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# PENNSYLVANIA BULLETIN

Volume 27

Number 26

Saturday, June 28, 1997 • Harrisburg, Pa.

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General Provisions of Act 57 of 1996

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Pennsylvania Public Utility Commission  
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State Employees' Retirement Board

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

**No. 271, June 1997**

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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*.

There are no restrictions on the republication of official documents appearing in 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.

# 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 1997.

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## **Part II**

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General Provisions of Act 57 of 1996

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# THE COURTS

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Mental Health Procedures Act Designation of Hearing Site; Administrative Doc. No. 001 of 1997

##### Order

And now, this 9th day of June, 1997, upon review and consideration of the request made by Girard Medical Center, located at 8th Street and Girard Avenue, in the City and County of Philadelphia, to be designated as a Hearing Site for Mental Health Hearings conducted pursuant to the Mental Health Procedures Act of 1976, as amended, the Court being satisfied that the facilities meet the Court's criteria, *It Is Hereby Ordered and Decreed* that Girard Medical Center is designated as a Hearing Site for Mental Health Hearings.

The scheduled day(s) and time(s) of Mental Health Hearings at the site shall be as directed by the Court from time to time.

This Order is issued in accordance with Phila. R. Civ. P. No. 7109, as adopted May 21, 1997, Phila. R. Civ. P. No. \*51 and Pa.R.C.P. No. 239 and shall become effective immediately. As required by Pa.R.C.P. No. 239, the original Order shall be filed with the Prothonotary in an Administrative Docket maintained for Orders issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedure Rules Committee. Copies of the Order shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library, and the law library for the First Judicial District.

By the Court

ALEX BONAVITACOLA,  
President Judge

[Pa.B. Doc. No. 97-1020. Filed for public inspection June 27, 1997, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### FAYETTE COUNTY

#### Local Rule 301: Continuances; Criminal Division, No. 69 Misc. of 1997

##### Order

And Now, this 9th day of June, 1997, pursuant to Rule 6 of the Rules of Criminal Procedure, it is hereby ordered that the above-stated Local Rule be adopted as follows.

The Clerk of Courts is directed as follows:

(1) Seven certified copies of the Local Rule shall be filed with the Administrative Office of the Pennsylvania Courts.

(2) Two certified copies of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) One certified copy of the Local Rule shall be sent to the State Criminal Procedural Committee.

(4) One certified copy shall be sent to the Fayette County Law Library.

(5) One certified copy shall be sent to the Editor of the *Fayette Legal Journal*.

This Local Rule shall be continuously available for public inspection and copying in the Office of the Clerk of Courts. Upon request and payment of reasonable costs of reproduction and mailing, the Clerk shall furnish to any person a copy of any local rule.

This local Rule shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

WILLIAM J. FRANKS,  
President Judge

#### Rule 301. Continuances.

(a) The court may, in the interest of justice, grant a continuance, of its own motion, or on the motion of either party. The court shall on the record identify the moving party and state for the record the court's reasons justifying the granting or denial of the continuance.

(b) A motion for continuance of trial made on behalf of the defendant shall be made to the assigned Plea Judge no later than forty-eight hours before the time set for trial. A later motion shall be entertained only when the opportunity therefor did not previously exist, or the defendant was not aware of the grounds for the motion, or the interests of justice require it.

(c) The absence of an attorney shall not be deemed to be grounds for a continuance unless such absence is caused by an engagement in Federal Court, a Pennsylvania Appellate Court, a previously scheduled Common Pleas Court hearing, by the attorney's illness, or by some special or unexpected circumstances rendering the attorney's absence practically involuntary. When two or more attorneys are of record for the same party, the absence of one of them shall not be deemed grounds for a continuance or for passing the case, except for reasons satisfactory to the court.

(d) Except for cause shown as stated in the motion, a motion for continuance shall comply with the following requirements:

(1) The motion shall be signed by the moving party and counsel for the moving party; and

(2) The motion shall be consented to and signed by all counsel, and unrepresented parties of record, or it must be presented as a Priority Motion (in accordance with Fayette County Rule 211); and

(3) If the motion is made necessary by a pre-existing hearing commitment, a copy of the order setting such hearing shall be attached to the motion, and the motion for continuance must be presented as soon as possible after the conflict is established, and in no event more than two weeks after the mailing of notice of the hearing that is proposed to be continued; and



(4) Counsel must obtain from the Court at least three dates available to all parties and all counsel for the continued hearing. Alternately, each counsel may provide a list of the dates counsel or counsel's client is unavailable during the three month period following the date the motion for continuance is presented.

[Pa.B. Doc. No. 97-1021. Filed for public inspection June 27, 1997, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 303: Arraignment; Criminal Division No. 70 Misc. of 1997

Order

And Now, this 9th day of June, 1997, pursuant to Rule 6 of the Rules of Criminal Procedure, it is hereby ordered that the above-stated Local Rule be adopted as follows:

The Clerk of Courts is directed as follows:

- (1) Seven certified copies of the Local Rule shall be filed with the Administrative Office of the Pennsylvania Courts.
(2) Two certified copies of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
(3) One certified copy of the Local Rule shall be sent to the State Criminal Procedural Committee.
(4) One certified copy shall be sent to the Fayette County Law Library.
(5) One certified copy shall be sent to the Editor of the Fayette Legal Journal.

This Local Rule shall be continuously available for public inspection and copying in the Office of the Clerk of Courts. Upon request and payment of reasonable costs of reproduction and mailing, the Clerk shall furnish to any person a copy of any local rule.

This Local Rule shall be effective 30 days after the date of publication in the Pennsylvania Bulletin.

By the Court

WILLIAM J. FRANKS,
President Judge

Rule 303. Arraignment.

(a) Arraignment shall be held on the third Thursday of each month before an assigned Judge.

(b) At the arraignment, the defendant shall be advised of:

- (1) the right to be represented by counsel;
(2) the nature of the charges contained in the information; and

(3) the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, and an Omnibus Pretrial Motion, and time limits within which the motions must be filed.

If the defendant or counsel has not received a copy of the information(s) pursuant to Rule 227, a copy of thereof shall be provided.

(c) A defendant may waive appearance at arraignment if:

(1) The defendant is represented by counsel of record and counsel concurs in the waiver; and

(2) The defendant and counsel sign and file with the clerk of courts a waiver of appearance at arraignment which acknowledges that the defendant:

- (i) understands the nature of the charges;
(ii) understands the rights and requirements set forth in Pa. R. Crim. P. 303(b); and
(iii) waives his or her right to appear for arraignment.

(d) The waiver of arraignment and entry of plea shall be in substantially the following form:

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

VS.

NAME

ADDRESS

CITY, STATE, ZIP

NO.

WAIVER OF ARRAIGNMENT AND ENTRY OF PLEA

I, \_\_\_\_\_, Defendant, in the above case, being advised of the offense charged in the Information, of my rights to an Arraignment, and of my right to file certain pretrial motions (including a Request for a Bill of Particulars) within seven (7) days of this Waiver, a Request for Pretrial Discovery and/or Inspection within

fourteen (14) days of this Waiver, and an Omnibus Pretrial Motions within thirty (30) days of this Waiver, do hereby waive Court Arraignment, enter a plea of \_\_\_\_\_, and request a \_\_\_\_\_ trial.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant (print)

DATE: \_\_\_\_\_

WITNESS: \_\_\_\_\_

**ENTRY OF APPEARANCE**

TO THE CLERK OF COURTS: Enter my Appearance as Attorney for the above-named defendant and please forward a copy of the Information(s) filed against the defendant in accordance with PA.R.Crim.P. 218 in the above case.

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT (signature)

[Pa.B. Doc. No. 97-1022. Filed for public inspection June 27, 1997, 9:00 a.m.]

\_\_\_\_\_

# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### Title 61—REVENUE

#### BOARD OF CLAIMS

[4 PA. CODE CH. 121]

[61 PA. CODE CH. 899]

#### Rules of Procedure

The Board of Claims (Board) deletes 4 Pa. Code Chapter 121 (relating to rules of practice and procedure) and 61 Pa. Code §§ 899.1—899.12 (relating to practice and procedure) and adopts 61 Pa. Code §§ 899.101—899.109, 899.201—899.206, 899.301, 899.302, 899.401—899.403, 899.501, 899.601, 899.701 and 899.702.

There are several purposes for the amendments. First, the Board is deleting two sets of rules of practice and procedure in 4 Pa. Code Chapter 121 and 61 Pa. Code Chapter 899 which were duplicative and replacing them with a single set of updated rules. Second, the prior rules referred to rules of practice and procedure in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) which no longer govern practice before the Board. Section 2(a) of the act of April 28, 1978 (P. L. 202, No. 53) (72 P. S. § 4651-8) and case law, *Pennsylvania Institutional Health Services, Inc. v. Commonwealth of Pennsylvania, Department of Corrections*, 167 Pa. Cmwlth. 226, 647 A.2d 692 (1994) mandate that all matters before the Board are governed by the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) The new rules supplement the Pa.R.C.P. and are compatible with it. Finally, the Board has experienced a steady increase in the volume of claims and their complexity. The new rules will provide for more expeditious and efficient handling of claims.

The Board is an independent agency and may promulgate rules of practice and procedure under the proposed rulemaking omitted process. Under section 204(1) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204) (CDL) and the regulation thereunder, 1 Pa. Code § 7.4, proposed rulemaking has been omitted.

Notice of the Board's intention to submit new rules by final order, proposed rulemaking omitted was published in the *Pennsylvania Bulletin* on April 19, 1997. The public was invited to review the rules and submit comments. Also, copies of the rules were sent to State agencies and attorneys who regularly appear before the Board, to the Independent Regulatory Review Commission (IRRC) and the Office of General Counsel (OGC). In preparing these final-form rules, the Board has considered the comments it received.

#### Analysis

The following is a description of some of the major changes included in the rules governing practice before the Board.

#### § 899.102—Scope of Rules

The new rules of procedure supplement the Pa.R.C.P. which govern all matters before the Board. As indicated in this Preamble, this is mandated by statute and case law. All references to 1 Pa. Code II relating to the general rules of administrative procedure have been eliminated because they do not apply to the Board.

#### § 899.106—Representation by counsel

This rule requires that counsel appearing before the Board must be admitted to practice and in good standing before the Supreme Court of Pennsylvania. If counsel is not admitted to practice in this Commonwealth, counsel shall have an associate counsel who is qualified to practice in this Commonwealth.

#### § 899.108—Service of legal papers other than the claim

Except for the original claim and any amended claim, which are served in accordance with § 899.201, all documents filed with the Board shall be served on all parties to the action and a certificate of service shall be attached to the documents. This rule changes the procedure under 61 Pa. Code § 899.4 with respect to filing and serving the response to the complaint.

#### § 899.201—Statement of Claim

The rule replaces 61 Pa. Code § 899.3 and adds the requirement that each claim filed with the Board shall include the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

#### § 899.202—Copies of written contracts

When the claim is based on a written contract, the plaintiff shall attach a copy of the contract or relevant portions as an exhibit to the claim. The exception to this requirement is if the plaintiff avers that all copies of the contract are in the possession of the defendant. This rule replaces 4 Pa. Code § 121.11.

#### § 899.204—Response to Claim

Within 30 days of service of the claim, the defendant shall file an original and two copies of its answer or other response with the Board and serve all parties. This section extends the time frame from 20 to 30 days for the defendant to respond to a claim. This rule replaces 61 Pa. Code § 889.4.

#### § 899.205—Preliminary Objections

A major change in practice before the Board is that a party filing preliminary objections must also file a supporting brief. Failure to file a brief may result in automatic dismissal of the preliminary objections. The requirement of a brief was added to discourage the filing of frivolous preliminary objections and to aid the Board in its consideration of the merits of the preliminary objections.

#### § 899.401—Discovery

Section 899.401(a) eliminates the filing of discovery material with the Board. It is similar to Pa.R.C.P. 4002.1, but has an additional requirement. Section 899.401(e) requires that the party serving a discovery request or response file a notice of service and § 899.401(f) sets forth the form of the notice. This will allow the Board to maintain a docket of discovery requests and responses and be apprised of the prosecution of the case.

#### § 899.403—Limitation on discovery

To prevent discovery abuse, the Board limits each party in an action to the service of 60 interrogatories or requests, or both, for admission. To be exempt from this limitation, a party must file a motion and show good cause for the additional discovery.

*Authority*

The amendments are promulgated under section 10 of the act of May 20, 1937 (P. L. 728, No. 193) (72 P. S. § 4651-10). This section provides the Board with the power and duty to promulgate rules governing practice before it.

*Fiscal Impact*

The Board has determined that deletion of the prior rules and adoption of the new rules will have no significant fiscal impact.

*Paperwork*

The amendments will not generate substantial additional paperwork for the public or the Commonwealth.

*Effective Date*

These amendments will become effective 30 days after publication in the *Pennsylvania Bulletin*.

*Contact Person*

The person to contact for an explanation of the new rules is Robert McLaughlin, Esquire, Senior Counselor, Board of Claims, 200 N. Third Street, Suite 700, Harrisburg, PA 17101-1501 (717) 787-3325.

*Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on May 9, 1997, the Board submitted a copy of the rules with the proposed rulemaking omitted to IRRC and the Chairpersons of the Senate and House Finance Committees. On the same date, the amendments were submitted to the Office of Attorney General (OAG) for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the amendments were deemed approved by the Senate Finance Committee on May 29, 1997, and deemed approved by the House Finance Committee on May 29, 1997. IRRC met on June 5, 1997, and approved the amendments.

*Findings*

The Board finds that:

(1) There is good cause to delete the rules of practice and procedure, 4 Pa. Code Chapter 121 and 61 Pa. Code §§ 899.1—899.12.

(2) The new rules of procedure, 61 Pa. Code §§ 899.101—899.702 are necessary and appropriate for practice before the Board.

(3) Under section 204(1) of the CDL, the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) do not apply because these amendments relate to agency practice.

*Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 61 Pa. Code Chapter 899, are amended by deleting §§ 899.1—899.12 and adding §§ 899.101—899.109, 899.201—899.206, 899.301, 899.302, 899.401—899.403, 899.501, 899.601, 899.701 and 899.702.

(b) The regulations of the Board, 4 Pa. Code, are amended by deleting §§ 121.1—121.17.

(c) The Chief Administrative Judge shall submit this order and Annex A to the OAG for approval as to form and legality as required by law.

(d) The Chief Administrative Judge 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 July 28, 1997.

DAVID C. CLIPPER,  
*Chief Administrative Judge*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)*

**Fiscal Note:** 105-3. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART VI. ARBITRATION**

**CHAPTER 121. (Reserved)**

**§§ 121.1 and 121.2. (Reserved).**

**§§ 121.11—121.17. (Reserved).**

**TITLE 61. REVENUE**

**PART VI. BOARD OF CLAIMS**

**CHAPTER 899. RULES OF PROCEDURE**

**Subchap.**

**A. PRELIMINARY PROVISIONS**

**B. PLEADINGS**

**C. MOTIONS**

**D. DISCOVERY**

**E. PREHEARING**

**F. HEARINGS**

**G. SETTLEMENT**

**Subchapter A. PRELIMINARY PROVISIONS**

**Sec.**

899.1—899.12. (Reserved).

899.101. Title and citation of rules.

899.102. Scope of rules.

899.103. Definitions.

899.104. Principles of interpretation.

899.105. Jurisdiction of the Board.

899.106. Representation by counsel.

899.107. Entry of appearance.

899.108. Service of legal papers other than the claim.

899.109. Copy fees.

**§§ 899.1—899.12. (Reserved).**

**§ 899.101. Title and citation of rules.**

This chapter shall be known as the Board of Claims Rules of Procedure and may be cited as BOC R.P.

**§ 899.102. Scope of rules.**

(a) This chapter and the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) govern all matters before the Board. If a discrepancy between this chapter and the Pa.R.C.P. arises, this chapter applies.

(b) When circumstances arise in individual cases when the application of any Board rule is impractical or inequitable, the Board, on its own motion or upon the request of a party and after notice to the parties, may prescribe other procedures as may be required by the circumstances in the particular case.

**§ 899.103. Definitions.**

In addition to the definitions in Pa.R.C.P. No. 76, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Board*—The Board of Claims of the Commonwealth.

*Rule*—A rule adopted by the Board.

*Claim*—The statement of facts describing the furnishing of goods or services, or both, to the Commonwealth, actions or inactions by Commonwealth employees which give rise to a demand for payment, and refusal by the Commonwealth to make payment.

