain a 112 inch wide by 75 inch high corrugated metal pipe with associated fill and riprap in the East Fork of Sinnemahoning Creek located at a gas pipeline crossing which is approximately 3,000 feet southeast of the Rock Ridge Road and SR 0044 intersection (Cherry Springs, PA Quadrangle N: 7.42 inches; W: 14.6 inches) in Summit Township, **Potter County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

E60-133. Encroachment. **Chris L. Wheeland**, 1241 Warrensville Rd., Montoursville, PA 17754. To remove the existing home and to construct and maintain a new home in the floodway of the West Branch Susquehanna River located on Maplewood Dr. approximately 300 feet north of Groover Road (Northumberland, PA Quadrangle N: 8.3 inches; W: 15.0 inches) in East Buffalo Township, **Union County**. This permit was issued under section 105.13(e) Small Projects.

E14-319. Encroachment. **Corl Farm Inc.**, Galen Dreibelis, 1535 N. Atherton St., State College, PA 16830. To construct, operate and maintain a stream enclosure in an unnamed tributary to Big Hollow Run to provide access for a residential development. The stream enclosure shall be constructed with a corrugated metal culvert pipe that will have a diameter of 36 inches and a length of 125 feet. The project is located along the southern right-of-way of SR 0322 (Business Route) approximately 350 feet west of the intersection of Circleville Road and Farmstead Lane (Julian, PA Quadrangle N: 5.9 inches; W: 3.4 inches) in Ferguson Township, **Centre County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

E14-320. Encroachment. **Raymond G. Woodring Jr.**, 10013 South Eagle Rd., Port Matilda, PA 16870. Construct, operate and maintain an earthen levee for the protection of private property from flooding along an unnamed tributary to Bald Eagle Creek. The levy shall be constructed with a maximum length of 215 feet, maximum top width of 13 feet, maximum height of 2.5 feet and vegetated earthen top and side slopes that is located along the eastern right-of-way of SR 0220 approximately 2.6 miles south of the intersection of SR 0322 and SR 0220 (Port Matilda, PA Quadrangle N: 5.5 inches; W: 11.3 inches) in Taylor Township, **Centre County**. This permit was issued under section 105.13(e) Small Projects.

E18-247. Encroachment. **J. Michael and Mary Jo Williamson**, P. O. Box 906, Lock Haven, PA 17745-0906. To construct, operate and maintain a horse barn in the floodway of the West Branch Susquehanna River. The work shall consist of constructing a horse barn that has a length of 24 feet and a width of 12 feet that is located along the eastern right-of-way of SR 0220 approximately 1.1 miles west of the intersection of SR 1002 and T-426 (Lock Haven, PA Quadrangle N: 3.0 inches; W: 4.4 inches) in Dunnstable Township, **Clinton County**. This permit was issued under section 105.13(e) Small Projects.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E63-448. Encroachment. **PA Department of Transportation, Engineering District 12-0**, P. O. Box 459, Uniontown, PA 15401. To remove the existing bridge and to construct and maintain a single span, prestressed concrete bridge having a normal span of 84.0 feet with an underclearance of 13.7 feet across Mingo Creek (TSF), to realign, clean and maintain the channel of said stream for a distance of approximately 205.0 feet and to place and maintain rip-rap bank stabilization along the banks of said stream for a distance of approximately 205.0 feet. The project is located on SR 0088, Section 00D, approximately 1,800.0 feet southwest from the intersection of SR 837 (Monongahela, PA Quadrangle N: 15.1 inches; W: 12.5 inches) in New Eagle Borough, **Washington County**.

E65-687. Encroachment. **PA Department of Transportation, Engineering District 12-0**, P. O. Box 459, Uniontown, PA 15401-0459. To remove the existing structure and to construct and maintain a 45-foot long, rigid frame culvert having a normal span of 11.0 feet and an underclearance of 7.0 feet across Belson Run (WWF) located on SR 3089 Section G01, Segment 0140, Offset 1748. The project includes construction and maintenance of a 72-inch diameter temporary pipe culvert (Mt. Pleasant, PA Quadrangle N: 14.6 inches; W: 17.1 inches) in Hempfield Township, **Westmoreland County**. This permit was issued under section 105.13(e) Small Projects. This permit also includes 401 Water Quality Certification.

Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

E10-275. Encroachment. **Breakneck Creek Regional Authority**, 1166 Mars-Evans City Road, Mars, PA 16046. To place fill within the 50-foot floodway on the left side of a tributary to Breakneck Creek beginning at Mars-Evans City Road and extending downstream approximately 140 feet for a driveway associated with construction of an office building at the Breakneck Creek Regional Authority Wastewater Treatment Plant approximately 1.2 miles north of Hutchman Road (Mars, PA Quadrangle N: 17.5 inches; W: 13.6 inches) located in Adams Township, **Butler County**.

E37-117. Encroachment. **Chad A. Marinelli**, 19 Belaire Drive, New Castle, PA 16105. To operate and maintain a steel beam bridge having a clear span of 19 feet and a maximum underclearance of 7 feet across McKee Run for a private driveway access to Cilli Subdivision Parcel No. 1 south of Union Valley Road approximately 0.5 mile east of S. R. 2001 (Savannah Road) at the Village of Union Valley (New Castle South, PA Quadrangle N: 11.25 inches; W: 11.4 inches) located in Shenango Township, **Lawrence County**.

Construction of this bridge was authorized by a General Permit, BDWM-GP-8, Temporary Road Crossing, No. GP083797604 acknowledged August 8, 1997, in response to the Department's Notice of Violation dated July 9, 1997.

E43-266. Encroachment. **Borough of Grove City**, 123 West Main Street, P. O. Box 110, Grove City, PA 16127. To remove the existing bridge superstructure and to repair and maintain the bridge abutments along Wolf Creek approximately 500 feet upstream of East Pine Street (Grove City, PA Quadrangle N: 6.5 inches; W: 11.5 inches) located in Grove City Borough, **Mercer County**.

SPECIAL NOTICES

Public Hearing Notice

102/NPDES/Stormwater Construction Activities

The Department of Environmental Protection (DEP) Water Management Program will be holding a fact finding hearing on the following Stormwater NPDES permit applications:

352 Associates, Lincoln Highway and Sproul Rd. Shopping Center, PAS10-G318; and Liberty Property Trust, 600-700 Chesterfield Parkway, PAS10-G320.

The hearing is scheduled for July 21, 1998, at 1:30 p.m. at Chester County Conservation District Office, Government Services Center, Conference Room 240, 610 Westtown Road, West Chester, PA 19382-4519, Chester County. The hearing is being held to solicit pertinent comments on these applications. These applications are for stormwater construction activities, with a discharge to Valley and Little Valley Creeks. A copy of these applications are available for review in the Southeast Regional Office's Record Management Section, (610) 832-6268. Those interested in reviewing these applications should call to schedule a date to review the files. The project sponsors are: 352 Associates, 50 Exeter Avenue, Haverford, PA 19401; and Liberty Property Trust, 65 Valley Stream Parkway, Great Valley Corporate Center, Malvern, PA 19355.

Comments received will be considered by DEP in completing its review and prior to taking final actions concerning these applications. The hearing will not be a question and answer session.

Persons intending to make a presentation at the hearing should submit written notice to the Regional Manager, Water Management Program at the above address. The notice should include name, address and phone number; whether a person is opposed or in favor of the project; and a brief statement about the presentation. Comments should be kept brief and, depending on the number of speakers, may be limited to 10 minutes per speaker. Where groups are represented, a spokesperson is requested to present the group's concerns. Persons wishing to present written material directly to DEP may do so within 30 days following the hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodations to participate in the proceedings, should contact Sharon Moore, at (610) 832-6073. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Bureau of Water Quality Protection

Public Notice of Proposed General NPDES Permit for Discharges from Hydrostatic Tests of Tanks and Pipelines (PAG#10)

In compliance with the provisions of the Federal Clean Water Act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20), the Department of Environmental Protection (Department) by this notice seeks public comments on the proposed General NPDES Permit, the general permit Application—(Notice of Intent) and other related documents for Discharges from Hydrostatic Tests of Tanks and Pipelines to be conducted in this Commonwealth. The documents set forth the effluent limitations and other terms and conditions of the permit and eligibility criteria to apply for the general permit. An individual permit will be required for any discharges to the waters designated for Special Protection in 25 Pa. Code Chapter 93. In addition, a public hearing is also required for discharges to exceptional value waters.

The draft permit documents package is on file in the Department's Central Office in the Division of Wastewater Management, Bureau of Water Quality Protection at the following location. The documents package can be obtained by writing to the following address or by calling the telephone number given: Department of Environmental Protection, Bureau of Water Quality Protection, Division of Wastewater Management, Rachel Carson State Office Building, P. O. Box 8774—11th Floor, Harrisburg, PA 17105-8774, (717) 787-8184. E-mail address: Patel.ratilal@A1.DEP.STATE.PA.US. World Wide Web Address: [HTTP://WWW.DEP.STATE.PA.US](http://WWW.DEP.STATE.PA.US).

The Department invites public comments on the proposed general permit documents package. All comments must be submitted within 30 days from the date of the publication of this notice in the *Pennsylvania Bulletin*. If there is significant public interest in the general permit or if requested, the comment period may be extended at the discretion of the Department for an additional 15-day period. Only the comments received within the specified period will be considered in the formulation of the final documents for this general permit. Persons wishing to comment should include in comments their name, address and telephone number and a concise comment statement to inform the Department of the exact basis of the comment and the relevant facts upon which it is based. A public meeting or hearing may be held if the Department considers the public interest and/or comments significant.

Written comments should be submitted at the above address. The comments will also be accepted by electronic mail to be sent at patel.ratilal@A1.DEP.STATE.PA.US. Persons with a disability may use the AT&T Relay Service by calling 1 (800) 654-5984 (TDD users) or 1 (800) 654-5988 (voice users). Comments will not be accepted by facsimile or on voice mail. Following the specified comment period, the Department will review all submitted comments, prepare written comments and response document (CRD) and prepare final documents package for this permit. An availability of the final permit documents will be announced in the *Pennsylvania Bulletin*. Persons

wishing to also receive a copy of the final documents may request them by contacting the above addresses or telephone numbers.

Once the availability of the final general permit is published for the applicant's use, the applicant may apply to the Department for use of the permit at a single discharge point or for Statewide use depending upon how the applicant conducts the testing operations. In addition, the Department may allow existing individual permit holders of the discharges to apply for and obtain coverage under the general permit when the existing permit is due for renewal. The permit coverage approval will be contingent upon the applicant's eligibility to apply for the general permit and a demonstration of compliance with all effluent limitations, and other terms and conditions of the permit.

Notice of Proposed Consent Decree, Amendment to the Statement of Decision, and Reopening of the Administrative Record.

Easterly Sewage Treatment Plant Site Logan Township, Blair County

Proposed Consent Decree

The Department of Environmental Protection (DEP) under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1304) has entered into a Proposed Consent Decree with American Premier Underwriters (APU). Under the proposed Consent Decree, APU will perform the final remedial response action for the Easterly Sewage Treatment Plant Site. The final remedial response action was proposed by APU and approved by the DEP. The final remedial response action proposed by APU replaces the final remedial response action selected by the DEP in its June 1994 Statement of Decision (SOD). The final remedial response action which will be carried out is a combination of air sparging and soil vapor extraction (AS/SVE). The AS/SVE technology employs a series of wells and soil vents to inject air into the water table and to extract soil gases from the unsaturated portion of the soil, to volatilize and otherwise strip VOCs from the soil and groundwater and collect the VOCs for treatment in a granulated activated carbon filter system. Under the Proposed Consent Decree, APU will reimburse the DEP for its past response costs in the amount of \$524,500. APU will also reimburse the DEP for its future response and oversight costs. The Proposed Consent Decree also provides for a Covenant Not to Sue and reservation of rights provided under section 505 of the Land Recycling and Environmental Remediation Standards Act (Act 2), and under section 706 of HSCA, and for contribution protection under section 705(c)(a) of HSCA. The Proposed Consent Decree is authorized by section 505(g) of HSCA. The Consent Decree is entered into in order to expedite efficient remedial action, to minimize prolonged litigation and to resolve APU's liability to the DEP under a Cost Recovery Complaint filed by the DEP against APU, the City of Altoona (City) and the Altoona City Authority (ACA) in November 1995. The City and the ACA are not parties to the Consent Decree. The Proposed Consent Decree will be lodged with the Pennsylvania Commonwealth Court in Harrisburg, PA during the 60-day public comment period provided for under HSCA section 1113.

The Easterly Site is located approximately 0.25 mile north of East Altoona in Logan Township, Blair County, PA. The site includes two waste pits which were discovered in August, 1989 during construction at the Easterly Sewage Treatment Plant to upgrade the facility. The pits

are located immediately north of several treatment plant buildings and south of lagoons that contain sludges generated at the treatment plant. The combined surface area of the two pits is approximately 27,000 square feet. The DEP conducted a Preliminary Site Investigation in 1989. The investigation revealed that groundwater was contaminated as a result of a release of hazardous substances from the waste pits. Waste and hazardous substances in the pits contained PCBs and volatile organic compounds (VOCs) including benzene, vinyl chloride, trichloroethene (TCE) and tetrachloroethene (PCE). The DEP then conducted an interim response, under section 505 of HSCA, in 1990—1991, which included excavation of approximately 8,000 cubic yards of soils from the pits and placement of the waste in an impoundment designed as an interim storage facility on the property. The material stored in the surface impoundment will be addressed during the final remedial response.

This Notice is being provided under section 1113 of HSCA and is being published in the *Pennsylvania Bulletin* and the *Altoona Mirror*. The Proposed Consent Decree is available for public review and comments and is located in the Administrative Record for the Easterly Sewage Treatment Plant site which is maintained by the DEP in its Southcentral Regional Office at 909 Elmerton Avenue, Harrisburg, PA 17110 and in its Altoona District Office at 615 Howard Avenue, Altoona, PA 16601. Persons wishing to submit written comments may do so by sending them to Noreen Wagner at the Harrisburg address.

The public comment period extends for 60 days from the date of publication in the *Pennsylvania Bulletin*. At the close of the public comment period, the DEP will file responses to any significant written comments received during the public comment period. Unless the DEP determines, based upon the public comments received, that the Consent Decree is not in the public interest, the DEP and APU will then file a Joint Motion to Enter the Consent Decree with the Commonwealth Court, requesting the Court approve the Consent Decree. The Consent Decree becomes final upon the Court's approval and entry of the Consent Decree.

Proposed Amendment to Statement of Decision

In June 1994, the DEP issued a Statement of Decision (SOD) for the Easterly Site. In the SOD, the DEP identified and selected a final remedial response for the Site which consisted of onsite, ex-situ soil washing. The DEP's remedy involved excavation of all contaminated material followed by an organic solvent extraction process. Extracted contaminants would be disposed offsite and treated material was to be disposed according to Pennsylvania's Residual Waste regulations. The remedy also included extraction and treatment of contaminated groundwater.

APU has proposed an alternative remedial response which will address the release of hazardous substances from the Site which will be performed in substitution for the final remedial response selected DEP in its 1994 SOD. The DEP has reviewed and approved the Clean-Up Plan for the alternative remedial response. The alternative remedial response to be performed by APU is a combination of air sparging and soil vapor extraction (AS/SVE). The AS/SVE technology employs a series of wells and soil vents to inject air into the water table and to extract soil gases from the unsaturated portion of the soil, to volatilize and otherwise strip VOCs from the soil and groundwater and collect the VOCs for treatment in a

granulated activated carbon filter system. The remedial response will be carried out under the Proposed Consent Decree described above.

The DEP proposes to amend the SOD for the Easterly Site, as set forth in the following, by: i) replacing the DEP's response action with the remedial response action to be implemented by APU outlined in Section III (Selected Response); and ii) amending the ARARS Section to delete the groundwater protection strategy and add the cleanup standards provided for under Act 2.

Applicable or Relevant and Appropriate Requirements (ARARS)

In the ARARS Section, Chapter 3 of the Land Recycling and Environmental Standards Act (35 P. S. §§ 301—304) and the regulations promulgated thereunder, 25 Pa. Code Chapter 250 §§ 250.1—250.708 has been added. In the section titled "To Be Considered (TBC) Material," the 'groundwater protection strategy' has been deleted.

Selected Response

The DEP's final remediation response involved excavation of all contaminated material followed by an organic solvent extraction process. Extracted contaminants would be disposed offsite and treated material was to be disposed according to Pennsylvania's Residual Waste regulations. The remedy also included extraction and treatment of contaminated groundwater. The remedial response to be performed in substitution for DEP's selected remedy is a combination of air sparging and soil vapor extraction (AS/SVE). The AS/SVE technology employs a series of wells and soil vents to inject air into the water table and to extract soil gases from the unsaturated portion of the soil, to volatilize and otherwise strip VOCs from the soil and groundwater and collect the VOCs for treatment in a granulated activated carbon filter system. The DEP has determined that the remedial response to be performed by APU meets the Act 2 cleanup standards. The Department proposes no other amendments to the SOD.

Reopening of the Administrative Record

The DEP is also reopening the Administrative Record for the Easterly Sewage Treatment Plant Site, under the authority of section 506(g) of HSCA and 25 Pa. Code § 3.33, in order to include documentation of its response costs incurred in addressing the release and threat of release of hazardous substances from the Easterly Site, and to add the amended SOD. The DEP opened the administrative record, under section 506 of HSCA on October 31, 1992 to allow the public to comment on the DEP's proposed Response for the Site. The Administrative Record was closed on June 27, 1994 upon filing of the DEP's SOD. The documentation of the DEP's response costs is provided for under section 505(g)(3) of HSCA and 25 Pa. Code § 3.11(c)(3).

This notice is being provided under section 506(h) of HSCA and 25 Pa. Code § 3.33, and is being published in the *Pennsylvania Bulletin* and *The Altoona Mirror*. The Proposed amendment to the SOD and documentation of response costs are available for public review and comments, and they are located in the Administrative Record for the Easterly Sewage Treatment Plant Site which is maintained at the DEP's Southcentral Regional Office located at 909 Elmerton Avenue, Harrisburg, PA 17110 and its Altoona District Office at 615 Howard Avenue, Altoona, PA 16601. Persons wishing to submit written

comments may do so by sending them to Noreen Wagner at the Harrisburg address. Persons wishing to have a public hearing on the proposed amendment to the SOD or the reopening of the Administrative Record may request DEP to hold a public hearing by submitting a written request to Noreen Wagner at the Harrisburg address. The written request must be made within 30 days of this notice.

The public comment period extends for 60 days from the date of publication in the *Pennsylvania Bulletin*. At the close of the public comment period, DEP will file responses to any significant written comments received during the public comment period. The proposed amendment to the SOD outlined above will become final upon filing of the DEP's response to written comments.

Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of May 1998, the Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed as follows to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23 RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Edward Cummins	140 Walnut Street Spring City, PA 19475	Testing
Kevin Deppe	P. O. Box 987 Cherryville, PA 18035	Testing
David Grammer Stone Ridge/Radata, Inc.	27 Ironia Road, Unit 2 Flanders, NJ 07836	Mitigation
House-Check, Inc.	P. O. Box 731 Valley Forge, PA 19482	Testing
Mark Kuloszewski	113 Valley Street Exeter, PA 18643	Testing Mitigation
Frank Marsico	504 Woodcrest Drive Mechanicsburg, PA 17055	Testing
Charles Patton Alpha Energy Labs	1555 Valwood Parkway, Suite 100 Carrollton, TX 75006	Laboratory
Surekha Paunikar Alpha Environmental, Inc.	2430 Rosewood Lane Havertown, PA 19083	Testing
Radon Detection	1317 Gwynedale Way Lansdale, PA 19446	Testing

[Pa.B. Doc. No. 98-927. Filed for public inspection June 12, 1998, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are on DEP's World Wide Web site (<http://www.dep.state.pa.us>) at the Public Participation Center. The "January 1998 Inventory" heading is the Governor's List of Nonregulatory Documents. The "Search the Inventory of Technical Guidance Documents" heading is a database of the Inventory. The "Final Documents" heading is the link to a menu of the various DEP bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to DEP's draft technical guidance documents.

DEP will continue to revise its documents, as necessary, throughout 1998.

Ordering Paper Copies of DEP Technical Guidance

Persons can order a bound paper copy of the latest Inventory or an unbound paper copy of any of the final documents listed on the Inventory by calling DEP at (717) 783-8727.

In addition, bound copies of some of DEP's documents are available as DEP publications. Persons should check

with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Here is the current list of recent changes. Persons who have any questions or comments about a particular document should call the contact person whose name and phone number is listed with each document. Persons who have questions or comments in general should call Jonathan Brightbill at (717) 783-8727.

Revocation of Notice of Intent to Develop

DEP ID: 580-2219-001 Title: Section 268(b): Criteria for Extending Distances Between Shelter Holes Under Section 702 Description: The Department has determined that it will not develop an industry-wide variances for extended distance between shelter holes. Contact: Richard E. Stickler at (724) 439-7469.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 98-928. Filed for public inspection June 12, 1998, 9:00 a.m.]

Proposed State Plan to Implement Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators; Public Hearing

Under sections 111(d) and 129 of the 1990 Amendments to the Clean Air Act (CAA), the United States Environmental Protection Agency (EPA) promulgated standards for new hospital/medical/infectious waste incinerators (HMIWI) in 40 CFR Part 60, Subpart Ec and Emission Guidelines for "existing" HMIWI in Subpart Ce to control the emissions of designated pollutants. (See 62 FR 48348, September 15, 1997). The designated pollutants regulated under the Guidelines include particulate matter (PM); metals (cadmium, lead and mercury); acid gases (sulfur dioxide, hydrogen chloride and nitrogen oxides), organic compounds (dioxins and furans); and carbon monoxide. States must submit a section 111(d)/129 for HMIWI to the EPA within 12 months after publication of the final emission guidelines to implement and enforce the Subpart Ce requirements. Consequently, the Department of Environmental Protection (Department) must develop and submit the State Plan for HMIWI to the EPA no later than September 15, 1998.

For purposes of the State Plan, a hospital/medical/infectious waste incinerator is a device that combusts any amount of hospital waste or medical/infectious waste. The designated HMIWI source category is divided into small (less than or equal to 200 lb/hr), medium (greater than 200 lb/hr but less than or equal to 500 lb/hr) and large (greater than 500 lb/hr) subcategories based on the maximum design waste burning capacity. A facility is considered an existing HMIWI if the facility commenced construction on or before June 20, 1996. Approximately 54 existing HMIWI facilities are currently subject to the proposed HMIWI State Plan and Emission Guidelines in 40 CFR Part 60, Subpart Ce. The State Plan developed and implemented under sections 111(d) and 129 of CAA, is not an element of State Implementation Plans required under section 110 of the CAA.

The Department will hold three public hearings for the purpose of accepting testimony on the proposed State Plan for designated HMIWI facilities. The public hearings will be held at 1 p.m. on the following dates at the following Department locations:

July 15, 1998	Southeast Regional Office Main Conference Room 555 North Lane, Suite 6010 Conshohocken, PA 19428
July 16, 1998	Rachel Carson State Office Building Room 105 400 Market Street, Harrisburg, PA 17105-2063
July 21, 1998	Southwest Regional Office Monongahela Room 400 Waterfront Drive Pittsburgh, PA 15222-4745

Persons wishing to present testimony at a hearing should contact Kimberly Maneval at the Department of Environmental Protection, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105, (717) 787-4325 at least 1 week in advance of the hearing to reserve a time to present testimony. Persons who do not reserve a time to testify will be able to testify after preregistered witnesses. Each witness must keep oral testimony to 10 minutes,

and submit three written copies of the oral testimony at the hearing. Each organization should designate one witness to present testimony on its behalf.

Persons interested in submitting written comments on the proposed State Plan should send the comments to Krishnan Ramamurthy, Chief, Technical Support Section, Division of Permits, P. O. Box 8468, Harrisburg, PA 17105-8468. Written comments must be received by the close of business on July 31, 1998. Copies of the proposed adopted State Plan for HMIWI may be obtained from Krishnan Ramamurthy at the above address or at (717) 787-4325 (e-mail: ramamurthy.krishnan@a1.dep.state.pa.us). This proposed State Plan is also available on the DEP Web site at <http://www.dep.state.pa.us> (choose Public Participation Center/Proposals Open for comment). A copy of the proposed HMIWI State Plan will be available for review in each of the Department's regional offices.

Persons with a disability who will attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Krishnan Ramamurthy at the above address or telephone number; or for TDD users, the AT&T Relay Service at 1 (800) 654-5984 to discuss how the Department can best accommodate their needs.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 98-929. Filed for public inspection June 12, 1998, 9:00 a.m.]

Public Notice of Proposed Strategy, NPDES Permit and Water Quality Management Part II Permit for Concentrated Animal Feeding Operations (CAFOs)

The Department of Environmental Protection (Department) has developed a strategy and permit documents proposed to regulate Concentrated Animal Feeding Operations (CAFOs) in this Commonwealth. By this notice, the Department seeks public comments on the proposed strategy, NPDES Permit, Water Quality Management Part II Permit and other related documents. The documents set forth the definitions used to classify animal operations as CAFOs, the design and construction standards for CAFO manure storage facilities and requirements for the safe application of animal manure generated by these facilities. In addition, the documents outline public participation requirements prior to Department action on permit applications and establish requirements for proper operation and maintenance of CAFOs. The strategy and permit documents being proposed are the result of input from a workgroup formed to help the Department formulate these documents.

The draft strategy and permit documents are on file in the Department's Central Office in the Division of Wastewater Management, Bureau of Water Quality Protection at the location noted as follows. The documents package can be obtained by writing to the following address or by calling Mary Miller at the following telephone number: Department of Environmental Protection, Bureau of Water Quality Protection, Division of Wastewater Management, Rachel Carson State Office Building, P. O. Box 8774—11th Floor, Harrisburg, PA 17105-8774, (717) 787-8184.

Copies are also available by e-mail to: Patel.ratalal@al.dep.state.pa.us, or by visiting DEP's Website at <http://www.dep.state.pa.us> (choose Information by Subject/Water Management/CAFO).

The Department invites public comments on the proposed strategy and permit documents package. All comments must be received by August 13, 1998. Only the comments and testimony received by August 13, 1998, will be considered in the formulation of the final requirements for regulating CAFOs. Persons wishing to comment should include their name, address and telephone number and a concise statement to inform the Department of the exact basis of the comment and the relevant facts upon which it is based.

Public meetings/hearings have been scheduled to provide additional opportunity for public discussion and comment. Each session will begin with a public information meeting where the Department will explain the proposal and respond to questions. The public meeting will be followed by a public hearing where witnesses may submit testimony regarding the proposal.

July 14, 1998—6:30 p.m. Lancaster Farm and Home Center, 1383 Arcadia Rd., Lancaster, PA

July 20, 1998—6:30 p.m. Northern Bedford High School, Route 36, Bedford, PA

July 28, 1998—7 p.m. DEP Northcentral Regional Office, 208 W. 3rd Street, Suite 101, Williamsport, PA

Oral and Written Comments

Persons wishing to present testimony at the hearing portion of any of the meeting/hearings are requested to contact Mary Miller, DEP Bureau of Water Quality Protection, P. O. Box 8774, Harrisburg, PA 17105-8477, (717) 787-8184, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chair at the hearing. Each organization is limited to designating one witness to present testimony on its behalf.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Mary Miller or the Pennsylvania AT&T Relay Service at 1 (800) 654-5984 (TDD users) or 1 (800) 654-5988 (voice users) to discuss how their needs may be accommodated.

Written comments may be submitted to the above address in place of or in addition to oral testimony. The comments will also be accepted by electronic mail at the e-mail address above. Comments will not be accepted by facsimile or on voice mail. Following the specified comment period, the Department will review all submitted comments, prepare a comment and response document and prepare a final documents package. Availability of the final strategy and permit documents will be announced in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 98-930. Filed for public inspection June 12, 1998, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES

Design Professional Selections; Extension of Deadline

The Selections Committee for the Department of General Services (Department) will meet to consider selections of Design Professionals for the following project.

The Selections Committee for the Department of General Services has extended the deadline for the request for consideration for the following project from the date as originally established in 28 Pa.B. 566 (January 31, 1998). The extension is as shown in paragraph (d) within this notice. Professionals who have previously submitted requests for consideration will not be required to resubmit their request; however, any updating, changes or additional information will be accepted until the deadline established within this notice.

Project No. DGS 655-8—Conversion of Theatre into a Performing Arts Center, Warner Theatre, Erie, Erie County, PA. Construction Cost: \$8,250,000. The scope of work includes, but is not limited to, restoration of the auditorium and lobby; replace deteriorated building systems, including HVAC, electrical and plumbing; bring building into ADA compliance, including elevator; expand stage, stage support areas and theatrical equipment systems; provide dressing room facilities; modification of fire protection system and exterior envelope. (See Special Note under Requirements and Information section.)

Requirements and Information

Special Note—Interviews to be Conducted

Inasmuch as this is a complex project in an important historic landmark which will combine substantial contemporary facility improvements with the preservation and restoration of the structure, the Selections Committee has determined that oral interviews will be required as part of the selection process.

The Selections Committee will establish interviews with five of the Professionals who have requested consideration for appointment as designer for the project. The Professional will be notified as to the date, time and location.

Note—Project Program

A Project Program, prepared by the Using Agency, for the above advertised project may be available and can be obtained upon request to the Selections Committee, Department of General Services, Room 104, 18th & Herr Streets, Harrisburg, PA 17125, (717) 783-8468.

Instructions for Filing Application

Professionals will not be considered by the Committee until all of the following requirements are met.

(a) Signed Revised 1994 Form 150, not more than 1 year old as of the deadline date stated in paragraph (d) as follows, must be filed with the Department of General Services for the requesting professional firm and the designated key consultants listed on the requesting professional firm's application (Form 150-S). All signatures on Form 150 must be original signatures. Consultants listed on the requesting professional firm's application (Form 150-S) shall be deemed to be designated key consultants. If these documents are not on file with the Department, the requesting professional firm must submit them with the firm's application (Form 150-S). A

photocopy of Form 150 without an original signature of a principal of the firm is not acceptable. Revised 1994 Form 150, Architect/Engineer Questionnaire, may be obtained upon request to the Selections Committee, Department of General Services, Room 104, 18th & Herr Streets, Harrisburg, PA 17125, (717) 783-8468.

(b) The requesting professional firm shall obtain from each consultant listed in the requesting professional firm's application (Form 150-S) a signed letter of certification on the consultant's letterhead, attesting to the firm's consent to participate in the requesting professional firm's application (Form 150-S) for the specific project. Signed letters of certification from consultants are required and constitute a part of the requesting professional firm's application (Form 150-S) for the specific project. All signatures on letters of certification must be original signatures.

(c) The requesting professional firm must submit six signed copies of Revised 1994 Form 150-S, Specific Project Form, for each project herein advertised in which the firm is interested and qualified to perform. All signatures on Form 150-S must be original signatures. For architectural projects and, when appropriate, for engineering projects, the Professional shall supply photographs showing a maximum of two different views of each of the three projects described in Question 14, Page 5 of the application (Form 150-S). The requesting professional firm or Joint Venture members must be the Professional of Record for the projects described in Question 14, Page 5 of the application (Form 150-S). It is not acceptable to list work performed by key consultants. The identification and appropriate supportive information concerning each photograph shall include the name, project title, location and the name of the Professional of Record. Renderings and brochures will not be accepted in lieu of photographs. The photographs shall be attached to each copy of the application (Form 150-S). The pages of each copy of revised 1994 Form 150-S must be stapled with photographs and consultant's letters of certification followed by photocopies of licenses of registered professionals included as the last section of the application. Do not bind the application (Form 150-S) in any way to any other documentation. Do not bind the application (Form 150-S) in a binder of any type. Revised 1994 Form 150-S may be obtained upon request to the Selections Committee, Department of General Services, Room 104, 18th and Herr Streets, Harrisburg, PA 17125, (717) 783-8468.

(d) A complete project submission, which consists of documents described in paragraphs (a), (b) and (c) above, must be received on or before the close of business (5 p.m.) Thursday, June 25, 1998, and addressed to the Selections Committee, Department of General Services, Room 104, 18th & Herr Streets, Harrisburg, PA 17125. Fax applications are not acceptable.

Project submissions must be made on the current 1994 forms. Outdated forms are not acceptable.

(e) Additional information, in writing, may be requested by the Committee as required.

Additional Services—Indoor Air Quality Assessment Program and Hazardous Materials

The professional firm selected to design a project will be expected to perform and administer, when required by the Department as additional services, an Indoor Air Quality Assessment Program during building or renovation commissioning and the sampling, testing, inspection and monitoring for removal of any asbestos, other hazard-

ous waste or contaminants encountered during project design or construction, unless otherwise stated in the scope.

The professional agrees to comply with the terms of the Agreement and specifically as it relates to the Professional Liability Insurance and the General Liability Insurance Requirements.

The Selections Committee encourages responses from small firms, minority firms, women-owned firms and firms who have not previously performed State work, and will consider Joint Ventures, which will enable them to participate in this program.

All applications submitted are subject to review by the Selections Committee. The Selections Committee disclaims any liability whatsoever as to its review of the applications submitted and in formulating its recommendations for selection. All recommendations for selection made by the Committee shall be final under the act of July 22, 1975 (PL. 75, No. 45).

GARY E. CROWELL,
Secretary

[Pa.B. Doc. No. 98-931. Filed for public inspection June 12, 1998, 9:00 a.m.]

DEPARTMENT OF REVENUE

Notice of Taxable and Exempt Property

The Department of Revenue is hereby giving notice to the public, in accordance with the provisions of 61 Pa. Code §§ 52.1 and 58.1 (relating to purchases of medicines, medical supplies, medical equipment and prosthetic or therapeutic devices; and publication of the list of taxable and exempt tangible personal property) of additions, deletions and revisions to the list of taxable and exempt property under the sales and use tax provisions of the TRC published at 25 Pa.B. 1353 (April 8, 1995). Under §§ 52.1 and 58.1, this list is required to be published by notice at least once every 3 years. In addition, quarterly the Department will publish notice of any additions, deletions or revisions to the list.

Copies of the Retailers' Information Booklet may be obtained by calling the 24-hour answering service numbers for forms ordering: in Pennsylvania 1 (800) 362-2050; outside Pennsylvania and within local Harrisburg area (717) 787-8094. TTD (717) 772-2252 (Hearing Impaired Only).

Index to Categories

<i>Title</i>	<i>Category No.</i>
Books and Stationery	(1)
Business Supplies and Equipment	(2)
Clothing and Accessories	(3)
Cosmetics and Toilet Goods	(4)
Farming Supplies and Equipment	(5)
Flowers, Seeds, Fertilizers, etc.	(6)
Food and Beverages Sold From a Caterer or Establishment Serving Ready-to-Eat Food	(7)
Food and Beverages Sold From Other than a Caterer or Establishment Selling Ready-to-Eat Food	(8)

<i>Title</i>	<i>Category No.</i>
Hair Goods and Notions	(9)
Hobby Supplies, Toys, Games, Radios, Recorders, etc.	(10)
Home Sewing, Millinery and Craft Supplies	(11)
Household Goods and Supplies	(12)
A. Soaps and Detergents	
B. Cleaning and Polishing Preparations	
C. Paper Goods	
D. Wrapping Supplies	
Infant Supplies	(13)
Jewelry	(14)
Luggage, Handbags, Carrying Bags, Wallets, etc.	(15)
Medicines, Drugs and Medical Supplies; Prosthetic and Therapeutic Devices	(16)
Miscellaneous	(17)
Optical Goods	(18)
Pets	(19)
Religious Articles	(20)
Restaurant Equipment and Supplies	(21)
Shoes and Shoe Accessories	(22)
Sporting Equipment, Clothing, Supplies and Recreational Equipment	(23)
Tobacco Products	(24)
Utilities and Fuel	(25)
Motor Vehicle, Lease and Rental 1/	(26)
Tires 1/	(26)
Vehicle Rental Tax	(27)
1/ Public Transportation Assistance Fund Taxes and Fees	

Listing of Taxable and Exempt Property

T—TAXABLE

NT—NONTAXABLE

(1) Books and Stationery

Tax is imposed on books, stationery and stationery supplies, not including Bibles and religious publications sold by religious groups.

- NT—Bibles
 - T—Comic books
 - T—Crossword, game books
 - T—Dictionaries
 - T—Greeting Cards
 - T—Instruction books, for needle-craft, embroidery, knitting, etc.
- NT—Mail order catalogues
- NT—Newspapers of general circulation qualified to carry a legal advertisement
 - T—Periodicals and magazines not purchased by subscription
- NT—Periodicals and magazines purchased by subscription
 - T—School supplies, except when sold directly to a school district or nonprofit educational institution
- NT—Textbooks when sold by a school or an authorized book store
 - T—Vending machines and equipment

(2) Business Supplies And Equipment

Generally, sales of business supplies and equipment used in construction, repair, etc., of real estate are taxable.

- T—Amusement and record playing devices
- T—Building materials, supplies, and equipment used in construction, repair, etc., of real estate
- T—Business forms such as invoices, order books, etc.
- T—Cash register receipt paper
- T—Computer software, canned or customized

- NT—Direct mail advertising materials, including calendars, matchbooks, etc.
 - T—Display cases and merchandising equipment
- NT—Dry ice, when sold for internal packaging with the sale of property to others
 - T—Fans
 - T—Signs, circulars, show cards and posters
 - T—Vending machines and equipment
- NT—Wrapping supplies used in connection with the sale of products

(3) Clothing And Accessories

Generally, clothing is nontaxable except the following: (1) Formal day or evening apparel; (2) Articles made of real, imitation or synthetic fur where the fur is more than three times the value of the next most valuable component material; and (3) Sporting goods and clothing normally worn or used when engaged in sports. (See Category 23.)

- T—Accessories and ornamental wear
- NT—Aprons
- NT—Belts and suspenders
- NT—Boots
 - T—Bridal apparel and accessories
 - T—Corsages and boutonnieres
 - T—Costumes—Halloween, Christmas, etc.
- NT—Dress shields
 - T—Formal clothing
 - T—Fur, articles made of fur on hide or pelt or any material imitative of fur and articles of which fur real, imitation or synthetic is the component material of chief value and fur trimmed articles if the value of fur is more than three times the value of the next most valuable component material. Felt, wool or fabric is not taxable unless it resembles fur on the hide.
- NT—Garters and garter belts
- NT—Girdles
 - T—Gloves, baseball, golf, racquet, etc.
- NT—Gloves, cloth, leather, kid
 - T—Gloves, sheepskin, fur, rubber
- NT—Gym suits
- NT—Handkerchiefs
- NT—Headwear and millinery, all types
- NT—Hosiery, pantyhose and peds
- NT—Leotards and tights
- NT—Leather wearing apparel
- NT—Lingerie
- NT—Neckwear, ties
- NT—Nightgowns
 - T—Prom dress
- NT—Rainwear
- NT—Receiving blankets
- NT—Repairing of wearing apparel
- NT—Safety clothing
- NT—Scarves, for headwear and neckwear
- NT—Scout uniforms and camp clothes
 - T—Sheepskin coats
- NT—Stockings, including support-hose
- NT—Suspenders
 - T—Tuxedos
 - T—Umbrellas
- NT—Underclothing
- NT—Work clothes, work uniforms
- NT—Yard goods (to make clothing)

(4) Cosmetics and Toilet Goods

- T—After shave creams, lotions, powders
- T—Antiperspirants
- T—Atomizers containing perfume and other liquids

- T—Bath crystals
- T—Bath milks, oils, powders, salts, tablets, etc.
- T—Bay rum
- T—Bleach creams and lotions
- T—Blush
- T—Bouquet liquids
- T—Breath sweeteners
- T—Bubble bath preparations
- T—Cocoa butter, if advertised or labeled for toilet purposes
- T—Colognes
- T—Compact refills
- T—Compacts containing rouge or powder
- T—Cosmetics
- T—Creams, protective (having cosmetic claims or use as skin creams, antiperspirants)
- T—Creams, cleansing, beauty or cold
- T—Cuticle softeners and removers
- T—Deodorants (even though having a medicinal or curative value, if advertised or labeled for use as a body deodorant)
- T—Deodorants (for use in closets, bureau drawers, etc., for imparting fragrance to clothing)
- NT—Deodorants, colostomy
- T—Dusting powders
- T—Essences and extracts, perfume
- T—Eyebrow pencils
- T—Eyelash mascara and eyelash and brow dyes
- T—Eye shadows
- T—Face creams
- T—Face lotions, facial oils
- T—Face packs
- T—Face powders, in loose or cake and liquid form
- T—Floral essences
- T—Foundation makeup film
- T—Freckle removers
- T—Hair bleaches
- T—Hair conditioners and rinses
- T—Hairdressings
- T—Hair dyes, colorings and tints
- T—Hair lotions
- T—Hair oils
- T—Hair pomades (regardless of whether they are colored or scented)
- T—Hair removers
- T—Hair restoratives
- T—Hairsprays
- T—Hair straighteners
- T—Hair tints and rinses
- T—Hair tonics
- T—Hand creams
- T—Hand lotions
- T—Lavender water
- T—Lip ices and salves
- T—Lip pomade
- T—Lipsticks, lipstick refills
- T—Liquid lip color
- T—Lotions, cleansing and beauty
- T—Manicure preparations
- T—Mask preparations
- T—Massage creams
- T—Mousse
- T—Mouthwashes
- T—Mustache wax
- T—Nail bleaches
- T—Nail enamels
- T—Nail enamel or polish removers
- T—Nail lacquers or removers
- T—Nail polishes, paste, powder, or liquid
- T—Perfumes
- T—Perfume ingredient kits
- T—Perfume novelties, containing perfume
- T—Permanent waving creams, lotions, neutralizers and kits
- T—Powder bases (liquid and cream)
- T—Rouges, blush
- T—Sachets containing powder or aroma producing materials
- T—Scalp lotions, which are used or intended for use as a treatment for dry or oily hair
- T—Shampoos
- T—Shaving preparations, creams, lotions, powders including medicated preparations
- T—Skin balms, bleaches, creams, fresheners, lotions, oils tonics or whiteners
- T—Sun allergy cream
- T—Sunburn preventives—suntan creams, lotions, oils, etc.
- NT—Sunburn treatment, lotions or creams
- T—Talcum powder
- T—Tissue creams
- T—Toothbrush, electric
- NT—Toothbrush, toothpaste, tooth cleansers, dental floss and replacement brushes for electric toothbrush
- T—Vanishing creams
- T—Water Piks
- T—Wave set, paste, powder or lotion
- T—Wrinkle removing and concealing preparations

(5) Farming Supplies and Equipment

The tax is not imposed upon the sale of property to a farmer to be used or consumed directly in the business of producing agricultural products. Home gardening is not considered "farming". See REV-1729, Farming Information, for additional information.

- NT—Artificial breeding equipment and supplies
- T—Building supplies and materials used to build and repair barns, sheds, coops, etc.
- NT—Cleansers and disinfectants used in cleaning milking equipment and to sterilize milk cans to prevent spoilage. (Property used for general farm cleaning and maintenance is taxable)
- NT—Equipment used to extract a product from productive animals or from the soil, such as harvesters, combines, binders, forage blowers, milking equipment, egg collecting equipment, corn shuckers, threshers, manure handling equipment
- NT—Equipment such as barn shovels, ensilage forks, wheelbarrows and feed carts
- NT—Feed and feed additives for productive animals
- NT—Fencing—portable when used directly for farm use
- T—Fencing, including gates, which become a permanent part of realty
- NT—Fertilizer and chemical additives to be added to soil
- T—Fire prevention and safety equipment
- NT—Fuel for use in heating poultry brooder and greenhouses
- NT—Fumigation services upon agricultural commodities or containers used for agricultural commodities
- T—Greenhouses and mushroom houses (if permanently installed to the real estate)
- NT—Grooming materials, equipment and supplies when necessary for the health of productive animals
- NT—Harnesses used to control productive animals on the farm
- NT—Ice
- NT—Livestock equipment to dispense chemicals, medicines and feed additives
- NT—Livestock, feeding equipment such as tubs, buckets, cans, etc., feed scoops and portable watering devices

- T—Maintenance facilities including tools, machinery and equipment to maintain machinery, equipment or building property, such as chain hoists, tire spreaders, drills, sanders, lumber, nails, wrenches, brooms, welding equipment, paint brushes and sprayers
- NT—Milk strainers and strainer discs and towels (dispensers to store and dispense the discs are taxable)
- T—Motor vehicles, if required to be licensed by the Dept. of Transportation
- NT—Pest control services for agricultural purposes
- NT—Property which becomes an ingredient or constituent of a farm product or is consumed by productive animals or plant growth, such as seeds, fertilizer, chemical additives, etc., and property such as seeders, planters, plows, harrows, cultivators, sprayers and similar equipment used to till soil, plant, seed and care for productive plants.
- NT—Property used to handle, store or preserve farm products or productive animals on farm premises such as chemicals, grooming equipment (dehomers, debeakers, hoof trimmers, calf weaners, etc.)
- T—Property used to transport or convey the farm product after the final farming operation
- T—Refrigeration or cooling equipment used to store farm products
- NT—Replacement parts such as tires, motors, belts, cutting edges, air filters, gears and similar replacement parts installed on exempt equipment. Motor fuels, lubricants, compressed air, distilled water, abrasives and similar supplies when used in operating exempt machinery are not taxable. Tools and equipment to apply parts and supplies are taxable.
- NT—Seeds
- NT—Silos
- T—Water heater for cleaning dairy equipment and supplies
- NT—Water pump for farm use
- NT—Wrapping supplies and containers which are non-returnable to deliver self-produced farm products.

(6) Flowers, Seeds, Fertilizers, etc.

The tax is imposed upon the sale of property which is purchased by persons not engaged in the business of farming.

- T—Fertilizer, sprays, insecticides
- NT—Gardening supplies
- T—Seeds and bulbs
- T—Vegetable plants, flowers and trees
- NT—Vegetable seeds, vegetable plants and fruit trees purchased with food stamps

(7) Food and Beverages Sold From a Caterer or Establishment Serving Ready-to-Eat Food

Generally, tax is imposed on food and beverages, for consumption on or off the premises, or on a "take-out" or "to go" basis, or delivered to the purchaser or consumer, when purchased from a caterer or an eating establishment from which ready-to-eat foods and beverages are sold, such as a restaurant, cafe, lunch counter, private or social club, tavern, dining car, hotel, night club, fast food operation, honor box, pizzeria, fair, carnival, lunch cart, ice cream stand, snack bar, lunch truck, cafeteria, employee cafeteria, theatre, stadium, arena, amusement park, juice stand, carryout shop, coffee shop, popcorn stand, automat, vending machine and other establishments, whether mobile or immobile.

NT—Alcohol, malt or brewed beverages and wines. Tax is paid at time of purchase from a Liquor Control Board store or licensed malt beverage distributor.

- NT—Candy and gum
- T—All food and beverages, in any quantity, including both food and beverages prepared on the premises and prepackaged food and beverages.
- NT—Ice
- T—Nonalcoholic beverages
- (8) Food and Beverages Sold From Other than a Caterer or Establishment Selling Ready-to-Eat Food
- NT—Bitters, grenadine and noncarbonated cocktail mixes
- NT—Candy and gum
- NT—Food, fruit drinks, soft drinks and sandwiches purchased with food stamps
- NT—Food supplements such as vitamins and therapeutic nutritional supplements
- NT—Fruit drinks, noncarbonated or reconstituted, containing at least 25% natural fruit juice
- T—Fruit drinks, noncarbonated or reconstituted, containing less than 25% natural fruit juice
- NT—Ice
- T—Nonalcoholic beverages
- T—Soft drinks, bottled and nonbottled (including soft drink mixes and powder, liquid or tablet form)
- NT—Tea, all forms including liquid and powdered tea
- NT—Sweeteners, artificial
- NT—Water, including nonflavored mineral water
- T—Water, flavored mineral

A vending machine (EFF. 7-1-98), delicatessen, grocery store, supermarket, farmers market, bakery, donut shop, pastry shop or convenience store selling the following items, whether sold for consumption on or off the premises or on a "take out" or "to go" basis or delivered is considered to be an eating establishment with respect to the sale of the following items:

- T—Brewed coffee
- T—Hot beverages
- T—Hot food items
- T—Hot soup
- T—Hot pizza
- T—Ice cream, yogurt and other ice based products when hand dipped or hand served
- T—Meals—not including prepackaged frozen meals
- T—Salad bars, food from
- T—Sandwiches
- T—Soft drinks

(9) Hair Goods and Notions

Generally, hair goods are taxable unless the item qualifies as clothing.

- T—Hair goods and notions, such as barrettes, hair pins, hair nets, curlers, clips, hair bow holders; combs, brushes, chignons, bandeaux
- T—Shower caps
- T—Wigs and toupees (the service of cleaning, styling, etc., also is taxable)

(10) Hobby Supplies, Toys, Games, Radios, Recorders, etc.

- T—Baseball, football cards, etc.
- T—Bicycles and parts
- T—Boats and equipment
- T—Computer games and equipment
- T—Games
- T—Hobby supplies
- T—Musical instruments and sheet music
- T—Photographic and projection equipment and supplies
- T—Photographic services, film developing, printing, processing, mounting, coloring, etc.
- T—Pocket knives

- T—Radios, TV sets, receiving equipment
- T—Sound players, recorders, components and accessories, records, compact discs
- T—Tape recorders and tapes
- T—Toys
- T—Video cassettes, recorders and cameras

(11) Home Sewing, Millinery and Craft Supplies

Goods and items which are to become a component part of clothing are not taxable. Goods and items which become a component of articles other than clothing, such as formal wear are taxable. Equipment and supplies used in sewing are taxable. Clothing is defined as articles designed for everyday wear,

- T—Artificial flowers
- NT—Buckles for clothing
- NT—Buttons for clothing
- T—Dress forms and patterns
- NT—Dress material and fabrics
- NT—Dye, clothing fabric
- NT—Elastics
- T—Embroidery hoops
- NT—Hooks and eyes
- NT—Knitting yarn for clothing
- NT—Laces, ribbons, edgings, trimmings
- T—Needle-craft instruction books
- T—Needles
- NT—Ribbons
- T—Rug yarns
- T—Scissors
- T—Sewing kits
- NT—Shoulder pads
- T—Tape measures
- T—Thimbles
- T—Thread for articles other than clothing
- NT—Thread for clothing
- NT—Yard goods for clothing
- T—Yarn holders
- NT—Zippers for clothing

(12) Household Goods and Supplies

- T—Air fresheners
- T—Ant traps
- T—Basin stoppers
- T—Batteries
- T—Bedding
- T—Books
- T—Boot caddy
- T—Brooms
- T—Buckets
- T—Candles
- T—Charcoal
- T—Cloth dish towels
- T—Cloth hand and bath towels
- T—Cloth laundry bags
- T—Clothesline
- T—Clothespins
- T—Coat hangers
- T—Cutlery
- T—Decorations
- T—Dinnerware
- T—Dishpans
- T—Dispensers
- T—Door mat
- T—Drinking glasses
- T—Easter egg color/paint
- T—Extension cords
- T—Filters, disposable air
- T—Fire extinguishers
- T—Fly swatters

- T—Fly tapes
- T—Furnishings, appliances, fittings, ornaments, furniture, equipment and accessories. Furnishings including bedding, rugs, lamps, hardware, electrical goods, mirrors, pillows, scarves for furniture, bookends, clocks, glassware, crockery, silverware and other household wares.
- T—Fuses
- T—Glue
- T—Greeting cards
- T—Grill scraper
- T—Hardware and tools
- T—Household linens, blankets
- T—Insecticide sprays
- T—Ironing board covers
- T—Jars for canning and jar lids
- T—Light bulbs
- T—Lubricating oils
- T—Matches
- T—Metal and plastic cooking utensils and flatware
- T—Mops
- T—Moth balls
- T—Moth flakes
- T—Mouse traps
- T—Needles
- T—Notebooks
- T—Oilcloth
- T—Paints, brushes and painting equipment
- T—Paint removers
- T—Plants, vegetable and flower (see Category 6)
- T—Playing cards
- T—Polishing cloths
- T—Pots and pans
- T—Refrigerator deodorants
- T—Rubber gloves
- T—Rug shampoo applicator
- T—Salt, water softeners
- T—Sandpaper
- T—Scrub brushes
- T—Seeds, vegetable and flower (see Category 6)
- T—Shoe brushes
- T—Sponges
- T—Squeegee scraper
- T—Stationery
- T—Static control spray, sheets
- T—Thermometer
- T—Thimbles
- T—Tie racks
- T—Toothpicks
- T—Turpentine and paint thinner
- T—Vacuum bottles
- T—Vacuum cleaner bags, disposable
- T—Vacuum cleaner parts
- T—Ventilating fans and equipment
- T—Wax applicator
- T—Wax paraffin

A. Soaps and Detergents

- T—Bleaches
- T—Bluing
- T—Borax
- T—Cleaner, septic tank, hand, oven, toilet bowl or tile
- T—Cleansers
- T—Detergents
- T—Drain opener
- T—Pre-soaks
- T—Rug shampoo
- T—Soaps, scented and unscented
- T—Softeners (fabric)

- T—Spot removers
- T—Starch
- T—Whiteners

B. Cleaning and Polishing Preparations

- T—Car cleaners and waxes
- T—Glass cleaner
- T—Polishes, floor, furniture, silver and similar items
- T—Removers, rust or wax
- T—Scouring pads
- T—Steel wool

C. Paper Goods

- T—Cups; paper, plastic or styrene
- NT—Disposable diapers and incontinence products
- T—Drop cloths; paper and plastic
- T—Facial tissue
- T—Filters, coffee
- T—Napkins
- T—Place mats
- T—Plates; paper, plastic or styrofoam
- NT—Sanitary napkins, tampons or similar items used for feminine hygiene
- T—Shelf paper, liners
- T—Straws
- T—Tablecloths
- NT—Toilet tissue
- T—Towels
- NT—Wet-wipes

D. Wrapping Supplies

- T—Aluminum foil
- T—Food bags
- T—Plastic wraps
- T—Tape, masking, scotch, plastic, freezer, duct
- T—Trash bags, paper and plastic
- T—Twine
- T—Waxpaper
- T—Wrapping paper, including gift wrapping, ribbons, etc.

(13) Infant Supplies

- T—Accessories, nursing bottles, nipples, teething beads, teethingers
- NT—Bibs
- T—Car seat, infant
- T—Crib blankets
- T—Diaper bags
- NT—Diaper pins
- NT—Diapers, cloth and disposable
- T—Liners, (nursing bottles)
- NT—Receiving blankets for infants
- NT—Rubber pants

(14) Jewelry

- T—Earring backs
- T—Jewelry, although a religious symbol is incorporated
- T—Ornaments and pins for hats and dresses

(15) Luggage, Handbags, Carrying Bags, Wallets, etc.

- T—Bags, carrying, athletic, book, etc.
- T—Handbags, pocketbooks and purses
- T—Knitting bags
- T—Leather goods, except clothing
- T—Luggage, briefcases
- T—Wallets and billfolds

(16) Medicine, Drugs and Medical Supplies: Prosthetic and Therapeutic Devices

The tax is not imposed on prescription or nonprescription medicines and drugs or medical supplies, crutches

and wheelchairs for the use of people with disabilities, artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user, false teeth and materials used by a dentist in dental treatment, eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser and artificial braces and supports designed solely for the use of people with disabilities or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including but not limited to hospital beds, iron lungs, and kidney machines.

- T—Adhesive removers
- NT—Adhesives used for medical treatment
- T—Air cleaners and electrostatic machines
- NT—Alcohol, rubbing
- NT—Analgesics
- NT—Antacids
- NT—Antiseptics, for external use only
- NT—Applicators (See "Cotton applicators")
- NT—Arch supports
- NT—Arm slings
- NT—Artificial eyes
- NT—Artificial limbs
- NT—Aspirin
- T—Autoclave
- NT—Automobile accessories, when noted by the Department of Transportation upon the motor vehicle operator's license of the purchaser that such accessories are necessary and when charges for accessories are stated separately by the vendor on the sales invoice.
- NT—Automobile wheelchair lift
- T—Baby powder
- NT—Bandages, dressings, gauze and cotton
- T—Bath tub and bathroom safety devices
- T—Bed boards
- NT—Bed drain bags
- NT—Bed pans
- NT—Bed trapeze bars
- NT—Benzoin
- T—Bicycle ergometer
- T—Bidet toilet seat
- T—Blankets
- T—Blood agar plates
- NT—Blood glucose monitors used to treat diabetes (therapeutic devices)
- NT—Blood pack units
- T—Blood pressure testing apparatus
- NT—Bone pins
- NT—Braces and supports worn on the body to correct or alleviate a physical incapacity
- NT—Braille teaching texts
- T—Breast pumps
- NT—Breathing units, intermittent positive pressure
- NT—Burn ointment and lotion
- NT—Calamine lotion
- NT—Canes
- NT—Cardiac emergency kit
- NT—Cardiac pacemakers and electrodes
- NT—Castor oil
- NT—Catheters and accessories
- T—Chemical agents and related supplies for analysis of patients' specimens
- NT—Cod liver oil
- NT—Colostomy appliances
- NT—Colostomy deodorants
- NT—Commode, chair bedside
- NT—Commode seats, elevated for use by incapacitated

- persons
- NT—Contact lens, solutions and kits
- NT—Corn pads and plasters for the removal of corns
- NT—Cotton applicators, cotton rolls, cotton balls and cotton swabs
- NT—Cough and cold items, cough drops, cough syrups
- NT—Crutches
- NT—Crutch pads
 - T—Dehumidifiers
- NT—Dental floss
- NT—Dental materials used in dental treatment including x-ray film, cotton, impression materials
 - T—Dentist chair
- NT—Dentist drills, disposable
- NT—Dentist materials which are transferred to the patient including dentures, fillings, crowns, inlays, bridges and lingual or palatal bars
 - T—Dentist replacement burs, drills, reusable
- NT—Denture products, including denture cleaners and adhesives
 - T—Deodorants, personal and room
 - T—Diagnostic equipment
 - T—Diagnostic glassware and diagnostic testing materials
- NT—Dialysis machines
- NT—Diathermy machines
- NT—Dietary supplements and substitutes
- NT—Diet pills
 - T—Disinfectants
- NT—Drapes, paper
 - T—Ear plugs
 - T—EKG mounts and EKG paper
- NT—Elastic bandages and braces
 - T—Electrocardiocorder
 - T—Elevators
- NT—Emesis basins or pans
- NT—Epsom salts
 - T—Esophageal dilator.
 - T—Eucalyptus oil
- NT—Examining table paper
 - T—Exercise equipment including exercise bikes and treadmill exercisers
- NT—Eye ointment
- NT—Eye pads
- NT—Eye washes
- NT—Eyeglasses, sold on prescription
- NT—False teeth
- NT—First aid kits
- NT—Fluidic breathing assistor
- NT—Food substitutes
- NT—Foot pads, insoles, all types
- NT—Foot products for treatment of infections
- NT—Gauze
- NT—Gloves, surgical, disposable
- NT—Glycerine
- NT—Gowns, medical
- NT—Hearing aids and batteries
 - T—Heaters, portable, room
- NT—Heating pads
- NT—Hospital beds, having side rails, electric and non-electric with attachments
- NT—Hot water bottles
 - T—Humidifiers
- NT—Hygienic needs, douche powder, vaginal preparations
- NT—Hydrogen peroxide
- NT—Ice bags
- NT—Ileostomy bags
- NT—Incontinence pants
- NT—Infusion pumps
- NT—Inhalation therapy equipment and equipment used to provide emergency breathing assistance
- NT—Insulin
 - T—Intravenous stand
- NT—Iron lungs
- NT—IUD devices
 - T—Laboratory testing and analysis equipment and supplies
- NT—Lactose intolerance medication
- NT—Lamps, ultraviolet and infrared
- NT—Laxatives and cathartics
- NT—Lifters, patient
- NT—Lubricating jelly
- NT—Lymphedema pumps
 - T—Mattresses, air
- NT—Mattresses, alternating positive pressure
- NT—Mattresses and covers for hospital beds
 - T—Medical alert cards
 - T—Medical alert systems
- NT—Medicine cups, disposable
- NT—Mercurochrome
 - T—Microscopes
- NT—Milk of magnesia
 - T—Mouthwashes
- NT—Muscle stimulator, electronic, for physical therapy
- NT—Nasal cannula
 - T—Nasal speculum
 - T—Needle holder
- NT—Needles, disposable
 - T—Needles and syringes, reusable
- NT—Orthodontic brackets
 - T—Orthodontic trays
- NT—Orthopedic splints
 - T—Overbed tables
- NT—Oxygen and oxygen equipment, when used for medical treatment
- NT—Pads, moist heat pad, alternating positive pressure pad, flotation pad, lambs wool pad
- NT—Paraffin bath units, standard or portable
 - T—Percussors
- NT—Pet medicines
 - T—Petroleum jelly
- NT—Physical therapy equipment, when designed exclusively for use in correcting or alleviating a physical incapacity
 - T—Plaque remover
- NT—Pore cleaners, medicated
- NT—Postural drainage board
 - T—Postural support chairs
- NT—Prophylactics
- NT—Prostheses (mammary, malar, chin, urinary, incontinence, etc.)
 - T—Pumice powder
- NT—Pump, diaphragm, pressure vacuum
 - T—Razor blades
- NT—Rectal preparations
 - T—Safety grab bars
- NT—Sanitary napkins, tampons and similar items
 - T—Sanitizer, air
 - T—Sauna baths
 - T—Scissors
 - T—Shaving products
 - T—Sheets, cloth
- NT—Sheets, disposable
- NT—Shoe insoles, orthopedically designed
- NT—Sitz bath
- NT—Smoking deterrents, gum and patch
 - T—Soaps
- NT—Specimen containers, disposable
 - T—Sphygmomanometer
 - T—Sphygmostat

- NT—Stair gliders for persons having a physical disability.
(EFF 7-1-98)
- T—Stethoscope
- NT—Styptic pencils
- T—Suction machines and pumps
- NT—Sunburn treatment lotions or creams
- T—Sunglasses (unless sold on prescription)
- T—Suntan lotion
- NT—Suppositories
- T—Surgical instruments
- NT—Surgical instruments and supplies, single use disposable
- NT—Sutures
- NT—Syringes, disposable
- T—Syringes, reusable
- T—Table, bedside
- T—Table, examining
- T—Talcum powder
- T—Telecaption equipment
- NT—Test strips used in treatment of diabetes
- T—Testing kits
- T—Thermometer, medical
- NT—Thermometer covers, disposable
- NT—Tongue depressor, disposable
- NT—Toothache drops
- NT—Tourniquets
- NT—Trachea tubes
- NT—Traction units, including bed stand, anklet, extension, pelvic or cervical units, head holder, fracture unit with trapeze bar set, weights, weight bags, pelvic lacing belt and over door traction equipment
- NT—Tubing, intravenous
- NT—Urine drain bag
- T—Vacutainers
- NT—Vaginal diaphragms
- T—Vapona strips
- T—Vaporizers
- NT—Vitamins
- NT—Walking bars and walkers
- NT—Wheel chairs
- T—Whirlpool baths and whirlpool pumps
- T—X-ray equipment and machines
- T—X-ray film and chemicals not used by dentists

(17) Miscellaneous

- T—Antiques
- T—Bullion (gold, silver)
- NT—Caskets, burial vaults, markers, cremation urns and tombstones for human graves, including foundations
- T—Coin banks and coin holders
- T—Coins and paper money, which are not legal tender in U.S.A., are taxable on full purchase price
- T—Coins and paper money, which are legal tender in U.S.A., are taxable on amount in excess of face value
- T—Dry ice, except when sold as an internal packaging material to retailer, manufacturer or processor
- NT—Safety equipment and devices designed and worn by production personnel employed in manufacturing, processing, mining, public utility, farming and dairying. Examples: asbestos suits, gloves, aprons, boots, masks, helmets, goggles and similar items
- T—Equipment and devices worn by nonproduction personnel are taxable
- T—Fencing materials
- NT—Flags of the U.S. and Commonwealth. Bunting and others are taxable.
- T—Fuel for motor vehicles except when subject to liquid fuel or fuel use tax
- T—Lunch kits, vacuum bottles and replacement parts

- T—Motor vehicle repair services (including labor), accessories, parts, supplies, lubricants and equipment
- T—Party favors
- NT—Religious articles when used for worship or prayer
- T—Scout supplies and training manuals except when sold to a scout troop
- T—Souvenirs
- T—Stamps, uncanceled U.S.A. stamps are taxable on amount in excess of face value
- T—Stamps, cancelled U.S.A. stamps and all foreign stamps are taxable on the full purchase price
- T—Trading stamp redemption for taxable property
- NT—Coupon books sold to individual consumers

(18) Optical Goods

- NT—Contact lens, solutions and kits
- NT—Eyeglasses and contact lenses sold on prescription
- T—Magnifying glasses
- T—Opera glasses and field glasses
- T—Sunglasses (prescription sunglasses are exempt)

(19) Pets (Animals, fish, birds, and similar items)

- NT—Boarding or sitting
- T—Clippers and clipper lubricants
- T—Equipment for pets (collars, leashes, etc.)
- NT—Flea collars, flea powder, flea and tick soap and tick sprays
- T—Food for pets including dietary food
- T—Grooming
- NT—Medicines and medical supplies for pets
- T—Sale or rental of pets

(20) Religious Articles

Articles used solely for religious or devotional purposes are not taxable.

- NT—Bibles (printed, audio or electric data)
- NT—Candles used in religious worship
- NT—Holy water bottles
- NT—Clergy vestments and choir and altar server clothing
- T—Household articles which are functional or utilitarian, even though a religious symbol is incorporated. (Household shrine not taxable)
- T—Jewelry, even though a religious symbol is incorporated
- NT—Nativity scenes
- NT—Religious statues, medals and symbols used in religious worship
- NT—Religious publications sold by religious groups
- NT—Rosaries
- NT—Wines used in religious services

(21) Restaurant Equipment and Supplies

Equipment, implements and similar property for use in the preparation and service of food is taxable.

- T—Carbonator for soda fountain operation
- NT—Carbon dioxide for soda fountain
- T—Equipment used to prepare and serve food and beverages
- T—Ice making equipment
- T—Napkins, wooden or plastic spoons, forks, straws, and similar articles for use in restaurants, vending machines and other eating places
- T—Vending machines and equipment
- NT—Wrapping supplies, paper or plastic plates, cups and similar articles used by restaurants or in vending machines for the delivery of food

(22) Shoes and Shoe Accessories

Generally shoes designed for everyday wear are exempt. However, shoes designed for formal wear or sporting activities are taxable.

- T—Bathing (swimming) shoes
- NT—Overshoes
- NT—Safety shoes
 - T—Shoe brushes, applicators and shoe trees
 - T—Shoecaps
- NT—Shoe dye
- NT—Shoe laces
- NT—Shoe polish
- NT—Shoe repairs
 - T—Shoes for baseball, bowling, football, soccer, hockey, dance, etc.
 - T—Shoes for formal wear, such as metallic cloth, brocade, satin, or silver leather, primarily for formal wear.
- NT—Slippers
- NT—Shoe soles and heels for shoe repair
- NT—Shower clogs
- NT—Sneakers, jogging, tennis and aerobic shoes

(23) Sporting Equipment, Clothing, Supplies and Recreational Equipment

Tax is imposed on sporting and recreational equipment and clothing and supplies which are designed to be worn and are normally worn only when engaged in sports.

- T—Accessories such as ammunition belts, hip waders and fly vests
- NT—Baseball caps and tee shirts
 - T—Bathing caps
 - T—Bathing suits
 - T—Beach coats
 - T—Bicycles, parts, accessories and supplies
 - T—Boats, pleasure boats and equipment and parts
- NT—Bowling shirts
 - T—Equipment and supplies for baseball, football, hockey, basketball and other sports
 - T—Guns and ammunition
- NT—Gym suits, outfits
 - T—Helmets
- NT—Hunting coats, pants and coveralls
 - T—Hunting wear, reflecting orange
- NT—Jogging outfits, running shoes
 - T—Mats, floor
 - T—Protective equipment, knee pads, elbow pads, forearm pads, etc.
 - T—Sleeping bags
- NT—Sneakers, jogging, tennis and aerobic shoes, etc.
- NT—Snowmobile suits
 - T—Uniforms, baseball, football, soccer, basketball, hockey etc.
- NT—Warm-up suits, cloth sweat suits
 - T—Weights
 - T—Skates, ice, roller, in-line

(24) Tobacco Products

- T—Chewing tobacco, snuff
- T—Cigarettes
- T—Smoking accessories
- T—Tobacco, cigars

(25) Utilities and Fuel

- NT—Coal
- NT—Coin-operated telephone charges
 - T—Firelogs, processed
- NT—Firewood and kindling for residential use
- NT—Fuel oil, gas, steam or electricity purchased for residential use

- T—Fuel oil, gas, steam or electricity purchased for commercial use
- T—Interstate and intrastate telephone services for residential or commercial use
- NT—Basic telephone service and subscriber line charges for residential use
 - T—Basic telephone service and subscriber line charges for commercial use
- T—Utilities for office or business within home
 - (26) Tires and Motor Vehicle Leases and Rentals Subject to Public Transportation Assistance Fund Taxes and Fees (PTA) (61 Pa. Code § 9.4).