**§ 899.104. Principles of interpretation.**

The principles of interpretation and rules of construction embodied in Pa.R.C.P. Nos. 101—153 apply to this chapter.

**§ 899.105. Jurisdiction of the Board.**

The Board has jurisdiction to hear and determine the following:

(1) Claims against the Commonwealth arising from contracts entered into with the Commonwealth when the amount in controversy is \$300 or more.

(2) Claims against the Commonwealth for actions or inactions by its employees giving rise to implied contracts.

(3) Claims against the Commonwealth for goods or services, or both, furnished to the Commonwealth but not within the terms of valid, existing contracts.

**§ 899.106. Representation by counsel.**

(a) A person may be represented before the Board by an attorney who is admitted to practice and is in good standing before the Supreme Court of Pennsylvania.

(b) Parties represented by counsel not admitted to practice in this Commonwealth shall associate counsel qualified under subsection (a).

**§ 899.107. Entry of appearance.**

When counsel for plaintiff files a claim and counsel for defendant files a response, their appearances are deemed entered before the Board. Thereafter, a counsel's appearance for a party may not be withdrawn without leave of the Chief Administrative Judge, unless another lawyer has previously entered or simultaneously enters an appearance for the party.

**§ 899.108. Service of legal papers other than the claim.**

Except for the claim and any amended claim, pleadings and other documents filed with the Board shall be served upon all parties to the action. A certificate of service shall be attached to all filings with the Board.

**§ 899.109. Copy fees.**

The fee for copying is 25¢ per page for opinions, pleadings, briefs and exhibits, and \$1 per page for docket sheets. The fee for certifying a document is \$5.

**Subchapter B. PLEADINGS**

Sec.

- 899.201. Statement of claim.
- 899.202. Copies of written contracts.
- 899.203. Oral contracts.
- 899.204. Response to claim.
- 899.205. Preliminary objections.
- 899.206. Amendment of pleadings.

**§ 899.201. Statement of claim.**

(a) A plaintiff shall prepare a concise and specific written statement of the claim, signed and verified by the plaintiff. The caption of the claim shall contain the full names of all parties to the claim. Each claim shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

(b) The plaintiff shall file an original and four copies of the claim with the Board, accompanied by a \$50 check made payable to the Commonwealth of Pennsylvania.

(c) Service of the claim and any amended claim will be made by the Board. The Board will serve one copy of the claim and any amended claim to the defendant involved, and one copy to the Attorney General.

(d) The claim is timely only if it is received at the Board's address within 6 months after it accrued.

**§ 899.202. Copies of written contracts.**

When the contract on which the claim is based is in writing, in whole, or in part, the plaintiff shall attach copies of the contract or relevant portions of the contract as an exhibit to all copies of the claim, unless one of the following exists:

(1) The plaintiff avers in the claim that all copies of the contract are in the possession of the defendant.

(2) The Chief Administrative Judge directs that the contract or relevant portions not be attached.

**§ 899.203. Oral contracts.**

When the contract on which the claim is based is oral, in whole or in part, the plaintiff shall plead the terms and details of the contract with particularity, and shall identify all agents who are alleged to have contracted on behalf of the defendant.

**§ 899.204. Response to claim.**

Within 30 days of service of the claim, the defendant shall file an original and two copies of its answer or other response with the Board. The answer, or other response, shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the defendant. The defendant or its counsel shall sign and verify the answer or other response.

**§ 899.205. Preliminary objections.**

(a) Preliminary objections shall be filed with the Board and served upon the adverse parties or their counsel. Preliminary objections shall be accompanied by a supporting brief. Failure to file a brief may result in automatic dismissal of the preliminary objections.

(b) Within 30 days after service of the preliminary objections, the adverse parties or their counsel shall file a response and a responsive brief with the Board and serve it upon the opposing parties or counsel.

**§ 899.206. Amendment of pleadings.**

(a) *Form of amended pleading.* An amended pleading, whether filed under Pa.R.C.P., by the agreement of the parties or by leave of the Board, shall be entirely restated and comply with the form of the original pleading, except an amendment allowed in the course of a hearing.

(b) *Allowance by Board.*

(1) If the amended pleading requires leave of the Board before a hearing, the party seeking the amendment shall give 5 days' notice to all parties of the intended application, enclosing a copy of the proposed amended pleading. The Board may allow the amendment or order the issue for argument.

(2) If the request for an amendment to a pleading is made at the hearing, the Board will dispose of the request at its discretion. If a continuance is granted by the Board, the party in whose favor the amendment is allowed shall file the amended pleading within 20 days after allowance by the Board, unless otherwise ordered.

**Subchapter C. MOTIONS**

Sec.  
899.301. Motions and petitions.  
899.302. Form of briefs.

**§ 899.301. Motions and petitions.**

(a) Each motion or petition shall be deemed contested unless certified to the contrary by the moving party. Except as provided in subsection (c) and § 899.402(b) (relating to discovery motions), a brief shall accompany each motion or petition. A motion or petition not accompanied by a brief may be dismissed by the Board.

(b) Each answering party shall file its response with the Board within 30 days of the date of service of the moving party's motion or petition. A response shall be accompanied by a supporting brief.

(c) If the moving party certifies that the motion or petition is uncontested, no brief is required.

**§ 899.302. Form of briefs.**

A brief shall contain a statement of the pertinent facts of the case, the questions involved and the argument. The statement of questions involved shall be drawn so that the Board may quickly determine all the legal questions requiring determination. The argument shall be divided into as many parts as there are questions involved.

**Subchapter D. DISCOVERY**

Sec.  
899.401. Discovery.  
899.402. Discovery motions.  
899.403. Limitation on discovery.

**§ 899.401. Discovery.**

(a) Except when required under subsection (c) or (d), discovery material may not be filed with the Board. The party serving the discovery material or taking the deposition shall retain the original and be custodian of it.

(b) If a part of discovery material is used as evidence in connection with a motion, the relevant part shall be set forth, verbatim, in the motion or response. If discovery material is used as evidence at the hearing, the party offering it shall read it into the record or, if directed to do so by the Board, offer it as an exhibit.

(c) The Board will resolve a dispute concerning the accuracy of a quotation of discovery material used as provided in subsection (b) and may require production of the original paper or transcript.

(d) The Board, on its own motion, on the motion of a party or on an application by a nonparty, may require the filing of original discovery material. The parties may provide for the filing by stipulation.

(e) A party serving a request for discovery including depositions by oral examination, and a party filing written responses thereto shall file with the Board and serve upon all other parties or their counsel a notice of service substantially in the form prescribed in subsection (f). A party which files a motion or petition under § 899.301 or § 899.402 (relating to motions and petitions; and discovery motions) in response to a discovery request or a discovery response is not required to file and serve a notice of service in addition thereto.

(f) The notice of service required by subsection (e) shall be substantially in the following form:

(CAPTION)

*Notice of Service*

You are hereby notified that on the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, (identify discovery request or response) was served upon the following parties or their counsel via United States Mail, first class, postage prepaid, and addressed as follows:

(names and addresses to whom discovery request or response were directed)

\_\_\_\_\_  
Name  
Supreme Court I. D. No.  
Address  
Phone  
Attorneys for

**§ 899.402. Discovery motions.**

(a) A discovery motion shall be prepared in accordance with § 899.301 (relating to motions and petitions).

(b) A moving party filing a motion to compel answers to interrogatories or production of documents need not file a brief with the motion, if the motion avers only that a response or objection has not been timely served. The Pa.R.C.P. which are relied upon shall be cited in the motion. The Board may grant or deny the motion without waiting for a response.

**§ 899.403. Limitation on discovery.**

(a) During the pendency of an action, a party may not serve on another party more than 60 interrogatories, including all subparts and requests for admission.

(b) If the party files a motion showing good cause, the Chief Administrative Judge may allow a party to exceed the limit in subsection (a). The motion shall be prepared in accordance with § 899.301 (relating to motions and petitions).

**Subchapter E. PREHEARING**

Sec.  
899.501. Prehearing procedure.

**§ 899.501. Prehearing procedure.**

(a) *Status conference.*

(1) At the discretion of the Chief Administrative Judge, a status conference may be held within 120 days after the filing of the claim. The conference may be by telephone or in person. Matters to be considered at the conference include:

- (i) Jurisdictional defects.
- (ii) Prospects of amicable settlement.
- (iii) Establishing a schedule for remaining prehearing proceedings including discovery deadlines and prehearing memoranda filings.

(2) A scheduling order will be issued as soon as practical after the conference.

(b) *Prehearing memoranda.* Prehearing memoranda shall be filed and served as directed by the Chief Administrative Judge in the scheduling order. Unless the scheduling order directs otherwise, the prehearing memorandum of each party shall include:

- (1) A statement of the issues in the case.
- (2) The identification and numbering of exhibits.

(3) A stipulation of facts not in dispute to be prepared jointly by the parties, which may include qualification of expert witnesses and admission of exhibits.

(4) Identification of witnesses who will appear at the hearing and a short summary of the testimony expected from each witness.

(5) Copies of expert witnesses' final reports.

(c) *Prehearing conferences and settlement conferences.*

(1) The Chief Administrative Judge will determine the necessity for the scheduling of, and the procedures for, a prehearing or settlement conference. Notice of a conference will be given to counsel or unrepresented parties.

(2) The Chief Administrative Judge may dismiss the case, or enter judgment against a party for failing to participate in a prehearing conference or failing to provide the required memorandum.

(3) The Board may refuse to allow a party to call witnesses or offer evidence not disclosed at the prehearing conference or in the prehearing memorandum.

#### **Subchapter F. HEARINGS**

Sec.  
899.601. Place of hearings.

##### **§ 899.601. Place of hearings.**

Unless the Board directs another location, proceedings before the Board and its panels will be held in Harrisburg.

#### **Subchapter G. SETTLEMENT**

Sec.  
899.701. Notice of proposed settlement.  
899.702. Termination of case by settlement.

##### **§ 899.701. Notice of proposed settlement.**

If during the pendency of an action before the Board the parties agree upon a proposed settlement, the parties shall immediately notify the Board.

##### **§ 899.702. Termination of case by settlement.**

Within 10 days after the conclusion of the settlement, the parties shall notify the Board in writing. The Board will mark its record of the case "settled."

[Pa.B. Doc. No. 97-1023. Filed for public inspection June 27, 1997, 9:00 a.m.]

## **Title 25—ENVIRONMENTAL PROTECTION**

### **ENVIRONMENTAL QUALITY BOARD**

#### **[25 PA. CODE CH. 93]**

#### **Corrections to Drainage Lists**

The Environmental Quality Board (Board) by this order amends §§ 93.9c—93.9g, 93.9i, 93.9l, 93.9n—93.9t and 93.9w—93.9y.

This order was adopted by the Board at its meeting of April 15, 1997.

#### **A. Effective Date**

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

#### **B. Contact Persons**

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, 10th Floor, Rachel Carson State Office Building, P. O. Box 8555, 400 Market Street, Harrisburg, PA 17105-8555 (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464 (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) and request that the call be relayed. This rulemaking is available electronically through the Department of Environmental Protection's (Department's) Website (<http://www.dep.state.pa.us>).

#### **C. Statutory Authority**

The final rulemaking is made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law.

#### **D. Background of the Amendment**

The Commonwealth's Water Quality Standards, which are set forth in part at Chapter 93 (relating to water quality standards), implement the provisions of sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals which are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department continuously reviews its water quality standards and receives various requests to investigate possible errors in §§ 93.9a—93.9z from regional staff, the Fish and Boat Commission and the general public. In response to these requests, the Department investigated the alleged errors by researching previous rulemaking activities and changes that resulted from the 1992 reforming of stream drainage lists in Chapter 93, and by comparing the drainage lists to the *Gazetteer of Streams* and topographic maps for these streams. Based upon the data collected in this research, the Board approved the amendments at its June 18, 1996, meeting, and notice of the proposed rulemaking was published at 26 Pa.B. 3637 (August 3, 1996). The proposal included provisions for a 45-day public comment period, which concluded on September 17, 1996. The recommended revisions do not change the protected uses or impose any additional requirements for any of the streams within the proposal. This rulemaking merely corrects duplicate entries, typographical errors or reinserts entries that have been incorrectly removed or changed. These changes allow wastewater treatment requirements for dischargers to these streams to be consistent with the water uses to be protected. The rulemaking makes only nonsubstantive modifications and does not alter the protected uses that have been implemented for the stream sections in question.

#### **E. Summary of Comments and Responses on the Proposed Rulemaking**

There were no public comments received on the proposed regulatory revisions during the public comment period. The House and Senate Standing Committees did not respond or provide comments on the amendments.

The Independent Regulatory Review Commission (IRRC) offered no objections, comments or suggestions on these amendments.

F. *Summary of Changes to the Proposed Rulemaking*

Although there were no public comments, objections or suggestions provided during the public comment period, some additional potential errors in the Chapter 93 stream lists were identified by Department staff subsequent to the comment period and during the development of this final rulemaking. The following errors were identified as being consistent with the type of errors considered by this rulemaking and would not enlarge the scope or purpose of the proposed rulemaking:

a) The last entry for 3-Maiden Creek and the 4-Willow Creek entry in § 93.9f have inconsistent zone descriptions and need to be placed in their proper order. The correct entries should encompass the Willow Creek tributary to Maiden Creek.

b) Duplicate and misplaced entry for Tunungwant Creek in § 93.9p should be deleted since a later entry correctly identifies the main stem of the Tunungwant Creek from the confluence of the East and West Branches to the PA-NY State border as WWF, Delete Water Contact (WC).

c) The Armstrong County reference in the first entry for 5-South Branch Plum Creek and 6-Reddings Run in § 93.9s should be Indiana County.

d) Add reference that Lake Erie in § 93.9x is in the Great Lakes Basin in Pennsylvania.

e) Genesee River in § 93.9y is in the Great Lakes Basin in Pennsylvania (Lake Ontario), not the Susquehanna River Basin as currently shown in Chapter 93.

G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in question by correcting errors or clarifying descriptions of stream zones or stream orders.

2. *Compliance Costs*—The changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth, political subdivisions or the private sector. No costs will be imposed directly upon local government by this recommendation. There are no changes from the proposal which impose more stringent requirements than would already be imposed for these streams.

3. *Compliance Assistance Plan*—The Department does not anticipate the need for compliance assistance plans to support these amendments since they do not impose more stringent requirements than would already be imposed for these streams.

4. *Paperwork Requirements*—The regulatory revisions should have no paperwork impact on the Commonwealth, its political subdivisions or the private sector since the

revisions do not change the designated uses already being implemented for the streams contained in this rulemaking. The rulemaking is based on existing Department programs and policies.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 24, 1996, the Department submitted a copy of the notice of proposed rulemaking to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comments. The notice was published at 26 Pa.B. 3637. In addition to submitting the amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

There were no comments received from the public, IRRC or the Standing Committees on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Committees on May 27, 1997. IRRC met on June 5, 1997, and approved the amendments in accordance with section 5(c) of the Regulatory Review Act.

J. *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 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 amendments do not enlarge the purpose of the proposal published at 26 Pa.B. 3637.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

K. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9c—93.9e, 93.9g, 93.9i, 93.9l, 93.9n, 93.9o, 93.9q, 93.9r, 93.9t and 93.9w to read as set forth at 26 Pa.B. 3637 and by amending § 93.9f, 93.9p, 93.9s, 93.9x and 93.9y 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, 26 Pa.B. 3637 and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.