The following items are subject to a Public Transportation Assistance Fund Tax or Fee as indicated below. The tax or fee is IN ADDITION TO any Sales or Use Tax which may be due. However, the Sales, Use, PTA Tax or PTA Fees shall not be included within the tax base when imposing such taxes or fees.

<i>Item</i>	<i>PTA Tax/Fee</i>	<i>Exemption</i>
Tires, new tires for highway use (used tires and tires for off highway use are not subject to the fee.)	\$1 fee upon the sale of each new tire	Exempt if lessee qualifies for sales tax exemption.
Rentals of Motor Vehicles (the term rental shall mean the transfer of the possession of a motor vehicle for a period of less than 30 days.)	\$2 fee upon each rental day.	Exempt if lessee qualifies for sales tax exemption.
Leases of Motor Vehicles (the term lease shall mean the transfer of possession of a motor vehicle for a period of 30 or more days.)	3% tax upon the total lease payment including down payment and accelerated lease payments.	Exempt if lessee qualifies for sales tax exemption.

(27) Vehicle Rental Tax (VRT) (61 Pa. Code § 9.14)

Rental companies that have available for rental five or more motor vehicles designed to carry 15 or less passengers or a truck, trailer or semi-trailer used in the transportation of property other than commercial freight that is rented without a driver are responsible for collecting an additional 2% tax. This tax is imposed on the purchase price, as calculated for Sales Tax purposes of each rental contract for a period of 29 consecutive days or less. The VRT is separate from, and in addition to any applicable state or local Sales Tax or the \$2 daily PTA fees.

Rental companies may claim a refund up to the amount of tax remitted for filing, and registration fees paid to the Commonwealth during a previous calendar year.

ROBERT A. JUDGE, Sr.,
Secretary

[Pa.B. Doc. No. 98-932. Filed for public inspection June 12, 1998, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding

Beaver County

Pursuant to the provisions of 71 P. S. Section 2002(b), the Secretary of Transportation makes the following written finding:

The Department of Transportation plans to construct S. R. 4016 (Beaver Hollow Road) in Beaver County.

The project consists of the upgrade of Beaver Hollow Road. The project extends from the intersection with S. R. 4018 (Dutch Ridge Road) in Brighton Township and proceeds in an easterly direction to the intersection with S. R. 4049 (Riverside Drive) in Bridgewater Borough, a distance of approximately 2.1 kilometers (1.3 miles).

This alignment requires 0.14 hectares (0.35 acres) of land from the National Register eligible Wray House. There is no feasible and prudent alternative to avoid the use of the Wray House.

No adverse environmental effect is likely to result from the construction of this section of highway.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 98-933. Filed for public inspection June 12, 1998, 9:00 a.m.]

Finding

Pike County

Pursuant to the provisions of 71 P. S. Section 2002(b), the Secretary of Transportation makes the following written finding:

The Department of Transportation is planning a highway project for the reconstruction, rehabilitation, and resurfacing of S. R. 2001 in Pike County from its intersection with S. R. 2006 in Dingman Township.

The construction of the project will require 16 sliver takes which include right-of-way acquisition from the following historical resources; Milford Borough Historic District and French Town Cemetery (Old Union School House Cemetery).

The right-of-way takes also include 0.22ha (0.55ac) of property from the Delaware Water Gap National Recreation Area, which is a recreational and public park resource.

Use of the following historic properties occur because the boundaries of the resources follow the property lines, and the deeds refer to the center of the road as the property lines, and the deeds refer to the center of the road as the property line for the Wells Property, Cliff Park Inn Property, and Norman Hills Property. Additionally, there will be a visual impact to the historic Alonzo Kline Property.

Mitigation measures will be implemented as outlined in the Categorical Exclusion Evaluation/Section 2002 Evaluation report.

The environmental, economic, social, and other effects of the proposed project as enumerated in Section 2002 of the Administrative Code, have been considered. It has been concluded that there is no prudent and feasible alternative to the project as designed, and all reasonable steps have been taken to minimize such effects.

No adverse environmental effect is likely to result from this highway project.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 98-934. Filed for public inspection June 12, 1998, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Mandated Benefits

Section 9 of Act 34 of 1993 requires that the Health Care Cost Containment Council (Council) review existing or proposed mandated health benefits on request of the executive and legislative branches of government. The Council has been requested by Senator F. Joseph Loeper, Chairperson of the Senate Rules Committee, to review Senate Bill 39, the proposed Cancer Prevention and Early Detection Services Act which would require insurance coverage of certain cancer-related services, as well as a proposed amendment that would exclude the following from affected health insurance policies: "accident only, fixed indemnity, limited benefit, credit, dental, vision, specified disease, Medicare supplement, Civilian Health and Medical Program of the Uniform Service (CHAMPUS) supplement, long-term care or disability income, workers' compensation or automobile medical payment insurance." The amendment would also add coverage of annual digital rectal exams and prostate specific antigen tests for men 40-years old and older with certain prostate cancer risk factors and would specify that the benefits be subject to the same copayment and coinsurance provisions of an insurance policy as other medical services, but shall be exempt from any deductible or dollar limit provisions.

Initial notification of request for information and documentation was published in the *Pennsylvania Bulletin* on March 14, 1998, with documentation due to the Council by May 29, 1998.

Following is a list of the documentation received. This information is available for public review and comment at the Council offices during regular business hours (8:30 a.m. to 5 p.m.) until July 7, 1998. Any additional comments on this information must be received by this time. Council offices are located at: 225 Market Street, Suite 400, Harrisburg, PA 17101. Send comments to Flossie Wolf at this address.

Senate Bill 39 Submissions

1. Highmark
 - Letter from Bruce R. Hironimus, Vice President of Government Affairs, addressing Section 9 requirements
 - Relevant research articles
 - Cancer facts/incidence information
2. AFLAC (American Family Life Assurance Company of Columbus)

- Letter from Richard J. Gmerek and Elvira O. Guida of the Law Offices of Maley, Williamson, Hayden & Gmerek, addressing Section 9 requirements and supporting proposed amendment A0385 to SB 39 to exempt supplemental policies

3. The Insurance Federation of Pennsylvania, Inc.

- Letter from John R. Doubman, Secretary & Counsel, addressing Section 9 requirements

- Article from the *Philadelphia Inquirer*

4. American Cancer Society, Commonwealth Division, Inc.

- Letter from Francis X. O'Brien, Jr. of Buchanan Ingersoll, addressing Section 9 requirements

- Cancer fact/incidence information

5. Managed Care Association of Pennsylvania

- Letter from Kimberly J. Kockler, Executive Director, addressing Section 9 requirements and opposing implementation of SB 39

- Research articles

6. Fox Chase Cancer Center

- Letter from Deborah Watkins Bruner, RN, MSN, Program Director, addressing Section 9 requirements and supporting implementation of prostate cancer coverage proposed in SB 39

- Prostate cancer facts/ incidence information

- Research articles

- Copies of bills proposed in New Jersey and Maryland

7. American Foundation for Urologic Disease, Inc.

- Letter from M. Brooke Moran, Director of Patient Advocacy & Government Affairs, supporting implementation of prostate cancer coverage proposed in SB 39

- Comparison of costs for prostate cancer screening and breast cancer screening

- List of states mandating insurance coverage of prostate cancer coverage

- Copies of bills proposed in Maryland and New Jersey

8. Robert Alexander

- Letter supporting prostate cancer coverage proposed in SB 39

- Newspaper article

- Prostate cancer facts

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 98-935. Filed for public inspection June 12, 1998, 9:00 a.m.]

Mandated Benefits

Section 9 of Act 34 of 1993 requires that the Health Care Cost Containment Council (Council) review existing or proposed mandated health benefits on request of the executive and legislative branches of government. The Council has been requested by Senator F. Joseph Loeper, Chairperson of the Senate Rules Committee, to review House Bill 656, which would mandate insurance benefits

for certain diabetic supplies and services, and require any insurer underwriting Medicare or Medicaid insurance for Pennsylvania residents to provide coverage for hearing aids in accordance with the "Hearing Aid Sales Registration Law," as well as a proposed amendment which would define the term "orthotics" in the bill to include "orthotics related to the treatment of diabetes illness" and require that services must be provided "by an individual with expertise in diabetes self-management, training and education."

Initial notification of request for information and documentation was published in the *Pennsylvania Bulletin* on March 14, 1998, with documentation due to the Council by May 29, 1998.

Following is a list of the documentation received. This information is available for public review and comment at the Council offices during regular business hours (8:30 a.m. to 5 p.m.) until July 7, 1998. Any additional comments on this information must be received by this time. Council offices are located at: 225 Market Street, Suite 400, Harrisburg, PA 17101. Send comments to Flossie Wolf at this address.

House Bill 656 Submissions

1. American Diabetes Association

- Letter of support from Jennifer K. Ross, Regional Advocacy Director, addressing Section 9 requirements and recommending implementation of HB 656

- Research articles supporting implementation of HB 656

- Copies of House Insurance Committee testimony on HB 656

- Diabetes fact/incidence information

- Information from other states addressing diabetes care

2. Pennsylvania Dietetic Association

- Letter of support from M. Colleen McCann, MPH, RD addressing Section 9 requirements, recommending inclusion of medical nutrition therapy

- Research articles supporting implementation of HB 656

- Copies of House Insurance Committee testimony on HB 656

- Diabetes fact/incidence information

3. American Association of Diabetes Educators

- Letter of support from David Holtzman, Director of Government Affairs, recommending inclusion of diabetes education

- Research articles supporting implementation of HB 656

4. Pennsylvania Pharmacists Association

- Letter of support from Carmen A. DiCello, R.Ph, Executive Director, recommending implementation of HB 656

- Summary of House Insurance Committee testimony on HB 656

5. The Insurance Federation of Pennsylvania, Inc.

- Letter from John R. Doubman, Secretary & Counsel, addressing Section 9 requirements and supporting implementation of HB 656 and supporting proposed amendments A0388 and A0470

6. Capital Blue Cross

- Letter from Vincent P. Carocci, Manager of Government Relations for Capital Blue Cross, and Mary Ellen McMillen, Vice-President for Legislative Policy for Independence Blue Cross, supporting proposed amendment A0470 to HB 656

7. Blue Cross of Northeastern Pennsylvania

- Letter from Gerald M. Guarilia, Senior Director of Legislative and Regulatory Affairs, and Gloria Blandina, Government Affairs Representative, supporting proposed amendment A0470 to HB 656, and opposing mandates in general

8. Highmark

- Letter from Bruce R. Hironimus, Vice President of Government Affairs, addressing Section 9 requirements
- Relevant research articles
- Diabetes fact/incidence information
- Information about Highmark's HealthPLACE Diabetes Management Program

9. Managed Care Association of Pennsylvania

- Letter of opposition from Kimberly J. Kockler, Executive Director, addressing Section 9 requirements
- Penn State Geisinger Newsletter from April/May 1998
- Research article

10. HealthAmerica

- Letter of opposition from Alanna M. Clark, Director of Governmental and Public Affairs, addressing Section 9 requirements and recommending against implementation of HB 656

11. AFLAC (American Family Life Assurance Company of Columbus)

- Letter from Richard J. Gmerek and Elvira O. Guida of the Law Offices of Maley, Williamson, Hayden & Gmerek, supporting the exemption of supplemental policies from HB 656

12. Holy Spirit Hospital, Diabetes Services

- Letter of support from Denise Bordlemay, RN, BSN, CDE, Manager of Diabetes Services HSH, recommending implementation of HB 656

13. Robert W. Piavis, Jr., R.Ph

- Letter of support for House Bill 656, discussing his personal costs for managing his diabetes

14. William Greene, R.Ph

- Fax documenting costs for diabetic supplies

15. Gary Hoffman

- Letter of support for House Bill 656
- News article from the Internet

83 Constituent Letters in support of House Bill 656

1 Constituent Letter in opposition to House Bill 656

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 98-936. Filed for public inspection June 12, 1998, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Filing of Final-Form Rulemakings

The Independent Regulatory Review Commission received, on the dates indicated, the following final-form regulations for review. The regulations will be considered within 30 days of their receipt at a public meeting of the Commission. To obtain the date and time of the meeting, interested parties may contact the office of the Commission at (717) 783-5417. To obtain a copy of the regulation, interested parties should contact the agency promulgating the regulation.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
#16A-538	State Board of Osteopathic Medicine Prescribing, Administering and Dis- pensing Controlled Sympathomimetic Amines	5/28/98
#16A-498	State Board of Medicine Licensure, Certification, Examina- tion and Registration Fees	5/29/98
#11-159	Insurance Department Qualifications of Persons Signing Annual Financial Statements	6/1/98
#11-157	Insurance Department Uniform Bylaws for Mutual Fire Companies	6/1/98
#11-152	Insurance Department Uniform Classification of Expenses	6/1/98
#11-150	Insurance Department Anti-Arson Application	6/1/98

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 98-937. Filed for public inspection June 12, 1998, 9:00 a.m.]

INSURANCE DEPARTMENT

**Agency Contract Termination of Jacob's Agency
under Act 143; United States Fidelity and Guar-
anty Company; Doc. No. AT98-04-034**

The request for review is granted and the scheduled day for review shall be held on July 1, 1998 at 9:30 a.m., in the Administrative Hearing Office, 901 North Seventh Street, Suite 200, Harrisburg, PA 17102.

The agency contract at issue shall remain in force and effect pending the issuance of a Decision in this matter.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid service or other accomodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 98-938. Filed for public inspection June 12, 1998, 9:00 a.m.]

Application for Consolidation of Two Domestic Mutual Fire Insurance Corporations

Millers Mutual Insurance Company and Paradise Mutual Insurance Company have filed an application for approval of an Agreement and Plan of Conversion, which will result in the formation of a new mutual fire insurance corporation. The filing was made under the requirements set forth under the Insurance Holding Company Act, 40 P. S. § 991.1402 *et. seq.* Persons wishing to comment on the acquisition are invited to submit a written statement to the Pennsylvania Insurance 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 and relevant facts to inform the Pennsylvania Insurance Department of the exact basis of the statement. Written statements should be directed to Carolyn Smith, Insurance Company Licensing Specialist, Pennsylvania Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120; FAX (717) 787-8557; email <http://www.csmith@ins.state.pa.us>.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 98-939. Filed for public inspection June 12, 1998, 9:00 a.m.]

Pennsylvania Compensation Rating Bureau; Coal Mine Compensation Rating Bureau; Workers' Compensation Loss Based Assessments Filings

On June 1, 1998, the Insurance Department (Department) received from the Pennsylvania Compensation Rating Bureau (PCRB) a filing which proposes to amend Workers' Compensation Insurance premium computation to recognize the loss based assessments provisions of Section 2218 of House Bill 1027, Act 57 of 1997, for a proposed effective date of July 1, 1998. The loss based assessments provisions of this Legislation amend the maintenance conditions of the Subsequent Injury Fund, the Workmen's Compensation Supersedeas Fund and the Workmen's Compensation Administration Fund. The PCRB's proposal is to define workers' compensation premium to be 96.82% of the dollar value obtained by applying carrier rating values and other rating plans. The remaining 3.18% of the dollar value shall be defined to be assessments for the maintenance of the above referenced loss based assessments.

Also, on June 1, 1998, the Department received from the Coal Mine Compensation Rating Bureau (CMCRB) a filing which, similar to the PCRB's filing, is responding to

House Bill 1027 requirements. The CMCRB defines workers compensation premium to be 96.81% of the dollar value obtained by applying carrier rating values and other rating plans. The remaining 3.19% of the dollar value shall be defined to be assessments for the maintenance of the above referenced loss based assessments.

Copies of these filings are available for public inspection during normal working hours, by appointment, at the Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to Chuck Romberger, CPCU, Insurance Department, Office of Rate and Policy Regulation, Bureau of Property and Casualty Insurance, Actuarial Review Division, 1311 Strawberry Square, Harrisburg, PA 17120, within 5 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 98-940. Filed for public inspection June 12, 1998, 9:00 a.m.]

Public Document Room Closed for Renovations

The Insurance Department's Public Document Room will be closed for renovations from June 22, 1998 to July 17, 1998. Any questions concerning this closing can be directed to Thomas J. Lavelle, Chief Budget and Office Management Division at (717) 783-2145.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 98-941. Filed for public inspection June 12, 1998, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing, as authorized by section 9(a) of the act of June 5, 1968 (P. L. 140, No. 78) (40 P. S. § 1008.9(a)) in connection with their company's termination of the insured's automobile policies.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Suhill Barber; file no. 98-121-03007; Erie Insurance Company; doc. no. P98-05-020; July 2, 1998, at 10 a.m.;

Appeal of Donald and Linda L. Smith; file no. 98-308-70691; Erie Insurance Company; doc. no. P198-06-002; July 7, 1998, at 1 p.m.;

Appeal of Howard and Anne Cohen; file no. 98-308-70794; USF&G Insurance Company; doc. no. P198-06-001; July 8, 1998, at 1 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files, documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The insured must bring any evidence which the insured may want to offer at the hearing. The hearing will be

held in accordance with the requirements of sections 9 and 10 of the act (40 P. S. §§ 1008.9 and 1008.10) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 98-942. Filed for public inspection June 12, 1998, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their company's termination of the insured's policies.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Harish Chandra and Sneh Rastogi; file no. 98-267-31758; State Farm Fire and Casualty Insurance Company; doc. no. PH98-06-003; July 7, 1998, at 10 a.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and other necessary evidence. The insured must bring all documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e) (relating to appeal procedure). Under 31 Pa. Code § 59.7(e)(5), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 98-943. Filed for public inspection June 12, 1998, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insurer has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with the termination of the insured's policy.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of State Farm Insurance Company; file no. 98-397-90307; Naomi R. Randolph; doc. no. E98-05-021; June 30, 1998, at 1 p.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and other necessary evidence. The insured must bring all documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e) (relating to appeal procedure). Under 31 Pa. Code § 59.7(e)(5), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 98-944. Filed for public inspection June 12, 1998, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board leases will expire:

Lackawanna County, Wine & Spirits Shoppe #3518, Keyser Oak Plaza, 1762 Keyser Oak Avenue, Scranton, PA 18508-1232.

Lease Expiration Date: May 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,500 net useable square feet of new or existing retail commercial space within 1 mile of the North Scranton Expressway and the intersection of U.S. Route 81 and PA Route 307, City of Scranton.

Proposals due: July 10, 1998 at 12 noon

Department: Pennsylvania Liquor Control Board
Location: Bureau of Real Estate, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Willard J. Rhodes, (717) 657-4228

Susquehanna County, Wine & Spirits Shoppe #5802, 78 Grow Avenue, Montrose, PA 18801-1137.

Lease Expiration Date: May 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,800 net useable square feet of new or existing retail commercial space within the Borough of Montrose.

Proposals due: July 10, 1998 at 12 noon

Department: Pennsylvania Liquor Control Board
Location: Bureau of Real Estate, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Willard J. Rhodes, (717) 657-4228

Susquehanna County, Wine & Spirits Shoppe #5801, 605 Main Street, Forest City, PA 18241-1429.

Lease Expiration Date: May 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,000 to 1,500 net useable square feet of new or existing retail commercial space within the Borough of Forest City.

Proposals due: July 10, 1998 at 12 noon

Department: Pennsylvania Liquor Control Board
Location: Bureau of Real Estate, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Charles D. Mooney, (717) 657-4228

JOHN E. JONES, III,
Chairperson

[Pa.B. Doc. No. 98-945. Filed for public inspection June 12, 1998, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Railroad With Hearing

I-00980074. Gettysburg Railway Company. Investigation Upon The Commission's Own Motion. To determine the condition, disposition and responsibility for maintenance of the existing crossing structure carrying West Guernsey Road above-the-grade of the track of the Gettysburg Railway Company in Butler Township, Adams County (AAR 593 406 V).

An initial hearing on this matter will be held Wednesday, July 29, 1998 at 10 a.m. in an available hearing room, Ground Floor, North Office Building, North Street and Commonwealth Avenue, Harrisburg, PA, when and where all persons in interests may appear and be heard, if they so desire.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 98-946. Filed for public inspection June 12, 1998, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before July 6, 1998, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.

A-00114965. Peter Pan Bus Lines, Inc. (1776 Main Street, P. O. Box 1776, Springfield, MA 01102), a corporation of the State of Massachusetts—for the right to begin to transport, persons in group and party service, between points in the city and county of Philadelphia, including the Delaware River, in amphibious vehicles with a seating capacity of 35 passengers or less, restricted to round-trip service only, with each trip including transportation on land and water. *Attorney:* Jeremy Kahn, 1730 Rhode Island Avenue, N.W., Suite 810, Washington, DC 20036.

A-00114984. Lois L. Feister, t/d/b/a Feister's Taxi Service (2202 Mine Road, Paradise, Lancaster County, PA 17562), for the right to begin to transport—persons, in paratransit service, between points in the township of Bart, Lancaster County, and within an airline distance of 50 statute miles of the limits thereof, and from points in said area, to points in Pennsylvania and return; limited to transportation of persons whose personal conditions prevent them from owning or operating a motor vehicle.

Application for temporary authority has been filed at A-00114984, seeking the rights cited above.

A-00114982. Elizabethtown Ambulance, A Division of Friendship Fire and Hose Co. #1 (171 North Mt. Joy Street, Elizabethtown, Lancaster County, PA 17022), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service, between points in the counties of Lancaster, Lebanon, York and Dauphin, and from points in the said counties, to points in Pennsylvania, and return. *Attorney:* Jack Smith, 222 South Market Street, Elizabethtown, PA 17022.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.

A-00114987. King Motor Koach Services, Inc. (906 East Main Street, Norristown, Montgomery County, PA 19401), a corporation of the Commonwealth of Pennsylvania—for the right to begin to transport—persons in group and party service, between points in the city and county of Philadelphia, and from points in said area, to points in Pennsylvania; subject to the following conditions: (1) that no right, power or privilege is granted to provide service in that portion of the city and county of Philadelphia located north and east of Frankford/Tacony Creeks; (2) that no right, power or privilege is granted to provide service in that portion of the city and county of Philadelphia bounded by Spring Garden Street on the north, the Schuylkill River on the west and south, and the Delaware River on the east and south; and (3) that no right, power or privilege is granted to provide service to or from the Philadelphia Civic Center and points located within an airline distance of 1/2 statute mile thereof; which is to be a transfer of all of the right authorized under the certificate issued at A-00109378 to Continental Tours, Inc., subject to the same limitations and conditions. *Attorney:* Reginald A. Krasmev, Bay Colony Executive Park, 565 East Swedesford Road, Suite 206, Wayne, PA 19087.

A-00114875, Folder 3 (corrected). Joseph T. Berg, t/d/b/a Berg's Limousine Service (480 Sankey Lane, New Castle, Lawrence County, PA 16105-1328)—persons in limousine service, between points in the townships of Wilmington, Pulaski, Washington and Plain Grove, and the boroughs of New Wilmington, and Volant, Lawrence County; the townships of Shenango, Wilmington, Springfield, Findley, East Lackawannok and Lackawannok, the city of Hermitage and the boroughs of West Middlesex and Mercer, Mercer County; the township and borough of Slippery Rock, Butler County; and the townships of Darlington, Big Beaver, North Sewickley, Franklin, the city of Beaver Falls, and the boroughs of Darlington, New Galilee, Koppel, Homewood and West Mayfield, Beaver County; and from points in said territory, to points in Pennsylvania; which is to be a transfer of all of the rights issued to Connolly's Limousine Service, Inc., under the certificate issued at A-00105991, subject to the same limitations and conditions. *Attorney:* William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219-2383.

A-00114985. Cranberry Limousine Service, Inc. (133 Glenbrook Drive, Cranberry Township, Butler County, PA 16066), a corporation of the Commonwealth of Pennsylvania—persons in limousine service, between points in Butler County, and from points in the county of Butler, to points in the county of Allegheny, and vice versa; and from points in the counties of Butler and Allegheny, to points in Pennsylvania on and west of U.S.

Highway Route 219, and return; which is to be a transfer of part of the rights issued to Star Limousine Service, Inc., under the certificate issued at A-00106305, F. 1, subject to the same limitations and conditions. *Attorney:* William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219-2383.

Applications of the following for amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under each application.

A-00109753, Folder 1, Am-A. Larry J. Wills (373 Cannery Road, Somerset, Somerset County, PA 15501), inter alia—persons upon call or demand in the borough of Somerset, Somerset County, and within an airline distance of 10 statute miles of the limits of said borough: *so as to permit* the transportation of persons upon call or demand, in the county of Somerset; subject to the following condition: Provided that no right, power or privilege is granted to provide service in that part of Somerset County that is both east of State Route 160 and north of U.S. Highway Route 30. *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

A-00111913, F. 1, Am-B. Bucks County Services, Inc. (1167 Newport Mews Drive, Bensalem, Bucks County, PA 19020), a corporation of the Commonwealth of Pennsylvania—persons upon call or demand in Lower Southampton Township and those portions of Northampton Township, Wrightstown Township, Upper Makefield Township, Solebury Township and the borough of New Hope located south and east of Pennsylvania Route 232, all townships and borough are located in Bucks County; subject to the following condition: that no right, power or privilege is granted to transport persons in call or demand service between points in, to or from the township of Upper Southampton, Bucks County: *so as to permit* the transportation of persons upon call or demand in Solebury Township and New Hope Borough, and the portion of Bucks County, located south and east of Pennsylvania Route 232, and that portion of Bryn Athyn Borough and Lower Moreland Township south and east of Pennsylvania Route 232 in Montgomery County to the Pennypack Creek, thence south and east along the Pennypack Creek in the city and county of Philadelphia, to the Delaware River, thence north along the Delaware River to the Bucks County Line in Bensalem Township, Bucks County. *Attorney:* William H. R. Casey, 99 East Court Street, Doylestown, PA 18901.

Application of the following for the approval of the transfer of stock as described under each application.

A-00111906, Folder 5000. Sharaton Bus Service, Inc. (RT. 6 East, P. O. Box 790, Wyalusing, Bradford County, PA 18853), a corporation of the Commonwealth of Pennsylvania—for the approval of the transfer of 50 shares of issued and outstanding shares of stock held by Arden Newton to Kenneth Sharer. *Attorney:* Kenneth Zielonis, 208 North Third Street, Suite 310, Harrisburg, PA 17101.

Application of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of household goods as described under each application.

A-00114976. Lyle C. Arana (1541 Fitzwatertown Road, Willow Grove, Montgomery County, PA 19090)—household goods in use, between points in the boroughs of Ambler,

Bryn Athyn and Hatboro, and the townships of Abington, Cheltenham, Upper Moreland, Lower Moreland, Horsham, Upper Dublin, Springfield, Montgomery, Upper Gwynedd and Lower Gwynedd, all in Montgomery County.

Applications of the following for approval of the right and privilege to partially discontinue/abandon operating as common carriers by motor vehicle for the transportation in use as described under each application.

A-00109820, F. 1, Am-A. M. J. McLaughlin Co. (142 South Washington Street, Wilkes-Barre, Luzerne County, PA 18701-2997), corporation of the Commonwealth of Pennsylvania—discontinuance of service, and cancellation of a certificate, as a common carrier, by motor vehicle, of all the limousine authority held at A-00109820, which permits the transportation of persons, from the city of Wilkes-Barre, Luzerne County, to the Wilkes-Barre/Scranton International Airport, borough of Avoca, Luzerne County; the city of Scranton, Lackawanna County; and points in Monroe County, and return.

Applications of the following for approval of the right and privilege to partially discontinue/abandon operating as common carriers by motor vehicle for the transportation of household goods in use as described under each application.

A-00087078, F. 2, Am-T. J. R. Butler, Incorporated (P. O. Box 487, East Syracuse, NY 13057), corporation of the Commonwealth of Pennsylvania—discontinuance of service and cancellation of the certificate of public convenience as a common carrier by motor vehicle which authorizes the following rights: (1) as a Class B carrier, household goods, in use, between points in the borough of Dunmore, Lackawanna County, and territory within 3 miles of the limits of said borough; (2) household goods in use from points in said territory, to points in Pennsylvania, and vice versa; (3) household goods in use between points in the city of Scranton, Lackawanna County, and within 3 miles of the limits of said city; (4) household goods in use from points in the city of Scranton, Lackawanna County, and within 3 miles of the limits of said city, to points within 40 miles by the usually traveled highways of the point of origin; and (5) property, except household goods in use, between points in Pennsylvania.

Applications of the following for approval amendment of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.

A-00113157, Folder 1, Am-A. Mary Lewis (R. R. 2, Box 193E, Carmichaels, Fayette County, PA 15320), inter alia—persons in limousine service, between points in the county of Greene, and from points in said county, to points in Pennsylvania, and return; subject to the following conditions: (a) that no right, power or privilege is granted to provide service for funeral homes or to persons attending funerals; and (b) that no right, power or privilege is granted to provide service in vehicles with seating capacities of less than 8 passengers, not including the driver: *so as to permit* the transportation of persons in limousine service: (1) between points in Fayette County; and (2) from points in the county of Fayette, to points in the boroughs of Carmichaels, Clarksville, Jefferson, Rice's Landing and the townships of Cumberland, Monongahela,

Morgan and Jefferson, Greene County; and the boroughs of West Brownsville, Marianna, Centerville, California, Roscoe, Stockdale, Dunlevy, Allenport, Elco, Charleroi, Speers, Coal Center, Beallsville, Donora, and Long Branch, and the townships of East Bethlehem, North Bethlehem and Hanover, Washington County and return; which is to be a transfer of all of the rights authorized under the certificate issued at A-00110340 and A-00110340, F. 1, Am-A to Garry Sisson, t/d/b/a Garry's Car & Truck Rental, subject to the same limitations and conditions. *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

A-00102568, F. 3, Am-A. Harry Williams, t/d/b/a Harry Williams Cab Service (2040 Centre Avenue, Pittsburgh, Allegheny County, PA 15219)—persons upon call or demand in the 3rd, 4th and 5th Wards of the city of Pittsburgh, Allegheny County, and those areas of the city of Pittsburgh commonly known as Northview Heights, St. Clair Village, Glen Hazel Project, Westgate Village, and Broadhead Manor, and the Homewood-Brushton area bounded generally by Washington Boulevard and Penn Avenue, the Beltzhoover area bounded by Brownsville Road, Arlington Avenue, Warrington Avenue and Saw Mill Run Boulevard, and that portion of the Manchester area bounded by Beaver Avenue, Brighton Road, Western Avenue and Marshall Avenue: *so as to permit* the transportation of persons upon call or demand in the city of Pittsburgh, Allegheny County; which is to be a transfer of all of the rights authorized UJSP, Inc., t/d/b/a Blue White Taxi, under the certificate issued at A-00110880, subject to the same limitation and conditions. *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under each application.

A-00114603, Folder 2. Hershey Entertainment & Resorts Company (300 Park Boulevard, P. O. Box 860, Hershey, Dauphin County, PA 17033-0860), a corporation of the Commonwealth of Pennsylvania—additional right to its pending application—persons in paratransit service, for the guests of the Hershey Lodge and Convention Center and the Hotel Hershey, between the Hershey Lodge and Convention Center, Hotel Hershey, both located in Derry Township, Dauphin County and the Amtrak Train Station located in the city of Harrisburg, Dauphin County. *Attorney:* John P. Neblett, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108.

A-00109753, Folder 3. Larry J. Wills (373 Cannery Road, Somerset, Somerset County, PA 15501)—additional right—persons, in paratransit service, between points in the county of Somerset, and from points in said county, to points in Pennsylvania, and return. *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

Motor Carrier Applications—Property, Excluding Household Goods in Use

The following applications for the authority to transport property, excluding household goods in use, between points in Pennsylvania, have been filed with the Pennsylvania Public Utility Commission. Public comment to these applications may be filed, in writing with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 on or before June 29, 1998.

- A-00114973 Midwest Logistics, Inc.
P. O. Box 959, Rantoul, IL 61866
- A-00114974 Leslie W. Miller, Jr., t/a Miller
Automotive
P. O. Box 459, Dushore, PA 18614-0459
- A-00114975 Marzocchi Trucking Co., Inc.
9 Meadowbrook Drive, Selingsgrove, PA 17870
- A-00114977 Menichino Paving Company, Inc.
402 Sampson Street, New Castle, PA 16101
- A-00114978 Samuel S. & Michael D. Shirk, t/a
Shirk Excavating
R. D. 2, Box 2021-B, Fleetwood, PA 19522
- A-00114979 David P. Clover, t/a Clover Trucking
P. O. Box 1427, Harrisonburg, VA 22801
- A-00114980 B & B Gash Trucking Corp.
359 Nemoral Street, Warminster, PA 18974; Joseph P. Murdock, P. O. Box 40248, Indianapolis, IN 46240
- A-00114981 Penske Transportation Services, Inc.
P. O. Box 563, Reading, PA 19603;
George C. Balchunas, P. O. Box 563, Reading, PA 19603-0563
- A-00114983 Beaver Valley Consolidated Transport
Systems, Inc.
901 20th Street, Aliquippa, PA 15001
- A-00111135 F.3 James W. Heater
614 Jack Street, Greensburg, PA 15601
- A-00114168 F.2 Charles R. & Mildred S. Altemus, t/a
Altemus Farms
R. D. 1, Box 134, Penn Run, PA 15765
- A-00114972 Charles W. Reckart, t/a Reckart
Trucking
P. O. Box 90, Route 166 South, Martin, PA 15460
- A-00114971 Richard W. Frazee, t/a R. W. Frazee
6446 National Pike Road, Addison, PA 15411
- A-00114970 Geo-Drain, Inc.
161 Jordan Street, P. O. Box 85, South Heights, PA 15081
- A-00114969 Thomas J. Jones, t/a T.J.'s Hauling
9 Moores Court, Quakertown, PA 18951
- A-00114968 Surehaul Transport, Inc.
P. O. Box 335, Paulsboro, NJ 08066;
Edward L. Ciemniecki, One Liberty Place, Thirty-Second Floor, 1650 Market Street, Philadelphia, PA 19103-7393
- A-00114929 Red Ball Express Corporation
625 Rocky Glen Road, Avoca, PA 18641; Mose Lewis III, 4201 Connecticut Avenue, NW, Suite 400, Washington, DC 20008
- A-00109753 F.4 Larry J. Wills
373 Cannery Rd, Somerset, PA 15501;
John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219
- A-00114998 Wayne L. Altemose, t/a Wayne L.
Altemose Trucking
R. D. 1, Box 289 A, Astolat Road, Effort, PA 18330
- A-00114997 Brian G. Witosky, t/a Brian G. Witosky
Trucking
146 Stouffer Hill Road, Friedens, PA 15541
- A-00114996 Jay-Kay Carrier's, Inc.
R. R. 2, Box 198, Olyphant, PA 18447
- A-00114995 Earl L. Livingston, t/a Dillsburg Septic
Excavating & Paving
516 Range End Road, Dillsburg, PA 17019; J. Bruce Walter, Dauphin Bank Bldg., 12th Floor, One South Market Square, P. O. Box 1146, Harrisburg, PA 17108-1146
- A-00114994 Carl W. Burd
R. R. 2, Box 1050, Port Royal, PA 17082
- A-00114993 Edward B. Stephens, t/a E. B. Stephens
Trucking
121 West Boot Road, West Chester, PA 19380
- A-00114992 Kerry McCrary, t/a McCrary
Enterprises
R. D. 2, Box 4473, Jonestown, PA 17038
- A-00114991 Harold T. Litzel, t/a Harold T. Litzel
Towing
6870 Old Ridge Road, Fairview, PA 16415
- A-00114990 Bryan Miller Trucking, Inc.
R. R. 1, Box 90-M, New Ringgold, PA 17960; Thomas R. Lisella, 109 W. Broad Street, Tamaqua, PA 18252
- A-00114989 FMDL Equipment, Inc.
Box 52, 900 S. Railroad Street, Penn, PA 15675
- A-00114986 Sherwood Wilson, t/a C & S Wilson & Son
268 Romney Boulevard, Newark, DE 19702
- A-00114999 Keith B. Coyne
R. D. 8, Box 8229, Reeders, PA 18360
- A-00114976 F.2 Lyle C. Arana
1541 Fitzwatertown Road, Willow Grove, PA 19090
- A-00115000 Hunnum Electric, Inc.
P. O. Box 37, Uwchland, PA 19480
- A-00115001 David L. Banghart
529 Church Drive, Muncy, PA 17756
- A-00115002 D & V Trucking, Inc.
12803 Col-Canfield Road, Columbus, OH 44408; David A. Ferris, 2733 West Dublin-Granville Road, Columbus, OH 43235-2798

- A-00115003 Rusty E. & Steven N. Miller, Copartners, t/a R & S Miller Trucking
P. O. Box 205, Loganton, PA 17747
- A-00115004 Corporate Express Delivery Leasing—Northeast, Inc.
800 Main Street, Troy, NY 12180:
William P. Parker, 2212 N.W. 50th,
Suite 163, Oklahoma City, OK 73112
- A-00115005 Corporate Express Delivery Systems—Northeast, Inc.
800 Main Street, Troy, NY 12180:
William P. Parker, 2212 N.W. 50th,
Suite 163, Oklahoma City, OK 73112
- A-00115006 Kemner Equipment Management Corp.
65 Lightcap Road, Pottstown, PA
19464: Christopher Zettlemyer, P. O.
Box 11844, Harrisburg, PA 17108-
1844
- A-00115008 Russell John Greiser, t/a Russell J. Greiser
R. R. 1, Box 1675, Dushore, PA 18614
- A-00115012 Kuntz & Son, Inc.
590 Hershey Road, Hummelstown, PA
17036: David H. Radcliff, 3905 North
Front Street, Harrisburg, PA 17110
- A-00110361 F.2 K. Murphy & Co., Inc.
1991 Turnpike Road, Elizabethtown,
PA 17022: David H. Radcliff, 3905
North Front Street, Harrisburg, PA
17110
- A-00115011 John R. Fenstermaker, t/a
Fenstermaker Trucking
R. R 2, Box 848, Jersey Shore, PA
17740
- A-00115007 Jean L. Stroble, t/a Stoble Trucking
Service
1844 Ridge Road, Cogan Station, PA
17728
- A-00115009 Mark A. Weber
3900 Elmerton Avenue, Harrisburg,
PA 17109: David H. Radcliff, 3905
North Front Street, Harrisburg, PA
17110
- A-00115010 Harvey M. Fisher
1531 Sand Hill Road, Hummelstown,
PA 17036: David H. Radcliff, 3905
North Front Street, Harrisburg, PA
17110

Trucking, Inc., respondent, alleging, inter alia, that respondent failed to pay an assessment, in violation of 66 Pa.C.S. § 510(c).

In accordance with 52 Pa. Code § 5.61, the notice page of the complaint notified respondent that it must file an answer to the complaint within twenty (20) days of the date of service. The notice further specified that, if the respondent failed to answer the complaint within twenty (20) days, or if the respondent filed an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety would request that the Commission enter an order imposing the penalty set forth in the complaint.

On March 31, 1998, Lee C. Krause, Esquire, filed an answer to the complaint, on behalf of respondent, which advised this Commission that respondent is no longer in business and has had no assets and/or vehicles for a minimum of four years. Respondent's certificate will be cancelled; however, respondent will be required to pay the outstanding assessment balance of \$11,319.00 prior to any approval for reinstatement of its certificate.

Therefore, It Is Ordered That:

1. The allegations in the complaint are admitted.
2. The complaint is sustained.
3. The certificate of public convenience held by Cherry Ridge Trucking, Inc. is hereby revoked.
4. Cherry Ridge Trucking, Inc. cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101, et seq. and the regulations of this Commission, 52 Pa. Code §§ 1.1, et seq. In view of the cancellation of respondent's certificate of public convenience, it is specifically prohibited from rendering service as a common carrier by motor vehicle in intrastate commerce in the Commonwealth of Pennsylvania.
5. The Secretary of the Commission serve a copy of this cancellation order on: Department of Revenue, Bureau of Audit Programs, Sales & Use Taxes, 10th Floor, Strawberry Square, Harrisburg, PA 17128-1061.
6. The Secretary of the Commission serve a copy of this cancellation order on respondent's insurance carrier: Northern Insurance Company of New York, 425 North 21st Street, Camp Hill, PA 17011.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 98-947. Filed for public inspection June 12, 1998, 9:00 a.m.]

Commissioners Present: John M. Quain, Chairperson;
Robert K. Bloom, Vice-Chairperson; John Hanger;
David W. Rolka; Nora Mead Brownell

Public Meeting held
May 21, 1998

*Pennsylvania Public Utility Commission v. Cherry Ridge
Trucking, Inc., R. D. 2, Box 2055, Honesdale, PA 18431;
A-00106902C9801*

Order

By the Commission:

On February 26, 1998, the Bureau of Transportation and Safety instituted a complaint against Cherry Ridge

Telecommunications Without Hearing

Doc. Nos. A-310621 F0002 and A-310621 F0003.
Vanguard Telecom Corporation. Application of Vanguard Telecom Corporation for approval to offer, render, furnish or supply telecommunications services as a Competitive Local Exchange Carrier and as a Competitive Access Provider, in the Commonwealth of Pennsylvania, in the geographic service areas of the following local exchange carriers: Bell Atlantic—Pennsylvania, GTE, Sprint/United Telephone, Conestoga Telephone, Denver and Ephrata Telephone, Alltel Pennsylvania, Inc., Buffalo

Valley Telephone Company, Citizens Telecommunications Company of New York, C-Tec Company, Contel of Pennsylvania, Inc., d/b/a GTE PA, Deposit Telephone Company, Inc., Frontier Communications, Hancock Telephone Company, Ironton Telephone Company, Lackawaxen Telephone Company, Mahanoy and Mahantango Telephone Company, North Eastern Pennsylvania Telephone Company, North Penn Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Quaker State Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company (TDS Telecom), United Telephone Company of Pennsylvania and Commonwealth Telephone.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before June 29, 1998, under 52 Pa. Code (relating to public utilities).

Applicant: Vanguard Telecom Corp.

Through and By Counsel: James H. Cawley, Rhoads and Sinon, LLP, Dauphin Bank Building, Twelfth Floor, One South Market Street, P. O. Box 1146, Harrisburg, PA 17108-1146.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 98-948. Filed for public inspection June 12, 1998, 9:00 a.m.]

TURNPIKE COMMISSION

Request for Proposals

In the event that the Turnpike Commission (Commission) does not exercise its option to renew existing purchase orders, the Commission will solicit bid proposals for selected commodities during the months as shown in the following. Bid Proposal Forms and Conditions may be obtained, free of charge, by communicating with the Purchasing Bid Clerk, (717) 939-9551, extension 2830, no later than the 15th day of the month preceding the month shown as follows for the solicitation. Please refer to the Commodity Description.

Commodity

July— Pest Control and Extermination
Electric Lamps and Tubes

August— Tires and Tubes (Auto, Truck)

October— Janitorial Supplies
Trash Removal Service
Structural and Vehicle Paint

December— Glass Beads
Low Heat Traffic Paint
Electric Tunnel Lamps

Interested parties not now on the Bidders Mailing List may obtain the necessary documents by contacting: Pennsylvania Turnpike Commission, Attention: Purchasing Department, P. O. Box 67676, Harrisburg, PA 17106, (Phone) (717) 939-9551, Ext. 2830.

JAMES F. MALONE, III,
Chairperson

[Pa.B. Doc. No. 98-949. Filed for public inspection June 12, 1998, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employes and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

Reader's Guide

Legal Services & Consultation—26

- ① Service Code Identification Number
- ② Commodity/Supply or Contract Identification No.
- ③ Contract Information
- ④ Department
- ⑤ Location
- ⑥ Duration
- ⑦ (For Commodities: Contact:) Vendor Services Section 717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, "Frequently Asked Questions About State Contracts," explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**

Pennsylvania State Treasury
Room G13 Finance Building
Harrisburg, PA 17120
717-787-2990
1-800-252-4700

BARBARA HAFER,
State Treasurer

Online Subscriptions At <http://www.statecontracts.com> 1-800-334-1429 x340

Commodities

1043158 Calendars—2,500 each calendar base size 3 5/8" x 6" base only; 325 each calendar base 5" x 8" base only; 36,250 each calendar refill size 3 5/8" x 6" refill only; 1,950 each calendar refill size 5" x 8" refill only; 34,968 each dated monthly calendar desk pad size 22 x 17; 1,962 each calendar diary and date book standard half hourly appointment size 5 3/4" x 8 3/4"; 3,510 each calendar standard diary hardbound diaries and date book, daily reminder; 1,356 each calendar, diaries and date book standard half hour appointment size 7" x 9 3/4"; 21,264 each calendar diaries and date book week-at-a-glance size 7" x 9"; 25,920 each calendar diaries and date book month-at-a-glance size 7" x 9"; 5,424 each calendar, wall, one full year, heavy white paper, blue ink, metal bound at top and bottom size 24 x 36.

Department: General Services

Location: Harrisburg, Dauphin County, PA

Duration: FY 97—98

Contact: Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

1020118 Promotional items—1 each sign making machine: Gerber Edge No. P493038A; 1 each sign making machine Gerber H.S. 15" plotter No. P32973A; 1 each Sign Shop Program computer software needed to provide the functionality and interconnectivity of the Gerber output device and the plotter to the existing Gerber sign making equipment.

Department: Corrections

Location: Albion, Erie County, PA

Duration: FY 97—98

Contact: Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

1028158 Refrigerator and AC equipment—2 each centrifugal water chillers (1,000 ton).

Department: General Services

Location: Harrisburg, Dauphin County, PA

Duration: FY 97—98

Contact: Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

1067158 Computer—Enterprise Agreement for Microsoft Software.

Department: General Services

Location: Statewide for Agencies Under the governor's jurisdiction

Duration: FY 97—98, 99—00 and 00—01

Contact: Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

SERVICES

Construction—09

050-306 Cleaning the super-structure on bridges located throughout Engineering District 5-0 which includes the counties of Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill as directed by the District Bridge Engineer or his delegate.

Department: Transportation

Location: District 5-0 State Roads

Duration: One year from the effective date

Contact: Barrie Heffner, (610) 798-4152

DGS A 508-89 Project title: Convert Patient Bed Cubicles. Brief description: Remove existing partitions and ceilings. Install new fire rated walls, partitions, doors and ceilings. Provide new HVAC and electrical upgrades. General, Mechanical and Electrical Construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 17, 1998 at 11 a.m.

Department: General Services

Location: Mayview State Hospital, Bridgeville, Allegheny County, PA

Duration: 180 calendar days from date of initial job conference

Contact: Contract Bidding Unit, (717) 787-6556

DGS A 581-49 Project title: Replace Condensate Lines—White Haven Center. Brief description: Excavate and backfill, remove and replace burned piping, repair concrete manhole, restore paving and lawn and test piping. Mechanical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 10, 1998 at 1 p.m.

Department: General Services
Location: White Haven Center, White Haven, Luzerne County, PA
Duration: 120 calendar days from date of initial job conference
Contact: Contract Bidding Unit, (717) 787-6556

Contract No. FBP-96-01-0022A Removal of an existing bridge (steel I-beams, steel grid decking and masonry substructure); constructing a new bridge (prestressed concrete beams, reinforced concrete abutments, deck, and wingwalls); landscaping; guide rail, selected material surfacing; and bituminous paving. Work is located south of U. S. Route 30 and Caledonia State Park.

Department: Conservation and Natural Resources
Location: Quincy Township, Franklin County, PA
Duration: Complete work by September 30, 1999
Contact: Construction Management Section, (717) 787-5055

Contract No. FDC-96-01-0016A Removal of existing and constructing a new bridge (maintenance and protection of traffic; excavating, backfilling and compacting; selected material surfacing; rock (84 C. Y.); E and S measures; guide rail; landscaping; reinforced concrete—Class A (100 C. Y.); Class AA (15 C. Y.), Class AAA (23 C. Y.), Class C (30 C. Y.); architectural surface treatment; and prestressed concrete beams. Work is located in Forest District 1, near Fayetteville in Franklin County.

Department: Conservation and Natural Resources
Location: Quincy Township, Franklin County, PA
Duration: Complete work by September 30, 1999
Contact: Construction Management Section, (717) 787-5055

Contract No. FDC-015-284 Removal of existing structures (pipe, stone masonry headwalls and wingwalls); clearing and grubbing; excavating (685 C. Y.) and fill (1,100 C. Y.); riprap (R6 (463 S. Y.) and R7 (185 tons)); corrugated steel pipe (160 L. F., various sizes) and 8 end sections; and landscaping. Work is located off PA Route 872 near the village of Wharton.

Department: Conservation and Natural Resources
Location: Sylvania Township, Potter County, PA
Duration: 90 days
Contact: Construction Management Section, (717) 787-5055

Contract No. FDC-016-95 Removal and disposal of two 1,000 gallon gasoline tanks and one 550 gallon diesel tank and restoration of the disturbed area. Work is located at the Armenia Ranger Station.

Department: Conservation and Natural Resources
Location: Union Township, Tioga County, PA
Duration: 60 days
Contact: Construction Management Section, (717) 787-5055

SU-615 Bucks Drive Resurfacing Project title: Bucks Drive Repaving. Brief description: Work shall be completed at Shippensburg University, Shippensburg Township, Cumberland County, PA, and shall be accomplished by one Prime Contractor. The project shall include the furnishing of all labor, superintendence, material, tools, equipment and performing all work necessary to resurface and restripe Bucks Drive and its intersection with adjoining streets. Prospective bidders may obtain project plans by contacting Debbie Martin, Contract Administrator, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257, (717) 532-1121 or fax (717) 530-4004. Prebid meeting with site visit immediately to follow will be held on June 23, 1998 at 10 a.m. in Reed Operations Center. Bids due: July 15, 1998 at 4 p.m. in Old Main Room 300. Bids open: July 16, 1998 at 2 p.m., Old Main Room 203A. Contracts and MBE/WBE participation apply. The System encourages responses from small firms, minority firms and firms which may have not previously performed work for the System. Non-Discrimination and Equal Opportunity are the policies of the Commonwealth and the PA State System of Higher Education.

Department: State System of Higher Education
Location: Shippensburg University, Shippensburg, Shippensburg Township, Cumberland County, PA
Duration: 30 days from date of Notice to Proceed
Contact: Deborah K. Martin, Contract Administrator, (717) 532-1121

AMD 56(2524)102.1 Acid Mine Drainage Abatement, Koontztown (Oven Run) involves approximately 126,500 c. y. of grading, 24,600 ton limestone aggregate and 7,000 c. y. spent mushroom compost (wetland treatment unit material), 37,000 s. y. impervious liner and geotextile fabric, 5,500 l. f. piping and 2,700 s. y. of rock lining. One hundred percent (100%) of this project is financed by the Federal Government. Federal funds available for this program total \$20.1 million for Pennsylvania's 1998 AML Grant.

Department: Environmental Protection
Location: Shade Township, Somerset County, PA
Duration: 180 days after Notice to Proceed
Contact: Construction Contracts Unit, (717) 783-7994

OSM 54(3042,3727)201.1 Backfilling Strip Pits, Oneida West and North Sheppton involves clearing and grubbing, backfilling, grading an estimated 332,950 c. y., 36.9 acres of seeding and wetland construction. One hundred percent (100%) of this project is financed by the Federal Government. Federal funds available for this program total \$20.4 million for Pennsylvania's 1997 AML Grant.

Department: Environmental Protection
Location: East Union Township, Schuylkill County, PA
Duration: 390 days after Notice to Proceed
Contact: Construction Contracts Unit, (717) 783-7994

Food—19

Inquiry No. 30235 Nutra Sweet tea and ice tea. Dates, specifications, quantities, special delivery instructions available upon request. For period: October, November, December 1998.

Department: Public Welfare
Location: Western Center, 333 Curry Hill Road, Canonsburg, PA 15317
Duration: October, November, December 1998
Contact: Ginny Stinespring, Purchasing Agent, (724) 873-3256

Inquiry No. 30236 Bread and rolls. Dates, specifications, quantities, special delivery instructions available upon request. For period: October, November, December 1998.

Department: Public Welfare
Location: Western Center, 333 Curry Hill Road, Canonsburg, PA 15317
Duration: October, November, December 1998
Contact: Ginny Stinespring, Purchasing Agent, (724) 873-3256

5598 Frozen coffee. Quantities, specifications and delivery dates may be obtained from Hamburg Center. Fax (610) 562-6025.

Department: Public Welfare
Location: Hamburg Center, Hamburg, PA 19526
Duration: August 1, 1998—June 30, 1998
Contact: B. O. Epting, Purchasing Agent, (610) 562-6034

AP2500-98 Alternative Protein Foods. Burgers: Garden (45 cs), bean (40 cs), soy (40 cs), grain (40 cs); dry mix soy chili (600 lbs.) and dry mix soy bar-b-que (600 lbs.). Quantities in parenthesis are approximate monthly requirements. To include any other related item. Delivery dates to be established by institution. Bids will be advertised for approximate 2 month requirements.

Department: Corrections
Location: State Correctional Institution, Follies Road, Dallas, Luzerne County, PA 18612
Duration: July 1, 1998 through June 30, 1999
Contact: Robert G. Berkey, Purchasing Agent, (717) 675-1101

Environmental Maintenance Services—15

1000-066 This contract will provide Engineering District 10-0 subsurface drilling services in accordance with Pub. 222M (revised), and maintenance and protection of traffic associated with drilling operations. All requests for bid packages must be received by fax at (724) 357-2872 (Attn: Diane Spence).

Department: Transportation
Location: Engineering District 10-0: Armstrong, Butler, Clarion, Indiana and Jefferson Counties, PA
Duration: One (1) year with four 1-year renewals
Contact: Thomas E. Polacek, P. E., (724) 357-2848

HVAC—22

Project No. 026 Provide emergency and routine repair work for air conditioning system. The contractor must respond to the call within two hours of receiving a call either directly or by a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid proposal forms used to submit bids are available from the State Armory Board.

Department: Military and Veterans Affairs
Location: PA Air National Guard, Greater Pittsburgh Airport, Pittsburgh, Allegheny County, PA
Duration: October 1, 1998—September 30, 2001
Contact: Emma Schroff, (717) 861-8518

AE-2703 Housing and exhaust fans installations. Fax (717) 783-7971.

Department: Transportation
Location: PennDOT Stockpile No. 21, Lenox SR 92, Lenox Township, Susquehanna County, PA
Duration: 90 calendar days, proposed bid July 1998
Contact: Valentina Chubb, (717) 787-7001

AE-2834 Housing and exhaust fan installations. Fax (717) 783-7971.

Department: Transportation
Location: PennDOT Stockpile No. 02, I-84 and Route 6, Millford Township, Pike County, PA
Duration: 90 calendar days, proposed bid July 1998
Contact: Valentina Chubb, (717) 787-7001

AE-4097 Housing and exhaust fans installation. Fax (717) 783-7971.

Department: Transportation
Location: PennDOT Stockpile No. 06, Retreat, SR 11, Hunlock Township, Luzerne County, PA
Duration: 90 calendar days
Contact: Valentina Chubb, (717) 787-7001

AE-4098 Housing and exhaust fans installations. Fax (717) 783-7971.

Department: Transportation
Location: PennDOT Stockpile No. 10, Sybertsville, Route 93, Sugarloaf Township, Luzerne County, PA
Duration: 90 calendar days, proposed bid July, 1998
Contact: Valentina Chubb, (717) 787-7001

AE-4099 Housing and exhaust fans installations. Fax (717) 783-7971.

Department: Transportation
Location: PennDOT Stockpile No. 11, West Hazleton, SR 924, West Hazleton Borough, Luzerne County, PA
Duration: 90 calendar days, proposed bid July 1998
Contact: Valentina Chubb, (717) 787-7001

AE-5000 Housing and exhaust fans installation. Fax (717) 783-7971.

Department: Transportation
Location: PennDOT Stockpile No. 16, Nuangola, Route 2043, Rice Township, Luzerne County, PA
Duration: 90 calendar days, proposed bid July 1998
Contact: Valentina Chubb, (717) 787-7001

H-5602 Maintenance and repair of refrigeration and air conditioning systems. To receive specifications, send written request to Beverly O. Epting, Hamburg Center, Hamburg, PA 19526, fax (610) 562-6025.

Department: Public Welfare
Location: Hamburg Center, Hamburg, PA 19526
Duration: January 1, 1999 to December 31, 2001
Contact: Beverly O. Epting, Purchasing Agent, (610) 562-6031

1-ITQ-1998 Electric Generation Service: All interested PUC licensed vendors will be invited to participate in a Statewide Qualification Contract. From the issuance of this multiple awards contract, interested Agencies of the Commonwealth and the State System of Higher Education and its Universities may request quotes. The contract period is January 1, 1999 to December 31, 1999. A solicitation of interest will be sent to each licensed vendor.

Department: General Services
Location: Statewide
Duration: One year—January 1, 1998—December 31, 1999
Contact: Faye Love-Kretz, (717) 787-6573

Janitorial Services—23

Project No. 113 Janitorial and custodial services.

Department: Military and Veterans Affairs
Location: PA Air National Guard, 300 Tanker Road, Coraopolis, Allegheny County, PA
Duration: October 1, 1998—September 30, 2001
Contact: Emma Schroff, (717) 861-8518

JC-10-98 Janitorial services: To be provided on a daily basis, Monday through Friday, after 5 p.m., except State holidays. Involves 8,000 square feet of office space. A prebid onsite inspection is mandatory.

Department: Labor and Industry
Location: Job Center Field Operations, Easton Job Center, 220 Ferry Street, Easton, Northampton County, PA 18042
Duration: October 1, 1998 through September 30, 2000—2 years
Contact: Mary A. Hallahan, Manager, (610) 250-1708

Laboratory Services—24

1000-065 This contract will provide laboratory testing services for soil, rock and water testing as related to drilling and construction activities. All requests for bid packages must be received by fax at (724) 357-2872 (Attn: Diane Spence).

Department: Transportation
Location: Engineering District 10-0: Armstrong, Butler, Clarion, Indiana and Jefferson Counties, PA
Duration: One (1) year with four 1-year renewals
Contact: Thomas E. Polacek, P. E., (724) 357-2848

Lodging/Meeting—27

IFB 97-07-15 The Bureau of Drug and Alcohol Programs is planning its 1999 Spring Staff Development Training Institute. The Institute will begin with Sunday registration and conclude Friday afternoon. Group size is expected to be up to 550 daily. The facility to host this Institute must meet the following daily requirements: Sleeping Rooms: 250 total air conditioned double/single rooms; Meeting Rooms: 18 soundproof to accommodate 35 people classroom style; 1 Hospitality Suite to accommodate 100; Banquet Facilities to accommodate 45 8' x 10' booths with electricity and photocopying capability; 1 Locked Room for storage of equipment; availability of training aids and equipment and parking to accommodate 350 cars. Meeting rooms must be connected to sleeping rooms in structure. Any of the following 1999 dates: May 8—14; May 15—21; June 5—11; June 12—18; June 19—25; June 26—July 2, 1999.

Department: Health
Location: York, Butler, Berks, Bucks, Beaver, Carbon, Monroe, Lawrence, Cambria, Somerset, Bedford, Fulton, Huntingdon, Adams, Lancaster, Chester, Lebanon, Juniata, Northampton, Montgomery, Philadelphia, Perry, Schuylkill, Blair, Franklin, Mifflin, Snyder, Armstrong, Indiana, Allegheny, Greene, Westmoreland, Fayette, Lehigh, Washington, Dauphin, Delaware or Cumberland Counties, PA
Duration: Seven days as listed above
Contact: Gwenn Miller, (717) 783-8200

IFB 97-07-16 The Bureau of Drug and Alcohol Programs is planning its 1999 Fall Staff Development Training Institute. The Institute will begin with Sunday registration and conclude Friday afternoon. Group size is expected to be up to 550 daily. The facility to host this Institute must meet the following daily requirements: Sleeping Rooms: 250 total air conditioned double/single rooms; Meeting Rooms: 18 soundproof to accommodate 35 people classroom style; 1 Hospitality Suite to accommodate 100; Banquet Facilities to accommodate 45 8' x 10' booths with electricity and photocopying capability; 1 Locked Room for storage of equipment; availability of training aids and equipment and parking to accommodate 350 cars. Meeting rooms must be connected to sleeping rooms in structure. Any of the following 1999 dates: September 25—October 1; October 2—8; October 16—22, October 23—29, October 30—November 5; November 13—19, 1999.

Department: Health

Location: York, Butler, Berks, Bucks, Beaver, Carbon, Monroe, Lawrence, Cambria, Somerset, Bedford, Fulton, Huntingdon, Adams, Lancaster, Snyder, Washington, Philadelphia, Perry, Schuylkill, Lebanon, Juniata, Northampton, Westmoreland, Lehigh, Dauphin, Chester, Blair, Franklin, Mifflin, Montgomery, Armstrong, Indiana, Allegheny, Greene, Fayette, Delaware or Cumberland Counties, PA

Duration: Seven days as listed above

Contact: Gwenn Miller, (717) 783-8200

SP 377504 The PA Board of Probation and Parole is requesting proposals from vendors to provide lodging rooms in order to accommodate employees attending four training programs for approximately 35—40 participants per training program. The dates of each program are indicated as follows: Program 1: July 13—24, 1998; Program 2: October 13—23, 1998 (Schedule will be effected by holiday); Program 3: January 11—29, 1999 (excluding January 18, 1999); Program 4: April 12—30, 1999. We will require 16 double rooms for 10 nights for Program 1 and 9 nights for Program 2. Program 3 requires 16 double rooms for 14 nights, and 15 nights for Program 4. There may also be a need for several single rooms for each program. A rooming list would be provided to the facility prior to the beginning of each program. Facility must be within a 10-mile radius of the Board's Central Office located at 1101 South Front Street, Harrisburg, PA. An onsite inspection of the facility will be made before the contract is awarded. A complete description of services required will be included in the invitation-bid proposal.

Department: Board of Probation and Parole

Location: Office of Management Services, 1101 South Front Street, Suite 5500, Harrisburg, PA 17104-2521

Duration: July 13, 1998 to April 30, 1999

Contact: Michelle Carl, (717) 787-8879

Property Maintenance—33

Project 409-FW "Wall Painting at Zimmerli Gymnasium". Project No. 409-FW. Lock Haven University of PA, of the Pennsylvania State System of Higher Education (SSHE) is seeking bids for general construction. The project consists of preparing, priming and painting approximately 25,000 square feet of interior walls and surfaces for the Zimmerli Gymnasium. A prebid meeting will be held June 17th, 1998 (9:30 a.m.) in Price Performance Center. All prospective bidders are encouraged to attend. Bids are due on Tuesday June 30th, 1998 (2 p.m. EST) and will be opened publicly shortly thereafter. For further information, or to request contract documents at a nonrefundable cost of \$30, bidders can contact Paulette Rider of Comprehensive Design, 3054 Enterprise Drive, State College, PA 16801, (814) 238-7706. Contract bonds and MBE/WBE participation apply. The System encourages responses from small firms, minority firms, women-owned firms, and firms which may have not previously performed work for the System. Non-Discrimination and Equal Opportunity are the policies of the Commonwealth and of the PA State System of Higher Education.

Department: State System of Higher Education

Location: Lock Haven University of Pennsylvania, Zimmerli Gymnasium, Lock Haven, PA 17745

Duration: August 10—August 28, 1998

Contact: Comprehensive Design, Paulette Rider, (814) 238-7706

KU 99-02 Kutztown University is seeking qualified contractors for the renovation of the Stone House Building. Work to include, but is not limited to: the installation of new roofs above kitchen; front and rear porches; new basement/cellar accesses; interior repairs to ceilings, walls, doors, floors, fireplaces; installation of security system; installation of three gas furnaces; installation of ductwork, piping, controls and power feeds; electrical work consists of providing power to the three furnaces; maintenance receptacles and equipment room lighting. Bid packages are available for a nonrefundable fee of \$35 from: Harry Garman, McTish, Kunkel & Associates, 2402 Sunshine Road, Allentown, PA 18103, (610) 791-2700. Bid packages are available June 15, 1998 through prebid 1998. A prebid meeting has been scheduled for Tuesday, June 23, 1998 at 10 a.m. Bids will be received July 1, 1998 by 2 p.m. and opened on July 2, 1998 at 2 p.m. Non-Discrimination and Equal Opportunity are the policies of the Commonwealth and the State System of Higher Education.

Department: State System of Higher Education

Location: Kutztown University, Kutztown, PA

Duration: 120 days after Notice to Proceed

Contact: Barbara Barish, (610) 683-4602

Railroad/Airline Related Services—34

Project No. 112 Provide Air Traffic Control services.

Department: Military and Veterans Affairs

Location: Muir Army Airfield, Ft. Indiantown Gap, Annville, Lebanon County, PA

Duration: October 1, 1998—September 30, 2001

Contact: Emma Schroff, (717) 861-8518

Real Estate Services—35

69A Lease Office Space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Office of Attorney General with 3,444 useable square feet of new or existing office space, parking for 15 vehicles, in Allentown, Lehigh County, within 2 miles of the intersection of Route I-78 and PA 29 (Cedar Crest Interchange). Proposals due: July 13, 1998. Solicitation No.: 92692.

Department: General Services

Location: Real Estate, 505 North Office Building, Harrisburg, PA 17105

Duration: Indeterminate 1997-98

Contact: Cynthia T. Lentz, (717) 787-4394

70A Lease Office Space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Office of Attorney General with 7,500 useable square feet of new or existing office space, parking for 50 vehicles, in Allentown, Lehigh County, within 1 mile of the following boundaries: North: Routes 22 and 78 (from Route 100 to Cedar Crest Boulevard); South: Route 78; East: Cedar Crest Boulevard. Proposals due: July 13, 1998. Solicitation No.: 92693.

Department: General Services

Location: Real Estate, 505 North Office Building, Harrisburg, PA 17105

Duration: Indeterminate 1997-98

Contact: Cynthia T. Lentz, (717) 787-4394

71A Lease Office Space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania State Police with 7,830 useable square feet of new or existing office/barracks space, with parking for 72 vehicles, in Clearfield County, PA within a 3 mile radius of the intersection of I-80 and PA Route 970. Proposals due: August 3, 1998. Solicitation No.: 92694.

Department: General Services

Location: Real Estate, 505 North Office Building, Harrisburg, PA 17105

Duration: Indeterminate 1997-98

Contact: John A. Hocker, (717) 787-4394

0202 Independent Fee Appraisers are to be solicited to prepare Real Estate Appraisals for Right-of-Way damages in Montgomery and Chester Counties for 0202 Sections 400, 404. Department policy requires that only fee bids from Commonwealth Pre-Qualified Appraisers be considered.

Department: Transportation

Location: Engineering District 6-0

Duration: FY 97

Contact: Bruce A. Hattersley, (610) 768-3013

Vehicle/Heavy Equipment—38

010340 This contract is to provide the Pennsylvania Department of Transportation, Maintenance District 1-5, Venango County, with a hydraulic side angle coupler, Wain-Roy or equivalent, to fit Hitachi EX150 excavator. Coupler to be installed at successful vendor site. Excavator to be delivered to vendor by PennDOT. Vendor site must not be more than 150 miles from PennDOT Maintenance Building, 1460 Pittsburgh Road, Franklin, PA 16323. Bid packages with detailed requirements are available upon request. All requests must be received by fax at (814) 437-1174. Direct requests to the attention of Patricia J. Carrara.

Department: Transportation
Location: Maintenance District 1-5, Successful Vendor Site
Duration: 60 days
Contact: Patricia J. Carrara, Clerical Supervisor, (814) 432-3115

M-40899 The contractor shall provide all labor, parts and materials necessary to service one McQuay Chiller (Centrifugal), Model No. PEH076, Serial No. 5Qd03Q1000, Style PE5824, Refrigerant 134A and one Dunham Bush Chiller (Rotary), Model No. WCFX39AR, Serial No. 4394701A95D, Factory No. 43947-1, Refrigerant R22, at the State Correctional Institution at Pittsburgh. Interested vendors can call Jim Crytzer at (412) 761-1955, ext. 260 for additional information.