(c) The Chairperson shall submit this order, 26 Pa.B. 3637 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, 26 Pa.B. 3637 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

JAMES M. SEIF,  
*Chairperson*

*(Editors Note: Sections 93.9c—93.9h, 93.9l, 93.9n, 93.9q, 93.9r, 93.9t, 93.9w and 93.9x were proposed to be amended at 27 Pa.B. 1449 and 1459 and remain outstanding.)*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)*

**Fiscal Note:** Fiscal Note 7-299 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 II. WATER RESOURCES**

**CHAPTER 93. WATER QUALITY STANDARDS**

**§ 93.9f. Drainage List F.**

**Delaware River Basin in Pennsylvania**

***Schuylkill River***

<b><i>Stream</i></b>	<b><i>Zone</i></b>	<b><i>County</i></b>	<b><i>Water Uses Protected</i></b>	<b><i>Exceptions To Specific Criteria</i></b>
3-Tumbling Run	Basin, Source to Tumbling Run Dam	Schuylkill	HQ-CWF	None
3-Tumbling Run	Basin, Tumbling Run Dam to Mouth	Schuylkill	CWF	None
3-Maiden Creek	Basin, Lake Ontelaunee Dam to Willow Creek	Berks	WWF	None
4-Willow Creek	Basin	Berks	CWF	None
3-Maiden Creek	Basin, Willow Creek to Mouth	Berks	WWF	None
3-Unnamed Tributaries to Schuylkill River	Basins, Berks-Chester-Montgomery County Border to Valley Creek (except those in Spring City and Phoenixville)	Chester	HQ-TSF	None
3-Unnamed Tributaries to Schuylkill River	Basins, Berks-Chester-Montgomery County Border to Valley Creek	Montgomery	WWF	None
3-Perkiomen Creek	Basin, Source the Second LR 06119 (SR 1010) Bridge at Hereford	Berks	CWF	None
3-Valley Creek	Basin	Montgomery-Chester	EV	None
3-Unnamed Tributaries to Schuylkill River	Basins, Valley Creek to Tide	Chester-Montgomery	WWF	None
3-Mellshamic Creek	Basin	Montgomery	WWF	None

§ 93.9p. Drainage List P.

Ohio River Basin in Pennsylvania

*Allegheny River*

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
3-McCrea Run 2-Allegheny River (NY)	Basin	McKean	CWF	None
		* * * * *		

§ 93.9s. Drainage List S.

Ohio River Basin in Pennsylvania

*Allegheny River*

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
5-South Branch Plum Creek 6-Reddings Run	Basin, Source to Reddings Run Basin	Indiana Indiana	HQ-CWF CWF	None None
		* * * * *		

§ 93.9x. Drainage List X.

Great Lakes Basin in Pennsylvania

*Lake Erie*

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
3-Unnamed Tributaries	Basins, (all sections in PA) Source to PA-OH State Border	Erie-Crawford	CWF; MF	None
3-Fish Creek	Basin	Crawford	CWF; MF	None
3-Foster Run	Basin	Crawford	CWF; MF	None
3-Crazy Run	Basin	Crawford	CWF; MF	None
		* * * * *		

§ 93.9y. Drainage List Y.

Great Lakes Basin in Pennsylvania

(Lake Ontario)

*Genesee River*

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		

[Pa.B. Doc. No. 97-1024. Filed for public inspection June 27, 1997, 9:00 a.m.]

# Title 31—INSURANCE

## INSURANCE DEPARTMENT

### [31 PA. CODE CH. 101]

#### Investments of Fire and Casualty Companies

The Insurance Department (Department) deletes Chapter 101 (relating to investments of fire and casualty companies) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and sections 802.1 and 803.1 of The Insurance Company Law of 1921 (40 P. S. §§ 912.1 and 913.1). Chapter 101 was previously promulgated under sections 517, 602 and 802 of The Insurance Company Law of 1921 (40 P. S. §§ 652, 722 and 912) (now repealed). Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL). The regulations prescribe that the investments of mutual fire and mutual casualty insurance companies are subject to investment laws that have been repealed.

#### *Purpose*

The purpose of this final-omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations were adopted October 1, 1958, under the authority of sections 517, 602 and 802 of The Insurance Company Law of 1921 which related to the investment of capital by stock fire, stock casualty and mutual insurance companies. The regulations subject mutual fire insurance companies and mutual casualty insurance companies to the investment laws applicable to stock fire insurance companies and stock casualty insurance companies. Sections 517, 602 and 802 of The Insurance Company Law of 1921 were repealed by sections 1, 4 and 9 of the act of December 22, 1989 (P. L. 755, No. 106) (Act 106). Act 106 enacted the investment requirements that are currently effective for mutual fire and mutual casualty insurance companies and are found at sections 802.1 and 803.1 of The Insurance Company Law of 1921. Therefore, Chapter 101 of the regulations has been superseded by sections 802.1 and 803.1 of The Insurance Company Law of 1921. Because Chapter 101 implements a statute that is no longer in existence, the regulations are no longer needed.

Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted if the agency finds that the notice procedures are impracticable and unnecessary. The deletion of Chapter 101 eliminates regulations made obsolete by amendments to The Insurance Company Law of 1921. Furthermore, public comments cannot change the obsolete status of the regulations. Accordingly, the Insurance Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable and unnecessary in this situation.

#### *Affected Parties*

There are no parties affected by the deletion of the regulations because the regulations are obsolete.

#### *Fiscal Impact*

The deletion of the regulations has no fiscal impact.

#### *Paperwork*

The deletion of the regulations has no impact on paperwork.

#### *Effectiveness/Sunset Date*

This order is effective upon publication in the *Pennsylvania Bulletin*. No sunset date had been assigned because the order deletes obsolete regulations.

#### *Contact Person*

The person to contact for information on the deletion of these regulations is Stephen Johnson, Director, Bureau of Examinations, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 783-4312.

#### *Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on June 15, 1997, the Department submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate and House Committees on June 4, 1997. IRRC met on June 5, 1997, and approved the regulations.

#### *Findings*

The Insurance Commissioner finds that:

(1) There is good cause to delete the regulations effective upon publication. Deferral of the effective date of the deletion of the regulations is impractical or contrary to the public interest under section 204 of the CDL because no purpose is served by deferring the effective date, and an immediate effective date best serves the public interest by deleting unnecessary regulations.

(2) There is good cause to forego public notice of the intention to delete Chapter 101 because public notice of the deletion is unnecessary and impractical, for the following reasons:

(i) Deletion of the regulations eliminates a rulemaking that is obsolete and no longer applicable to investments of mutual fire and mutual casualty insurance companies.

(ii) Public comment cannot change the fact that the regulations are obsolete.

#### *Order*

The Insurance Commissioner, acting under the statutory authority, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 101, are amended by deleting §§ 101.1 and 101.2 to read as set forth in Annex A.

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

(c) The Department 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 its publication in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
*Insurance Commissioner*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)*

**Fiscal Note:** 11-156. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 31. INSURANCE**

**PART VI. MUTUAL INSURANCE**

**CHAPTER 101. (Reserved)**

**§§ 101.1 and 101.2. (Reserved).**

[Pa.B. Doc. No. 97-1025. Filed for public inspection June 27, 1997, 9:00 a.m.]

**[31 PA. CODE CH. 109]**

**Conversion of Certain Mutual Insurance Companies**

The Insurance Department (Department) deletes Chapter 109 (relating to conversion of certain mutual insurance companies) under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and sections 801-A—818-A of The Insurance Company Law of 1921 (40 P. S. §§ 911-A—928-A). Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL).

*Purpose*

The purpose of this final-omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations were adopted effective October 2, 1976, under the authority of the act of December 10, 1970 (P. L. 884, No. 279) (Act 1970) (40 P. S. §§ 1010.1—1010.14) (now repealed) relating to the conversion of mutual companies. The purpose of the regulations was to implement Act 1970 and facilitate compliance with its provisions. Act 1970 was repealed by section 16(a) of the act of December 21, 1995 (P. L. 714, No. 79). The currently effective requirements for the conversion of mutual companies are found in sections 801-A—818-A of The Insurance Company Law of 1921 known as the Insurance Company Mutual-to-Stock Conversion Act (40 P. S. §§ 911-A—928-A). Therefore, Act 1970 and its regulations have been superseded by the Insurance Company Mutual-to-Stock Conversion Act. Because Chapter 109 implements a statute that is no longer in existence, the regulations are no longer needed.

Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted if the agency finds that the notice procedures are impracticable and unnecessary. The deletion of Chapter 109 eliminates obsolete regulations that are no longer applicable to conversions of mutual insurance companies. Furthermore, public comments cannot change the obsolete status of the regulations. Accordingly, the Insurance Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (40 P. S. §§ 1201 and 1202) are impracticable and unnecessary in this situation.

*Affected Parties*

There are no parties affected by the deletion of the regulations because the regulations were made obsolete by the repeal of Act 1970.

*Fiscal Impact*

The deletion of the regulations has no fiscal impact.

*Paperwork*

The deletion of the regulations has no impact on paperwork.

*Effectiveness/Sunset Date*

This order is effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned because the order deletes obsolete regulations.

*Contact Person*

The person to contact for information on the deletion of these regulations is Stephen Johnson, Director, Bureau of Examinations, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 783-4312.

*Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on June 15, 1997, the Department submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate and House Committees on June 4, 1997. IRRC met on June 5, 1997, and approved the rulemaking.

*Findings*

The Insurance Commissioner finds that:

(1) There is good cause to delete the regulations effective upon publication. Deferral of the effective date of the deletion of the regulations is impractical or contrary to the public interest under section 204 of the CDL because no purpose is served by deferring the effective date, and an immediate effective date best serves the public interest by deleting unnecessary regulations.

(2) There is good cause to forego public notice of the intention to delete Chapter 109 because public notice of the deletion is unnecessary and impractical, for the following reasons:

(i) Deletion of the regulations eliminates a rulemaking that is obsolete and no longer applicable to conversions of mutual insurance companies.

(ii) Public comment cannot change the fact that the regulations are unnecessary.

*Order*

The Insurance Commissioner, acting under the statutory authority, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 109, are amended by deleting §§ 109.1—109.6 to read as set forth in Annex A.

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

(c) The Department 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 its publication in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
*Insurance Commissioner*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)

**Fiscal Note:** 11-158. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 31. INSURANCE

### PART VI. MUTUAL INSURANCE

#### CHAPTER 109. (Reserved)

#### §§ 109.1—109.6. (Reserved).

[Pa.B. Doc. No. 97-1026. Filed for public inspection June 27, 1997, 9:00 a.m.]

### [31 PA. CODE CH. 113]

#### Premium Taxes for Foreign Fire Insurance

The Insurance Department (Department) hereby amends Chapter 113 (relating to miscellaneous provisions) by deleting Subchapter B (relating to premium taxes for foreign fire insurance). The deletion is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the Foreign Fire Insurance Tax Distribution Law (53 P. S. §§ 895.701—895.803). Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL).

#### *Purpose*

The purpose of this final-omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations were adopted April 15, 1970, under the authority of the act of June 28, 1895 (P. L. 408, No. 289) (Act 1895) (72 P. S. § 2262) (now repealed). Act 1895 provided that the 2% premium tax paid by foreign fire insurers was to be distributed to political subdivisions and used for relief or pension funds for paid or volunteer employees of fire departments. The regulations require foreign fire insurers to assign a code number to each policy to identify the political subdivision in which the insured property is located. The Department of Revenue previously used the codes to assure that tax revenue was being properly distributed among the various political subdivisions.

Act 1895 was repealed by the Foreign Fire Insurance Tax Distribution Law (Act 1984) (53 P. S. §§ 895.701—895.803) in particular section 801(a) (53 P. S. § 895.801(a)). Act 1984 provides for the distribution of the 2% tax based on population and market values of property. The location of the insured property is irrelevant under Act 1984. Accordingly, the Department of Revenue no longer requires information concerning locations of insured properties and no longer assigns codes to political subdivisions. Therefore, the regulations adopted to implement Act 1895 have been superseded by the distribution mechanism provided in Act 1984.

Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted if the agency finds that the

notice procedures are impracticable and unnecessary. The deletion of Subchapter B eliminates obsolete regulations that are no longer applicable to the distribution of the 2% premium tax paid by foreign fire insurers. Furthermore, public comments cannot change the obsolete status of these regulations. Accordingly, the Insurance Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable and unnecessary in this situation.

#### *Affected Parties*

The regulations apply to foreign fire insurance companies doing business in this Commonwealth. Because the regulations are obsolete, there are no parties affected by the deletion of the regulations.

#### *Fiscal Impact*

The deletion of the regulations has no fiscal impact.

#### *Paperwork*

The deletion of the regulations has no impact on paperwork.

#### *Effectiveness/Sunset Date*

This order is effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned because the order deletes obsolete regulations.

#### *Contact Person*

The person to contact for information on the deletion of these regulations is Elaine Leitzel, Administrative Officer, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 787-8840.

#### *Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on June 15, 1997, the Department submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate and House Committees on June 4, 1997. IRRC met on June 4, 1997, and approved the regulations.

#### *Findings*

The Insurance Commissioner finds that:

(1) There is good cause to delete the regulations effective upon publication. Deferral of the effective date of the deletion of the regulations is impractical or contrary to the public interest under section 204 of the CDL because there is no purpose served by deferring the effective date, and an immediate effective date best serves the public interest by deleting unnecessary regulations.

(2) There is good cause to forego public notice of the intention to delete Subchapter B because public notice of the deletion is unnecessary and impractical, for the following reasons:

(i) Deletion of the regulations eliminates a rulemaking that was adopted under a statute that has been repealed, and implements requirements on the distribution of the 2% premium tax paid by foreign fire insurers which are no longer effective.

(ii) Public comment cannot change the fact that the regulations have been rendered obsolete due to the revision of statutory law.

*Order*

The Insurance Commissioner, acting under the statutory authority, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 113, are amended by deleting §§ 113.21—113.23 to read as set forth in Annex A.

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

(c) The Department 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 its publication in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
*Insurance Commissioner*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)*

**Fiscal Note:** 11-154. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 31. INSURANCE**

**PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE**

**CHAPTER 113. MISCELLANEOUS PROVISIONS**

**Subchapter B. (Reserved)**

**§§ 113.21—113.23. (Reserved).**

[Pa.B. Doc. No. 97-1027. Filed for public inspection June 27, 1997, 9:00 a.m.]

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 128, 129, 131 AND 139]

### Air Quality Amendments (RBI # 2)

The Environmental Quality Board (Board) proposes to amend Chapters 128, 129, 131 and 139 to read as set forth in Annex A.

The proposed rulemaking deletes portions of Chapter 128 (relating to alternative emission reduction limitations) which established alternative emission reduction limitations for certain air contamination sources. Section 129.56 (relating to storage tanks greater than 40,000 gallons capacity containing VOCs) is amended to allow owners and operators of floating roof storage tanks with capacities greater than 40,000 gallons up to 45 days to complete repairs on defective storage tank seals. An additional 30-day extension may be granted by the Department of Environmental Protection (Department) if the storage tank vessel cannot be emptied or repaired within the 45-day time frame. Section 129.67(b)(2) (relating to graphic arts systems) is amended to include the term "less water," which was erroneously deleted in a previous rulemaking. Section 129.70 is amended to delete the Department's perchloroethylene (PCE) requirements for dry cleaning facilities because PCE is no longer regulated as a volatile organic compound (VOC). The proposal also deletes the ambient air quality standards in § 131.3 (relating to ambient air quality standards) and the sampling and analytical procedures in § 139.32 (relating to sampling and analytical procedures) for sulfates (as H<sub>2</sub>SO<sub>4</sub>), fluorides (total soluble, as HF) and hydrogen sulfide because these standards are not required by Federal law.

This proposal was adopted by the Board at its meeting of March 17, 1996.

#### A. Effective Date

These amendments will be effective immediately upon publication in the *Pennsylvania Bulletin* as final rulemaking.

#### B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468 (717) 787-1663, or Joyce E. Epps, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464 (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 proposal is available through the Department's Website (<http://www.dep.state.pa.us>).

#### C. Statutory Authority

The proposed rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (35 P. S. § 4005), which grants to the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

#### D. Background and Purpose

On August 4, 1995, Secretary Seif issued the "Directive on Review of Existing Regulations and Technical Guidance." This directive mandated an extensive review of the Department's regulations and technical guidance and provided an opportunity for public comments on the results of this Regulatory Basics Initiative (RBI). The goals of the RBI included identifying those regulations that were more stringent than Federal requirements, obsolete or redundant or no longer necessary. The RBI also required the Department to identify regulations which inhibited new green technologies and failed to encourage pollution prevention approaches.

Subsequently, the Governor signed Executive Order 1996-1 entitled "Regulatory Review and Promulgation" on February 6, 1996. The Executive Order establishes procedures for the review of existing regulations and the drafting and promulgation of new regulations. General requirements of Executive Order 1996-1 include the promulgation of regulations which have a compelling public interest, regulatory costs which do not outweigh their benefits and regulations that are no more stringent than standards imposed by Federal law unless justified by a compelling State interest.