Department: Corrections
Location: State Correctional Institution at Pittsburgh, 3001 Beaver Avenue, P. O. Box 99901, Pittsburgh, PA 15233
Duration: July 1, 1998 to June 30, 2001
Contact: Ronald J. Dudek, Purchasing Agent, (412) 761-1955, ext. 212

Miscellaneous—39

01 Conservation treatment of two historic vehicles, a hearse and a funeral carriage currently located at the Commonwealth Conservation Center, 908 Market Street, Harrisburg, PA 17101. Bids are to be broken down by the following costs: treatment and documentation, analysis, materials, fabrication of missing elements, transport, insurance. Bidder must meet certain qualification criteria, e.g. must be a practicing professional artifact conservator, who is a member in good standing of AIC.

Department: Historical and Museum Commission
Location: Commonwealth Conservation Center, 908 Market Street, 3rd Floor, Harrisburg, PA 17101
Duration: 2 years from award of contract
Contact: E. John Hartmann, Jr., (717) 787-2292

090-MCP98 Request for Proposal (RFP). The Office of Chancellor, State System of Higher Education, wishes to secure the services of a vendor to provide management compensation/classification consulting services in examination of the State System's Management Compensation Plan to determine its applicability to current and future needs. The RFP will provide interested vendors with detailed information to prepare and submit proposals to the Office of the Chancellor for consideration. The selected vendor will have its final structural and guideline recommendations completed by October 30, 1998, to be shortly followed by the governance acceptance process and required implementation and training activities. If interested, a copy of the RFP may be obtained by writing to: William C. Hamilton, Office of the Chancellor, State System of Higher Education, 2986 North Second Street, Harrisburg, PA 17110. Bids must be submitted by 5 p.m. July 7, 1998.

Department: State System of Higher Education
Location: 2986 North Second Street, Harrisburg, PA 17110
Duration: Indeterminate 1997-98
Contact: William C. Hamilton, (717) 720-4154

S159532 MU is interested in receiving proposals from qualified consulting firms which can provide comprehensive consulting and planning services for student housing and resident life programs. Scope of the project includes, but is not limited to, conducting surveys among students, staff, other universities, and the like; developing a mission statement with a defined set of goals/objectives for future housing options; and providing cost estimates of renovation/construction options. Interested professionals should fax their requests to be placed on a bidders list to Anna Stauffer (717) 871-2000 no later than Friday, June 26, 1998, 2 p.m.

Department: State System of Higher Education
Location: Millersville University, Millersville, PA 17551
Duration: Indeterminate 1998-99
Contact: Anna Stauffer, (717) 872-3041

[Pa.B. Doc. No. 98-950. Filed for public inspection June 12, 1998, 9:00 a.m.]

DESCRIPTION OF LEGEND

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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,
Secretary

Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract #	Awarded On	To	In the Amount Of
1595217-01	06/02/98	Artic Air Refrigeration, Inc.	30,308.00
1595217-02	06/02/98	Clark Food Service	2,135.34
1661117-01	06/02/98	Globe Trailers of Florida, Inc.	13,700.00
1661117-01	06/01/98	Globe Trailers of Florida, Inc.	13,700.00
1678117-01	06/01/98	D & H Distributors	53,333.95
1678117-01	06/02/98	D & H Distributors	53,333.95
1678117-02	06/01/98	Elcor International	14,188.00
1678117-02	06/02/98	Elcor International	14,188.00
1727117-01	06/02/98	Howard Uniform Co.	36,006.00
1729047-01	06/02/98	American Sterilizer Co./ Subsidiary of Steris Corp.	38,752.00
1735727-01	06/02/98	Proven Technology, Inc.	52,000.00
1735727-01	06/01/98	Proven Technology, Inc.	52,000.00
1752237-01	06/02/98	Westgate Chevrolet	89,594.00
1793157-01	06/02/98	Lift Truck Service	23,687.00

Requisition or Contract #	Awarded On	To	In the Amount Of
1846117-01	06/02/98	Meer Dental Supply Co.	29,627.00
1846117-01	06/01/98	Meer Dental Supply Co.	29,627.00
1916217-01	06/01/98	Rovanco Piping Systems, Inc.	164,483.00
1916217-01	06/02/98	Rovanco Piping Systems, Inc.	164,483.00
1919157-01	06/01/98	Saw Sales and Machinery Co.	9,109.00
1919157-01	06/02/98	Saw Sales and Machinery Co.	9,109.00
1945387-01	06/01/98	BSC Litho, Inc.	90,739.43
1945387-01	06/02/98	BSC Litho, Inc.	90,739.43
2059167-01	06/02/98	Advanced Training Systems, Inc.	93,014.00
8141400-01	06/02/98	American Signal Co., Inc.	36,343.00
8141400-01	06/01/98	American Signal Co., Inc.	36,343.00
9905-13 RIP No. 1	06/01/98	Rocall, Inc.	23,235.00

GARY E. CROWELL,
Secretary

[Pa.B. Doc. No. 98-951. Filed for public inspection June 12, 1998, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 89]

Mine Subsidence Control, Subsidence Damage Repair and Water Supply Replacement

Preamble

The Environmental Quality Board (Board) by this order amends Chapter 89 (relating to the underground mining of coal and coal preparation facilities). The amendments pertain to the control and repair of mine subsidence damage and the replacement of water supplies affected by underground bituminous coal mining.

This order was adopted by the Board at its meeting of March 17, 1998.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information contact Roderick A. Fletcher, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 2063, Rachel Carson State Office Building, Harrisburg, PA 17105-2063, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 voice (users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The amendments are adopted under the authority of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (52 P. S. §§ 1406.1—1406.21); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background and Summary*

This rulemaking is intended to bring the Commonwealth's regulations on mine subsidence control, subsidence damage repair and water supply replacement into conformance with the act of June 22, 1994 (P. L. 357, No. 54) (Act 54) amendments to the BMSLCA. In addition to inserting the new provisions implemented by Act 54, this rulemaking also incorporates several changes aimed at clarifying and facilitating the implementation of the new statutory provisions.

This rulemaking also includes changes which are intended to bring the Commonwealth's underground coal mining regulatory program into closer conformance with its Federal counterpart. While the Commonwealth's program is generally broader in terms of the scope of structures covered by subsidence damage repair requirements and the scope of water supplies covered by replacement requirements, there are some areas where the Commonwealth's regulations are not as inclusive as the Federal regulations or incorporate different approaches for resolving damage claims. Regulations are included to

resolve these differences to the extent practical and permissible under the BMSLCA.

This rulemaking also includes changes that are intended to eliminate the confusion over utility protection requirements, which has arisen as a result of an Environmental Hearing Board (EHB) decision in *P.U.S.H. et al. v. DEP, et al.* EHB Docket No. 95-232-R (Consolidated) (Opinion and Order on Motions for Summary Judgment issued November 27, 1996) pp. 5-13. Since the decision, there has been controversy between mine operators and utility owners regarding the measures which must be taken to protect utilities and who bears the burden of taking protective measures. The revised regulations include provisions which are intended to restore the conventional arrangements made between mine operators and utility owners prior to the EHB's *P.U.S.H.* decision.

Finally, the rulemaking also includes changes made for purposes of clarifying the existing regulations. These changes were made in accordance with Executive Order 1996-1.

The following is a description of the final-form regulations by section.

§ 89.5. Definitions.

A definition of the term "de minimis cost increase" was added for clarity. The term identifies a threshold below which an operator is not responsible for compensating a landowner or water user for the increased cost of operating a replacement water supply. The definition is consistent with that employed in the Department's surface mining regulatory program which is derived from Commonwealth case law.

A definition of the term "dwelling" was added for clarity.

A definition of the term "fair market value" was added for clarification. The term is used to determine the amount of compensation an operator must provide to a landowner whose water supply cannot be replaced. The definition is taken from *Blacks Law Dictionary*.

A definition of the term "irreparable damage" was added for clarity. The term is used to describe a level of damage which must be prevented to dwellings and certain agricultural buildings unless the structure owner consents. The definition is modified from that presented in the proposed rulemaking. The final definition includes criteria relating to structural stability, special architectural characteristics and practicality of repairs.

A definition of the term "material damage" was added for clarity and to conform with to the Federal definition in 30 CFR 701.5 (relating to definitions).

A definition of "noncommercial building" was added for clarity and to demonstrate conformance with the Federal definition in 30 CFR 701.5. The term includes "community or institutional buildings" defined in § 86.101 (relating to definitions).

A definition of the term "permanently affixed appurtenant structures" was added for clarity. The term is used to describe structures associated with dwellings and buildings accessible to the public which must be repaired. The term is defined to conform to the Federal term "structures related thereto" which is used to describe structures that are covered in association with occupied residential dwellings.

A definition of the term "public buildings and facilities" was added for clarity. The definition is based on the Federal definition of "public building" in 30 CFR 761.5 (relating to definitions) and the dictionary definition of "facility." The definition is used to clarify which buildings and facilities cannot be undermined if subsidence will cause material damage or reduce the reasonably foreseeable use of the building or facilities.

A definition of the term "public water supply system" was added for clarity. The term is used to designate those aquifers and water bodies that are protected against material damage or reduction in reasonably foreseeable use. If a well or spring supplies a water supply system which falls within the scope of the definition, the source aquifer which recharges that well or spring is eligible for special protection. Similarly, streams and other water bodies supplying these systems are afforded special protection. The definition is based partially on the definition of community water supply system as used in the safe drinking water program. It also includes systems serving public buildings, churches, schools, hospitals and nursing homes.

The term "rebuttable presumption area" was defined to facilitate descriptions of the term when it is used in information requirements and performance standards. The term refers to an area within the proximity of a mine where an operator is presumed responsible for impacting water supplies. The term is defined to encompass an area above the mine, which is determined by projecting a line along a 35° angle from the outside of a coal removal area to the land surface.

Definitions were provided for the terms "underground mining" and "underground mining operations." These terms are used to describe subcategories of activities within the broader term "underground mining activities." Underground mining operations includes all operations which take place in an underground mine, while underground mining refers to the actual extraction of coal. These terms are used to tailor regulatory requirements to the appropriate activity.

A definition of the term "water supply" was added for clarity and convenience. The definition is taken from the language in section 5.1 of the BMSLCA (52 P.S. § 1406.5a) and relates to the types of water supplies which must be replaced when affected by underground mining activities.

§ 89.33. Geology.

Section 89.33 was revised to add coal seam thickness as an information requirement in permit applications. This addition is intended to achieve consistency with the Federal regulation in 30 CFR 784.20(b)(3) (relating to subsidence control plans).

§ 89.34. Hydrology.

Section 89.34 was revised to add the ownership of wells and springs to the list of information which must be provided in the groundwater inventory. This change is intended to achieve consistency with the Federal counterpart regulation in 30 CFR 784.14(b) (relating to hydrologic information).

Section 89.34 was also revised to replace the term "potentially impacted offsite area" with the term "adjacent area." The term "adjacent area" has a specific meaning while the former term does not.

§ 89.35. Prediction of the hydrologic consequences.

Section 89.35 was revised to require permit applicants to predict whether underground mining activities may

result in contamination, diminution or interruption of water supplies. This language is intended to conform to the Federal requirement in 30 CFR 784.14(e).

§ 89.36. Protection of the hydrologic balance.

A new subsection was added to require an operator to describe the measures which the operator will use to replace water supplies impacted by the mining operation. This requirement reflects those contained in section 5.2(j) of the BMSLCA (52 P.S. § 1406.5b(j)) and 30 CFR 784.20(b)(8).

§ 89.67. Support facilities.

Section 89.67 was revised to clarify that this section applies to surface sites associated with underground mining activities. Surface sites include shaft sites, slope sites, drift entry sites, borehole sites, coal loading sites, coal preparation sites and other sites where surface operations associated with underground mining activity take place.

§ 89.141. Subsidence Control: application requirements.

Subsection (a) was revised to require a description of geologic conditions which affect the likelihood or extent of subsidence or subsidence related damage. This revision is intended to conform to the Federal requirement in 30 CFR 784.20(b)(3). Additional language was also inserted to clarify the relationship between the geologic information requirements of § 89.33 and this subsection.

The introductory paragraph in subsection (d) was revised to clarify the area which must be covered by the subsidence control plan. Subsidence control plans must now include all areas where structures, facilities and features may be materially damaged by mine subsidence. At a minimum, the plan must cover the area within a 30° angle of draw of proposed mining to ensure inclusion of all structures that are covered by the Federal rebuttable presumption on subsidence damage.

Subsection (d)(2) is a new information requirement. It requires a description of the potential impacts of subsidence on overlying structures, surface lands and water supplies. This requirement was included to conform to the Federal requirement in 30 CFR 784.20(a)(2).

Subsection (d)(3) requires descriptions of the measures to be taken to prevent material damage to or reduction in the reasonably foreseeable uses of certain structures and features listed in § 89.142a(c). These structures and features include: public buildings and facilities; churches, schools and hospitals; and impoundments and water bodies with storage capacities greater than 20 acre-feet (2.47 hectare-meters). This paragraph was revised from that which appeared in the proposed rulemaking to better clarify a mine operator's options for mining beneath and adjacent to these structures and features.

Subsection (d)(4) requires a description of anticipated effects due to mine subsidence. This paragraph was added to conform to the Federal requirements in 30 CFR 784-20(f).

Subsection (d)(5) requires a general description of the measures a mine operator will take to correct material damage to surface lands if damage occurs as a result of underground mining. Subsection (d)(6) requires a general description of the measures a mine operator will take to prevent irreparable damage to structures enumerated in § 89.142a(f)(1)(iii)–(v). Subsection (d)(7) requires a description of any monitoring the mine operator will conduct in conjunction with his subsidence control plan.

Subsection (d)(8) requires a description of the measures that will be taken to maximize mine stability in accordance with § 89.142a(a). Subsection (d)(9) and (10) require descriptions of the measures that will be taken to protect perennial streams and, in particular, those perennial streams and aquifers which serve as significant sources to public water supply systems.

Subsection (d)(11) is a new information requirement which is intended to elicit additional information on utilities and the measures that will be used for their protection. New subsection (d)(11) requires information concerning the construction, use and approximate age of pipelines, which will enable the Department to better assess the potential of damage which would result in an imminent hazard to human safety.

Subsection (d)(12) and (13) require information relating to subsidence control measures that must be taken to comply with statutes other than the BMSLCA, and authorizes the Department to require any additional information as needed to properly evaluate subsidence control plans.

§ 89.142a. Subsidence control: performance standards.

Subsection (a) sets forth general subsidence control requirements including the requirement to mine in accordance with an approved subsidence control plan, the requirement to maximize mine stability and the restriction on mining beneath structures in areas where the cover thickness is less than 100 feet (30.48 meters). Paragraph (3) is revised to clarify the requirements for mining beneath structures in areas where cover thickness is less than 100 feet (30.48 meters).

Subsection (b) is a new requirement pertaining to premining structure surveys. Mine operators are now required to conduct premining surveys of dwellings, buildings that are accessible to the public, noncommercial buildings customarily used by the public, barns, silos and certain agricultural structures. The surveys must be conducted prior to the time the structure falls within a 30° angle of draw of underground mining. Surveys must describe the premining condition of the structure and, if the structure is historically or architecturally significant, the presence of any architectural characteristics that will require special craftsmanship to restore or replace. Requirements also call for survey results to be kept confidential.

Subsection (c) sets forth the special protections afforded to public buildings and facilities, churches, schools, hospitals, impoundments and water bodies of 20 acre-feet (2.47 hectare-meters) and larger, and aquifers and perennial streams which serve as significant sources to a public water supply system. Subsection (c) retains the existing requirements for mining beneath these structures and features. The default standard for mining beneath these structures and features is 50% coal support although the Department may require a greater percentage if the overburden thickness is sufficient to render 50% coal support inadequate or if the Department finds that 50% coal support is proving insufficient in a particular mine. Subsection (c) also clarifies alternatives to the coal support standard including surface measures which may be undertaken in conjunction with planned and controlled subsidence.

Subsection (d) prohibits a mine operator from mining in a manner which would cause irreparable damage to dwellings and permanently affixed appurtenant structures, barns, silos and certain permanently affixed structures of 500 or more square feet (46.45 or more square

meters) used for agricultural purposes. The prohibition is predicated upon the Department determining that irreparable damage would result from the proposed mining. The proposed mining can occur if the mine operator obtains the consent of the structure owner to allow the damage to occur. Alternatively, the proposed mining can proceed if the mine operator, prior to mining, implements measures approved by the Department to minimize or reduce the irreparable damage which would result from subsidence.

Subsection (e) is a revised version of an existing regulation concerning the repair of damage to surface lands. The former regulation was vague in that it required operators to maintain the value and reasonably foreseeable use of surface lands. The revised version specifies that an operator must correct material damage to surface lands. The revised language also parallels that of the Federal counterpart regulation 30 CFR 817.121(c)(1) (relating to subsidence control).

Subsection (f) is a new regulatory section which reflects the provisions of section 5.4 of the BMSLCA (52 P. S. § 1406.5d). It sets forth an operator's responsibility to repair or compensate for subsidence damage to buildings that are accessible to the public and their permanently affixed appurtenant structures; noncommercial buildings customarily used by the public; barns, silos and certain agricultural structures of 500 or more square feet (46.45 square meters) in area; and, dwellings, permanently affixed appurtenant structures and certain improvements. It should be noted that section 5.4(a)(3) of the BMSLCA and the corresponding clause in § 89.142a(f)(1)(iii) are now being interpreted to require the operator to repair all dwellings in place at the time of underground mining and all permanently affixed appurtenant structures in place at the time of underground mining. This interpretation is based on the rule of statutory construction known as "the rule of the last antecedent" which is also an accepted principle of English grammar. This rule provides that unless plainly meant otherwise a modifying clause operates only upon the phrase preceding it. This interpretation differs from the Department's previous interpretation in that the requirement to be in place on August 21, 1994, the date of first publication of the permit application, or date of first publication of a permit renewal application is no longer viewed as applicable to dwellings or permanently affixed appurtenant structures. Under the rule of the last antecedent, the requirement for being in place on one of the specified dates applies only to improvements. In addition, language has been added to the text of the amendment to clarify that the requirements also pertain to mining conducted on August 21, 1994, the effective date of Act 54.

Subsection (g) is a revised version of the current regulation regarding protection of utilities. Subsection (g) includes the basic requirement to minimize damage, destruction or disruption in services provided by utilities, which is derived from the Federal regulation in 30 CFR 817.180 (relating to utility installations). Paragraph (2) describes various measures a mine operator may take in complying with the performance standard, including a program for detecting subsidence damage and minimizing disruption in service; providing timely notice of proposed mining to the utility operator; providing support in accordance with the utility owner's support rights; providing temporary or alternate utility service to customers; and demonstrating that mine subsidence will not materially damage the utility. This represents a change from the proposed rulemaking in that it will allow notification to suffice for meeting the requirement to minimize damage, destruction or disruption in services provided by utilities.

It will then be up to the investor-owned utility to protect the utility line. If the utility line is owned by a government agency, mining beneath the utility line will not be allowed to occur if subsidence will cause material damage to the utility line or reduce its reasonably foreseeable use.

Subsection (h) is an existing regulation on perennial stream protection which has been relocated during this rulemaking. Subsection (h) requires mine operators to take measures to maintain the value and reasonably foreseeable uses of perennial streams and to restore to the extent technologically and economically feasible any streams which have been adversely impacted by mining.

Subsection (i) relates to the prevention of imminent hazards to human safety. Paragraph (1) restates the former regulation found under § 89.143(f). It requires the Department to suspend underground mining beneath urbanized areas, certain buildings and facilities and perennial streams if the mining poses an imminent hazard to human safety. Paragraph (1) was relocated from former § 89.143(f) and modified to limit protection of solid and hazardous waste disposal facilities to those which contain a liner. Paragraph (2) restates section 9.1(a) of the BMSLCA (52 P. S. § 1406.9a(a)) and gives the Department broad authority to restrict or prohibit mining if it determines that there will be an imminent hazard to human safety.

Subsection (j) is a performance standard relocated from § 89.143(g). It prohibits mining in an area that is not covered by an approved subsidence control plan.

Subsection (k) is a new performance standard which requires mine operators to report mine subsidence damage claims to the Department. This requirement will enable the Department to investigate subsidence damage incidents near the time of occurrence when details relating to causation and extent of damage are best observed.

Subsection (l) is an advisory statement that has been added at final rulemaking. It clarifies that the Department does not have the authority to resolve disputes over property rights.

§ 89.143a. Subsidence control: procedure for resolution of subsidence damage claims.

Section 89.143a is a new section which describes the responsibilities of mine operators, structure owners and the Department in resolving claims of mine subsidence damage. These responsibilities are taken directly from section 5.5 of the BMSLCA.

§ 89.144a. Subsidence control: relief from responsibility.

Section 89.144a is a new section which describes the conditions under which an operator may be relieved of responsibility to repair or compensate for damage to a structure. This section comes directly from the BMSLCA, and is included to alert operators and structure owners of their rights and responsibilities under the BMSLCA.

§ 89.145a. Water supply replacement: performance standards.

Section 89.145a is an entirely new regulatory section that pertains to the restoration or replacement of water supplies which are contaminated, diminished or interrupted by underground mining.

Subsection (a) requires mine operators to conduct premining surveys of all water supplies prior to mining in an area which could result in the water supplies being impacted. The subsection establishes a default distance of 1,000 feet (304.80 meters) for determining the timing of surveys. It further provides that the Department may

increase or decrease this distance based on site specific considerations. Paragraph (2) describes the minimum information to be obtained during the survey and limits information acquisition to that which is reasonably available. Paragraph (3) describes the procedures a mine operator must follow when the landowner or water user denies access to conduct a survey.

Subsection (b) sets forth a mine operator's basic responsibility to restore or replace a water supply that has been contaminated, diminished or interrupted by the operator's underground mining activities. The language has been revised from that of the proposed rulemaking to reference underground mining activities rather than underground mining. This change was made to conform to the language of the statute. Language has been added to clarify that this subsection does not apply to those aspects of underground mining activities that are regulated as surface mining activities under Chapter 87 (relating to surface mining of coal).

Subsection (c) requires a mine operator to notify the Department within 24 hours of receiving a complaint that the operator's underground mining activity has affected a water supply.

Subsection (d) repeats the statutory requirement to diligently investigate all complaints of water supply contamination, diminution or interruption. It also requires the operator to notify the Department of the results of investigations in a timely manner.

Subsection (e) sets forth the requirement to provide temporary water when a water supply has been impacted by underground mining activity within the rebuttable presumption zone and the landowner or water user is without a readily available alternate source of water. It also establishes basic criteria for the quality and quantity of temporary water supplies.

Subsection (f) sets forth the criteria for determining the adequacy of a permanently restored or replacement water supply. It establishes standards for quality, quantity, reliability, cost, maintenance and control. The requirements specified in this subsection are for the most part the same as those of the Department's surface mining program which is based on similar statutory language and several court decisions interpreting that language. In regard to costs, subsection (f) requires that a mine operator must provide for the permanent payment of increased operation and maintenance costs which are more than de minimis. Subsection (f) also includes a clause which provides for the assumption of reasonable expansion in determining the water needs of agricultural operations.

§ 89.146a. Water supply replacement: procedure for resolution of water supply damage claims.

Section 89.146a is a new regulatory section which summarizes the responsibilities of mine operators, landowners, water users and the Department in resolving claims of water supply contamination, diminution or interruption. The procedures described in this section are based on section 5.2 of the BMSLCA (52 P. S. § 1406.5b).

§ 89.152. Water supply replacement: relief from responsibility.

Section 89.152 is a new section which describes the conditions under which an operator may be relieved of responsibility to restore or replace a water supply. These releases are based on sections 5.1 and 5.2 of the BMSLCA.

§ 89.153. Water supply replacement: rebuttable presumption.

Section 89.153 is a new regulatory section which describes the effect of the rebuttable presumption provision under section 5.2 of the BMSLCA, and the means by which an operator may rebut the presumption that he is liable for the contamination, diminution or interruption of a water supply.

§ 89.154. Maps.

Section 89.154 describes the contents of mine subsidence control plan maps and 6 month maps. Most of these requirements are existing and have been relocated from § 89.142. Subsection (a) describes the coverage and content of the general mine map which is submitted at the time of permit application. Subsection (b) describes the coverage and content of 6-month maps, which are submitted semiannually during permitted operations.

In subsection (a), the scope of the general mine map has been modified to comply with Federal mapping requirements in 30 CFR 784.20(a)(1). Under the proposal, the map must show all areas where structures may be damaged by mine subsidence, and at a minimum cover the area within a 30° angle of draw of the limits of underground mining. This latter provision is intended to assure that all structures covered by the rebuttable presumption under the federal program are considered in the Commonwealth's subsidence control plans.

Subsections (a) and (b) also list the details which must be shown on subsidence control maps. Many of these details are the same as those required by current regulation. Some additional details have been added in conjunction with the Act 54 amendments to the BMSLCA. The maps must now include all water supplies and all structures covered by subsidence damage repair and compensation provisions. In addition, subsection (a)(6)(x) and (xi) has been added to require the depiction of all utilities listed under § 89.142a(g).

§ 89.155. Public notice.

This section contains public notice requirements which have been relocated from § 89.144. Two additional parties have been added to the list of persons to be notified. Owners of all structures and owners of all utilities must now be notified of proposed mining.

Deleted regulations.

Sections 89.142—89.145 are deleted under this rulemaking. Many of these former provisions are incorporated in §§ 89.142a, 89.154 and 89.155.

E. Summary of Comments and Responses on the Proposed Rulemaking

At its meeting on March 18, 1997, the Board approved publication of proposed amendments. The proposed amendments were published at 27 Pa.B. 2379 (May 10, 1997). Comments were accepted from May 10 to July 9, 1997. A public hearing was held in regard to the proposed rulemaking on June 18, 1997.

Comments were received from 45 persons during the course of the public comment period. Commentators included private citizens, mining interests, utility interests and the Independent Regulatory Review Commission (IRRC). In addition, informal comments were received from the United States Office of Surface Mining Reclamation and Enforcement (OSM).

The comment period associated with the May 10 notice represents the second opportunity for the public to comment on this rulemaking package. In September 1996,

the Department conducted an advance notice of proposed rulemaking (ANPR), in which it made draft amendments available for public review and comment. The availability of the ANPR proposed amendments was published at 26 Pa.B. 4693 (September 28, 1996) and a 6-week comment period was provided.

The following is a discussion of comments received on the proposed rulemaking that was published on May 10, 1997.

Definition of "de minimis cost increase"

One comment was received regarding the proposed definition of "de minimis cost increase." The commentator recommended deleting the \$60 per year figure on the basis that it will become obsolete with time.

The Board believes that it is appropriate to retain the \$60 figure to define a minimum threshold for requiring compensation arrangements. Long term financial arrangements for amounts less than \$60 per year are difficult to maintain because of administration costs. A detailed discussion on the rationale behind the figures included in the definition is provided in the Preamble to the Board's proposed rulemaking on water supply protection/replacement, Chapter 87 and 88 at 27 Pa.B. 2246 (May 3, 1997).

Definition of "irreparable damage"

Six comments were received regarding the proposed definition of "irreparable damage." One commentator recommended that the term be tied to ability to be repaired rather than cost. Two commentators recommended deleting the reference to structural components because they believed it could be subject to a wide range of interpretations and lead to unnecessary restrictions of full extraction mining. A third commentator recommended that the definition should include damage which renders a structure less strong or less valuable than it was prior to mining. A fourth commentator recommended revising the definition to include criteria relating to the structural stability of the repaired structure and other parameters which insurance companies normally consider when selecting an approach to repair. The fourth commentator also recommended deleting the references to regulations in which the term appears, noting that the references were incomplete and unnecessary.

After reviewing these comments, the Board decided to revise the definition of "irreparable damage" based on the recommendations of the fourth commentator. The recommended definition is reasonable and addresses the concerns raised by other commentators. The revised definition includes considerations relating to structural stability, the cost of repairs, compliance with building codes and the presence of architectural characteristics which will require special craftsmanship to restore or replace. It also provides that architectural characteristics need only be considered in cases where the main structure is historically or architecturally significant. The Board believes that the revised definition will facilitate determinations relating to the occurrence or likelihood of irreparable damage.

In regard to the concern about restricting mining, the Board notes that the performance standard in § 89.142a(d) provides three options for dealing with situations when irreparable damage is predicted. An operator may take measures on the surface to reduce the level of damage. An operator may also obtain the consent of the structure owner to allow irreparable damage. As a third option, the operator may restrict mining so as to reduce the level of resultant damage.

The final definition is also revised to delete references to information requirements and performance standards where the term "irreparable damage" appears. The term only appears in reference to subsidence damage to structures, so there is no need to qualify its use.

Definition of "material damage"

One comment was received in regard to the proposed definition of "material damage." The commentator noted that the definition was inconsistent with the Federal definition in that it included physical changes which result in significant loss in production or income to the owner or user of the land. The commentator noted that the Federal definition does not include the phrase "to the owner or user of the land."

Since the objective of defining material damage is to conform to the Federal definition, the phrase is deleted in the final definition.

Definition of "noncommercial building"

One commentator noted that the term "noncommercial building" was not defined in § 89.5. The commentator believed that a definition is necessary to ensure that the term includes all structures covered by the Federal definition. The commentator also noted that the term must include "community or institutional buildings" to be as effective as the Federal regulations.

A definition of "noncommercial building" is included in the final rulemaking. The term is defined in a manner which conforms to the Federal definition.

Definition of "permanently affixed appurtenant structures"

Four comments were received regarding the proposed definition of "permanently affixed appurtenant structures". One commentator was concerned that the term may exclude some structures covered under the Federal program because they are not permanently affixed. One commentator supported the inclusion of customer-owned utilities, while another commentator proposed revising the definition to include all utilities. One commentator also noted errors in the references that were included in the definition.

In regard to the first commentator's concern, the definition of "permanently affixed appurtenant structures" includes only those structures which are attached to the ground in a permanent manner. While this definition may not include all structures encompassed by the Federal definition, it does not render the Commonwealth's program less effective than the Federal program. Structures which are not permanently affixed are rarely susceptible to subsidence damage. In addition, the Commonwealth's program addresses damage to certain "improvements," a term which covers many structures that are not "permanently affixed."

The Board does not believe it is appropriate to include all utilities in the definition of "permanently affixed appurtenant structures." This could be interpreted to require repair of damage to pipelines owned by investor-owned utilities. The Board does not believe that the BMSLCA authorizes these provisions. The responsibility for repairing damage to investor-owned utilities is governed by the respective property rights of mine operators and utility owners. The final-form regulations therefore retain the reference to customer-owned utilities.

The reference to other structures in the first sentence of the definition is corrected to include § 89.142a(f)(1)(i) and (iii).

Definition of "public water supply system"

Four comments were received regarding the proposed definition of "public water supply system". One commentator believed that the definition may be less inclusive than the Federal definition. A second commentator recommended revising the definition to clarify that hunting camps and resorts are not included. Two commentators questioned the need to include water systems serving public buildings, churches, schools, hospitals and nursing homes since water supplies serving these facilities are already covered by replacement provisions. The commentator further noted that many of the systems covered by the definition could withstand temporary losses of water without creating an imminent hazard to human safety.

No changes were made in response to these comments. In reviewing the Federal regulations, it was noted that the term "public water supply system" is not defined in the Federal regulations. Consequently, there is no basis for the assertion that the Commonwealth's definition is less inclusive than the Federal term.

Even though the term is not intended to include hunting camps and resorts, there is no reason to specifically address them in the definition. The current definition includes sufficient criteria to exclude these facilities from coverage. Generally, neither of these facilities have year round residents, nor do they qualify as public buildings, churches, schools, hospitals or nursing homes.

The fact that public water supplies are covered by water supply replacement provisions has nothing to do with the protections afforded to source aquifers and water bodies that serve public water supply systems. These aquifers and water bodies are set aside for special protection under section 9.1(a) of BMSLCA (52 P.S. § 1406.9a(a)). Also, the requirement to prevent material damage to these features is not limited by the qualification that the material damage must also create an imminent hazard to human safety.

Definition of "rebuttable presumption area"

Two comments were received regarding the proposed definition of "rebuttable presumption area." One commentator noted that the Federal regulations do not include a rebuttable presumption of causation which is applicable to water supply replacement. The commentator further asserted that there is no basis for applying a rebuttable presumption to water supply impacts. The second commentator recommended that the term be revised to reference the 3-year limitation of liability for water supply replacement provided by the BMSLCA.

In response to the first comment, the Board notes that the configuration of the rebuttable presumption area is specified in the BMSLCA. It must therefore be included without regard to its technical basis. The Board does, however, note that the 35° angle used to define the area of probable impacts is generally consistent with figures published by researchers at the Pennsylvania State University and West Virginia University.

The Board does not believe that it is appropriate to insert language relating to the 3-year period of liability. The BMSLCA does not provide for the 3-year limit to serve as the basis for rebutting the presumption of liability. Rather, it provides for an operator to be relieved of liability in cases where water supply impacts occur more than 3 years after the completion of underground mining activities. The 3-year release only applies when the mine is closed and reclamation was completed more than 3 years prior to the time the impacts occurred.

Definitions of "underground mining" and "underground mining operations"

The Preamble to the proposed rulemaking assigned specific meanings to the terms "underground mining" and "underground mining operations" to distinguish the manner in which these terms are used in the revised regulations. IRRC recommended that the Board formally incorporate these terms and definitions in § 89.5. The Board has included these terms and definitions in the final rulemaking. The term "underground mining" is defined to mean the extraction of coal in an underground mine. The term "underground mining operations" is defined to include underground mining and other operations which take place underground, such as the operation and reclamation of shafts and adits, the operation of underground support facilities, in situ processing, hauling, storage and blasting.

Definition of "water supply"

Three comments were received regarding the proposed definition of "water supply." One commentator recommended amending the definition to include the phrase "as used in this chapter" to clarify that the meaning of the term does not apply outside the scope of Chapter 89. Another commentator questioned whether the term would include appurtenant delivery systems and water supplies which are used to irrigate noncommercial gardens and agricultural fields like the Federal regulations. A third commentator questioned whether the term would include water supplies used to irrigate noncommercial gardens and agricultural fields.

No changes were made in response to these comments. It is unnecessary to state that the definition of "water supply" in § 89.5 applies only to Chapter 89 because the lead sentence in § 89.5(a) already indicates this.