This proposed rulemaking, consistent with the principles of Executive Order 1996-1 and the Department's RBI, deletes the obsolete alternative emission limitations in Chapter 128 as well as the redundant PCE requirements for dry cleaners in § 129.70. The volatile organic storage tank requirements in § 129.56 (relating to storage tanks greater than 40,000 gallons capacity containing VOCs) are being revised to conform to Federal requirements for repairing defective floating roof seals in volatile organic storage tanks. The proposal also deletes several ambient air quality standards and sampling and analysis techniques codified in Chapters 131 and 139 (relating to ambient air quality standards; and sampling and testing) which are no longer necessary and not required by Federal law.

The Department consulted with the Air Subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) during the development of the proposed amendments to Chapters 128, 129, 131 and 139. On December 11, 1996, a majority of the members of the AWQTAC concurred with the Department's recommendation to submit the proposed amendments to the Board for consideration.

#### E. Summary of Regulatory Requirements

These proposed amendments delete portions of Chapter 128. Under the existing regulations, the owners and operators of air contamination sources at 12 facilities, including Andre Greenhouses, Inc., United States Steel Corporation, Scott Paper, Bethlehem Steel Corporation and Sun Refining and Marketing Company, submitted proposals to the Department to implement alternative emission reduction limitations for certain air contamination sources. Alternative emission reduction limitations for those sources were incorporated in revised operating permits, codified in the *Pennsylvania Code* and submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP). Eleven of the 12 alternative emission reduction limitations are no longer necessary due to changes in processes and equipment or the closing of the affected

facility. Consequently, the proposed amendments delete the alternate emission reduction limitations for 11 of the 12 facilities.

The proposed rulemaking includes revisions to several provisions in Chapter 129 (relating to standards for sources). Proposed revisions to § 129.56 will allow the owners and operators of volatile organic liquid storage tanks to empty the tanks and repair the seals within 45 days if the floating roof seals are defective. A 30-day extension may be requested from the Department if the request includes a demonstration that alternative storage capacity is unavailable. Section 129.56 does not presently include a time frame for repairing or emptying of defective organic liquid storage tanks. This revision ensures that § 129.56 is consistent with the Federal procedures in 40 CFR 60.113b(b)(4)(iii).

The proposed change to § 129.67(b)(2) amends the graphic arts systems requirements by adding the term "less water." This term was inadvertently omitted during a previous rulemaking (22 Pa.B. 2720 (May 23, 1992)). Addition of the term "less water" clarifies that water is not to be considered when demonstrating compliance with the requirements.

Section 129.70 will be deleted in this proposed rulemaking. In 1981, as part of its ozone strategy, the Department adopted PCE requirements for certain dry cleaning facilities which emitted more than a 100 tons per year of VOCs. The EPA no longer considers PCE to be a photochemically reactive compound and removed the compound from its listing of VOCs. Consequently, § 129.70 is no longer necessary as a result of EPA's finding. However, new and existing dry cleaning facilities in this Commonwealth with the potential to emit more than 10 tons of PCE a year must comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for PCE dry cleaning facilities published at 58 FR 49354 (September 22, 1993). The NESHAP for those PCE dry cleaning facilities specifies control of PCE emissions to the level of the maximum achievable control technology (MACT) required under section 112 of the Clean Air Act.

The proposed rulemaking also deletes the sulfate (as sulfuric acid [H<sub>2</sub>SO<sub>4</sub>]), fluoride (total soluble as hydrogen fluoride [HF]) and hydrogen sulfide ambient air quality standards in § 131.3 and sampling and analysis techniques for those contaminants in § 139.32. The Department will retain the ambient air quality standards for beryllium because of its extreme toxicity and the total settled particulates (TSP) standard because of its usefulness, Statewide, as an investigative tool to address citizen complaints. With the exception of beryllium, there are no Federal ambient standards for those air contaminants for which maximum ambient air concentrations were established in September 1971. The ambient air quality standards recommended for deletion are not required by Federal law and there is no compelling State interest to retain those standards. Sampling and testing requirements for those ambient air quality standards are no longer necessary because the standards are being deleted in this proposed rulemaking.

Although the sampling of hydrogen sulfide has been used in the past to investigate malodor complaints, the standard is no longer needed for investigative purposes because hydrogen sulfide levels are objectionable at concentrations lower than the 0.005 parts per million (ppm) averaged over 24 hours or the 0.1 ppm averaged over 1 hour concentrations specified in § 131.3.

Following the adoption of this proposal by the Board as final-form regulations, the Department will submit these amendments to the EPA as a revision to the SIP.

#### F. *Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

##### *Benefits*

Persons affected by this rulemaking will benefit from the deletion of obsolete or redundant air quality regulations. The proposed amendment of § 129.56 will establish a time frame, consistent with Federal law, for the owners and operators of large organic liquid storage tanks to empty the storage tanks and make repairs on defective seals. The inclusion of a time frame for emptying the storage tanks and repairing the seals will also allow safer completion of repairs to defective seals on the floating roof tank.

The proposed deletion of the PCE requirements for dry cleaning facilities in § 129.70 would allow the owners and operators of PCE dry cleaning facilities to eliminate duplicate recordkeeping to demonstrate compliance with Chapter 129 requirements and the Federal NESHAP requirements for PCE dry cleaning facilities.

##### *Compliance Costs*

These proposed amendments are not expected to result in additional costs or savings to the regulated community or the general public. However, the Bureau of Air Quality could save an estimated \$34,000 to \$43,000 if sulfate analyses are no longer required for the estimated 1281 sulfate filters analyzed each year.

##### *Compliance Assistance Plan*

Proposed amendments to § 129.67 address compliance assistance by allowing the owners and operators of storage tanks of greater than 40,000 gallons capacity up to 45 days to repair the floating roof seals or empty the storage vessels. The owners and operators of the tanks may request an additional 30 days to correct defective seals in the floating storage tanks. The regulated community, generally owners and operators of large storage tanks at petroleum terminals, chemical plants and refineries, will be advised of the compliance schedule included in the regulation for emptying and repairing large storage tanks.

##### *Paperwork Requirements*

This proposal is not expected to result in increased paperwork requirements. Deletion of the sampling and analytical procedures for ambient air contaminants such as sulfates, fluorides and hydrogen sulfide reduces paperwork requirements for the regulated community since monitoring reports required under § 139.53 will not be necessary. In addition, elimination of the PCE requirements for dry cleaning facilities will also reduce paperwork requirements for the owners and operators of PCE dry cleaning facilities.

#### G. *Sunset Review*

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



H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 16, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before publication of the final-form regulations.

I. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by September 4, 1997. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by September 4, 1997. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us. A subject heading of the proposal must be included in each transmission. Comments submitted electronically must also be received by the Board by September 4, 1997.

J. *Public Hearings*

The Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held on the following dates and at the following locations:

- July 28, 1997      Department of Environmental Protection  
Southwest Regional Office  
500 Waterfront Drive  
Pittsburgh, PA
- July 30, 1997      Department of Environmental Protection  
1st Floor Conference Room  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA
- August 5, 1997    Department of Environmental Protection  
Southeast Regional Office  
Suite 6010, Lee Park  
555 North Lane  
Conshohocken, PA

Persons wishing to present testimony at a hearing are requested to contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, 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 chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Nancy Roush at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,  
*Chairperson*

**Fiscal Note:** 7-317. No fiscal impact; (8) recommends adoption.

**Annex A**

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

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 128. ALTERNATIVE EMISSION REDUCTION LIMITATIONS SPECIFIC LIMITATIONS**

*(Editor's Note:* As part of this proposal, the Board is proposing to delete the existing text of §§ 128.11—128.20 and 128.22, which currently appear at 25 Pa. Code pages 128-2—128-12 and 128-14—128-17, serial pages (194362), (114835)—(114844) and (114846), (114847) and (128415).)

**CHAPTER 129. STANDARDS FOR SOURCES**

**§ 129.56. Storage tanks greater than 40,000 gallons capacity containing VOCs.**

\* \* \* \* \*

**(h) If a failure is detected during inspections required in this section, the owner or operator, or both, shall repair the items or empty and remove the storage vessel from service within 45 days. If this failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Department. A request for an extension shall document that alternate storage capacity is unavailable and specify a schedule of actions the owner or operator will take that will assure that the equipment will be repaired or the vessel will be emptied as soon as possible but within the additional 30-day time requested.**

**§ 129.67. Graphic arts systems.**

\* \* \* \* \*

(b) A person may not permit the emission into the outdoor atmosphere of VOCs from a rotogravure or flexographic printing press subject to this section unless one of the following limitations is met:

\* \* \* \* \*

(2) The ink, as applied to the substrate, less water, contains 60% by volume or more of solid material.

§ 129.70. [Perchloroethylene dry cleaning facilities] (Reserved).

[ (a) This section applies to perchloroethylene dry cleaning facilities which:

(1) Are located in the counties of Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Lackawanna, Lehigh, Luzerne, Montgomery, Northampton, Philadelphia, Washington and Westmoreland, and in the Harrisburg Area Transportation Study area.

(2) Emit more than 100 tons of volatile organic compounds per year.

(b) Emissions of perchloroethylene to the outdoor atmosphere from a dry cleaning facility shall be vented through a properly functioning condenser or carbon adsorption system.

(c) Emissions of perchloroethylene shall also be restricted as follows:

(1) Diatomaceous earth filters shall be cooked or otherwise treated so that the residue contains no more than 25% by weight of volatile organic compounds.

(2) Wet waste material from all solvent stills shall be reduced to no more than 60% by weight of volatile organic compounds.

(3) Filtration cartridges shall be drained in the filter housing for a minimum of 24 hours before being discarded.

(4) A component including hose connections, valves, machine door gaskets, pumps, storage containers, water separators, filter sludge recovery units, distillation units, cartridge filters and lint depositories found to be leaking volatile organic compounds shall be replaced or repaired within 24 hours of discovery of such leak. ]

CHAPTER 131. AMBIENT AIR QUALITY STANDARDS

§ 131.3. Ambient air quality standards.

The following standards apply and, unless otherwise stated, are maximum values that may not be exceeded:

Contaminant	Concentrations Averaged Over				
	1-Year	30-Days	[ 24-Hours ]	[ 1-Hour ]	
[ Sulfates (as H <sub>2</sub> SO <sub>4</sub> ) ]	[ — ]	[ 10 µg/m. <sup>3</sup> ]	[ 30 µg/m. <sup>3</sup> ]	[ — ]	
[ Fluorides (total soluble, as HF) ]	[ — ]	[ — ]	[ 5 µg/m. <sup>3</sup> ]	[ — ]	
[ Hydrogen sulfide ]	[ — ]	[ — ]	[ .005 p.p.m. ]	[ .1 p.p.m. ]	

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

AMBIENT LEVELS OF AIR CONTAMINANTS

§ 139.32. Sampling and analytical procedures.

(a) Sampling and analytical techniques which may be used directly or employed as reference standards against which other methods may be calibrated shall be as follows

Contaminant	Sampling Method	Analytical Method
[ Sulfates (as H <sub>2</sub> SO <sub>4</sub> ) ]	[ High-volume filtration (7) ]	[ Turbidimetric (8) ]
[ Fluorides (total soluble, as HF) ]	[ Filtration plus gas absorption (9) ]	[ Thorium-alizarin lake titration (9) ]
[ Hydrogen sulfide ]	[ Gas absorption (18) ]	[ Methylene blue method (18) ]

[Pa.B. Doc. No. 97-1028. Filed for public inspection June 27, 1997, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 65]  
Collision Loss Settlements

The Insurance Department (Department) proposes to delete §§ 65.11—65.14 pertaining to collision loss settlements to read as set forth in Annex A. The Department is publishing the deletion of the regulations as a proposed rulemaking to provide an opportunity for public comment. The Department proposes the deletion under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and the act of June 5, 1968 (P. L. 140, No. 78) (40 P. S.

§§ 1008.1—1008.11) (Act 78). The regulations require an insurer to use actual cash value with certain adjustments as the standard for settling collision losses when adjusting total losses.

Purpose

The purpose of this rulemaking is to delete §§ 65.11—65.14, to eliminate outdated regulations which do not serve any compelling public purpose. These sections were adopted May 5, 1970, under the authority of Act 78, which governs cancellations, refusals to renew and refusals to write private passenger automobile insurance policies. The regulations define "actual cash value," the amount an insurer must pay the insured for damages to

the insured vehicle. The regulations require that collision losses involving a total loss be settled based upon the preloss fair market value of the damaged automobile plus the State Sales Tax on the cost of a replacement vehicle. The regulations further define actual cash value as the cost of repairing or replacing the damaged auto with another similar auto in the same physical condition, commonly known as replacement cost less depreciation.

After careful review, the Department proposes the deletions because they are no longer necessary. Collision loss settlements are covered more comprehensively in §§ 62.1—62.4 pertaining to motor vehicle physical damage appraisers (physical damage appraisers), adopted December 28, 1973. The collision loss settlement regulations duplicate the requirements in the physical damage appraisers regulations, which establish standards in § 62.3(f) (relating to applicable standards for appraisal) to be used to determine replacement value under the insurance policy provisions covering the total loss of a motor vehicle. The physical damage appraisers regulation in § 62.3(f)(5) also requires the applicable sales tax on the replacement cost of a motor vehicle to be included as part of the replacement value. Therefore, the deletion of these regulations does not lessen or alter the current regulatory requirements on the industry.

#### *Fiscal Impact*

The deletion of these regulations will not have any impact on costs associated with the Department, insurance companies, physical damage appraisers, political subdivisions or the general public.

#### *Paperwork*

The deletion of these regulations imposes no additional paperwork requirements on the Department, insurance companies, physical damage appraisers or the general public.

#### *Persons Regulated*

The deletion of these regulations applies to insurance companies and individuals who determine the value of a vehicle or cost of repairs to a damaged vehicle in this Commonwealth.

#### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Chester A. Derk, Jr., Chief, Market Conduct Division, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, PA 17120, (717) 783-2627, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In addition to submitting this proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of this proposed rulemaking, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act

specifies detailed procedures for review, prior to final publication of the regulations by the Department, the General Assembly and the Governor of objections raised.

LINDA S. KAISER,  
*Insurance Commissioner*

**Fiscal Note:** 11-151. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 31. INSURANCE**

#### **PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE**

#### **CHAPTER 65. MISCELLANEOUS PROVISIONS**

#### **Subchapter B. [ COLLISION LOSS SETTLEMENTS ] (Reserved)**

#### **§ 65.11. [ Background ] (Reserved).**

**[ Under the standard automobile collision loss insurance policy, the insurer contracts to pay the actual cash value of the automobile at the time of a total loss by the insured. For the most part, except with a car which is brand new at the time that it is "totaled," the actual cash value will be somewhere in between the "wholesale" and the "retail" Red Book values, which vary between \$400 and \$500, regardless of the make of the automobile or its comparative age. ]**

#### **§ 65.12. [ Standard for settling collision losses is actual cash value ] (Reserved).**

**[ The Red Book values, as explained in § 65.11 (relating to background), shall be used by insurance companies writing automobile collision insurance as a guide only, recognizing that the Insurance Department insists that "totaled" collision losses be adjusted on the basis of fair market value plus the State tax on the cost of a replacement vehicle. ]**

#### **§ 65.13. [ Definition of actual cash value ] (Reserved).**

**[ When used in this subchapter, the term actual cash value is theoretically the cost of repairing or replacing the damaged property with other property of like kind and quality in the same physical condition, commonly defined as replacement cost less depreciation. ]**

#### **§ 65.14. [ Notice to claims forces ] (Reserved).**

**[ The provisions of this subchapter shall be brought to the attention of the claims force of each insurance company, including the home office and the field offices. ]**

[Pa.B. Doc. No. 97-1029. Filed for public inspection June 27, 1997, 9:00 a.m.]

### **[31 PA. CODE CH. 41]**

#### **Fraternal Beneficial Societies Administration**

The Insurance Department (Department) proposes to delete Chapter 41 (relating to administration) to read as set forth in Annex A. The deletion is being published as a proposed rulemaking to allow an opportunity for public comment. The deletion is proposed under the authority of

sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the Fraternal Benefit Societies Code (40 P. S. §§ 1142-101—1142-701). Chapter 41 was promulgated under section 3 of the act of July 17, 1935 (P. L. 1092, No. 357) (Act 357) (40 P. S. § 1053)(now repealed). The regulation sets forth requirements that must be met in a request for waiver or extension of a meeting of a domestic fraternal beneficial society.