The definition does not include the term "appurtenant delivery system" because it is based on the language of the statute, which does not include the term. Further, the Board does not wish to include language which could be interpreted to include investor-owned water transmission and distribution mains which are rightfully classified as utilities. The Board notes that this definition does not limit in any way the duty of an operator to provide pumping equipment and connecting piping when the mine operator is required to replace a water supply under § 89.145a.

The definition of "water supply" is expected to include all water supplies covered under the Federal program, including those which are used for irrigating noncommercial gardens and noncommercial agricultural operations. The definition only excludes water supplies which are used in production agriculture and serve irrigation systems installed after August 21, 1994.

Predicting hydrologic consequences and protecting the hydrologic balance

Numerous comments were received regarding proposed revisions to §§ 89.35 and 89.36. Section 89.35 was revised to incorporate the Federal requirements to predict whether underground mining activities may result in contamination, diminution or interruption of water supplies within the permit or adjacent area. Section 89.36 was revised to require a description of the measures which will be taken to replace water supplies which are contaminated, diminished or interrupted by underground mining activities.

One commentator recommended that the existing language of § 89.35 be revised to require the use and verification of models to predict hydrologic impacts.

This recommendation was not adopted because models are only one method that a permit applicant may use to develop his prediction. Equivalent or better predictions can often be made by observing and reporting the hydrologic impacts of nearby mines.

Two commentators expressed concern that requirements to predict water supply impacts in § 89.35 and to describe replacement measures in § 89.36 could lead to permit denial, if this information indicated the mining would affect water supplies.

The Board does not believe that a prediction of impacts to water supplies will typically result in permit denial. The general requirement under the BMSLCA is to restore or replace those supplies which are impacted. The prediction in this part is intended to make the operator aware of the extent of his responsibilities and inform the public about the nature of impacts which are likely to occur. Nevertheless, the Department could deny a permit if it determined that mining would eliminate the available water resources over a large area (under authority granted by The Clean Streams Law (35 P. S. §§ 691.1—691.1001)).

One commentator thought that the term "underground mining activities" should be replaced with the term "underground mining" to clarify that the predictions and descriptions required in §§ 89.35 and 89.36 pertain only to water supplies which are impacted by the extraction of coal in an underground mine.

This recommendation was not adopted because the predictions and descriptions required by these sections must address the hydrologic impacts of the entire mine, including those impacts resulting from underground mining, underground mining operations and activities conducted at surface sites.

Several commentators expressed disappointment that § 89.36 and the regulations in general allowed for the contamination, diminution or interruption of water supplies.

The Board acknowledges the concerns of these commentators but notes that the BMSLCA clearly allows for a water supply to be impacted as long as it is replaced or the affected landowner or water user receives appropriate compensation. The regulations follow the parameters established in the statute by the General Assembly for addressing contamination, diminution or interruption of water supplies.

One commentator recommended that § 89.36 be revised to require site specific descriptions of the replacement measures that will be taken for each impacted water supply. The commentator felt that general descriptions such as "will drill deeper or wider" were insufficient.

The Board does not believe that it is necessary to provide details that are applicable to the level of an individual water supply. It is likely that many water supplies in a given area will be able to be replaced by the same means. Further, simple proposals such as drilling to a deeper aquifer may be sufficient if the permit application documents the presence of suitable water in the general area where replacement may be necessary.

One commentator recommended revising § 89.36 to incorporate the statutory provision that "nothing contained herein shall be construed as authorizing the Department to require a mine operator to provide a replacement water supply prior to mining as a condition of securing a permit to conduct underground mining."

Section 89.36 is revised to reflect the proviso in section 5.2(j) of the BMSLCA. However, the Board also notes that section 9.1 of the BMSLCA provides that nothing in the act shall be construed to amend, modify or otherwise supersede standards related to the prevailing hydrologic balance requirement of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (Federal SMCRA). In accordance with this provision, the Department would have authority to deny permits in situations when mining would eliminate the available water resources over a large area or where a replacement source was not available.

Requirements for support activities

Four comments were received regarding proposed revisions to § 89.67 relating to support facilities. Three of the commentators favored retaining the existing language of the section. Two of these commentators objected to narrowing the scope of the regulation, while the other supported keeping the language the same as the Federal counterpart regulation. Two commentators recommended adding the provision that a mine operator's responsibility to protect utilities would be limited in accordance with its property rights.

The Board believes that it is appropriate to narrow the scope of this regulation to address only those activities which take place at surface sites associated with an underground mine. There is sufficient authority in Chapter 89, Subchapter F (relating to subsidence control) to regulate those aspects of the underground mining activity which take place underground. Together, these requirements are no less effective than the Federal regulation in 30 CFR 817.180.

In regard to concerns about mining rights, the Board believes that it is appropriate to restrict surface operations in the vicinity of utilities without regard to a mine operator's right to mine the coal. Activities at surface sites associated with an underground mine are regarded as surface mining activities and are therefore subject to the Federal SMCRA. Furthermore, the activities which typically take place at surface sites do not involve the mining of coal.

Subsidence control plans

Numerous comments were submitted regarding proposed revisions to § 89.141(d). Proposed changes included inserting new requirements relating to water supply replacement and repair of subsidence damage and revising language to clarify several existing information requirements.

Two commentators noted that subsidence control plan requirements did not include potential impacts on "renewable resource lands." The commentators noted that Federal regulations require these impacts on renewable resources lands to be assessed.

The Board does not believe it is necessary to revise § 89.141(d) to include references to renewable resource lands. Chapter 89 does not use the term renewable resource lands, per se. Chapter 89 does, however, address aquifers, water supplies, perennial streams and surface lands, to cover all features which may fall within the scope of the term, as it is used in the Federal regulations. Section 89.141(d) currently includes specific references to aquifers, water supplies, perennial streams and surface lands and the means which will be used to protect these features.

One commentator observed that subsidence control plan coverage could be limited to areas within a 30° angle of

draw of the proposed mine. The commentator believed that this could provide less coverage than the Federal regulations which require subsidence control plans to consider all areas where the value or reasonably foreseeable uses of structures and renewable resource lands will be diminished by mine subsidence.

The Board notes that § 89.141(d) provides that subsidence control plans must address all areas where structures, facilities and features may be damaged by mine subsidence, and that the 30° angle of draw is only used as a minimum criterion for defining this coverage. Subsidence control plans prepared under subsection (d) should therefore be no less inclusive than those required by the Federal regulations.

Two commentators recommended adding planned and controlled subsidence to the list of available options for protecting public buildings and other structures listed in § 89.141(d)(3) and (6). The commentators also recommended eliminating references to support areas which they assert were eliminated when section 4 of the BMSLCA (52 P. S. § 1406.4) was repealed.

The Board did not adopt this recommendation because planned and controlled subsidence by itself does not meet the intent of the statute. These paragraphs pertain to the special protection afforded to public buildings and facilities, churches, schools, hospitals and impoundments and water bodies with volumes of 20 acre-feet (2.47 hectare-meters) or more. If any of these structures or features are to be subsided, it will usually be necessary to take surface measures in conjunction with planned and controlled subsidence to achieve the necessary level of protection. It is these surface measures which constitute the means of protection rather than the planned and controlled subsidence. Furthermore, there is a need to retain the concept of support areas beneath structures and features which have been set aside for special protection under the BMSLCA. Even if alternative protection measures are proposed, these measures must be taken prior to the time mining advances into the area where it could damage the structure or feature.

Two commentators noted that proposed § 89.141(d)(6) included contradictory provisions. One provision prohibited mining within the support area of public buildings and other protected structures. Another provision required 50% coal support while allowing planned and controlled subsidence if the latter would provide protection equivalent to that provided by coal support.

After reviewing this matter, the Board decided to delete proposed subsection (d)(6) in its entirety. Subsection (d)(6) was found to be both internally inconsistent and repetitive of requirements specified in § 89.141(d)(3). Information requirements relating to the protection of public buildings and facilities, churches, schools, hospitals and other selected features are now covered entirely in subsection (d)(3).

Another commentator thought that the subsidence control plans should include more detailed information concerning the steps to be taken to prevent subsidence damage to utilities, homes and other structures.

In response, the Board notes that the BMSLCA limits the operator's responsibility to prevent material damage to a small list of structures and features, that is, public buildings and facilities, churches, schools, hospitals and large water bodies. Dwellings and certain agricultural structures are protected against irreparable damage but not against lesser levels of damage. While the BMSLCA does protect "public facilities," it does not require the

prevention of material damage to investor-owned utilities. Section 89.141(d) requires permit applicants to describe the measures that will be taken to comply with the various performance standards in the statute and the regulations. Generally, this information is provided in a manner that addresses groups of structures. Because of similarities among structures within the same group, the measures that are proposed for a particular group can be expected to apply to any structure within the group. It is usually unnecessary to tailor descriptions to individual structures unless an applicant can predict in advance that a specific structure within a group will require special treatment. In addition, if a new structure is built after permit issuance, approved measures are already in place to provide for its treatment. In some cases, it may be acceptable for an applicant to propose several options so that he can decide upon the best method nearer to the time the structure is undermined.

One commentator recommended using the term "underground mining" rather than "underground mining activities" and "underground mining operations" in § 89.141(d)(6) and (9). The commentator noted that these paragraphs address subsidence concerns which are associated with coal extraction.

The Board agreed with this recommendation and incorporated these revisions into the final-form regulations.

One commentator recommended inserting the terms "material" or "materially" to modify the word "damage" in § 89.141(d) and in paragraphs (2), (3) and (5). The commentator also recommended modifying subsection (d)(5) to clarify that damage minimization measures with respect to dwellings and agricultural structures are only required if "irreparable damage" will occur. The commentator further recommended deleting the reference to preventing damage to dwellings, agricultural structures and surface land as found in paragraph (7).

The Board agreed with the commentator's recommendation to use the term "material damage" in § 89.141(d)(2), (3) and (5). These changes are in accordance with the protections provided by the BMSLCA. Paragraph (5) has been revised to delete the reference to structures identified in § 89.142a(f)(1) since the specific plans to minimize irreparable damage to a particular structure are best determined near the time of mining rather than at the time of permit application. Paragraph (5) has also been revised to require correction of damage rather than mitigation of damage. No changes were made to paragraph (7) since this requirement only pertains to situations where an operator opts to prevent irreparable damage using a subsidence monitoring program. It is further noted that paragraph (7) restates a Federal program requirement.

One commentator recommended that "facilities" associated with churches, schools and hospitals should also be protected against material damage under § 89.141(d)(3) and (6). The Board did not adopt this recommendation.

One commentator asserted that there should be no requirement to minimize subsidence or subsidence-related damage in cases where planned subsidence is proposed. The commentator further asserted that the Federal regulations include this provision.

The Board does not agree with this assertion. Public buildings and facilities, churches, schools, hospitals, large impoundments and water bodies, and aquifers and bodies of water which are significant sources to public water supply systems have been set aside for special protection under the BMSLCA and the Federal regulations. It is,

therefore, appropriate to restrict coal extraction when necessary to prevent material damage or reductions in the reasonably foreseeable uses of these structures and features. The Federal program follows the same approach.

One commentator recommended that § 89.141(d)(3) or (6) should be revised to provide for owners of public buildings and facilities, churches, schools and hospitals to waive the protection afforded to their structures under section 9.1 of the BMSLCA.

The Board did not adopt this recommendation because the BMSLCA does not provide that this protection can be waived by the owner of these structures. Even so, it may be possible to conduct full extraction mining under certain protected structures if the structure owner consents and the mine operator takes surface measures to prevent material damage.

Eleven commentators recommended revising § 89.141(d)(11) to require more detailed descriptions of the measures a mine operator will take to protect overlying utilities. One commentator recommended revising subsection (d)(11) to simply restate the Federal requirement and include a provision that notice to the utility company is sufficient to fulfill the utility protection requirement. One commentator recommended that subsection (d)(11) should be revised to require information that will enable the Department to identify situations involving imminent hazards to human safety. IRRC recommended defining the term "utilities" to clarify the scope of paragraph (11).

After reviewing these and other comments regarding the protection of utilities, the Board decided to revise the final-form regulations in subsection (d)(11) to require additional information about utilities and the measures which mine operators or utility companies, or both, will take to minimize damage, destruction or disruption in service. This information will enable the Department to identify situations which could lead to imminent hazards to human safety and serve to inform interested members of the public about the measures which will be employed to protect utilities. In some circumstances, proposing notice to the utility owner will constitute a satisfactory protection plan. The Board also added a cross reference to § 89.142a(g) to clarify the specific utilities covered by subsection (d)(11).

One commentator expressed concern that the requirements in proposed § 89.141(d) lacked the clarity needed to guide permit reviewers. As an example, the commentator suggested that the description of potential impacts on overlying structures in subsection (d)(2) could be satisfied by the response there will be no impacts.

The Board does not share this view. Section 89.141(d) was revised to match information requirements with the performance standards in § 89.142a. In addition, § 89.141(d)(3) was added to clarify the requirements for mining beneath public buildings and facilities, churches, schools, hospitals and other protected features.

Mining beneath shallow cover and maximizing mine stability

Several comments were received regarding the proposed revisions to § 89.142a(a). One commentator recommended reinstating the language allowing development of mine openings without the need for stability demonstrations. Another commentator was concerned that the added language on stability demonstrations would open shallow cover areas to mining. The second commentator noted the history of mine subsidence problems associated with shallow cover mining in this Commonwealth.

The Board made no changes to § 89.142a(a) in response to these comments. The purpose of the proposed revisions was to clarify the requirements for mining in areas where the cover is less than 100 feet (30.48 meters). Mine workings in the interval between the surface and 100-foot depth may be unstable due to geologic conditions. The revised regulations require that workings in this interval be designed to be stable, especially in settings where there are overlying structures. Most mine openings should be able to meet stability requirements because they are designed for long-term use.

One commentator recommended deleting the requirement to maximize mine stability in § 89.142a(a)(4). The Board does not believe that it is appropriate to delete this requirement, because it is derived from section 5(e) of the BMSLCA.

Premining structure surveys

Numerous comments were received regarding proposed requirements for premining surveys of structures.

One commentator noted that the Federal regulations require the results of premining surveys to be included in permit applications so that this information is available to the landowner and the public.

The Board does not agree with the Federal concept of requiring survey results to be included in permit applications. Survey results are more accurate if they are obtained nearer to the time of mining. Several years may elapse between the time of permit application and the time a structure is undermined. Over this time the structure owner may make improvements or the structure may undergo natural deterioration which would not be reflected in a survey conducted at the time of permit application. Furthermore, since survey results may include photographs showing the contents of people's homes, there is a reason for keeping this information confidential rather than making it available for public review.

One commentator recommended that § 89.142a(b) includes a listing of landowner's rights so that people do not have to refer to the BMSLCA when reviewing mine operator's requests to gain access to their property.

While this recommendation has some merit, the Board believes that there is little to be gained by attempting to restate these rights in the regulation. It would be unwieldy to incorporate the full text of several sections of the statute in the regulations. Further, any attempt to paraphrase the statute could lead to conflicting interpretations. The Board believes that the best way to apprise landowners of their rights is for the Department to develop information sheets relating to survey requirements and include on those sheets the text of relevant sections of the BMSLCA.

One commentator recommended that surveys should only be required when a structure will undergo planned subsidence.

The Board does not believe that that limitation is appropriate. Except for structures covered by § 89.142a(c), few structures will be afforded support which qualifies as permanent. As a result, there could be instances of unplanned subsidence.

Two commentators recommended that mine operators should be required to submit all survey results to the Department. One commentator questioned how the Department will be able to verify the accuracy of structure survey results if it does not collect the results of every survey.

The Board believes that the statute and the regulations provide sufficient incentives for mine operators to conduct accurate surveys. The intent of the survey is to document premining conditions and damage so that the operator is not required to repair damage which is unrelated to mine subsidence. It is therefore in the operator's interest to conduct a thorough and accurate survey. In addition, the regulations require mine operators to provide copies of survey results to structures owners. The structure owner can report any discrepancies to the Department for follow up investigation.

The Board does not believe it is necessary to require mine operators to submit all survey results to the Department. The Department does not necessarily need to know survey results unless it is called upon to intervene in the resolution of a claim. The provision that the claims need only be submitted to the Department at its request has been included to help ensure the confidentiality of survey information. In addition, the Department can verify whether or not surveys are being conducted by contacting structure owners at random and reviewing information during the course of claim investigations.

One commentator recommended that a provision be added to relieve a mine operator of the requirement to conduct a survey in the event the structure is erected just a few days before mining.

The Board revised § 89.142a(b) to include a provision releasing a mine operator of the requirement to conduct a premining survey when the structure is constructed less than 15 days prior to the date on which the structure will fall within the 30° angle of draw. The Board notes that the release of the responsibility to conduct a survey in no way releases a mine operator from the responsibility to repair the structure if it is damaged.

One commentator recommended deleting the requirement to document components which cannot be repaired or replaced with identical structural components. The Board has responded by revising § 89.142a(b)(1)(i). Surveys must now document architectural characteristics which will require special craftsmanship to replace. In addition, these characteristics must only be documented for structures which are of historical or architectural significance.

One commentator expressed concern that the requirements for documenting denial of access were too vague. After reviewing the requirements of proposed § 89.142a(b)(2), the Board revised paragraph (2) to clarify documentation requirements. Similar changes are also incorporated in § 89.145a(2) relating to surveys of water supplies.

One commentator noted that subsidence effects can extend beyond the 30° angle of draw which is used to determine the timing of surveys. The Board notes that the Department has only documented a few cases when structures were damaged outside the 30° angle of draw. The Board also notes that the Department has established an inspection program in which its inspectors will check for damage outside the 30° angle of draw.

One commentator requested that the regulations include requirements relating to the confidential treatment of survey results and the qualifications of persons conducting surveys.

In response, the Board has added requirements relating to the confidentiality of survey results. Under the final-form regulations, a mine operator must store survey results in a secure location and limit access to them. In

addition, survey results may not be released to anyone other than the structure owner or the Department without the structure owner's consent.

Mining beneath and adjacent to public buildings and other protected structures and features

One commentator noted that the Federal regulations in 30 CFR 817.121 do not allow mining beneath public buildings and other protected structures unless the subsidence control plan demonstrates that there will be no material damage or reduction in reasonably foreseeable uses. The commentator questioned the adequacy of 50% coal support and recommended that the support area be configured around a 30° angle of draw. The commentator also questioned whether support areas should be rectangular or conical in shape.

The Board notes that the Department has used the 15° angle of draw, 50% support standard and rectangular support area for protecting structures for over 30 years, and that these criteria have proven effective in preventing material damage. These criteria are already part of Commonwealth's approved program for protecting the structures listed under Federal regulation in 30 CFR 817.121(d). In regard to the shape of support areas, a rectangular support area will be larger and, therefore, offer greater protection than one computed by conical projection. Section 89.142a(c) also includes provisions allowing the Department to increase support area requirements in cases where it believes that the basic standards will not provide sufficient protection.

Two commentators questioned how full extraction could meet the standard for protecting public buildings and other structures.

The Board believes that in some situations full extraction mining could be conducted beneath public buildings and other structures without causing material damage or reductions in reasonably foreseeable uses. In some cases, surface measures could be taken to protect the structures during the occurrence of planned and controlled subsidence. In other cases, an operator may be able to demonstrate that planned and controlled subsidence will not cause material damage based on observations at a comparison site.

One commentator noted that proposed § 89.142a(c) required all alternative mining plans to be supported by engineering reports, geologic information and elevation surveys. The commentator further noted that the previous regulation allowed technical reviewers to determine what information was necessary. The Board has revised § 89.142a(c) to delete this language and simply require the submission of a report demonstrating that the structure or feature will not be materially damaged by mine subsidence.

One commentator recommended deleting the requirement to prevent material damage to the structures listed in § 89.142a(c), noting that some of these structures were listed among those covered by repair and compensation provisions under the BMSLCA.

The Board did not adopt this recommendation because the structures listed in § 89.142a(c) have been identified for special protection under the BMSLCA. The directive in these cases is to prevent material damage or prevent a reduction in the reasonably foreseeable use of the structure. Accordingly, the Board has retained permanent coal support as the default standard for protecting these structures. Mine operators may use alternative measures, but they must first demonstrate that those alternative measures will not allow the onset of material damage or

reductions in reasonably foreseeable uses. The statutory requirement to repair these structures only serves to ensure repairs if damage occurs despite the operator's efforts to prevent it.

One commentator noted that the BMSLCA does not necessarily prohibit full extraction mining beneath a perennial stream or aquifer that serves as a significant source to a public water supply system. The Board acknowledges the commentator's observation but notes that the Department has technical guidances which aid permit reviewers in determining when to apply restrictions.

One commentator recommended reinstating coal refuse disposal areas to the list of protected structures and features. The Board did not adopt this recommendation because coal refuse disposal areas are not listed under section 9.1 of the BMSLCA.

One commentator questioned whether contamination would constitute material damage to an aquifer. The Board notes that the contamination of an aquifer is regarded as a hydrologic impact covered by The Clean Streams Law. In addition, the contamination of an aquifer which serves as a significant source to a public water supply system would constitute material damage under § 89.142a(c).

Irreparable damage to dwellings and agricultural structures

Three comments were received in regard to § 89.142a(d).

One commentator recommended that damage to homes should be prevented and another recommended that damage minimization measures should be required when even material damage is predicted. The Board did not adopt these recommendations because the BMSLCA allows for homes to be damaged as long as the damages are repaired or the structure owner is compensated. In addition, the act only specifically provides for damage minimization when a structure is likely to be irreparably damaged.

One commentator noted that the BMSLCA does not require a mine operator to take damage minimization measures unless the Department notifies the operator that irreparable damage is likely to occur. After considering this comment, the Board revised § 89.142a(d) to more closely conform to the BMSLCA. Subsection (d) now requires the Department to notify the mine operator that irreparable damage will occur prior to requiring the operator to take damage minimization measures. Subsection (d) also provides for irreparable damage to occur if the structure owner consents.

Repair of damage to surface lands

One comment was received regarding proposed § 89.142a(e). The commentator recommends that there should be a requirement to restore the land to a condition capable of supporting the value and reasonably foreseeable uses that it was capable of supporting prior to subsidence damage.

The Board believes that the commentator's concern is addressed by the language of the regulation. The concept of restoring the land to its premining value and reasonably foreseeable uses is implicit in the responsibility to correct material damage. The definition of "material damage" includes considerations relating to the affected land's capability to support any current or reasonably foreseeable uses and significant losses in production or income.

Repair of subsidence damage to dwellings and other structures

Numerous comments were received regarding § 89.142a(f) relating to the repair of subsidence damage to dwellings and other structures under section 5.4 of the BMSLCA.

Two commentators observed that the dwellings and permanently affixed appurtenant structures built after August 21, 1994, and after the first public notice of the mine permit application were excluded from subsidence damage repair and compensation requirements. The commentators further noted that these structures are not excluded from repair and compensation under the Federal program.

In considering this comment, the Board researched the rules of statutory construction and concluded that appropriate application of the rules directly addresses the commentator's concern. Under the rule of statutory construction known as the "rule of the last antecedent," section 5.4(a) of BMSLCA and § 89.142a(f) are to be interpreted to require an operator to repair all dwellings in place at the time of underground mining and all permanently affixed appurtenant structures in place at the time of underground mining. The dates in section 5.4(a) of the BMSLCA and § 89.142a(f) which limit an operator's repair obligations only apply to improvements. As a result of this interpretation, dwellings and permanently affixed appurtenant structures are subject to repair and compensation requirements equivalent to those required by Federal law.

One commentator also observed that repair and compensation requirements only apply to those dwellings and permanently affixed appurtenant structures which are within the boundary of the mine.

Under the rule of statutory construction known as "the rule of the last antecedent," only the "improvements" must be within the boundary of the entire mine as depicted in the permit application. Dwellings and permanently affixed appurtenant structures are not subject to this qualification.

One commentator questioned whether structures that are installed beneath the ground would qualify for protection. The Board believes that all structures which are installed beneath the ground would qualify as permanently affixed appurtenant structures. The very aspect of being in the ground causes these structures to be considered permanently affixed.

One commentator questioned whether the requirement to compensate for the reasonable cost of repair would be equal to the Federal requirement to fully repair or compensate. The commentator also questioned who makes the determination as to what is reasonable.

The Board believes that the compensation provided under § 89.142a(f) will equal or exceed that provided by the Federal program in all cases. Both programs should provide equal compensation up to the point when damage is irreparable. In cases involving irreparable damage, the Commonwealth's program offers greater compensation because the amount is determined on the basis of replacement value rather than fair market value. In regard to determining what is reasonable, the Department has the final say.

Two commentators noted that the Commonwealth's regulations do not contain a rebuttable presumption relating to subsidence damage to structures like the Federal program. The Board acknowledges that

§ 89.142a(f) does not contain a rebuttable presumption relating to subsidence damage. The reason is because the BMSLCA does not provide for one. The Board has, however, made provisions to bring the Commonwealth's program closer to the Federal program on this matter. The premining survey requirements in § 89.142a(b) include provisions for obtaining baseline information prior to the time mining enters the rebuttable presumption area defined in the Federal regulations. The availability of baseline information of structures will facilitate enforcement of subsidence damage repair and compensation requirements.

One commentator questions whether dwellings which are used temporarily, occasionally or seasonally for human habitation qualify for subsidence damage repair and compensation provisions. The Board believes that all dwellings mentioned by the commentator would be covered under § 89.142a(f) if they meet the criteria for being in place at the time underground mining occurs.

One commentator noted that § 89.142a(f) does not provide for prompt repair or compensation in a manner similar to the Federal program. The Board acknowledges that the BMSLCA does not provide for the Department to become involved until the mine operator and structure owner have had 6 months to come to terms. The Board notes, however, that final repairs cannot be completed until subsidence is complete and the land has stabilized. Based on this consideration, final repairs should be completed within the same time frames under both State and Federal programs.

One commentator expressed concern that § 89.142a(f) did not specifically address multilevel mining. The commentator was concerned that once a home is undermined in one seam, operators of future mines in overlying or underlying seams could be relieved of responsibility to repair future damage.

The Board acknowledges the commentator's concern, but believes that this matter is covered by the regulations. Section 89.142a(f) is applicable to individual mines and their associated damages. The only potential problem is the situation when a landowner signs a voluntary agreement releasing a mine operator from damages caused by future mining. In the absence of these agreements, the mine operator would be liable to repair or compensate for subsequent damage resulting from mining additional coal seams.

One commentator noted that the proposed regulation in § 89.142a(f)(2)(i) was missing a reference to structures covered in § 89.142a(f)(1)(i)—(v). The Board has revised the final-form regulation to correct this oversight.

One commentator recommended revising § 89.142a(f)(2)(ii) to require a mine operator to promptly notify a landowner of its decision to replace a damaged agricultural structure with an alternate type structure. The commentator noted that this would allow the mine operator and landowner to work matters out prior to the end of the 6-month negotiation period. While the Board agrees that this recommendation has some merit, it notes that the regulation, as written, allows the mine operator and landowner to work matters out prior to the end of the 6-month period.

One commentator pointed out that subsidence does not necessarily cease within a few months. There are some cases where subsidence continues after 12 years. The Board acknowledges the commentator's concern and notes that § 89.142a(f) does not limit the time frame in which a mine operator is responsible to repair or compensate for

subsidence damage. Likewise, there is no limit on the number of times an operator must repair or compensate for damage resulting from successive episodes of subsidence.

One commentator recommended that § 89.142a(f) should include facilities that are associated with buildings which are accessible to the public and noncommercial buildings customarily used by the public. The Board notes that permanently affixed appurtenant structures are covered in association with buildings that are accessible to the public. Other than this specific provision, the BMSLCA does not provide repair or compensation for facilities associated with either of these types of structures.

One commentator noted that §§ 89.142a(f) and 89.143a(b) seem to give the mine operator the choice of repairing or compensating for structural damage. The commentator believed this choice should be left to the landowner. The Board notes that the BMSLCA is silent on which party gets the choice in the matter. In cases when there is a dispute regarding which remedy to apply, the Department would make the final determination after considering the wishes of both the mine operator and landowner. The Board has revised § 89.143(d)(3) to correct this matter.

One commentator noted that the construction of § 89.142a(f)(2)(ii) did not provide compensation for relocation expenses when a structure owner's home was being repaired. The Board acknowledges this error and has corrected this matter in the final-form regulation.

One commentator questioned who is responsible for the safety of livestock and any injury to livestock when agricultural buildings are damaged. The Board acknowledges the commentator's concern, but notes that the BMSLCA does not address this matter. Consequently, any claims relating to injury to livestock would have to be settled through the courts.

Protection of utilities

Over 100 comments were received regarding proposed §§ 89.141(d)(11) and 89.142a(g) relating to the protection of utilities. These comments came primarily from mining and utility interests including gas companies, water companies, sewer authorities and railroads. IRRC also provided comments on these aspects of the regulations.

Utility interests focused on several basic issues. They were concerned that the proposed revisions would strip them of protections afforded in the recent EHB decision in *P.U.S.H.* Commentators were especially concerned about the deletion of regulations which in their opinion required mine operators to provide coal support or take surface measures to protect utility lines. The utility interests also expressed concern that the proposed revisions could subject their lines and facilities to even more damage than previously allowed. Many commentators believed that the proposed amendments would allow mine operators to fulfill utility protection requirements by merely notifying the utility company of planned mining. Some commentators recommended preventing material damage to vital utilities such as gas and water lines.

In support of their contentions, utility interests submitted information relating to the need to provide additional protection to utilities. Some commentators asserted that the safety of their customers is jeopardized when gas mains and transmission lines and rail lines are undermined. Some commentators representing gas and water utilities asserted that service to large areas can be disrupted when large mains and transmission lines are

damaged or must be shut down. Some commentators noted that some utility pipelines are difficult to protect because of their construction, or because they run through streets, buildings or other areas where conventional means of protection will not work. Utility interests also indicated that they incur considerable expenses in taking precautionary measures to prevent damage and in repairing lines which are damaged by mine subsidence and that some of these costs must be passed on to utility customers. Some commentators also felt the language of proposed § 89.142a(g) could make the Commonwealth's regulation less effective than the Federal counterpart regulation.

Mining interests were generally concerned that the proposed revisions could force them to assume a larger role in protecting utilities than they had assumed in the past. Some commentators favored simply reinstating the language of the Federal regulation in 30 CFR 817.180. Mining interests were especially concerned that the proposed amendments could upset the system of rights and responsibilities which existed between mining operators and utility companies for many years. Mining interests also recommended that amendments should focus primarily on maintaining utility service rather than preventing damage to utility lines.

In support of their position, mining interests described situations when tens of thousands of feet of utility lines had been undermined without incident under the current arrangement where mine operators notified utility companies of planned mining and utility companies took precautionary measures at the surface. Some commentators cited examples of situations when utility pipelines were kept in service and left undamaged by subsidence even in the absence of surface precautions. Some commentators also pointed out that certain utilities have the right to acquire coal support by eminent domain. Commentators also noted that the requirement to protect utilities is derived from the Federal regulations and there is nothing in the BMSLCA which affords utilities any specific right to protection. One commentator also noted that courts in Ohio have upheld a miner's right to mine the coal.

IRRC also presented comments in regard to utility protection. IRRC noted that the issue has arisen as to which party is responsible for the cost of mitigating damages incurred by investor-owned utilities. In the IRRC's view, the Department has no authority to make this determination. Rather, the issue is between two parties that would have to be resolved through litigation if an agreement could not be reached. IRRC also recommended that the Preamble to the final-form regulations address the measures mine operators are expected to take in protecting utilities, and that the final-form regulation in § 89.155 requires mine operators to notify utilities of planned mining by certified mail.

One commentator also asked to what extent mine operators were required to protect customer-owned utilities.

The traditional system in which mine operators and utility companies carried out their respective duties in accordance with their respective property rights appears to have been effective in preventing hazards to human safety. Over the past 15 years, the Department has received only two or three reports of significant damage due to the undermining of utility lines. While the occurrence of any incident is unfortunate, the Board believes

that this is a commendable record considering the tens of thousands of feet of utility lines which have been undermined.

In addition, the BMSLCA does not afford any specific protections to utilities other than those which may qualify as public facilities under section 9.1 of the BMSLCA. The term "public buildings and facilities" was defined to mean those which are owned by a government agency, such as a sewer or water authority. A utility owned by a government agency is covered by §§ 89.141(d)(3) and 89.142a(c).

The Board agrees that the matter of who should bear the costs for taking precautionary measures should be primarily based on which party owns the right of support. When the mine operator owns the right of support, the owner's responsibilities may be limited to providing timely notice to the investor-owned utility operator of imminent mining beneath the utility line. By providing notice to the utility operator, the mine operator may have satisfied § 89.142a(g)(1) and minimized damage, destruction or disruption of utility services. When the investor-owned utility possesses the right to support, a mine operator must provide support and bear the costs associated with providing support. The Board does, however, find that the BMSLCA provides sufficient authority for the Department to intervene in situations which could result in an imminent hazard to human safety without regard to the property rights of either party.

The Board believes that it is appropriate to require a mine operator to take measures to minimize breakage of customer-owned gas and water service connections, since this matter goes more toward protecting coal field residents than investor-owned utilities. The connecting lines are by definition "permanently affixed appurtenant structures." An operator who damages them by subsidence is required to repair them or compensate for the damage.

The Board also believes that it is appropriate to describe acceptable utility protection measures in the regulations and to require subsidence control plans to include information that can be used to assess the potential hazards associated with undermining individual utilities which are located above underground mines. The Board also believes that it is appropriate to provide notification to utility companies whose utility lines may be affected by underground mining.

As a result of its findings, the Board has made several changes to the final-form regulations. Section 89.141(d)(11) is revised to require additional information regarding the nature, use and construction of utilities. Section 89.142a(g) has been revised to restate the Federal regulation in 30 CFR 817.180 and to describe the measures a mine operator may use to minimize damage, destruction or disruption in services provided by a utility. Section 89.155 is revised to require notification of utility owners by certified mail.

Protecting perennial streams

Three comments were submitted in regard to § 89.142a(h) relating to perennial stream protection. This subsection was relocated under this rulemaking but was otherwise left unchanged.

Two commentators expressed concern that the existing requirements for protecting perennial streams were inadequate. The commentators suggested revising the subsection to requiring more intensive sampling and flow measurement. The Board made no change in response to this recommendation. The Board believes that the current regulation in combination with the Department's technical guidance on perennial stream protection (TGD 563-

2000-655) provides sufficient protection for perennial streams located above and adjacent to underground mines. Since implementing the guidance in January 1994, the Department has not encountered any situations when perennial streams have been adversely affected by diminution due to underground mining. The Board notes that the subsection applies only to larger streams which flow continuously throughout the calendar year, and that there are interests who believe that its application should be expanded to include smaller streams.