#### *Purpose*

The purpose of this rulemaking is to delete Chapter 41 to eliminate an obsolete, unnecessary regulation. The regulation was adopted May 18, 1943, and required that a request for waiver or extension of a meeting of a fraternal beneficial society shall be made by resolution of the board of directors or similar managing body. The resolution is required to contain six items of information listed in the regulation, including a certification that the request for waiver or extension has been approved by a majority of the subordinate lodges or bodies of the fraternal beneficial society.

Act 357 which initially authorized the regulation was transferred to 15 P. S. §§ 8501—8543 and later repealed by section 5(a)(9) of the act of November 15, 1972 (P. L. 1063, No. 271) (Act 271) 40 Pa.C.S. §§ 6501—6701. Act 271 was subsequently replaced by the act of July 29, 1977 (P. L. 105, No. 38) (Act 38)(40 P. S. §§ 1141-101—1141-1001). Finally, Act 38 was replaced by section 701 of the Fraternal Benefit Societies Code (40 P. S. § 1142-701).

Section 202 of the Fraternal Benefit Societies Code (40 P. S. § 1142-202) contains requirements relating to meetings of domestic fraternal benefit societies. The current statutory requirements relating to meetings of fraternal benefit societies are consistent with requirements relating to other types of insurers. However, Chapter 41 contains additional requirements beyond those contained in current law, which requirements are not imposed on other types of insurers. Imposing special requirements on fraternal benefit societies regarding their meetings serves no compelling public interest. The statutory requirements are sufficient. Therefore, the regulation has been superseded by the existing statutory requirements in the Fraternal Benefit Societies Code (40 P. S. §§ 1142-101—1142-616) and are no longer needed.

#### *Affected Parties*

The deletion of the regulation affects fraternal benefit societies.

#### *Fiscal Impact*

The deletion of the regulation has no fiscal impact because of the obsolescence of the regulation.

#### *Paperwork*

The deletion of the regulation would impose no additional paperwork requirements on the Department or fraternal benefit societies.

#### *Effectiveness/Sunset Date*

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete obsolete, unnecessary regulations, no sunset date has been assigned.

#### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Elaine M. Leitzel, Administrative Officer, Office of Regulation of Companies,

1345 Strawberry Square, Harrisburg, PA 17120 (717) 787-8840, within 30 days of its publication in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the public comment 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 the Department, the Governor and the General Assembly to review these objections before final publication of the rulemaking.

LINDA S. KAISER,  
*Insurance Commissioner*

**Fiscal Note:** 11-153. No fiscal impact; (8) recommends adoption.

#### **Annex A**

#### **TITLE 31. INSURANCE**

#### **PART I. GENERAL PROVISIONS**

#### **Subpart D. FRATERNAL BENEFICIAL SOCIETIES**

#### **CHAPTER 41. [ ADMINISTRATION ] (Reserved)**

#### **§ 41.1 [ Extension or waiver of meetings ] (Reserved).**

**[ A request for waiver or extension of meetings of fraternal beneficial societies shall be by resolution of the board of directors or similar managing body. The resolution shall be attested by the secretary of the society and shall contain all of the following information:**

- (1) Identification of the convention or meeting.**
- (2) The need for waiver or extension.**
- (3) The specific provisions of the constitution and bylaws under which the society will function if the request for waiver or extension is granted.**
- (4) Certification that the request for waiver or extension has been approved by a majority of the subordinate lodges or bodies.**
- (5) A statement that a waiver or extension, if granted, will not be prejudicial to the best interests of the members.**
- (6) A statement that the convention or meeting so waived or so extended will be held within a stated time after the date of the waiver or the extension has expired. ]**

[Pa.B. Doc. No. 97-1030. Filed for public inspection June 27, 1997, 9:00 a.m.]

**[31 PA. CODE CH. 103]  
Uniform Bylaws for Mutual Fire Companies**

The Insurance Department (Department) proposes to delete Chapter 103 (relating to uniform bylaws for mutual fire companies) to read as set forth in Annex A. The deletion is being published as a proposed rulemaking to allow the opportunity for public comment. The deletion is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 506 of The Insurance Company Law of 1921 (40 P. S. § 636). The regulation was adopted under sections 501—553 of The Insurance Company Law (40 P. S. §§ 631—702) relating to fire and marine insurance. The regulation recommends that domestic assessment mutual fire insurance companies adopt uniform bylaws in the form attached to § 103.1 as Exhibit A. The regulation also encourages domestic assessment mutual fire insurance companies to use Pennsylvania's standard fire insurance policy.

*Purpose*

The purpose of this rulemaking is to delete Chapter 103 to eliminate obsolete, unnecessary, burdensome regulations.

The regulation was adopted on May 26, 1936, under sections 501—553 of The Insurance Company Law of 1921, which governs stock and mutual fire insurance companies. The regulation recommended, but did not mandate, the standardization of bylaws for one small subset of insurers—domestic mutual fire insurance companies that offer policies on an assessable basis. There is no public policy reason for standardizing the bylaws used by this type of insurer, when uniform bylaws are not imposed upon other types of fire insurance companies.

Further, the Commonwealth adopted a comprehensive corporations code at 15 Pa.C.S. (relating to Associations Code) (code) in 1988; all other types of insurers may adopt bylaws consistent with that code. Domestic mutual fire insurance companies should have the same flexibility to adopt bylaws as is available to other companies against whom they compete. In addition, Exhibit A does not completely list all provisions that a domestic mutual fire insurance company should include in its bylaws, consistent with the code. Thus, the regulation is outdated as well as incomplete.

This regulation is also unnecessary because sufficient regulatory provisions exist for reviewing bylaws under current statutes, rendering this regulation superfluous. After the deletion of this regulation, the Department will continue to have the statutory authority to review a fire insurer's bylaws at the time of its admission, during a financial examination of the company, and at any other time at the request of the Insurance Commissioner. See sections 1504(b) and 3121 of the code (relating to adoption, amendment and contents of bylaws; and bylaws); sections 903(a) and 904(b) of the Insurance Department Act of 1921 (40 P. S. §§ 323.3(a) and 323.4(b)); and section 320(a)(1) of the Insurance Company Law of 1921 (40 P. S. § 443(a)(1)). In addition, because the bylaws' provisions are encompassed within assessable policies, a mutual fire insurance company must submit its bylaws when it seeks review and approval of an assessable

insurance policy. See section 354 of the Insurance Company Law of 1921 (40 P. S. § 477b). Accordingly, the regulation is not needed to maintain appropriate regulatory scrutiny of bylaws.

Finally, the regulation was intended to facilitate the review and approval of policy forms used by domestic assessment mutual fire insurance companies. Accordingly, the regulation recommended, but did not mandate, the use of the standard fire insurance policy found at section 506 of the Insurance Company Law of 1921 (40 P. S. § 636). However, the statute itself mandates that all insurance companies issuing fire insurance policies must adhere to the standard policy provisions set forth in section 506. Therefore, the regulation duplicates existing statutory authority governing the standard policy provisions of fire insurance contracts, and inaccurately suggests that use of the standard fire policy is optional, rather than mandatory.

*Affected Parties*

The regulation applies to domestic assessment mutual fire insurance companies.

*Fiscal Impact*

The proposed deletion of the regulation has no fiscal impact because the regulation contains only advisory recommendations, and because of the obsolescence of the regulations.

*Paperwork*

The proposed deletion of the regulation would impose no additional paperwork requirements on the Department or mutual insurance companies.

*Effectiveness/Sunset Date*

This rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to repeal obsolete, unnecessary regulations, no sunset date has been assigned.

*Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Elaine M. Leitzel, Administrative Officer, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 787-8840, within 30 days of its publication in the *Pennsylvania Bulletin*.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request. If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the public comment 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 the

Department, the Governor and the General Assembly to review these objections before final publication of the rulemaking.

LINDA S. KAISER,  
*Insurance Commissioner*

**Fiscal Note:** 11-157. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 31. INSURANCE

#### PART VI. MUTUAL INSURANCE

#### CHAPTER 103. [ UNIFORM BYLAWS FOR MUTUAL FIRE COMPANIES ] (Reserved)

#### § 103.1. [ Recommendations ] (Reserved).

[(a) It is recommended that all domestic assessment mutual fire insurance companies adopt the uniform bylaws attached hereto as Exhibit A and made a part of this section.

(b) It is also recommended that such companies adopt the Standard Fire Insurance Policy of the Commonwealth.

#### EXHIBIT A

#### UNIFORM BYLAWS

##### SECTION I. Duties of Officers:

**Subsection 1. President.** It shall be the duty of the President to preside at all meetings of the Company, of the Board of Directors and of the Executive Committee, to sign all policies of insurance and all papers to which the seal of the Company is affixed, and to perform such other duties as may be required of him by the Board of Directors. The President's signature to policies may be in facsimile. The President shall be ex-officio member of all committees.

**Subsection 2. Vice President.** The Vice President shall perform the duties of the President, in the latter's absence, and shall have such other duties as may be assigned by the Board of Directors or Executive Committee.

**Subsection 3. Secretary.** Subject to the provision and approval of the Board of Directors, the Secretary shall have general charge of the affairs of the Company. He shall keep a complete and accurate record of all transactions of the Company. He shall issue and sign all policies, permits and endorsements of the Company. He shall collect all assessments and any other money due the Company and shall turn same over to the Treasurer or deposit same as directed by the Treasurer. He shall make a complete and accurate report of the years' business at each annual meeting of the Company and shall perform such other duties as the Board of Directors may assign him.

**Subsection 4. Treasurer.** The Treasurer under the direction of the Board of Directors shall have charge of all the funds of the Company, deposit same in the name of the Company in depositories designated by the Board of Directors. He shall pay all vouchers or orders properly attested by the President and Secretary and shall make a complete

and accurate report of the finances of the Company at each annual meeting thereof or at any other time upon the request of the Board of Directors.

**Subsection 5. Bonds.** The Secretary and Treasurer before entering upon their respective duties shall each give bonds in such sum and in such form as the Board of Directors may require. Other officers and employes may be required to give bond at the discretion of the Board of Directors.

##### SECTION II. Insurance in Relation to Value:

**Subsection 1. General Limits.** Except as provided in Subsection 2 of this Section, the management of this Company shall exercise due care to prevent the insurance of any building, for more than three-fourths (3/4) of its cash value. Each building shall be insured for a stipulated amount and no blanket insurance shall be permitted except on the personal property within a specified group or class as designated in the policy; provided this Subsection shall not be construed to cover risks other than farm property.

**Subsection 2. Special Limits on Livestock.** Registered animals, and others, if desired, may be insured individually in such amount as may be approved by the management of the Company. Livestock not thus insured individually may be insured as groups or classes of animals. In the latter case a stipulated amount of insurance shall be placed on each group or class as designated in the policy. In case of loss of an animal in an insured group or class, the indemnity shall not exceed the value of the animal at the time of loss; nor shall it exceed the amount per head specified in the policy for the group or class.

##### SECTION III. Fees and Assessments:

**Subsection 1. Policy Fee and Initial Charges.** A policy fee and other initial charges to be fixed by the Board of Directors shall be paid by the applicant at the time of making application for insurance.

**Subsection 2. Assessments.** The Board of Directors shall levy on the policyholders such assessments as, based on the amount insured and the class or property and hazard covered, may be necessary for losses and expenses and may include reasonable additions to the safety or reserve fund.

**Subsection 3. Levy and Collection of Assessments.** Levy and Collection of assessments may be made annually, or oftener if required. The insured shall be sent a written or printed notice requiring the payment of such assessment.

**Subsection 4. Neglect or Failure to Pay.** Neglect or failure to pay an assessment within sixty days after written notice to pay same shall without further notice, render the policy void as to the interest of the insured until such payment be made, and in no case shall the Company be liable to the insured for any loss occurring during such suspension. The notice of assessment shall contain a statement to this effect. The acceptance of any delinquent assessment shall not operate to render the Company liable for any loss occurring during such suspension, nor shall such suspension relieve the insured from liability for assessment or other charges during the period of suspension.

**Subsection 5. Termination of Liability.** The insured shall not be liable to assessment for any losses or expenses incurred subsequent to the termination of this policy nor shall he be liable for any assessment to cover obligations of the Company while his policy was in force unless due notice of such assessment be given to him within two years from the date of termination of his policy or from the date on which such obligations were incurred, whichever date is earlier.

**SECTION IV. Notice.**

Notice for all purposes under this policy shall consist of written or printed notice delivered to the

insured or other person to be notified or deposited in the post office directed to his address as shown on the records of the Company.

**SECTION V. Amendments.**

These Bylaws may be amended by a two-thirds (2/3) affirmative vote at any meeting of the Board of Directors or by a similar vote of any annual or special meeting of members. Amendments made by membership meetings shall take precedent over amendments made by the Board of Directors. ]

[Pa.B. Doc. No. 97-1031. Filed for public inspection June 27, 1997, 9:00 a.m.]

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# STATEMENTS OF POLICY

## Title 31—INSURANCE

### MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND

[31 PA. CODE CH. 247]

#### Coverage and Claims Issues

On November 26, 1996, Governor Tom Ridge signed into law Act 135 of 1996. This Legislation amends the Health Care Services Malpractice Act (act) (40 P. S. §§ 1301.101—1301.1004) and constitutes the first substantive changes to the act in over 14 years. The Medical Professional Liability Catastrophe Loss Fund (Fund) was first established under the act in 1976. Its purpose is to provide professional liability insurance to Pennsylvania's health care providers, as defined in the act, at a reasonable cost and ensure just compensation to the victims of alleged professional negligence. See 40 P. S. § 1301.103. The amendments found in Act 135 of 1996 profoundly alter the professional liability insurance marketplace, the Fund's role in the marketplace, and certain of the procedures and processes governing professional liability malpractice litigation in this Commonwealth.

Participation in the Fund is mandatory for hospitals, nursing homes, birth centers, primary health centers, physicians, osteopathic physicians, podiatrists and nurse midwives licensed or approved by the Commonwealth who conduct more than 50% of their health care business within this Commonwealth. Professional corporations, professional associations or partnerships, which are entirely owned by health care providers, may elect to insure their basic liability. If they so choose, their participation in the Fund is mandatory.

The act requires that each health care provider who is rendering professional medical services within this Commonwealth must obtain primary professional liability insurance with an insurance carrier licensed or approved by the Insurance Department (Department). The act further requires health care providers, other than hospitals, who conduct more than 50% of their professional medical services within this Commonwealth, to obtain basic limits of coverage for policies issued or renewed in calendar years 1997 through 1998 of \$300,000 per occurrence and \$900,000 per annual aggregate and must participate in the Fund. Hospitals must obtain basic limits coverage for policies issued or renewed in calendar year 1997 through 1998 of \$300,000 per occurrence and \$1.5 million per annual aggregate and must participate in the Fund. See § 1301.701(a)(1)(I). For policies issued or renewed in the calendar years 1999 through 2000, a health care provider, other than a hospital, must purchase basic insurance coverage in the amount of \$400,000 per occurrence and \$1.2 million per annual aggregate, and hospitals located in this Commonwealth must purchase professional liability primary coverage in the amount of \$400,000 per occurrence and \$2 million per annual aggregate. See § 1301.701(a)(1)(ii). Finally, Act 135 of 1996 provides that for policies issued or renewed in the calendar year 2001 and each year thereafter, a health care provider other than a hospital must obtain primary insurance in the amount of \$500,000 per occurrence and

\$1.5 million per annual aggregate, while hospitals located in this Commonwealth shall insure their professional liability in the amount of \$500,000 per occurrence and \$2.5 million per annual aggregate. See § 1301.701(a)(1)(iii).

Act 135 of 1996 further provides that for calendar years 1997 through 1998, the limit of liability of the Fund shall be \$900,000 for each occurrence for each health care provider and \$2.7 million per annual aggregate for each health care provider. For calendar years 1999 through 2000, the limit of liability of the Fund shall be \$800,000 for each occurrence for each health care provider and \$2.4 million per annual aggregate for each health care provider. Finally as to Fund coverage, for calendar year 2001 and each year thereafter, the limit of liability of the Fund shall be \$700,000 for each occurrence for each health care provider and \$2.1 million per annual aggregate for each health care provider. See 40 P. S. § 1301.701(d)(1)(3).