One commentator believed that the subsection on perennial stream protection was in conflict with § 86.102 which prohibits mining within 100 feet (30.48 meters) of a perennial stream. The Board notes that § 86.102(12) provides for the distance between mining and perennial stream to be measured horizontally and not vertically. Section 86.102 pertains only to activities conducted at the land surface.

Prevention of hazards to human safety

Seven comments were received regarding proposed § 89.142a(i) relating to prevention of hazards to human safety.

Three commentators recommended revising subsection (i)(1) to more clearly track the Federal regulation in 30 CFR 817.121(f). Two of these commentators recommended deleting the language referring to the undermining of perennial streams, industrial and commercial buildings, solid waste facilities and hazardous waste facilities. These same two commentators also asserted that there should be no presumed need to suspend mining beneath all commercial structures.

After considering these comments, the Board made several changes to the language of the proposed rulemaking. Paragraph (1) has been modified to clarify that restrictions do not apply unless the Department first determines that there is an imminent hazard to human safety. The list in paragraph (1) remains largely unchanged because it tracks the Federal requirement in 30 CFR 817.121(f) except for its reference to solid and hazardous waste disposal facilities. The Board has decided to retain the reference to solid and hazardous waste disposal facilities but has added language to clarify that considerations will generally focus on those facilities which are lined. Lined facilities are designed to contain contaminants and it is important for the Department to consider the effects of leakage resulting from subsidence damage. Although subsidence to unlined waste disposal facilities is unlikely to cause an imminent hazard, the provisions of subsection (i)(2) will allow the Department to restrict mining beneath an unlined facility if an imminent hazard is identified.

One commentator questioned how perennial streams would pose an imminent hazard to human safety. The Board believes that there could be situations wherein the undermining of a large stream in a populated area would endanger persons residing in the vicinity of the stream. In these situations, subsidence could cause flooding by altering the profile of the stream.

One commentator recommended revising § 89.142a(i) (2) to include an imminent hazard to an individual as opposed to an entire community. The Board believes that § 89.142a(i) applies to situations when there is an imminent hazard to an individual.

Two commentators recommended revising § 89.142a(i) (2) to track the language of section 9.1 of the BMSLCA and to substitute the word "hazard" for the word "danger." The Board has revised § 89.142a(i)(2) to track the lan-

guage of section 9.1 of the BMSLCA. This change involved incorporating the word "hazard" in place of "danger."

IRRC recommended revising § 89.142a(i) to add the undermining of utilities to the list of conditions which could result in imminent hazards to human safety. The Board accepted this recommendation but opted to incorporate it in § 89.142a(g) which is specific to the undermining of utilities. The Board believes that this approach focuses more attention on the matter.

Procedure for resolution of subsidence damage claims

Seven comments were received regarding proposed § 89.143a.

One commentator pointed out that the Federal regulations require prompt actions by the mine operator and regulatory authority while § 89.143a does not provide for the Department to become involved until 6 months after the claim is filed. The commentator also pointed out that in the worst-case scenario, damage repairs could be postponed for up to 21.5 months. The commentator further noted that under the Federal program the bond must be increased if subsidence damage is not repaired or compensated within 90 days.

The Board acknowledges the commentator's concern, but finds that the BMSLCA does not provide for the Department to intervene in subsidence damage claims for 6 months. The Board does, however, note that the Department has taken steps to encourage landowners to report subsidence damage to the Department as soon as the damage is discovered. This will enable the Department to obtain the facts surrounding the case early in the process. It will reduce the time needed for investigations following the 6-month negotiation period.

The Board also notes that the BMSLCA provides for an escrow program rather than relying on bonding to ensure the satisfaction of subsidence damage claims. An operator is required to deposit sufficient escrow to guarantee satisfaction of the claim to perfect his appeal of a Department order to repair or compensate for subsidence damage. The amount of escrow is established in the Department's order and is payable directly to the landowner if the operator does not prevail in its appeal.

One commentator recommended revising subsection (c) to require the Department to forward any claims it receives from structure owners to the mine operator. The Board agrees that that this is a reasonable request and has revised § 89.143a(c) to require the Department to forward claims to the mine operator.

One commentator recommended that § 89.143a be revised to require the Department to issue an order in the when it does not find a mine operator responsible for causing subsidence damage. The commentator believes that this provision is necessary to ensure that a structure owner can protect his rights by filing an appeal.

The Board does not agree that it is necessary to insert a provision of this nature in § 89.143a. The Department's standard practice is to notify all concerned parties of the results of its findings in regard to a subsidence damage claim. The notification includes the right of a landowner to appeal the Department's determination.

One commentator thought that § 89.143a should be revised to require an affected structure owner to notify the Department as well as the mine operator upon discovering subsidence damage.

The Board did not adopt this recommendation. While the Board believes it is beneficial for the Department to be notified early in the process, it does not wish to imply that this action is mandatory. A requirement of this nature could be interpreted as requiring a structure owner to notify both the Department and the mine operator to perfect his claim.

One commentator expressed general dissatisfaction with the basic provisions of § 89.143a. The Board acknowledges the commentator's concerns, but finds that § 89.143a is in keeping with the BMSLCA.

Relief from responsibility to repair or compensate for subsidence damage

Numerous comments were submitted in regard to § 89.144a relating to the conditions under which a mine operator may be relieved of repairing or compensating for subsidence damage.

Three commentators, including IRRC, recommended revising § 89.144a to include a list of landowners' rights under sections 5.4—5.6 of the BMSLCA. The commentators believe that this listing is necessary to ensure that a landowner can refer to his rights by reading the regulations rather than the statute.

The Board did not adopt this recommendation for the reasons stated with regard to comments on premining surveys. The Board believes that the best way to apprise landowners of their rights is for the Department to prepare and distribute fact sheets and information circulars relating to specific items of concern.

Two commentators noted that § 89.144a appears to be less effective than the Federal program by relieving a mine operator of the responsibility to repair or compensate for structural damage in the case where the operator is denied access to conduct a premining or postmining survey. The commentators note that the effect of denial in the Federal program is simply loss of the rebuttable presumption.

The Board acknowledges this difference between programs, but finds that the effects of denial of access are clearly specified in the BMSLCA. The Board observes, however, that even the OSM may have difficulty enforcing orders to repair subsidence damage when the rebuttable presumption does not apply and there is no premining survey data available to support the claim.

Three commentators expressed concern about the provision that relieves a mine operator of responsibility when a landowner fails to file a claim within 2 years of the date on which damage occurred. One commentator felt that this provision is contrary to requirements of the Federal program. Another believed that this provision could result in releasing an operator of liability for subsequent damage resulting from future subsidence. The third commentator observed that, based on statutory construction, the 2-year limit only pertains to the right to a Department investigation, not to release of liability to repair damage.

In reviewing this matter, the Board has found that the third commentator is correct in asserting that the 2-year limit only pertains to a structure owner's right to a Department investigation of his subsidence damage claim. It does not relieve an operator of the responsibility to repair or compensate for the subsidence damage. Accordingly, the Board has deleted the 2-year reporting limit from the list of conditions under which an operator may be relieved of the responsibility to repair or compensate

for subsidence damage. This change also addresses the concerns of the other commentators.

One commentator indicated that the provision for voluntary agreements in § 89.144a could render the Commonwealth's program less effective than the Federal program. The commentator also recommended that the Department should be required to review all voluntary agreements and claims settled in accordance with voluntary agreements.

The Board finds that the BMSLCA clearly provides for the use of voluntary agreements in settling structure damage claims. The Board also believes that it is inappropriate for the Department to become involved in the resolution of claims involving voluntary agreements unless specifically asked to do so by the landowner.

One commentator felt that the 10-day period for granting access to conduct a premining survey was too limiting. The commentator also recommended adding a right of cure for situations where access is not granted because a landowner is out of the country or legally incompetent.

The Board finds that the 10-day period for granting access is clearly stated in the BMSLCA. The Board also believes that a right of cure will be unnecessary in most cases because the notice of the intent to conduct a survey must actually be served upon the landowner. If the landowner is out of the country and does not physically receive the notice, the 10-day period does not begin. The 10-day period does not begin until the landowner receives the notice.

One commentator recommended that § 89.144a should be revised to clarify that the relief from responsibility to repair or compensate for subsidence damage is only applicable to mining that occurs after August 21, 1994.

The Board believes it is unnecessary to incorporate this qualification in § 89.144a. The performance standard in § 89.142a(f) clarifies that a mine operator is only responsible to repair or compensate for damage which results from underground mining on or after August 21, 1994.

One commentator noted that the term "operator" should be inserted following the word "thereafter" in § 89.144a(a)(1). The Board has incorporated this revision in the final-form regulation.

Premining water supply surveys

Six comments were received regarding requirements for water supply surveys in proposed § 89.145a(a).

Several commentators questioned the basis for the 1,000-foot (304.80-meter) distance used for determining the timing of surveys. Two commentators indicated that they were aware of situations when water supplies were impacted at greater distances.

The Board has adopted the 1,000-foot criterion based on the Department's recommendation. According to the Department's experience, 1,000 feet is sufficiently conservative to serve as a default parameter for most operating mines. The Department notes that the 1,000-foot distance extends approximately 240 feet (73.15 meters) beyond the rebuttable presumption area for this Commonwealth's deepest mines. The Department acknowledges that mining related effects can extend to distances greater than 1,000 feet, but notes that most cases of this nature are due to peculiar geologic conditions such as fracture zones. The Board also notes that the regulation provides for Department technical staff to adjust this distance based on site-specific conditions.

One commentator questioned if a mine operator was obligated to pay the cost for a premining survey. The Board affirms that this is what the regulation requires.

One commentator also thought that mine operators might limit data collection to supplies which are located within the rebuttable presumption area. The Board notes that the regulation establishes a default distance of 1,000 feet for collecting premining survey data. This will extend beyond the rebuttable presumption area for all Commonwealth mines which are currently in operation.

One commentator questioned what a landowner could do if he disagreed with the results of the premining survey. The Board believes that a landowner would have several options if the landowner disagreed with the survey results. The landowner could arrange to have a certified laboratory conduct an independent survey at the landowner's expense. The landowner could also ask the Department to review the results of the mine operator's survey and conduct additional testing, if necessary.

One commentator recommended revising premining survey requirements to include 1 year of premining data collection. The commentator also thought that operators should be required to submit precipitation data.

While the Board agrees that a full year of sampling would provide a well-founded basis against which to measure impacts, it does not agree that this extensive testing is warranted. In the Department's surface mining program, water supply replacement provisions have been adequately enforced using two background samples and one quantity measurement. It is unnecessary to require operators to provide precipitation data because the Department has access to precipitation data for the entire State.

One commentator questioned the basis for selecting the premining survey parameters given that they represent only a portion of the regulated drinking water parameters.

The Board has adopted the prescribed series of parameters because they are reflective of mining-related impacts. Bacteriological testing has also been added because bacterial contamination is often found in rural areas with wells and septic systems.

One commentator recommended that water supply surveys limit data collection to that which can be readily obtained. The commentator noted that landowners sometimes object to having their wells opened to allow pump tests and water level measurements.

The Board has revised § 89.145a(a) to provide for the collection of information which can be collected without extraordinary efforts or the expenditure of excessive sums of money. The provision is also incorporated in the amendments to the Department's surface mining program published in the *Pennsylvania Bulletin* on May 7, 1998.

Water supply replacement

Numerous comments were received regarding proposed § 89.145a(b)—(f) which relates to the replacement of water supplies that are contaminated, diminished or interrupted by underground mining.

One commentator observed that the Commonwealth's regulations require water supplies to be replaced to quantity and quality needed to satisfy the current and reasonably foreseeable needs of the water user. The

Federal regulations require water supplies to be restored to the quality and quantity of the premining water supply.

The Board acknowledges that there is a difference between State and Federal standards in this regard. The guidelines for replacement, however, are clearly specified in the BMSLCA. In most cases, the Board does not believe that there will be a noticeable difference between a replacement supply meeting the Federal standards and a replacement supply meeting the State standards.

One commentator questioned whether a mine operator would be obligated to replace a water supply located outside the rebuttable presumption area.

The Board notes that § 89.145a(b) clearly provides for the replacement of all water supplies which are contaminated, diminished or interrupted as a consequence of underground mining activities conducted on or after August 21, 1994. This provision applies regardless of whether the affected water supply is inside or outside the rebuttable presumption area.

Several commentators objected to the use of voluntary agreements as a means of resolving water supply problems. The commentators noted that all affected properties must be left with a useable source of water under the Federal program.

The Board acknowledges that there is a difference between State and Federal programs in this regard. However, the use of voluntary agreements is clearly provided for in the BMSLCA. Given the potential need to purchase a property for its fair market value prior to mining, the Board believes that there is sufficient incentive for operators to pursue replacement of water supplies rather than compensate landowners. The Board also notes that the BMSLCA allows the landowner to opt for compensation in lieu of water supply replacement if he chooses.

One commentator noted that the Federal regulations require prompt replacement of water supplies whereas the Commonwealth's regulations seem to allow permanent replacement to be delayed for up to 3 years. The Board acknowledges that according to the BMSLCA, an operator has up to 3 years to resolve a water supply replacement claim. However, this provision allows time for the water supply to recover on its own. The technical literature indicates that many water supplies may recover within 3 years of the impact.

One commentator questioned when a water supply has to be in place to qualify for replacement under § 89.145a(b). The Board interprets § 89.145a to apply to all water supplies that are in place at the time underground mining occurs, if mining occurs after August 21, 1994.

Several commentators expressed concern that an operator did not have to provide temporary water if a water supply was impacted outside the rebuttable presumption area or if a landowner or water user had another available source of water. One commentator asked if carrying water from a spring would constitute an available alternate source of water.

The Board acknowledges that § 89.145a(e) only requires temporary water when the affected water supply is within the rebuttable presumption area and the landowner or water user is without an alternate source of water. The Board notes, however, that the Department

has authority to issue orders requiring temporary water in cases where it determines that mining outside the rebuttable presumption area is responsible for impacting a water supply. The Board views a readily available alternate source of water as one which can be quickly connected to deliver water to the point of use. The Board also notes that a temporary water supply must meet the same quality standard as a permanently installed replacement water supply and must provide a sufficient amount of water to satisfy the water user's current needs.

One commentator recommended that the regulation be revised to incorporate a definition for the term "diminution." The Board does not believe the term "diminution" needs to be defined. The diminution of a water supply is best determined on a case-by-case basis considering the premining performance of the water supply and the water user's needs.

Several commentators objected to allowing even a de minimis cost increase to go uncompensated. The Board notes that the concept of compensating for the increased operation and maintenance costs of replacement water supplies has been established through case law on surface coal mining. The BMSLCA uses the same statutory language as the Federal SMCRA. It is therefore appropriate to incorporate this concept in water supply replacement regulations.

One commentator objected to allowing mine operators to satisfy their water supply replacement liability by connecting an affected water user to a public water supply system. The commentator felt that water supplies should be replaced in kind. The Board does not agree with this recommendation. A connection to a public water supply system is a reasonable means of replacement if the public water system can satisfy the water user's existing and reasonably foreseeable needs and is adequate for the purposes served.

One commentator felt that a mine operator should not be required to compensate for the increased costs of public water service because of the inherent benefit to the landowner or water user. The Board does not agree with this assertion. Case law provides that compensation is necessary for any increased water supply costs which are greater than de minimis.

One commentator felt that the chlorine in a public water supply system would sicken dairy cattle based on his own experience. The Board has been unable to substantiate this assertion. Communication with animal science experts at the Pennsylvania State University indicate that there should be no adverse long-term effects on cattle.

Two commentators, including IRRRC, recommended adding a special criterion to address the water quantity needs of agricultural water users. The commentators believe that many agricultural operations will have to expand in size and increase their water use to remain competitive. The Board has added a criterion to § 89.145a(f)(3) to address this concern.

One commentator noted that the Commonwealth's regulations do not require additional bond to cover water supply replacement like the Federal program. The Board acknowledges this point. The BMSLCA does not authorize requiring a bond to cover water supply replacement. The Board notes, however, that the BMSLCA gives the Department broad authority to issue orders requiring the replacement of affected water supplies and to impose penalties for failure to comply with those orders.

Procedures for resolving water supply damage claims

One commentator questioned how a water user would know if he should be collecting data if he has to substantiate his loss. The Board notes that there are several provisions which will serve to alert the water user if he wishes to collect his own premining survey information. One is the notification letter the water user will receive under § 89.155. Another will be the mine operator's request to gain access to conduct a premining survey prior to the time mining enters into the area where the supply might be impacted. A third is the public notice that the mine operator publishes in a local newspaper at the time of permit application and permit renewal.

Relief of responsibility for water supply replacement

Numerous comments were received regarding proposed § 89.152 which describes the circumstances under which a mine operator may be relieved of the responsibility to replace a water supply.

Several commentators objected to the 3-year limitation on liability and the 2-year reporting limit specified in § 89.152. The commentators noted that the Federal program contains no similar releases of liability.

The Board notes that changes to §§ 89.145a and 89.152 serve to address this concern. By linking water supply impacts to underground mining activities rather than underground mining, liability for replacement extends from the time of underground mining to the period ending 3 years after reclamation has been completed. This should be sufficient to cover virtually all water supply impacts resulting from the underground mine. The limitation regarding reporting impacts within 2 years of their occurrence remains, however, because it is specified in the BMSLCA.

Some commentators also objected to § 89.152 which allows mine operators to settle water supply cases by compensation. These commentators noted that under the Federal program a property must be left with a useable source of water. The Board acknowledges this fact, but notes that compensation is specifically allowed under the BMSLCA. The Board further notes that this provision allows landowners to opt for compensation in lieu of water supply replacement if they so choose.

One commentator indicated that a property's fair market value, on which compensation is based, begins to decline at the time a mine is opened. The Board acknowledges the commentator's concern, but has no basis on which to affirm or dispute this point. The Board further notes that the BMSLCA specifically requires compensation figures to be calculated using the fair market value prior to subsidence.

Rebuttable presumption of causation for impacts to water supplies

Two comments were received regarding proposed § 89.153.

One commentator asserted that the rebuttable presumption provision would make the Commonwealth's program less effective than the Federal program. The other recommended that § 89.153 include that rebutting the presumption does not automatically relieve the mine operator of the responsibility to replace the water supply.

The Board does not agree with the assertion that the rebuttable presumption in § 89.153 will make the Commonwealth's program less effective than the Federal program. The Board notes that the Federal program includes no rebuttable presumption which is applicable to

water supply replacement. As a result, the OSM bears the burden of proof in all water supply replacement cases.

The Board adopted the second commentator's recommendation. Simply rebutting the presumption does not relieve the operator of the liability to replace the water supply.

Mapping requirements

One commentator recommended that the general mine maps should extend at least out to the 35° angle wherein water supplies may be impacted.

The Board did not adopt this recommendation. The Board notes that the Department requires various other maps to be included in mine permit applications. These maps typically cover additional area that is well beyond that covered by the general mine map.

One commentator also questioned what other structures would be included in the term "other structures which are entitled to coal support."

The Board notes that the term primarily includes structures with support rights and structures for which coal support was purchased under former section 15 of the BMSLCA (52 P. S. § 1406.15) (Repealed). The term would also include oil wells and gas wells with approved pillar plans.

One commentator also recommended requiring mine operators to show permanently affixed appurtenant structures. The Board did not adopt this recommendation because many items such as septic systems, fences and subsurface facilities would be difficult to locate and portray at the conventional scale of these maps.

The Board also notes that additional details regarding the nature and locations of utilities have been added to mapping requirements in response to comments on utility protection.

Public notice

One commentator recommended deleting the requirement to notify residents of structures. The commentator noted that it is often difficult to identify the current tenants of rental properties.

The Board did not adopt this recommendation. The Board believes that mine operators will have the opportunity to identify residents during the course of arranging for and conducting premining surveys.

One commentator recommended deleting certified mail requirements for notice to persons other than owners of record. The Board did not adopt this recommendation. The Board believes that the use of certified mail is a reasonable means of documenting that notifications are being made, as required. The Board also notes that § 89.155 has been revised to incorporate IRRC recommendation that utilities be notified by certified mail.

Department data collection and compilation

Several commentators recommended that the regulations include a section describing the manner in which the Department will satisfy its data collection and analysis responsibilities under section 18 of the BMSLCA (52 P. S. § 1406.18).

The Department contends that it is unnecessary for the regulations to specify the type of information it is collecting. It believes that to do so may inhibit its ability to ask for additional information if it decides to do so in the future. For the benefit of those who are concerned about

this matter, the Department wishes to describe the information currently being collected.

For structures—The name of the owner; address; type; year of construction; map name and reference; accessibility to public; type of water supply; premining survey status; postmining survey status; access denied; voluntary agreement in place; owned or rented; nature of damage; Act 54 coverage; the OSM coverage; former section 4 coverage; latitude; longitude; depth of cover; the name of the mine; distance to nearest mining; distance to origin of problem; height of coal extracted in mine; last date of mining; name of coal seam; mining method; multiple seams extracted; associated land damage; mine operator notified by structure owner; the date problem was first noticed; results of communications between mine operator and structure owner; and resolution.

For water supplies—The name of the owner; address; type of water supply; depth of water supply; latitude; longitude; map reference and location; depth of cover distance to nearest mining; angle to nearest mining; distance to origin of problem; angle from origin of problem; the name of the mine; coal seam; rebuttable presumption applicable; multiple seams extracted; release of liability; nature of problem; premining survey status; access denied; date of damage; voluntary agreement in effect; the date problem was first noticed; results of communications between property owner and mine operator; and resolution of claim.

The Department also wishes to advise it has sent written notice to mine operators asking for disclosure on all structure damage claims and all water supply claims which the operators have received since August 22, 1994, the effective date of Act 54. In addition, the Department has hired additional inspection staff to inspect areas which are being undermined by full extraction methods.

Cost benefit analysis

One commentator raises several questions regarding the cost benefit analysis. The commentator believed that the analysis should reflect impacts on people's lives and reductions in property values which occur as a result of underground mining. The commentator also believed that the analysis should compare conditions before and after the adoption of these regulations, rather than comparing conditions before Act 54 and conditions after the adoption of these regulations. The commentator further believed that the benefit to the mining industry should be based on the gross profit realized from the sale of the coal rather than the full sale value of the coal. The commentator also included with his comments information about the effects of waste disposal operations on property values.

After considering the commentator's assertions, the Board revised the cost benefit analysis to reflect the reduction in benefits to the mining industry. The benefit was adjusted from \$20 per metric ton to \$3.80 per metric ton to reflect the gross profit realized from mining the coal.

The Board did not adjust the cost benefit analysis to reflect property value considerations, because it has no basis for doing so. The property value information presented by the commentator does not pertain to coal mining. This information pertains to highly visible surface activities such as waste disposal sites. It is inappropriate to apply these figures to an activity which is much less visible.

The Board also decided to retain the baseline conditions considered in the cost benefit analysis for the proposed

rulemaking. The selected baseline was the condition prior to the passage of Act 54. In this way, the full impact of new provisions can be better assessed.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

Benefits

The final-form regulations will benefit underground mine operators and coal field residents whose rights and responsibilities are currently found scattered among State law, State regulation, Federal law and case law. The consolidation of requirements into a single chapter promotes public understanding of these rights and responsibilities.

The final-form regulations will serve to codify benefits already contained in State and Federal law. These include benefits to many structure owners whose structures are damaged by mine subsidence, benefits to landowners and water users whose water supplies are affected by underground coal mining and benefits to mine operators who mine in the bituminous coal fields.

Many structure owners benefit from the expanded subsidence damage repair and compensation requirements imposed under the Act 54 amendments to the BMSLCA. Recent information on mine subsidence damage claims shows that the typical cost of repairing a damaged structure is \$30,000 to \$40,000. Under the Act 54 amendments, mine operators are responsible to repair or compensate for many of these damages. This results in a benefit to structure owners who would otherwise be forced to absorb these costs or suffer reductions in the value of their properties.

Landowners and water users also benefit from the water supply replacement requirements imposed under the Act 54 amendments to the BMSLCA. Recent estimates show that the costs of replacing a water supply at an underground coal mine site typically run between \$5,000 and \$10,000. In addition, the cost of providing temporary water may cost between \$5,000 to \$7,000. Since mine operators are now responsible for the costs associated with replacing water supplies, this represents a direct cost savings to landowners and water users.

Structure owners, landowners and water users will benefit from the premining survey requirements of the regulations. Premining survey requirements are derived primarily from the Federal regulations which define the Commonwealth's primacy requirements. These surveys document the premining condition of structures and water supplies and are crucial to determining impacts and assessing the adequacy of remedial measures. The typical cost of a premining water survey ranges from \$500 to \$1,500. The typical cost of a premining structure survey ranges from \$300 to \$800 per property. The requirement that an operator perform these surveys is a benefit to landowners.

Mine operators benefit through the repeal of certain protections which were mandated by the BMSLCA and the regulations prior to the Act 54 amendments. The former protections resulted in mine operators having to leave support pillars beneath certain dwellings and cemeteries. In addition to reducing the amount of coal that could be mined in these areas, the support requirements often interfered with longwall mining, which is a highly mechanized technique. It is estimated that the repeal of these protections will free an additional 105,000 metric tons of coal per year per mine. This figure assumes the elimination of 20 support areas which each contain 5,250

metric tons of coal. At a profit of approximately \$3.80 per ton, this equates to a benefit of approximately \$400,000 per year to the average operating mine.

Compliance Costs

The compliance costs associated with the final-form regulations include the costs of performing premining surveys, repairing or compensating for subsidence damage to structure, and replacing water supplies affected by mining. Additional costs may also be incurred in taking precautionary measures to prevent irreparable damage to dwellings and agricultural structures and taking measures to minimize breakage of customer-owned gas and water service lines; however, these costs should be offset by the resultant reductions in repair work.

The cost of performing premining structure surveys is estimated to be \$11,000 per mine per year. This is based on the assumed need to perform 20 surveys per mine per year at an average cost of \$550 per survey.

The cost of performing premining water supply surveys is estimated to be \$21,000 per mine per year. This is based on the assumed need to perform 20 surveys per year at an average cost of \$1,050 per survey.

The cost of repairing structure damage is estimated to be \$210,000 per mine per year. Repair estimates are based on 6 damage incidents per year at an average cost of \$35,000 per incident.

The cost of replacing water supplies is estimated to be \$110,000 per mine per year. This figure assumes the need to provide temporary water to 10 water users at an average cost of \$6,500 per service. It also assumes the need to permanently restore or replace 6 water supplies at an average cost of \$7,500.

The preceding costs total approximately \$352,000 per mine per year. These costs are directly attributable to the Act 54 amendments to the BMSLCA and will be incurred by mine operators irrespective of the proposed regulations. It is notable that the costs incurred by mine operators also represent direct benefits to structure owners, landowners and water users.

Compliance Assistance Plan

The Department will prepare and update program guidances and fact sheets, and hold seminars as necessary to assist mine operators in complying with these final-form regulations. The Department has already conducted similar activities in implementing the Act 54 amendments.

Paperwork Requirements

The primary paperwork associated with the final-form regulations is the correspondence and duplication of materials associated with arranging for premining surveys, reporting survey results and settling damage claims. These costs are insignificant compared to the costs of performing premining surveys and repairing or compensating for damages.

G. Sunset Review

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 1997, the Department submitted a copy of the proposed amendments to IRRC and the Chairpersons of the Senate and House Environ-

mental Resources and Energy Committees. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

Under section 5.1 of the Regulatory Review Act, these final-form regulations were deemed approved by the House Environmental Resources and Energy Committee and by the Senate Environmental Resources and Energy Committee on April 13, 1998. IRRC met on April 23, 1998, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

I. Findings of the Board

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the proposal published at 27 Pa.B. 2371.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

J. Order of the Board

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

(a) The regulations of the Department, 25 Pa. Code Chapter 89, are amended by amending §§ 89.5, 89.33—89.36, 89.67 and 89.141; adding §§ 89.142a, 89.143a, 89.144a, 89.145a, 89.146a and 89.152—89.155; and deleting §§ 89.142, 89.143, 89.144 and 89.145 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

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

JAMES M. SEIF,
Chairperson

Fiscal Note: Fiscal Note 7-316 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES

Subchapter A. EROSION AND SEDIMENTATION CONTROL

GENERAL PROVISIONS

§ 89.5. Definitions.

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

* * * * *

De minimis cost increase—For purposes of § 89.145a (relating to water supply replacement: performance standards), a cost increase which meets one of the following criteria:

(i) Is less than 15% of the annual operating and maintenance costs of the previous water supply that is restored or replaced.

(ii) Is less than \$60 per year.

* * * * *

Dwelling—A building or other structure that, at the time subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation.

* * * * *

Fair market value—The amount at which property would exchange hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

* * * * *

Irreparable damage—Damage to a structure resulting from subsidence which is in one of the following categories. The term includes:

(i) Damage for which the total cost of repair, including improvements required by Federal, State and local law to meet current standards, would exceed the cost of replacement.

(ii) Damage of such magnitude that Federal, State or local law would prohibit repair of the structure.

(iii) Damage that weakens the strength of a structure's foundation, load bearing walls or other load bearing structural components in a manner which would make it impossible or impractical to restore the structure to its previous strength.

(iv) For structures recognized as historically or architecturally significant:

(A) Damage which would adversely affect the structure's historical or architectural value.

(B) Damage for which the cost of repair to restore the historical and architectural value of the structure with the same craftsmanship and historically and architecturally equivalent components would exceed the cost of replacement.

(C) Damage which would be impossible to repair to restore the historical and architectural value of the structure with the same craftsmanship and historically and architecturally equivalent components.

Material damage—Damage that results in one of the following:

(i) Functional impairment of surface lands, structures, features or facilities.

(ii) Physical change that has a significant adverse impact on the affected land's capability to support current or reasonably foreseeable uses or causes significant loss in production or income.

(iii) Significant change in the condition, appearance or utility of a structure or facility from its presubsidence condition.

* * * * *

Noncommercial building—A building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 86.101 (relating to definitions). The term does not include a building used only for commercial agricultural, industrial, retail or commercial enterprises.

* * * * *

Permanently affixed appurtenant structures—A structure or facility securely attached to the land surface if that structure or facility is adjunct to and used in connection with structures listed in § 89.142a(f)(1)(i) and (iii) (relating to subsidence control: performance standards). Examples of these structures include:

- (i) Garages.
- (ii) Storage sheds and barns.
- (iii) Greenhouses and related structures.
- (iv) Customer-owned utilities and cables.
- (v) Fences and other enclosures.
- (vi) Retaining walls.
- (vii) Paved or improved patios, walks and driveways.
- (viii) Septic treatment facilities.
- (ix) Inground swimming pools.
- (x) Lot drainage and lawn and garden irrigation systems.

* * * * *

Public buildings and facilities—Structures that are owned or leased and principally used by a government agency for public business or meetings and anything built, installed, assembled or used by a government agency to provide a public service. Examples include, but are not limited to, the following:

- (i) Government office buildings.
- (ii) Police stations.
- (iii) Prison complexes.
- (iv) Municipal swimming pools.
- (v) Municipal utilities.
- (vi) Municipal airports.
- (vii) Public park pavilions and maintenance facilities.

* * * * *

Public water supply system—A water delivery system which does one of the following:

- (i) Serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
- (ii) Provides water to a public building, church, school, hospital or nursing home.

Rebuttable presumption area—As used in the context of water supply replacement, the area in which an operator is presumed responsible for diminishing, contaminating or interrupting a water supply. The area is defined by projecting a 35° angle from the vertical from the outside of any area where the operator has extracted coal from an underground mine.

* * * * *

Underground mining—The extraction of coal in an underground mine.

* * * * *

Underground mining operations—Underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage and blasting.

* * * * *

Water supply—An existing source of water used for domestic, commercial, industrial or recreational purposes or for agricultural uses, including use or consumption of water to maintain the health and productivity of animals used or to be used in agricultural production and the watering of lands on a periodic or permanent basis by a constructed or manufactured system in place on August 21, 1994, to provide irrigation for agricultural production of plants and crops at levels of productivity or yield historically experienced by the plants or crops within a particular geographic area, or which serves a public building or a noncommercial structure customarily used by the public including churches, schools and hospitals.

* * * * *

**Subchapter B. OPERATIONS
INFORMATION REQUIREMENTS**

§ 89.33. Geology.

(a) The operation plan shall include a description of the areal and structural geology in the permit and adjacent area, including the lithology of the strata that influence the occurrence, availability, movement and quality of groundwater that may be affected by the underground mining activities.

(1) For lands within the proposed permit and adjacent areas and over the coal seam to be mined, the description shall include the results of test borings, coal samplings and the stratum immediately beneath the coal seam to be mined, and overlying strata. When an aquifer or existing deep mine below the lowest coal to be mined may be affected, the description shall also include the aquifer or existing deep mine and overlying strata. For mines not underlain by existing deep mines and greater than 200 feet (60.96 meters) below surface drainage, the description need only include the strata down to and including the stratum immediately below the coal seam to be mined. At a minimum, the description shall include:

- (i) The location and quality of groundwater.
- (ii) The depth, lithology and structure of overburden strata.

(iii) Coal seam thickness.

(iv) Chemical analysis for pollution-forming materials of the stratum immediately above and the stratum immediately below the coal seam to be mined.

(v) Chemical analyses for pollution-forming materials of the coal seam including the sulfur content.

(2) Additionally, for portions of a permit area in which the strata down to the coal seam to be mined will be removed, as in the face up area, test borings or core samples shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined. For the purposes of this section, boreholes, drill holes, slopes and shafts do not constitute removal of overburden. The following data shall be provided:

(i) Logs of drill holes that show the lithologic characteristics, including physical characteristics and thickness of each stratum, and location and quality of groundwater.

(ii) Chemical analyses of each stratum within the overburden and the stratum immediately below the coal seam to be mined to identify those strata that contain pollution-forming or alkalinity-producing materials.

(iii) Chemical analyses for pollution-forming materials of the coal seam, including the total sulfur content.

(b) An applicant may request that the requirements of subsection (a)(2) be waived in part or in its entirety by the Department. The waiver can be granted only if the Department makes a written determination that the information required by subsection (a)(2) is unnecessary because other information having equal value or effect is available to the Department in a satisfactory form.