The Fund acts as both a primary and excess insurer depending upon the alleged occurrence date of malpractice and the timing of the claim against a health care provider. If a claim against a health care provider is made less than 4 years after the date on which the alleged malpractice occurred, the Fund acts as an excess carrier with its coverage at risk only after the health care provider's primary limits have been exhausted. In this type of claim, responsibility for the cost of defense and first dollar indemnity payment rests with the primary carrier. However, in the event that a claim is made more than 4 years after the alleged malpractice, coverage under section 605 of the act (40 P. S. § 1301.605) is applicable. If a claim qualifies for Section 605 coverage, the Fund operates as a primary carrier by providing the first dollar of indemnity coverage and the cost of defense.

The purpose of this policy statement is to set forth the Fund's position as it relates to claims and coverage questions affecting health care providers and the insurance industry. Publication of this statement of policy ensures widespread dissemination of this information, and will assist in assuring uniform claims handling practices and procedures.

#### Contact Information

Questions regarding this policy statement of policy may be addressed to the following address:

Commonwealth of Pennsylvania  
Medical Professional Liability  
Catastrophe Loss Fund  
30 North Third Street, Suite 1000  
P. O. Box 12030  
Harrisburg, PA 17108

#### Effective Date

This statement of policy shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN H. REED,  
*Director*

*(Editor's Note: The regulations of the Medical Professional Liability Catastrophe Loss Fund, 31 Pa. Code, are amended by adding a statement of policy at §§ 247.1 and 247.2 to read as set forth in Annex A.)*



**Fiscal Note:** 20-2. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 31. INSURANCE

### PART IX. MEDICAL CATASTROPHE LOSS FUND

#### CHAPTER 247. COVERAGE AND CLAIMS ISSUES—STATEMENT OF POLICY

Sec.

247.1 Excess coverage—implementation of new limits.  
247.2 Section 605 amendment implementation.

#### § 247.1. Excess coverage—implementation of new limits.

(a) The act of November 26, 1996 (P. L. 776, No. 135) (Act 135) amended the Health Care Services and Malpractice Act (act) (40 P. S. §§ 1301.101—1301.1004). Act 135 redistributes coverage responsibilities between the primary carriers and the Medical Professional Liability Catastrophe Loss Fund (Fund). This redistribution continues the maximum statutory limit of \$1.2 million per claim for each health care provider. This is an indication that the General Assembly did not intend to reduce the available insurance coverage to pay settlements or awards in excess medical malpractice cases.

(b) The structure of Act 135 is such that an issue arises as to the timing of a particular claim and the policy year in which a loss (that is, claim) arises. By way of example, an annual primary policy issued November 1, 1996, which runs until October 31, 1997, shall by law carry a \$200,000 primary limit. If a claim occurs pre-December 31, 1996, the Fund's limit of liability, per the statute, will be \$1 million. However, if the claim arises on or after January 1, 1997, through October 31, 1997, the plain language of the statute would mandate the Fund's liability is only \$900,000. Neither the amendments themselves nor the Legislative history suggest that this was a result intended by the General Assembly. Therefore, in instances where the coverage level of the primary policy and the Fund limits do not reach the \$1.2 million total, the Fund will provide its coverage as required by law, recognizing the amount of primary coverage available from the insurance policy, issued in compliance with Act 135, against which the claim is made.

#### § 247.2. Section 605 amendment implementation.

(a) The act of November 26, 1996 (P. L. 776, No. 135) (Act 135) added language to section 605 of the Health Care Services and Malpractice Act (act) (40 P. S. § 1301.605). Specifically, Act 135 added a notification provision, under which the primary carrier must notify the Medical Professional Liability Catastrophe Loss Fund (Fund) within 180 days of the date on which the notice of claim was received by the health care provider or his insurer. Secondly, Act 135 added language with regard to the issue of "continuing course of treatment." This latter provision relates to multiple treatments or consultations which take place less than 4 years before the date on which a claim was made against a health care provider (40 P. S. § 1301.605). Both amendments to Section 605 were made effective immediately by Act 135, and by implication, will return to primary carriers additional cases for coverage and defense, and will place the Fund in the role of excess carrier for the claim.

(b) The notification requirements of Act 135 are procedural in nature, and require as a condition precedent to Section 605 status that timely notice of the claim must be provided to the Fund. Therefore, it is incumbent upon insureds, self-insureds and primary carriers to timely

notify the Fund of a claim. Because of its procedural nature, the amendment will be implemented commensurate with the effective date of Act 135, that is November 27, 1996, and will apply to all claims reported on or after that date.

(c) The Fund will implement the continuing course of treatment amendments effective November 27, 2000, which is 4 years after the effective date of the Section 605 amendments. This determination is intended to provide primary carriers with the ability to build into their rate filings the costs associated with additional risks and liabilities that will accrue once the new amendments have been fully implemented.

(d) As to the continuing course of treatment provision, the Fund believes that the General Assembly intended that the continuing course of care relate to the manifestation of the claimed injury, and should not apply to unrelated treatments or consultations. By way of example, when a patient has been treated by a physician for routine cancer screening and examinations more than 4 years prior to a claim being made for delay in diagnosis of cancer, and sees the same physician within the 4-year period only for treatment of a hangnail, Section 605 coverage would apply to the claim of delay in diagnosis of cancer. In contrast, a claim alleging professional liability revolving around the hangnail would be considered an excess claim.

[Pa.B. Doc. No. 97-1032. Filed for public inspection June 27, 1997, 9:00 a.m.]

## Title 61—REVENUE

### DEPARTMENT OF REVENUE

#### [61 PA. CODE CH. 60]

#### Computer Services

The Department of Revenue (Department) has adopted a revised statement of policy under the authority contained in § 3.2 (relating to statements of policy). This statement of policy revises § 60.13 (relating to computer services) and shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

The purpose of the amendment to § 60.13 is to advise the public of the effect of the repeal of taxation on computer services, effective July 1, 1997, as set forth in Act 7 of 1997.

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Department 281061, Harrisburg, PA 17128-1061.

ROBERT A. JUDGE,  
*Secretary*

(*Editor's Note:* The regulations of the Department, 61 Pa. Code Chapter 60, are amended by amending § 60.13 to read as set forth in Annex A, with ellipses referring to the existing text of the statement of policy.)

**Fiscal Note:** 15-389. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 61. REVENUE**

**PART I. DEPARTMENT OF REVENUE**

**Subpart B. GENERAL FUND REVENUES**

**ARTICLE II. SALES AND USE TAX**

**CHAPTER 60. SALES AND USE TAX**

**PRONOUNCEMENTS—STATEMENTS OF POLICY**

**§ 60.13. Computer services.**

\* \* \* \* \*

(b) *Scope.*

(1) *Taxable use of computer service.* Effective October 1, 1991, through June 30, 1997, the sale-at-retail or use of a computer service is subject to tax upon the purchase price if the predominate use of the service is in this Commonwealth. A charge for a computer service that is rendered

prior to and after July 1, 1997, shall be subject to Sales or Use Tax only for that portion of the purchase price representing the rendition of the computer service prior to July 1, 1997. An invoice for a computer service dated on or after July 1, 1997, for a computer service rendered prior to July 1, 1997, shall be subject to Sales or Use Tax on the entire purchase price of the service. If the charge for computer services is comprised of charges for multiple services, only individual services which are predominately used in this Commonwealth are subject to tax. A computer service which is incidental to providing a nontaxable service is not subject to tax.

\* \* \* \* \*

[Pa.B. Doc. No. 97-1033. Filed for public inspection June 27, 1997, 9:00 a.m.]

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# 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 17, 1997.

#### BANKING INSTITUTIONS

##### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-13-97	Northwest Savings Bank Warren Warren County  Purchase of Assets/Assumption of Liabilities of One Branch Office of First Western Bank, fsb, Sharon, located at:  6 East First Street Oil City Venango County	Warren	Filed

##### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-10-97	Premier Bank Doylestown Bucks County	101 Floral Vale Blvd. Yardley Bucks County	Filed
6-17-97	Pennsylvania State Bank Camp Hill Cumberland County	One North Hanover St. Carlisle Cumberland County	Approved

#### SAVINGS ASSOCIATIONS

No activity.

#### CREDIT UNIONS

##### Branch Applications

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
6-9-97	Philadelphia Telco Credit Union Trevose Bucks County	291 E. Swedesford Rd. Wayne Tredyfrin Township Chester County	Opened

RICHARD C. RISHEL,  
*Secretary*

[Pa.B. Doc. No. 97-1034. Filed for public inspection June 27, 1997, 9:00 a.m.]

# DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

## Machinery and Equipment Loan Participation and Interest Rates

The Department of Community and Economic Development (Department) gives notice of the adoption of Machinery and Equipment Loan (MELF) participation and interest rates for loans approved by the Department. The rates are effective as of July 1, 1997 and will remain in effect until changed by a notice in the *Pennsylvania Bulletin*. The rates follow as Annex A.

The Department retains the right to waive or modify the rates, to the extent that such are not mandated by law, on a case by case basis for good cause shown.

Further information can be obtained from the Department of Community and Economic Development, Room 481 Forum Building, Harrisburg, PA 17120, (717) 787-6245.

SAMUEL A. MCCULLOUGH,  
*Secretary*

### Annex A

#### MELF PARTICIPATION AND INTEREST RATES FOR COUNTIES AND MUNICIPALITIES\* OVER 25,000 POPULATION

County*	Maximum MELF Participation**	Interest Rate*** %
ADAMS	50%	6.75
ALLEGHENY	50%	6.75
McKeesport City	50%	3.75
Pittsburgh City	50%	5.25
ARMSTRONG	50%	3.75
BEAVER	50%	3.75
BEDFORD	50%	3.75
BERKS	50%	6.75
Reading City	50%	5.25
BLAIR	50%	5.25
Altoona City	50%	5.25
BRADFORD	50%	5.25
BUCKS	50%	6.75
Bensalem Twp.	50%	5.25
Bristol Twp.	50%	5.25
BUTLER	50%	5.25
CAMBRIA	50%	3.75
CAMERON	50%	3.75
CARBON	50%	3.75
CENTRE	50%	6.75
CHESTER	50%	6.75
CLARION	50%	3.75
CLEARFIELD	50%	3.75
CLINTON	50%	3.75
COLUMBIA	50%	3.75
CRAWFORD	50%	5.25
CUMBERLAND	50%	6.75
DAUPHIN	50%	6.75
Harrisburg	50%	6.75
DELAWARE	50%	6.75
Chester City	50%	3.75
ELK	50%	5.25
ERIE	50%	5.25

County*	Maximum MELF Participation**	Interest Rate*** %
Erie City	50%	3.75
FAYETTE	50%	3.75
FOREST	50%	3.75
FRANKLIN	50%	6.75
FULTON	50%	5.25
GREENE	50%	3.75
HUNTINGDON	50%	3.75
INDIANA	50%	3.75
JEFFERSON	50%	3.75
JUNIATA	50%	3.75
LACKAWANNA	50%	3.75
LANCASTER	50%	6.75
Lancaster City	50%	5.25
LAWRENCE	50%	5.25
New Castle City	50%	3.75
LEBANON	50%	6.75
Lebanon City	50%	5.25
LEHIGH	50%	5.25
Allentown City	50%	5.25
LUZERNE	50%	3.75
LYCOMING	50%	5.25
Williamsport City	50%	3.75
McKEAN	50%	5.25
MERCER	50%	3.75
MIFFLIN	50%	3.75
MONROE	50%	3.75
MONTGOMERY	50%	6.75
Norristown Boro	50%	5.25
Upper Dublin Twp.	50%	6.75
MONTOUR	50%	6.75
NORTHAMPTON	50%	5.25
NORTHUMBERLAND	50%	5.25
PERRY	50%	6.75
PHILADELPHIA	50%	3.75
PIKE	50%	5.25
POTTER	50%	3.75
SCHUYLKILL	50%	3.75
SNYDER	50%	5.25
SOMERSET	50%	3.75
SULLIVAN	50%	5.25
SUSQUEHANNA	50%	3.75
TIOGA	50%	3.75
UNION	50%	6.75
VENANGO	50%	3.75
WARREN	50%	5.25
WASHINGTON	50%	5.25
WAYNE	50%	3.75
WESTMORELAND	50%	5.25
WYOMING	50%	3.75
YORK	50%	6.75
York City	50%	3.75

\*Municipalities are listed *only* if MELF rate differs from County rate.

\*\*Maximum participation; MELF loans are \$500,000 or 50% of eligible project costs, whichever is less.

\*\*\*Based on calendar year 1996 unemployment rate. Subject to change at discretion of DCED.

*Special Note:* Projects located in designated enterprise zones, planning stage enterprise zones, financially distressed municipalities under Act 47, Federal empowerment zones, Federal enterprise communities and

brownfields will receive loans at 3.75%. Companies designated as advanced tech firms will receive an interest rate 1% less than the area rate with a floor of 3.75%.

10% equity injection required for all projects.

[Pa.B. Doc. No. 97-1035. Filed for public inspection June 27, 1997, 9:00 a.m.]

### Policy on Public Information

The Department of Community and Economic Development (Department) gives notice of the establishment of a policy on public information. The Department will provide access to public records to the extent authorized by law and by Commonwealth of Pennsylvania policy, consistent

with its duties to protect the rights and interests of the Department, its members and its clients, and consistent with its obligation to provide the citizens of the Commonwealth with information regarding the use of public funds. The policy is effective as of June 3, 1997.

Copies of the policy can be obtained from the Department of Community and Economic Development, Office of Chief Counsel, Room 524 Forum Building, Harrisburg, PA 17120, (717) 783-8452.

SAMUEL A. MCCULLOUGH,  
*Secretary*

[Pa.B. Doc. No. 97-1036. Filed for public inspection June 27, 1997, 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 Water 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 Richard Adams at (717) 327-3666. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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

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

**PA 0070246.** Sewerage, **Parkland School District**, Kernsville Elementary School, 1210 Spring House Road, Allentown, PA 18104.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into Jordan Creek in North Whitehall Township, **Lehigh County**.

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

The proposed effluent limits for Outfall 001 based on a design flow of .009 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
Dissolved Oxygen	a minimum of 5 mg/l at all times	
Fecal Coliform	200/100 ml as a geometric mean	
(5-1 to 9-30)	2,000/100 ml as a geometric mean	
(10-1 to 4-30)	6.0—9.0 standard units at all times	
pH		
Total Residual Chlorine		
1st Month - 24th Month	monitor and report	monitor and report
25th Month - Expiration	1.2	2.8

The EPA waiver is in effect.

**PA 0070289.** Sewerage, **Karl K. Kramer**, (Pine Brook II, A Limited Partnership), R. R. 1, P. O. Box 218, Orwigsburg, PA 17961.

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 fishery, aquatic life, water supply and recreation.

Effluent requirements were determined at point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of .12 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
Dissolved Oxygen	a minimum of 5 mg/l at all times	
Fecal Coliform	200/100 ml as a geometric mean	
(5-1 to 9-30)	2,000/100 ml as a geometric mean	
(10-1 to 4-30)	6.0—9.0 standard units at all times	
pH		
Total Residual Chlorine		
1st Month - 24th Month	monitor and report	
25th Month - Expiration	1.0	2.0

The EPA waiver is in effect.

**PA 0052426.** Sewerage, **Allied Utility Services, Inc.**, P. O. Box 1488, Skippack, PA 19474.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into an unnamed tributary of Coplay Creek in North Whitehall Township, **Lehigh County**.

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

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply (PWS) considered during the evaluation is Allentown Intake on Lehigh River.

The proposed effluent limits for Outfall 001 based on a design flow of .048 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>		
(5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
Total Suspended Solids	10	20
NH <sub>3</sub> -N		
(5-1 to 10-31)	3	6
(11-1 to 4-30)	9	18
NO <sub>3</sub> /NO <sub>2</sub> -N	10	20
Dissolved Oxygen	a minimum of 3 mg/l at all times	
Fecal Coliform	200/100 ml as a geometric mean	
(5-1 to 9-30)	2,000/100 ml as a geometric mean	
(10-1 to 4-30)	6.0—9.0 standard units at all times	
pH		
Total Residual Chlorine		
1st Month - 24th Month	monitor and report	
25th Month - Expiration	1.2	2.8

The EPA waiver is in effect.

*Northcentral Region: Environmental Program Manager, Water Management, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (717) 327-3666.*

**PA 0028681.** SIC: 4952. **Kelly Township Municipal Authority**, 299 River Road, Lewisburg, PA 17837-9703.

This proposed action is for renewal of an NPDES permit for an existing discharge of treated sewage to the West Branch Susquehanna River in Kelly Township, **Union County**.

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

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the downstream potable water supply (PWS) considered during the evaluation is located at Sunbury.