§ 89.34. Hydrology.

(a) The operation plan shall contain premining or baseline hydrologic information representative of the proposed permit, adjacent and general areas.

(1) Groundwater information shall include:

(i) The results of a groundwater inventory of existing wells, springs and other groundwater resources, providing information on location, ownership, quality, quantity, depth to water and usage for the proposed permit area and adjacent area. Information on water availability, occurrence and alternative water supplies shall be emphasized and water-quality information relating to suitability for existing premining uses shall be provided. At a minimum, water quality descriptions shall include total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, alkalinity, acidity and sulfates.

(ii) Other information on the baseline hydraulic and hydrogeologic properties of the groundwater system shall be included with the application. Information on indicator parameters, such as pumping test, lithologic and piezometer data or other appropriate information shall be provided in the application.

(iii) A groundwater monitoring plan under § 89.59 (relating to surface water and groundwater monitoring). The plan shall logically relate to the analysis of the baseline information and the prediction of the probable hydrologic consequences of mining and reclamation required by § 89.35 (relating to prediction of the hydrologic consequences). The plan shall identify monitoring locations and sampling frequency. Water availability, including water levels and yields, and approximate overall

recharge protection shall be emphasized. The plan shall provide for monitoring the minimum group of parameters in § 89.59, plus additional parameters that relate to the suitability of the groundwater for current and approved postmining land uses, the protection of the hydrologic balance and locally potential problem causing conditions at or near the mine site.

(2) Surface water information shall include:

(i) A description of streams, valuable impoundments and alternative water supplies. The information shall include the name, location and qualitative and quantitative seasonal flow conditions. Water-quality descriptions, at a minimum, shall include base-line information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, acidity, alkalinity, sulfates, total iron, total manganese and other locally significant water-quality characteristics. Base-line acidity information shall be provided if acid neutralization is anticipated for the proposed operation. The location of point source discharge and the name and location of the surface stream into which the point source will be discharged shall be provided. The Department may require additional hydrologic information if the predictive evaluation required by § 89.35 indicates that adverse, offsite impacts are likely to occur or, if the data are necessary to properly plan for remedial and reclamation activities.

(ii) A surface water monitoring plan under § 89.59. The plan shall logically relate to the analysis of baseline information and the prediction of the probable hydrologic consequences of mining and reclamation required by § 89.35. The plan shall identify monitoring locations and monitoring frequency. The plan shall emphasize low flows and high flows and their variable quality. The plan shall provide for monitoring the minimum group of parameters in § 89.59, plus additional parameters that relate to the suitability of the surface water for current and approved postmining land uses, the protection of the hydrologic balance and locally potential problem-causing conditions at or near the mine site. Special emphasis shall be given to accurately measuring and documenting the quality and quantity of water discharging from the permit area so that onsite damages can be minimized and offsite damages are prevented to the greatest extent possible.

(b) The Department may require hydrologic tests, including, but not limited to, drilling, infiltration, other aquifer tests and stream flow measurements. The results shall be submitted to the Department.

§ 89.35. Prediction of the hydrologic consequences.

The operation plan shall include a prediction of the probable hydrologic consequences of the proposed underground mining activities upon the quantity and quality of groundwater and surface water within the proposed permit, adjacent and general areas under seasonal flow conditions, and whether underground mining activities may result in contamination, diminution or interruption of any water supplies within the permit or adjacent area. The prediction shall be prepared by a qualified hydrologist or engineer. The probable hydrologic consequences determination shall emphasize the anticipated responses of groundwater and surface water flow, its rate, direction and quality and quantity to the proposed underground mining activities. The prediction shall be based on baseline data collected at the proposed mine site or data statistically representative of the site or a combination of both. The prediction required by this section may be developed using modeling techniques, but the Department may require verification of any models.

§ 89.36. Protection of the hydrologic balance.

(a) The operation plan shall describe, with appropriate maps and cross sections, the measures to be taken to ensure the protection of the hydrologic balance and to prevent adverse hydrologic consequences. The measures shall address:

(1) The quality and quantity of surface and groundwater within the proposed permit and adjacent areas.

(2) The rights of present users to surface and groundwater.

(3) The control of surface and groundwater drainage into, through and out of the permit area.

(4) The treatment, when required, of surface and groundwater drainage from the permit area, and proposed quantitative limits on pollutants in discharges as provided in § 89.52 (relating to water quality standards, effluent limitations and best management practices).

(b) The operation plan shall also describe how the proposed mine development plan will prevent or minimize adverse hydrologic consequences. The plan shall consider:

(1) The location of mine openings to prevent postmining discharges as required by § 89.54 (relating to preventing discharges from underground mines).

(2) Possible alterations in the mine development plan or method of mining in response to adverse impacts on the hydrologic balance as indicated by the groundwater monitoring system.

(c) The operation plan shall include a description of the measures which will be taken to replace water supplies which are contaminated, diminished or interrupted by underground mining activities. An operator is not required to provide a replacement water supply prior to mining as a condition for securing a permit.

PERFORMANCE STANDARDS

§ 89.67. Support facilities.

(a) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal loading facilities at or near the mine site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and sedimentation, water pollution and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained and used in a manner which, using the best technology currently available prevents:

(1) Damage to fish, wildlife and related environmental values.

(2) Additional contributions of suspended solids to streamflow or runoff outside the disturbed area. Contributions may not be in excess of limitations of State or Federal law.

(b) Surface mining activities associated with an underground mine shall be conducted in a manner which minimizes damage, destruction or disruption of services provided by oil, gas and water wells; oil, gas and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under or through a permit area, unless otherwise approved by the owner of those surface facilities and the Department.

Subchapter F. SUBSIDENCE CONTROL AND WATER SUPPLY REPLACEMENT

§ 89.141. Subsidence control: application requirements.

(a) *Geology.* The application shall include a description of the geology overlying the proposed permit area, from the surface down to the first stratum below the coal seam to be mined. The description shall include geologic conditions which are relevant to the likelihood or extent of subsidence or subsidence related damage. For the same strata, a detailed description and cross-section shall be provided from available test borings and core samples. A copy of the information developed for § 89.33 (relating to geology) may be used as appropriate to meet the requirements of this section.

* * * * *

(d) *Subsidence control plan.* The permit application shall include a subsidence control plan which describes the measures to be taken to control subsidence effects from the proposed underground mining. The plan shall address the area in which structures, facilities or features may be materially damaged by mine subsidence. At a minimum, the plan shall address all areas within a 30° angle of draw of underground mining which will occur during the 5-year term of the permit. The subsidence control plan shall include the following information:

* * * * *

(2) A narrative describing whether subsidence, if it is likely to occur, could cause material damage to or diminish the value or reasonably foreseeable use of any structures or could contaminate, diminish or interrupt water supplies.

(3) For each structure and feature, or class of structures and features, described in § 89.142a(c) (relating to subsidence control: performance standards), a detailed description of the measures to be taken to ensure that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of the structures or features. The measures shall include one or more of the following:

- (i) Backfilling or backstowing of voids.
 - (ii) Leaving support pillars of coal.
 - (iii) Leaving areas in which no coal extraction will occur.
 - (iv) Taking measures on the surface to prevent material damage or reduction of the reasonably foreseeable use of the structure or feature.
 - (v) Other measures approved by the Department.
- (4) A description of the anticipated effects of planned subsidence, if any.
- (5) A description of the measures to be taken to correct any subsidence-related material damage to the surface land.

(6) A description of the measures to be taken to prevent irreparable damage to the structures enumerated in § 89.142a(f)(1)(iii)—(v), if the structure owner does not consent to the damage.

(7) A description of the monitoring, if any, the operator will perform to determine the occurrence and extent of subsidence so that, when appropriate, other measures can be taken to prevent or reduce or correct damage in accordance with § 89.142a(e) and (f).

(8) A description of the measures to be taken to maximize mine stability and maintain the value and reasonably foreseeable use of the surface land.

(9) A description of the measures which will be taken to maintain the value and foreseeable uses of perennial streams which may be impacted by underground mining. The description shall include a discussion of the effectiveness of the proposed measures as related to prior underground mining under similar conditions.

(10) A description of the measures to be taken to prevent material damage to perennial streams and aquifers which serve as a significant source to a public water supply system.

(11) A description of utilities including type, nature of use, composition and approximate age of pipelines, and a description of the measures to be taken to minimize damage, destruction or disruption in utility service in accordance with § 89.142a(g) (relating to protection of utilities).

(12) A description of applicable measures to be taken to control subsidence under other statutes, including:

- (i) The act of December 22, 1959 (P. L. 1994, No. 729) (52 P. S. §§ 3101—3109).
- (ii) The Oil and Gas Act (58 P. S. §§ 601.101—601.605).
- (iii) Section 419 of the State Highway Law (36 P. S. § 670-419).
- (iv) The act of June 1, 1933 (P. L. 1409, No. 296) (52 P. S. § 1501).

(13) Other information as requested in accordance with the policies and procedures of the Department.

§ 89.142. (Reserved).

§ 89.142a. Subsidence control: performance standards.

(a) *General requirements.* Underground mining shall be planned and conducted in accordance with the following:

(1) The subsidence control plan required by § 89.141(d) (relating to subsidence control: application requirements) and the postmining land use requirements in § 89.88 (relating to postmining land use).

(2) The performance standards in subsections (b)—(j).

(3) Underground mining will not be authorized beneath structures where the depth of overburden is less than 100 feet (30.48 meters), unless the subsidence control plan demonstrates to the Department's satisfaction that the mine workings will be stable and that overlying structures will not suffer irreparable damage.

(4) The mine operator shall adopt measures to maximize mine stability. This subsection does not prohibit planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.

(b) *Structure surveys.*

(1) The operator shall conduct premining surveys of all structures listed under subsection (f)(1). The operator is relieved of the duty to conduct a premining survey if the operator has complied with the notice procedure in paragraph (2) and the landowner denies the operator access to conduct a premining survey or the structure was constructed less than 15 days before mining will enter the area described in subparagraph (ii).

(i) The premining survey shall document the existing condition of each structure and for structures that are recognized as historically or architecturally significant,

the presence of any architectural characteristics that will require special craftsmanship to replace.

(ii) The premining survey shall be completed prior to the time that a structure falls within a 30° angle of draw of underground mining, or a larger area as required by the Department.

(iii) The results of a premining survey shall be submitted to the landowner within 30 days of completion and to the Department upon Department request.

(iv) The operator may not provide the results of a premining survey to persons other than the structure owner and the Department without the consent of the structure owner.

(v) The operator shall store survey results in a secure location and shall limit access to the results to authorized personnel.

(2) The operator will be relieved of the duty to conduct a premining survey if the operator submits evidence to the Department that:

(i) The operator notified the owner by certified mail or personal service of the landowner's rights as set forth in sections 5.4—5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5d—1406.5f).

(ii) The operator attempted to conduct a survey.

(iii) The landowner failed to provide the operator with access to the site to conduct a survey within 10 days of receipt of the operator's notice of intent to conduct the survey.

(c) *Restrictions on underground mining.*

(1) Unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of the structures and surface features listed in subparagraph (i)—(v), no underground mining shall be conducted beneath or adjacent to:

(i) Public buildings and facilities.

(ii) Churches, schools and hospitals.

(iii) Impoundments with a storage capacity of 20 acre-feet (2.47 hectare-meters) or more.

(iv) Bodies of water with a volume of 20 acre-feet (2.47 hectare-meters) or more.

(v) Bodies of water or aquifers which serve as significant sources to public water supply systems.

(2) The measures adopted by the operator to comply with paragraph (1) shall consist of one of the following:

(i) Providing a support area beneath the structure or surface feature to be protected where coal extraction is limited to 50%, and the following:

(A) The support area shall consist of pillars of coal of a size and in a pattern which maximizes bearing strength, and which is approved by the Department.

(B) For purposes of this section, the support area shall be rectangular in shape and determined by projecting a 15° angle of draw from the surface to the coal seam beginning 15 feet (4.57 meters) from the sides of the structure. For a structure on a slope of 5% or greater, the support area on the downslope side of the structure shall be extended an additional distance determined by multiplying the thickness of the overburden by the percentage

expressed as a decimal of the surface slope. A pillar lying partially within the support area shall be considered part of the support area and shall be consistent with the other support pillars in size and pattern.

(C) The area lying between two support areas shall be treated as a support area, when the distance between the two support areas is less than the depth of the overburden.

(D) If the Department determines there is a potential for material damage or reducing the reasonably foreseeable use of a structure or feature listed in paragraph (1), the Department may limit the percentage of coal extracted under or adjacent to the structure or feature as necessary to minimize the potential for material damage or reduction in reasonably foreseeable use.

(ii) Backfilling or backstowing of voids.

(iii) Leaving areas in which no coal extraction will occur.

(iv) Taking measures on the surface to prevent material damage or reduction in the reasonably foreseeable use of the structure or feature.

(v) Demonstrating that the structure or feature will not be materially damaged through an engineering report or a report of the effects of mining under similar conditions.

(vi) Initiating a monitoring program within a specified area to detect surface movement resulting from the underground mining. The program shall entail placing monitors sufficiently in advance of the underground mining so that if excessive subsidence occurs the underground mining can be stopped before the protected structures or features are damaged. In calculating the area to be monitored, a 30° angle of draw shall be used.

(3) If the measures implemented by the operator cause material damage or reduce the reasonably foreseeable use of the structures or features listed in paragraph (1), the Department will impose additional measures to further minimize the potential for these effects.

(d) *General measures to prevent or minimize irreparable damage.* If the Department determines and so notifies a mine operator that a proposed mining technique or extraction ratio will result in irreparable damage to a structure enumerated in subsection (f)(1)(iii)—(v), the operator may not use the technique or extraction ratio unless the building owner, prior to mining, consents to the mining or the operator, prior to mining, takes measures approved by the Department to minimize or reduce impacts resulting from subsidence to these structures.

(e) *Repair of damage to surface lands.* To the extent technologically and economically feasible, the operator shall correct material damage to surface lands resulting from subsidence caused by the operator's underground mining operations.

(f) *Repair of damage to structures.*

(1) *Repair or compensation for damage to certain structures.* Whenever underground mining conducted on or after August 21, 1994, causes damage to any of the structures listed in subparagraphs (i)—(v), the operator responsible for extracting the coal shall fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of § 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

(i) Buildings that are accessible to the public including, but not limited to, commercial, industrial and recreational buildings and all permanently affixed appurtenant structures.

(ii) Noncommercial buildings customarily used by the public, including, but not limited to, schools, churches and hospitals.

(iii) Dwellings which are used for human habitation and permanently affixed appurtenant structures or improvements in place on August 21, 1994, or on the date of first publication of the application for a coal mining activity permit or a 5-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in the application.

(iv) Barns and silos.

(v) Permanently affixed structures of 500 or more square feet (46.45 square meters) in area that are used for raising livestock, poultry or agricultural products, for storage of animal waste or for the processing or retail marketing of agricultural products produced on the farm on which the structures are located.

(2) *Amount of compensation.*

(i) If, rather than repair the damage, the operator compensates the structure owner for damage caused by the operator's underground mining, the operator shall provide compensation equal to the reasonable cost of repairing the structure or, if the structure is determined to be irreparably damaged, the compensation shall be equal to the reasonable cost of its replacement except for an irreparably damaged agricultural structure identified in paragraph (1)(iv) or (v) which at the time of damage was being used for a different purpose than the purpose for which the structure was originally constructed. For such an irreparably damaged agricultural structure, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before the damage occurred if the operator can affirmatively prove that the structure was being used for a different purpose than the purpose for which the structure was originally constructed.

(ii) The operator shall compensate the occupants with an additional payment for reasonable, actual expenses incurred during their temporary relocation, if the occupants of a damaged structure are required to relocate. The operator shall also compensate the occupants for other actual, reasonable incidental costs agreed to by the parties or approved by the Department.

(g) *Protection of utilities.*

(1) Underground mining shall be planned and conducted in a manner which minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; rail lines; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department.

(2) The measures an operator may take to minimize damage, destruction or disruption in services protected by this subsection may include, but are not limited to, one or more of the following:

(i) A program for detecting subsidence damage and minimizing disruption in services.

(ii) A notification to the owner of the facility which specifies when underground mining beneath or adjacent to the utility will occur.

(iii) Providing support in accordance with the utility owner's support rights.

(iv) Providing temporary or alternate service to customers.

(v) Demonstrating to the Department that subsidence will not materially damage the utility.

(3) A mine operator shall take measures to minimize damage to customer-owned gas and water service connections, unless the customer does not consent to the measures.

(4) The Department will suspend or restrict underground mining if it determines that mining beneath or adjacent to a utility will present an imminent hazard to human safety.

(h) *Perennial streams.*

(1) Underground mining shall be planned and conducted in a manner which maintains the value and reasonably foreseeable uses of perennial streams, such as aquatic life; water supply; and recreation, as they existed prior to coal extraction beneath streams.

(2) If the Department finds that the underground mining has adversely affected a perennial stream, the operator shall mitigate the adverse effects to the extent technologically and economically feasible, and, if necessary, file revised plans or other data to demonstrate that future underground mining will meet the requirements of paragraph (1).

(i) *Prevention of hazards to human safety.*

(1) The Department will suspend underground mining beneath urbanized areas; cities; towns; and communities and adjacent to or beneath industrial or commercial buildings; lined solid and hazardous waste disposal areas; major impoundments of 20 acre-feet (2.47 hectare-meters) or more; or perennial streams, if the operations present an imminent danger to the public.

(2) If the Department determines and so notifies the operator that a mining technique or extraction ratio will result in subsidence which creates an imminent hazard to human safety, the operator may not use the technique or extraction ratio unless the operator, prior to mining, takes measures approved by the Department to eliminate the imminent hazard to human safety.

(j) *Prohibition.* Underground mining is prohibited under an area which is not included within a subsidence control plan that has been submitted under § 89.141(d) (relating to subsidence control: application requirements) and approved by the Department.

(k) *Report of claim.* Within 10 days of being advised of a claim of subsidence damage to a structure or surface feature, the operator shall provide the Department with a report of the claim which shall include the following information:

(1) The date of the claim.

(2) The name, address and telephone number of the owner of the structure, surface feature or surface land claimed to be damaged.

(3) The number assigned to the structure or feature under § 89.154(a) (relating to maps).

(l) *Property rights.* This section does not authorize the Department to adjudicate property rights disputes between mine operators and other parties.

§ 89.143. (Reserved).

§ 89.143a. Subsidence control: procedure for resolution of subsidence damage claims.

(a) The owner of a structure enumerated in § 89.142a(f)(1) (relating to subsidence control: performance standards) who believes that underground mining caused mine subsidence resulting in damage to the structure and who wishes to secure repair of the structure or compensation for the damage shall provide the operator responsible for the underground mining with notification of the damage to the structure.

(b) If the operator agrees that mine subsidence damaged the structure, the operator shall fully repair the damage or compensate the owner for the damage in accordance with either § 89.142a(f) or a voluntary agreement between the parties authorized by section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5f).

(c) If, within 6 months of the date that the building owner sent the operator notification of subsidence damage to the structure, the parties are unable to agree as to the cause of the damage or the reasonable cost of repair or compensation for the structure, the owner of the structure may within 2 years of the date damage to the structure occurred, file a claim in writing with the Department. The Department will send a copy of the claim to the operator.

(d) Upon receipt of the claim, the Department will conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining caused the subsidence damage to the structure.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining caused the damage to the structure, the Department will either issue a written order directing the operator to compensate the structure owner or issue an order directing the operator to repair the damaged structure within 6 months of the date of issuance of the order. The Department may allow more than 6 months if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

§ 89.144. (Reserved).

§ 89.144a. Subsidence control: relief from responsibility.

(a) The operator will not be required to repair a structure or compensate a structure owner for damage to structures identified in § 89.142a(f)(1) (relating to subsidence control: performance standards) if the operator demonstrates to the Department's satisfaction one or more of the following apply:

(1) The landowner denied the operator access to the property upon which the structure is located to conduct a

premining survey or a postmining survey of the structure and surrounding property, and thereafter the operator served notice upon the landowner by certified mail or personal service. The operator shall demonstrate the following:

(i) The notice identified the rights established by sections 5.4—5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5d—1406.5f).

(ii) The landowner denied the operator access to the site to conduct the survey within 10 days after the landowner's receipt of the notice.

(2) The operator's underground mining did not cause the damage.

(3) The operator and the landowner entered into a voluntary agreement that satisfies the requirements of section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act.

§ 89.145. (Reserved).

§ 89.145a. Water supply replacement: performance standards.

(a) *Water supply surveys.*

(1) The operator shall conduct a premining survey and may conduct a postmining survey of the quantity and quality of all water supplies within the permit and adjacent areas, except when the landowner denies the operator access to the site to conduct a survey and the operator has complied with the notice procedure in this section. Premining surveys shall be conducted prior to mining within 1,000 feet (304.80 meters) of a water supply unless otherwise authorized or required by the Department based on site specific conditions. Survey information shall include the following information to the extent that it can be collected without extraordinary efforts or the expenditure of excessive sums of money:

(i) The location and type of water supply.

(ii) The existing and reasonably foreseeable uses of the water supply.

(iii) The chemical and physical characteristics of the water, including, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, hardness, total coliform, acidity, alkalinity and sulfates. An operator who obtains water samples in a premining or postmining survey shall utilize a certified laboratory to analyze the samples.

(iv) The quantity of the water.

(v) The physical description of the water supply, including the depth and diameter of the well, length of casing and description of the treatment and distribution systems.

(vi) Hydrogeologic data such as the static water level and yield determination.

(2) The operator shall submit copies of the results of the analyses, as well as the results of any quantitative analysis, to the Department and to the landowner within 30 days of their receipt by the operator.

(3) If the operator cannot make a premining or postmining survey because the owner will not allow access to the site, the operator shall submit evidence to the Department of the following:

(i) The operator notified the landowner by certified mail or personal service of the landowner's rights in sections

5.1—5.3 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5a—1406.5c), and the effect on the landowner of the landowner's denial to the operator of access to the site as described in section 5.2(d) of The Bituminous Mine Subsidence and Land Conservation Act.

(ii) The operator's attempt to conduct a survey.

(iii) The landowner failed to authorize access to the operator to conduct a survey within 10 days of receipt of the operator's notice of intent to conduct a survey.

(b) *Restoration or replacement of water supplies.* When underground mining activities conducted on or after August 21, 1994, affect a public or private water supply by contamination, diminution or interruption, the operator shall restore or replace the affected water supply with a permanent alternate source which adequately serves the premining uses of the water supply or any reasonably foreseeable uses of the water supply. The operator shall be relieved of any responsibility under The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) to restore or replace a water supply if the operator demonstrates that one of the provisions of § 89.152 (relating to water supply replacement: relief from responsibility) relieves the operator of further responsibility. This subsection does not apply to water supplies affected by underground mining activities which are covered by Chapter 87 (relating to surface mining of coal).

(c) Within 24 hours of an operator's receipt of a claim of water supply contamination, diminution or interruption, the operator shall notify the Department of the claim.

(d) *Investigation and reporting of water supply damage complaints.* Upon receipt of notification that a water supply has been contaminated, diminished or interrupted and that the operator's underground mining activities may have caused the contamination, diminution or interruption, the operator shall diligently investigate the complaint and notify the Department in a timely manner of the results of the operator's investigation. This subsection does not apply to water supplies affected by underground mining activities which are governed by Chapter 87.

(e) *Temporary water supplies.*

(1) If the affected water supply is within the rebuttable presumption area and the rebuttable presumption applies and the landowner or water user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water supply user or the Department, whichever occurs first.

(2) The temporary water supply provided under this subsection shall meet the requirements of paragraph (f)(2) and provide a sufficient amount of water to meet the water supply user's premining needs.

(f) *Adequacy of permanently restored or replaced water supply.* A permanently restored or replaced water supply shall include any well, spring, municipal water supply system or other supply approved by the Department, which meets the criteria for adequacy as follows:

(1) *Reliability, cost, maintenance and control.* A restored or replaced water supply, at a minimum, shall:

(i) Be as reliable as the previous water supply.

(ii) Be as permanent as the previous water supply.

(iii) Not require excessive maintenance.

(iv) Provide the owner and the user with as much control and accessibility as exercised over the previous water supply.

(v) Not result in more than a de minimis cost increase to operate and maintain. If the operating and maintenance costs of the restored or replaced water supply are more than a de minimis cost increase, the operator shall provide for the permanent payment of the increased operating and maintenance costs of the restored or replaced water supply.

(2) *Quality.* A restored or replaced water supply will be deemed adequate when it differs in quality from the premining water supply, if it meets the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 750.1—750.20), or is comparable to the premining water supply when that water supply did not meet these standards.

(3) *Adequate quantity.* A restored or replaced water supply will be deemed adequate in quantity if it meets one of the following:

(i) It delivers the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(ii) It is established through a connection to a public water supply system which is capable of delivering the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(iii) For purposes of this paragraph and with respect to agricultural water supplies, the term reasonably foreseeable uses includes the reasonable expansion of use where the water supply available prior to mining exceeded the farmer's actual use.

(4) *Water source serviceability.* A replacement of a water supply shall include the installation of any piping, pumping equipment and treatment equipment necessary to put the replaced water source into service.

§ 89.146a. Water supply replacement: procedure for resolution of water supply damage claims.

(a) Whenever a landowner or water supply user experiences contamination, diminution or interruption of a water supply which is believed to have occurred as a result of underground mining activities, the landowner or water user shall notify the operator. The operator shall diligently investigate the water loss. This subsection does not apply to water supplies affected by underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

(b) The Department will order the operator to provide temporary water to the landowner or water supply user within 24 hours of issuance of the order if the following apply:

(1) No alternate temporary water supply is available to the landowner or water user.

(2) The water supply is contaminated, diminished or interrupted.

(3) The water supply is located within the rebuttable presumption area.

(4) The landowner notified the operator of the water supply problem.

(c) If the affected water supply has not been restored or an alternate water supply has not been provided by the operator or if the operator provides and later discontinues an alternate source, the landowner or water supply user may so notify the Department and request that the Department conduct an investigation in accordance with the following procedure:

(1) Within 10 days of notification, the Department will commence an investigation of landowner's or water supply user's claim.

(2) Within 45 days of notification, the Department will make a determination of whether the contamination, diminution or interruption was caused by the operator's underground mining activities and will notify all affected parties of the Department's determination.

(3) If the Department determines that the operator's underground mining activities caused the water supply to be contaminated, diminished or interrupted, the Department will issue any orders that are necessary to assure compliance with The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) and this chapter.

§ 89.152. Water supply replacement: relief from responsibility.

(a) The operator will not be required to restore or replace a water supply if the operator can demonstrate one of the following:

(1) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.

(2) The contamination, diminution or interruption is due to underground mining activities which occurred more than 3 years prior to the onset of water supply contamination, diminution or interruption.

(3) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(4) The claim for contamination, diminution or interruption of the water supply was made more than 2 years after the water supply was adversely affected by the underground mining activities.

(5) That the operator has done one of the following:

(i) Has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(ii) The landowner and operator have entered into a valid voluntary agreement under section 5.3 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5c) which does not require restoration or replacement of the water supply or authorizes a lesser amount of compensation to the landowner than provided by section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act.

(b) This section does not apply to underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

§ 89.153. Water supply replacement: rebuttable presumption.

(a) In a determination or proceeding under section 5.2 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5b), it is presumed that the operator is responsible for the contamination, diminution or interruption of a water supply that is within the rebuttable presumption area.

(b) The operator may successfully rebut the presumption by affirmatively proving that the landowner denied the operator access to the property on which the water supply is located to conduct a premining survey or a postmining survey of the quality and quantity of the water supply and that the operator complied with the notification procedure in § 89.145a(a)(3) (relating to water supply replacement: performance standards).

(c) Affirmatively proving that an operator was denied access to conduct a premining or postmining survey of a water supply does not relieve the operator of liability for the contamination, diminution or interruption when the landowner, affected water use or the Department proves the operator's underground mining activities caused the contamination, diminution or interruption.

§ 89.154. Maps.

(a) *General mine map.* The application shall include maps prepared under the supervision of and certified by a qualified registered professional engineer or qualified registered professional land surveyor drawn to a scale of 1 inch = 500 feet in a manner satisfactory to the Department, updated as requested by the Department, showing the items identified in this subsection. The map shall cover all areas where structures may be damaged and surface lands may suffer material damage as a result of mine subsidence. At a minimum, the map shall cover the entire area above the mine, and all areas within a 30° angle of draw of the limits of the mine. The requirements of paragraphs (2)—(7) may be satisfied by referencing the maps required by Subchapter B (relating to operations). The map, at a minimum, shall show the following:

(1) The boundaries of areas proposed to be affected over the estimated total life of the underground mining activity, with a description of the size, sequence and the schedule for mining subareas of the mine.

(2) The location of test borings and core samplings, and surface and coal elevations at these locations.

(3) Coal crop lines and the contours of the coal seam to be mined within the permit and adjacent areas.

(4) The location and extent of known workings of active, inactive or abandoned, underground or surface mines, including identification of the coal seams mined and location of mine openings to the surface within, above and below the proposed permit and adjacent areas.

(5) The portrayal of major aquifers on cross-sections.

(6) The area covered by the subsidence control plan submitted under § 89.141(d) (relating to subsidence control: application requirements) with the following information identified:

(i) The boundaries of lands and names of current surface and subsurface owners of record.

(ii) Dwellings, public buildings and facilities, churches, schools, hospitals and impoundments with a storage

capacity of 20 acre-feet (2.47 hectare-meters), identified by numerical reference.

(iii) Structures or classes of structures listed in § 89.142a(f)(1)(i)—(v) (relating to subsidence control: performance standards), identified by numerical reference.

(iv) Urbanized areas, cities, towns, communities and industrial or commercial buildings.

(v) Public parks and historic structures.

(vi) Other structures which are entitled to support, identified by numerical reference.

(vii) Water supplies.

(viii) Major electric transmission lines, including identification by name or numerical reference.

(ix) Public roads and railroads.

(x) Oil, gas and coal slurry pipelines larger than 4 inches (10.16 centimeters) in diameter, including identification by name or numerical reference.

(xi) Water and sewer mains and transmission lines, including identification by name or numerical reference.

(xii) Surface water bodies, including perennial streams, lakes, ponds, dams and impoundments with a volume of 20 acre-feet (2.47 hectare meters) or more, indicating by numerical reference those perennial streams and other bodies of water which are a significant source for a public water supply system.

(xiii) Coal refuse disposal areas, solid and hazardous waste disposal areas, and other air and water pollution control facilities, all identified by numerical reference.

(xiv) Gas, oil and water wells, identified by numerical reference.

(xv) Surface sites and facilities associated with the underground permit application.

(xvi) Aquifers which serve as a significant source for a public water supply system, identified by numerical reference.

(xvii) Political subdivisions.

(xviii) Landslide prone areas.

(xix) Proposed underground workings including a description of the location and extent of the areas in which planned subsidence mining methods will be used and the identification of all areas where the measures described in § 89.141(d)(3), (5) and (7) will be taken to prevent or minimize subsidence and subsidence-related damage; and when applicable, to repair subsidence-related damage.

(7) Areas over the proposed mine where the overburden is 100 feet (30.48 meters) or less.

(b) *Six-month maps.* The operator shall submit mine maps to the Department every 6 months. The maps shall:

(1) Be drawn to a scale of 1 inch = 100 feet or 1 inch = 200 feet.

(2) Be prepared under the supervision of and certified by a qualified registered professional engineer or qualified registered professional land surveyor.

(3) Show the area in which mining is projected to occur in the next 6 months.

(4) Show the area where underground mining occurred over the last 6 months, including pillar locations, and the areas abandoned or completed within the last 6 months.

(5) Provide the following information:

(i) The location and identifying number for structures and surface features required to be identified by number in subsection (a)(6)(i)—(xviii).

(ii) The location and identifying number of structures and surface features required to be identified by number in subsection (a)(6)(i)—(xviii), which have appeared since the permit application.

(iii) The location of surface boundaries and identification of surface owners of record and the owners of record of the coal seam being mined.

(iv) The boundaries of the projected mining area and within that area designated coal areas to be mined and coal areas to be left unmined, including:

(A) A description of the areas to be supported by the pillar plan required by § 89.142a(c)(2).

(B) Coal left in place in compliance with other statutes including those listed in § 89.141(d)(12) (relating to subsidence control; application requirements).

(C) Identification of other areas of planned and controlled subsidence.

(v) Existing mine working adjacent to the area to be mined in the next 6 months, including a designation of any survey stations, elevations of the bottom of the coal seam and areas of geologic faults.

(vi) Other information requested by the Department.

(c) *Map to be filed with recorder of deeds.* After the Department has determined that the 6-month map is in accordance with the subsidence control plan, the operator shall file a copy of the map with the recorder of deeds for each county in which underground mining is projected, and submit to the Department proof of this filing.

(d) *Restriction of activity.* No underground mining may occur until it is shown as projected underground mining on the maps required by subsection (b) and the maps have been on file with the recorder of deeds' office for 10 days.

§ 89.155. Public notice.

(a) The operator shall send a notice by certified mail, return receipt requested, to the owner of record of each property and each utility, and each political subdivision overlying its underground mining operations. A notice shall be sent to the resident and owner of each structure overlying the mining operation. The notice shall be sent at least 6 months, but not more than 5 years, prior to mining beneath that property or structure or within that political subdivision. The operator shall provide the Department with a copy of each notice and return receipt, or, if the certified mail is not accepted, a copy of the returned envelope documenting that the notice was not accepted or not deliverable.

(b) The notice shall identify:

(1) The area in which underground mining will take place.

(2) The approximate time frame, within the permit term, when the underground mining that may cause subsidence and affect specific structures is expected to occur.

(3) The location of the offices where the applications and maps submitted under this chapter are available for inspection and a schedule of dates for the submission of the 6-month maps under § 89.154(b) (relating to maps).

(4) The location of the offices of both the operator and the Department where a surface owner can submit

written complaints alleging subsidence damage or water supply contamination, diminution or interruption.

(c) The operator shall establish and implement a procedure to notify Federal, State or local government agencies responsible for administering public facilities, such as roads, when the underground mining beneath or adjacent to the public facility will occur. The notification shall be given 6 months prior to underground mining beneath the

public facility or shall be timed to enable the agency to take appropriate measures to protect the facility and to prevent conditions which may endanger the health, safety or welfare of the public.

[Pa.B. Doc. No. 98-952. Filed for public inspection June 12, 1998, 9:00 a.m.]