The proposed effluent limits for Outfall 001, based on a design flow of 3.75 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Suspended Solids	74	111	148
Total Chlorine Residual	0.5		1.6
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		
pH	6.0—9.0 SU at all times		

*Other Conditions:*

- (1) Bypass overflow monitoring.
- (2) Total Chlorine Residual limits effective 3 years from permit issuance date. Monitoring and reporting required in the interim.

The EPA waiver is not in effect.

**PA 0044661.** SIC: 4952. **Lewisburg Area Joint Sewer Authority**, P. O. Box 305, River Road, Lewisburg, PA 17837.

This proposed action is for renewal of an NPDES permit for an existing discharge of treated sewage to the West Branch Susquehanna River in East Buffalo Township, **Union County**.

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

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the downstream potable water supply (PWS) considered during the evaluation is located at Sunbury.

The proposed effluent limits for Outfall 001 based on a design flow of 2.42 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Suspended Solids	30	45	60
Total Chlorine Residual	0.5		1.6
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		
pH	6.0—9.0 SU at all times		

*Other Conditions:*

- (1) Total Chlorine Residual limits effective 3 years from permit issuance date. Monitoring and reporting required in the interim.

The EPA waiver is not in effect.

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

**PA 0005011.** Industrial waste, SIC: 4911. **Pennsylvania Electric Company**, 1001 Broad Street, Johnstown, PA 15907.

This application is for an amendment of an NPDES permit to discharge treated process water from the Conemaugh Generating Station in West Wheatfield, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, Conemaugh River and unnamed tributaries, classified as a warm water and cold water (respectively) fisheries with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) considered during the evaluation is Saltsburg, M.W.W., located at 37.4 miles below the discharge point.

Outfall 207: design flow of 0.264 mgd, discharge to 007.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>			25	50	
TSS			30	60	
Oil and Grease			15	20	
Temperature					monitor and report
Beryllium			0.008	0.016	0.02
Copper			0.045	0.09	0.11
Lead			0.1	0.2	0.25
Mercury			0.004	0.008	0.01
Selenium			1.0	2.0	2.5
Boron			120	240	300
TDS			40,000	80,000	100,000
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is not in effect.

**PA 0096067.** Sewage, **Mt. Pleasant Area School District**, R. D. 4, Box 2222, Mount Pleasant, PA 15666.

This application is for renewal of an NPDES permit to discharge treated sewage from Westmoreland Homesteads Sewage Treatment Plant in Mt. Pleasant, **Westmoreland County**.

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

Outfall 001: existing discharge, design flow of .0204 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	15,000/100 ml as a geometric mean			
Total Residual Chlorine				
1st - 36th month	monitor and report			
37th - expiration	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA 0217654.** Sewage, **Seward-St. Clair Township Sanitary Authority**, P. O. Box 494, Seward, PA 15954.

This application is for issuance of an NPDES permit to discharge treated sewage from the Big Springs Sewage Treatment Plant in St. Clair Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Conemaugh 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 Saltsburg Municipal Waterworks.

Outfall 001: new discharge, design flow of 0.161 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	100,000/100 ml as a geometric mean			
Total Residual Chlorine	0.5			1.6
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 0101931.** Sewage. **Jenks Township and Jenks Township Municipal Authority**, P. O. Box 436, 2 Pine Street, Marienville, PA 16239.

This application is for renewal of an NPDES permit to discharge treated sewage to the UNT to Salmon Creek (Outfall 001), and West Branch Millstone Creek (Outfall 002) in Jenks Township, **Forest County**. These are existing discharges.

The receiving water is classified for the following uses: high quality-cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation was made at the point of discharge since the receiving stream is designated as a High Quality Stream.

The proposed effluent limits for Outfall No. 001 based on a design flow of 0.007 mgd, are:

Parameter	Average Monthly (mg/l)	Weekly Average (mg/l)	Instantaneous Maximum (mg/l)
CBOD <sub>5</sub>	25	40	50
TSS	30	45	60
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		
Total Residual Chlorine	0.5		1.2
Dissolved Oxygen	minimum of 3.0 mg/l at all times		
pH	6.0—9.0 at all times		

The proposed effluent limits for Outfall No. 002 based on a design flow of 0.180 mgd, are:

Parameter	Average Monthly (mg/l)	Weekly Average (mg/l)	Instantaneous Maximum (mg/l)
CBOD <sub>5</sub>			
(5-1 to 10-31)	10	15	20
(11-1 to 4-30)	20	30	40
TSS	30	45	60
Ammonia-Nitrogen			
(5-1 to 10-31)	3		6
(11-1 to 4-30)	9		18
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	6,000/100 ml as a geometric average		
Total Residual Chlorine			
(Interim Limit)	monitor and report		
(Final Limit)	0.3		1.0
Dissolved Oxygen	minimum of 6 mg/l at all times		
pH	6.0—9.0 at all times		

The EPA waiver is in effect.

**PA 0101621.** Industrial waste, **Bradford City Water Authority**, 28 Kennedy Street, Bradford, PA 16701.

This application is for renewal of an NPDES permit to discharge treated sewage and industrial waste to West Branch Tunungwant Creek in Bradford Township, **McKean County**. This is an existing discharge.

The receiving water is classified for the following uses: high quality-cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the NY/PA state line, approximately 10.5 miles below point of discharge.

The proposed discharge limits, based on a design flow of 0.15 mgd, are:

*Outfall No. 001 (Filter Backwash Emergency Overflow)*

Parameter	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)	XX		
Total Suspended Solids	30		60
Total Iron	2		4
Total Aluminum	4		8
Manganese	1		2
Total Residual Chlorine	.5		1.2
pH	6.0—9.0 at all times		

XX—Monitor and Report on monthly Discharge Monitoring Report.

The proposed discharge limits, based on a design flow of 0.0002 mgd, are:

*Outfall No. 002 (Sewer Discharge)*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow (mgd)	XX		
Total Suspended Solids	30		60
CBOD <sub>5</sub>	25		50
Fecal Coliform (5-1 to 9-30)	200/100 ml		
(10-1 to 4-30)	100,000/100 ml		
Total Residual Chlorine	.5		1.6
pH	6.0—9.0 at all times		

XX—Monitor and Report on monthly Discharge Monitoring Report.

The EPA waiver is in effect.

**PA 0104388.** Sewage, **Susan S. Coleman**, 9305 Lake Carroll Drive, Zebulon, NC 27597.

This application is for renewal of an NPDES permit to discharge sewage to Hemlock Creek in Glade Township, **Warren County**. This is an existing 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, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Emlenton Water Company on the Allegheny River located at RMI 90, approximately 105 miles below point of discharge.

The proposed discharge limits, based on a design flow of 0.000400 mgd, are:

*Outfall No. 001*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25		50
TSS	30		60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	2,000/100 ml as a geometric average		
Total Residual Chlorine	monitor and report		
pH	6.0—9.0 at all times		

XX—Monitor and Report on Annual Maintenance Report.

The EPA waiver is in effect.

**PA 0222330.** Sewage, **Ray Kotewicz**, 2854 Bellavista Drive, Allison Park, PA 15101.

This application is for renewal of an NPDES permit to discharge sewage to an Unnamed Tributary to Victory Run in Victory Township, **Venango County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Emlenton Water Company on the Allegheny River located at RMI 90, approximately 28.87 miles below point of discharge.

The proposed discharge limits, based on a design flow of 0.000400 mgd, are:

*Outfall No. 001*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	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	XX		XX
pH	6.0—9.0 at all times		

XX—Monitor and Report on Annual Maintenance Report.

The EPA waiver is in effect.

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

**Applications under the Pennsylvania Clean  
Streams Law**

**(Part II Permits)**

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

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

**4697408.** Sewerage. **Worcester Township**, 1721 Valley Forge Road, P. O. Box 767, Worcester, PA 19490-0767. Construction of a sanitary force main and pump station to serve The Cutler Group, Inc.—Worcester Twins subdivision located in Worcester Township, **Montgomery County**.

**0997404.** Sewerage. **Warrington Township Municipal Authority**, 3080 Bristol Road, Warrington, PA 18976. Relocation of 18" sanitary sewer interceptor to serve Penns Woods located in Warrington Township, **Bucks County**.

**2397406.** Sewerage. **Upper Darby Township**, 100 Garrett Road, Upper Darby, PA 19082. Moving and replacement of a section of an existing 33 inch sanitary sewer interceptor to serve Cobbs Creek located in Milbourne Borough, **Delaware County**.

**0997405.** Sewerage. **The Municipal Sewer Authority of the Township of Lower Makefield**, 1100 Edgewood Road, Yardley, PA 19067-1696. Construction of sanitary sewers, services, pumping station and appurtenances to serve Mill Road Estates subdivision located in Lower Makefield Township, **Bucks County**.

**4697409.** Sewerage. **Lower Moreland Township Authority**, 640 Red Lion Road, Huntingdon Valley, PA 19006-6234. Construction of 7,300 L. F. of gravity sanitary sewer collection system to serve Pine Run Park located in Lower Moreland Township, **Montgomery County**.

**4697410.** Sewerage. **Township of Worcester**, 1721 Valley Forge Road, P. O. Box 767, Worcester, PA 19490-0767. Expansion of the wastewater treatment facility to serve Berwick Place located in Worcester Township, **Montgomery County**.

*Southcentral Regional Office: Water Management Program Manager, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4590.*

**0697407.** Sewerage. Submitted by **Schuylkill Valley Bible Church**, Bellman's Church Road, Dauberville, PA 19517 in Centre Township, **Berks County** to construct a package sewage treatment plant was received in the Southcentral Region on June 6, 1997.

**0197402.** Sewerage. Submitted by **Gettysburg Municipal Authority**, 601 East Middle Street, P. O. Box 3307, Gettysburg, PA 17325-3307 in Gettysburg Borough, **Adams County** to construct a new West Diversion Pumping Station to eliminate collection system overflow 007 was received in the Southcentral Region on June 9, 1997.

**2297403.** Sewerage. Submitted by **Frank Perano**, P. O. Box 278, King of Prussia, PA 19406 in East Hanover Township, **Dauphin County** to construct a sewage treat-

ment plant to serve Shadyback Mobile Home Park was received in the Southcentral Region on May 12, 1997.

**2871402 (97-1 amendment).** Sewerage. Submitted by **Mont Alto Sewer Authority**, P. O. Box 430, Mont Alto, PA 17237 in Mont Alto Borough, **Franklin County** to construct a new tank, access road, pipelines and reed beds for sludge handling was received in the Southcentral Region on May 27, 1997.

**3697403.** Sewerage. Submitted by **Lancaster County Career and Technology Center**, 170 Hans Herr Drive, P. O. Box 527, Willow Street, PA 17584-0527 in West Earl Township, **Lancaster County** to replace their corroding package wastewater treatment facility with a new precast concrete package wastewater treatment facility was received in the Southcentral Region on May 27, 1997.

**0697406.** Sewerage. Submitted by **Douglass Township Supervisors**, 1068 Douglass Drive, R. D. 2, Box 503, Boyertown, PA 19512-9440 in Douglass Township, **Berks County** to construct a pump station and sewer extension was received in the Southcentral Region on June 4, 1997.

**0697407.** Sewerage. Submitted by **Schuylkill Valley Bible Church**, Bellman's Church Road, Dauberville, PA 19517 in Centre Township, **Berks County** to construct a package sewage treatment plant was received in the Southcentral Region on June 6, 1997.

**3697404.** Sewerage. Submitted by **Leacock Township Sewer Authority**, P. O. Box 558, Intercourse, PA 17534-0558 in Leacock Township, **Lancaster County** to construct the West View Drive pumping station was received in the Southcentral Region on June 12, 1997.

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

**462S87, Amendment No. 3.** Sewerage. **State Correctional Institution**, P. O. Box 588, Camp Hill, PA 17001-0598. Application for the expansion and operation of the sewage treatment plant located in the Borough of Waynesburg, **Greene County** to serve the State Correctional Institution.

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

**WQM Permit No. 3397403.** Sewerage. **Snyder Township**, P. O. Box 39, Brockway, PA 15824. This project is for the Arch Street sewer extension serving existing residents in Snyder Township, **Jefferson County**.

**WQM Permit No. 2597413.** Sewerage. **Lovett's Manufactured Home Park**, 411 Waterford Street, Apartment 117, Edinboro, PA 16412. This project is for the proposed installation and construction of an on site treatment facility to serve an existing manufactured home park in Washington Township, **Erie County**.

**WQM Permit No. 2597414.** Sewerage. **Fairview Township Sewer Authority**, 7485 McCray Road, Fairview, Pa 16415. This project is for the installation of a sanitary sewerage system which includes a pump station that will be connected to a proposed force main into the Fairview Township sewerage system in Fairview Township, **Erie County**.

**WQM Permit No. 4397407.** Sewerage. **Melvin Webb, SRSTP**, 815 Linn-Tyro Rd., Hadley, PA 16130. This project is for the construction of a Single Residence Sewage Treatment Plant in Shenango Township, **Mercer County**.

**WQM Permit No. 6297404.** Sewage, **Thomas L. Holden**, SRSTP, P. O. Box 274, Sheffield, PA 16347. This project is for the construction of a Single Residence Sewage Treatment Plant in Sheffield Township, **Warren County**.

### INDIVIDUAL PERMITS

#### (PAS)

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of the 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 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the Regional Office or County Conservation District Office indicated as the responsible office, within 30 days from the date of this public notice. A copy of the written comments should be sent to the County Conservation District Office. 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 Regional Office of the exact basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 30-day comment period, the Water 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 appealable 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 County Conservation District Office or the Department Regional 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 (800) 654-5984.

*Southwest Regional Office: Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222, (412) 442-4028.*

*Northeast Regional Office, Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18701, (717) 826-2553*

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

*Southeast Regional Office: Regional Water Management Program Manager, 555 North Lane, Conshohocken, PA 19428, (610) 832-6131*

*Allegheny County Conservation District, District Manager, 875 Greentree Road, Pittsburgh, PA 15220, (412) 921-1999.*

**NPDES Permit PAS10A102.** Stormwater. **Zamagias Properties**, The Times Building, 8th Flr, 336 4th Avenue, Pittsburgh, PA 15222 has applied to discharge stormwater from a construction activity located in Richland Township, **Allegheny County**, to Pine Creek.

*Chester County Conservation District, District Manager, 601 Westtown Road, Ste 395, West Chester, PA 19382, (610) 696-5126.*

**NPDES Permit PAS10G271.** Stormwater. **Ardmore Associates**, 1235 Westlakes Drive, Berwyn, PA 19312 has applied to discharge stormwater from a construction activity located in East Whiteland Township, **Chester County**, to UNT to Valley Creek.

**NPDES Permit PAS10G272.** Stormwater. **G Michael Main**, 1175 Montgomery Avenue, Rosemont, PA 19010 has applied to discharge stormwater from a construction activity located in Charlestown Township, **Chester County**, to UNT to Pickering Creek.

**NPDES PAS10G273.** Stormwater. **Teachers Pa. Realty**, 730 Third Avenue, New York, NY 10017 has applied to discharge stormwater from a construction activity located in Tredyffrin Township, **Chester County**, to Valley Creek.

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

**NPDES Permit PAS10S053.** Stormwater. **VFG-LABar, LLC**, 500 Village Drive, Stroudsburg, PA 18360 has applied to discharge stormwater from a construction activity located in Stroudsburg Borough, **Monroe County**, to McMichaels Creek.

**NPDES Permit PAS10S054.** Stormwater. **Monroe County Recreation and Park Comm.**, 4221 Manor Drive, Stroudsburg, PA 18360 has applied to discharge stormwater from a construction activity located in Hamilton Township, **Monroe County**, to McMichaels Creek.

*Northampton County Conservation District, District Manager, Greystone Building, R. R. 4, Nazareth, PA 18064, (610) 746-1971.*

**NPDES Permit PAS10U074.** Stormwater. **Triple Net Investments III L. P.**, 171 Route 73, Asbury, NJ 08802 has applied to discharge stormwater from a construction activity located in Bethlehem Township, **Northampton County**, to Monocacy Creek.

*Warren County Conservation District, District Manager, 609 Rouse Avenue, Ste 2032, Youngsville, PA 16371, (814) 563-3117.*

**NPDES Permit PAS107202.** Stormwater. **North Coast Energy, Inc.**, 3896 Oakwood Avenue, Youngstown,

OH 44515 has applied to discharge stormwater from a construction activity located in Conewango Township, Warren County, to Morse Run.

**LAND RECYCLING AND ENVIRONMENTAL  
REMEDICATION**

**Under Act 2, 1995**

**Preamble 1**

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

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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 to responsible persons not participating in the remediation.

For further information concerning the content of a Notice of Intent to Remediate, contact the Department of Environmental Protection Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact Steve Curcio at (814) 332-6816. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

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

*Northwest Regional Office: John Fruehstorfer, Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.*

**Pennsylvania Electric Company (d/b/a GPU Energy**, for the Front Street Electrical Generating Station (Parcels H, I, G-3), City of Erie, **Erie County**, One Front Street and Bayfront Highway, between State Street and Holland Street, Erie, Pennsylvania, has submitted a Notice of Intent to Remediate soil. The site has been found to be contaminated with heavy metals and PHCs. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate will be published on or about June 9, 1997, in the *Erie Daily Times Newspaper*.

**LAND RECYCLING AND ENVIRONMENTAL  
REMEDICATION**

**Under Act 2, 1995**

**Preamble 2**

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

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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 below, 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 below. During this comment period a municipality may request that the person identified below, 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 of Environmental Protection 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 (800) 654-5984.

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

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

**Former Wilkes-Barre Public Works Garage**, City of Wilkes-Barre, **Luzerne County**. Lawrence Newman with the Redevelopment Authority of the City of Wilkes-Barre, 40 East Market Street, PA, 18711 has submitted a Notice

of Intent to Remediate concerning the remediation of site soils suspected of being contaminated with BTEX (benzene, toluene, ethylbenzene and xylene) compounds. The applicant proposes to meet the Special Industrial Area standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Citizen's Voice* on June 12, 1997.

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

**Herman Banks Scrap Yard**, West Chillaspauque Township, **Northumberland County**. The Estate of Herman Banks, c/o First National Trust Bank, 400 Market Street, Sunbury, PA 17801 has submitted a Notice of Intent to Remediate soil contaminated with PBCs, heavy metals, PHCs and PAHs. The applicant proposes to remediate the site to meet the Site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Milton Daily Standard* on June 2, 1997.

## AIR POLLUTION OPERATING PERMITS

### Construct, modify or activate air contaminant sources

#### 25 Pa. Code § 129.1

#### Notice of Intent of Issue

#### Title V Operating Permit No. 46-00003

Under 25 Pa. Code §§ 127.424 and 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to Stroehmann Bakeries, Inc., for the Norristown facility. Stroehmann Bakeries, Inc. is located at 1810 E. Ridge Pike, in Plymouth Township, Montgomery County.

The Stroehmann facility provides breads, rolls and buns. As a result of the potential levels of VOC emitted, the Norristown facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code, Chapter 127, Subchapter G.

The proposed Title V Operating Permit does not adopt any new regulations and does not reflect any change in air emissions from the facility. It incorporates all of the applicable air quality requirements for each source at the existing plant into a single permit as required under Title V of the Clean Air Act Amendments of 1990. Upon final approval, the permit will be issued for a period of 5 years.

An appointment to review the permit application and the draft Title V Operating Permit at the Department's Southeast Regional Office may be scheduled by contacting the Record's Management staff, at (610) 832-6000 between 8 a.m. and 4 p.m. Monday through Friday, except holidays.

A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following:

- Name, address and phone number of the person submitting the comments.
- Identification of the proposed permit (specify permit TVOP 46-00003)
- Concise statements regarding the relevancy of objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified on the decision to hold a hearing by publication in this newspaper, or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to Francine Carlini, Regional Air Quality Program Manager, Department of Environmental Protection, Southeast Region—Field Operations, 555 North Lane, Suite 6010, Lee Park, Conshohocken, PA 19428, (610) 832-6242.

For additional information, contact Edward Jurdones Brown, Facilities Section Chief, Air Quality Program, at the same address and phone number.

#### Title V Operating Permit No. 09-00041

Under 25 Pa. Code §§ 127.424 and 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to Atlantic Greenhouse Inc., for the Pipersville facility. Atlantic Greenhouses Inc. is located at 6071 Durham Road, in Plumstead Township, Bucks County.

The Pipersville facility is primarily used for wholesale flowers and florist supplies. As a result of the potential levels of NOx emitted, Atlantic Greenhouses Inc. is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code, Chapter 127, Subchapter G.

The proposed Title V Operating Permit does not adopt any new regulations and does not reflect any change in air emissions from the facility. It incorporates all of the applicable air quality requirements for each source at the existing plant into a single permit as required under Title V of the Clean Air Act Amendments of 1990. Upon final approval, the permit will be issued for a period of 5 years.

An appointment to review the permit application and the draft Title V Operating Permit at the Department's Southeast Regional Office may be scheduled by contacting the Record's Management staff, at (610) 832-6000 between 8 a.m. and 4 p.m. Monday through Friday, except holidays.

A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following:

- Name, address and phone number of the person submitting the comments.
- Identification of the proposed permit (specify permit TVOP 09-00041).
- Concise statements regarding the relevancy of objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified on the decision to hold a hearing by publication in this newspaper, or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to Francine Carlini, Regional Air Quality Program Manager, Department of Environmental Protection, Southeast Region—Field Operations, 555 North Lane, Suite 6010, Lee Park, Conshohocken, PA 19428, (610) 832-6242.

For additional information, contact Edward Jurdones Brown, Facilities Section Chief, Air Quality Program, at the same address and phone number.

**Title V Operating Permit No. 53-00002**

Under 25 Pa. Code § 127.521, notice is given that the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the Transcontinental Gas Pipe Line Corporation for the Wharton compressor station. The Wharton compressor station is located in Wharton Township, Potter County. The Transcontinental Gas Pipe Line Corporation representative to contact regarding this application is Mary Beth Whitfield, Environmental Scientist, Transcontinental Gas Pipeline Corporation, P. O. Box 1396, Houston, TX 77251.

The Wharton compressor station is primarily used for the distribution of natural gas. As a result of the nitrogen oxides, volatile organic compounds, and carbon monoxide emitted, the Wharton station is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code, Chapter 127, Subchapter G.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the Department of Environmental Protection, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of this permit may submit the information to the Department at the address shown in the preceding paragraph. A 30-day comment period from the date of this publication will exist for the submission of comments. Each written comment must contain the following:

Name, address and telephone number of the person submitting the comments.

Identification of the proposed permit (specify Permit No. 53-00002).

Concise statements regarding the relevancy of the information or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Chief, Title V Facilities Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-0512.

**Title V Operating Permit #49-00003**

Under 25 Pa. Code § 127.521, notice is given that the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to ACF Industries Inc.—Amcar Division. The ACF Amcar Division is located in Milton Borough, Northumberland County. The ACF Industries Inc. representative to contact regarding this application is Robert Greenley, Engineer, ACF Industries, P. O. Box 109, Milton, PA 17857.

The ACF Amcar Division manufactures rail cars and small items such as: mixing bowls for the food industry, small valves and a variety of other parts for the railroad industry. As a result of the volatile organic compounds emitted, the ACF Amcar Division facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code, Chapter 127, Subchapter G.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the Department of Environmental Protection, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of this permit may submit the information to the Department at the address shown in the preceding paragraph. A 30-day comment period from the date of this publication will exist for the submission of comments. Each written comment must contain the following:

Name, address and telephone number of the person submitting the comments.

Identification of the proposed permit (specify Permit No. TVOP-49-00003).

Concise statements regarding the relevancy of the information or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Chief, Title V Facilities Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-0512

**Title V Operating Permit No. 61-00147**

Under 25 Pa. Code § 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the Pennsylvania Department of Public Welfare—Polk Center (Polk Center). Polk Center is located in Polk Borough, Venango County. Polk Center's representative to contact concerning these applications is Don Willis, Facility Maintenance Manager, Polk Center, Route 62, P. O. Box 94, Polk, PA 16342, (814) 432-0474.

Polk Center's air emission sources include three coal fired boilers, misc. small combustion units and emergency stand-by generators. The facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments due to the potential to emit of Sulfur Oxides. The facility is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public inspection during normal business hours at the Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of these permits may submit the information to the Department at the address shown above. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following information:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit (specify Permit No. TV 61-00147).
- Concise statements regarding the relevancy of the information in the proposed permit or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to Larry W. Wonders, Regional Air Quality Program Manager, Department of Environmental Protection, Northwest Region, 230 Chestnut Street, Meadville, PA 16335. For additional information concerning the permit or the issuance procedure, contact Eric A. Gustafson, Facilities Section Chief, Air Quality Program, at the same address or phone at (814) 332-6940.

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#### **Title V Operating Permit No. 10-00062**

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Under 25 Pa. Code § 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to Slippery Rock University (SRU). SRU is located in Slippery Rock Borough, Butler County. SRU's representative to contact concerning these applications is Herb Carlson, Slippery Rock University, Facilities and Planning Offices, Maintenance Center, Slippery Rock, PA 16057.

SRU's air emission sources include four coal fired boilers and various internal combustion emergency generators and compressors. The facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments due to the potential to emit of Sulfur Oxides. The facility is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the Department of Environmental Protection, 230 Chestnut Street, Meadville, Pa 16335.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of this permit may submit the information to the Department at the address shown in the preceding paragraph. A 30-day comment period from the date of this publication will exist for the submission of comments. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit (specify Permit No. TV 10-00062).

Concise statements regarding the relevancy of the information or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Larry W. Wonders, Regional Air Quality Program Manager, Department of Environmental Protection, Northwest Region, 230 Chestnut Street, Meadville, PA 16335. For additional information concerning the permit or the issuance procedure, contact Eric A. Gustafson, Facilities Section Chief, Air Quality Program, at the same address or phone at (814) 332-6940.

#### **Title V Operating Permit No. 43-00272**

Under 25 Pa. Code § 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to Tennessee Gas Pipeline Corp.—Station #219 (Tennessee). Tennessee is located in Jefferson Township, Mercer County. Tennessee's representative to contact concerning these applications is Nasir Ghani, Environmental Scientist, P. O. Box 2511, Houston, TX 77252-2511, (713) 757-5421.

Tennessee's air emission sources include various natural gas compressor engines, miscellaneous combustion units, and various gasoline and fuel storage tanks. The facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments due to the potential to emit of Nitrogen Oxides. The facility is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the Department of Environmental Protection, 230 Chestnut Street, Meadville, Pa 16335.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of this permit may submit the information to the Department at the address shown in the preceding paragraph. A 30-day comment period from the date of this publication will exist for the submission of comments. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit (specify Permit No. TV 43-00272).

Concise statements regarding the relevancy of the information or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Larry W. Wonders, Regional Air Quality Program Manager, Department of Environmental Protection, Northwest Region, 230 Chestnut Street, Meadville, PA 16335. For additional information



concerning the permit or the issuance procedure, contact Eric A. Gustafson, Facilities Section Chief, Air Quality Program, at the same address or phone at (814) 332-6940.

#### **Title V Operating Permit No. 27-00015**

Under 25 Pa. Code § 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to Tennessee Gas Pipeline Corp. (Tennessee). Tennessee is located in Howe Township, Forest County. Tennessee's representative to contact concerning these applications is Nasir Ghani, Environmental Scientist, P. O. Box 2511, Houston, TX 77252-2511, (713) 757-5421.

Tennessee's air emission sources include various natural gas compressor engines, miscellaneous combustion units, a gasoline storage tank and a solvent degreaser. The facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments due to the potential to emit of Nitrogen Oxides. The facility is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public inspection during normal business hours at the Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of these permits may submit the information to the Department at the address shown above. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following information:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit (specify Permit No. TV 27-00015).
- Concise statements regarding the relevancy of the information in the proposed permit or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to Larry W. Wonders, Regional Air Quality Program Manager, Department of Environmental Protection, Northwest Region, 230 Chestnut Street, Meadville, PA 16335. For additional information concerning the permit or the issuance procedure, contact Eric A. Gustafson, Facilities Section Chief, Air Quality Program, at the same address or phone at (814) 332-6940.

#### **Title V Operating Permit No. 37-00023**

Under 25 Pa. Code § 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to Pennsylvania Power Company's New Castle Plant (Penn Power). Penn Power is located in Taylor Township, Lawrence County. Penn Power's representative to contact concerning these applica-

tions is Bob Williams, Environmental Technician, Pennsylvania Power Company, Route 168, West Pittsburgh, PA 16103, (303) 384-5393.

Penn Power's air emission sources include three utility boilers, two electromotive diesel engines, coal storage pile, ash disposal area, and other minor air contamination sources. The facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments due to the potential to emit of nitrogen oxides, sulfur oxides, particulate matter less than 10 microns in diameter and carbon monoxide. The facility is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. This Title V Operating Permit will also include applicable requirements concerning the Phase II Acid Rain Program under Title IV of the Clean Air Act.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application is available for public inspection during normal business hours at the Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of these permits may submit the information to the Department at the address shown above. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following information:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit (specify Permit No. TV 37-00023).
- Concise statements regarding the relevancy of the information in the proposed permit or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Larry W. Wonders, Regional Air Quality Program Manager, Department of Environmental Protection, Northwest Region, 230 Chestnut Street, Meadville, PA 16335. For additional information concerning the permit or the issuance procedure, contact Eric A. Gustafson, Facilities Section Chief, Air Quality Program, at the same address or phone at (814) 332-6940.

#### **Applications received for Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001-4015).**

*Regional Office: Northcentral Regional Office, Bureau of Air Quality, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.*

**8-317-006.** The Department intends to issue an operating permit to **Leprino Foods Company** (117 Bradford Street, South Waverly, PA 18840) for the operation of a whey drying system and associated air cleaning devices (two venturi scrubbers and a fabric collector) in South Waverly Borough, **Bradford County**.

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**Philadelphia Air Management Services Notice of Intent to Modify an approved construction permit of the cogeneration process**

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Applicant: Grays Ferry Cogeneration Partnership (Owner) and Philadelphia United Power Corporation (Operator)

Location: Schuylkill Station, 2600 Christian Street, Philadelphia, PA

Source Description:

A. Existing Equipment: Boiler #23, #24 and #26 795 MMBTU, 795 MMBTU and 761 MMBTU, respectively. Owned by Trigen-Philadelphia Energy Corporation, and under the operational control of the Philadelphia United Power Corporation.

B. New Equipment: A 1515 MMBTU 501D5A Combustion Turbine, 366 MMBTU Heat Recovery Steam Generator (HRSG), Steam Turbine, Selective Catalytic Reduction System, 1119 MMBTU Auxiliary Boiler #25, and 10,000 gallons tank storage 28% ammonia. Owned by Grays Ferry Cogeneration Partnership (Grays Ferry) and under the operational control of Philadelphia United Power Corporation.

Date of Original Permit: November 4, 1992

Date of Revised Permit: October 19, 1995

Grays Ferry has requested Air Management Services (AMS) to amend its permit based upon design changes on March 7 and April 22, 1997, and in the permit application number 97019.

This amended permit is for modifying the project equipment and emissions limits to install a selective catalytic reduction system for NO<sub>x</sub> control.

Conclusion: AMS intends to approve the permit modification to Grays Ferry for the cogeneration project. The conditions shall supersede the conditions of the permit issued on November 4, 1992, and revised on October 19, 1995.

Copies of all documents and information concerning this permit modification are available for review in the offices of Air Management Services, 321 University Avenue, Philadelphia, PA 19104. The contact person is Thomas Huynh at (215) 685-7572.

**PLAN APPROVALS**

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

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*Regional Office: Northeast Regional Office, Bureau of Air Quality, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

An application for Plan Approval has been received by this office for the construction, modification or reactivation of the air contamination sources and associated air cleaning devices described below for the specified companies.

Permit: **35-318-076A**

Source: Crank Shaft Plating w/Scrubber

Received: June 1, 1997

Company: **Precision National Corporation**

Location: Abington Township

County: **Lackawanna**

Permit: **35-329-001B**

Source: 7 IC Engines for Landfill Gas

Received: June 13, 1997

Company: **Keystone Recovery Incorporated**

Location: Throop Borough

County: **Lackawanna**

Permit: **39-310-009B**

Source: Stone Crushing Plant/Watersprays

Received: June 13, 1997

Company: **Coplay Aggregates Incorporated**

Location: Whitehall Township

County: **Lehigh**

Permit: **45-302-058A**

Source: Coal Fired Boiler/Cyclone

Received: June 3, 1997

Company: **Pleasant Valley School District**

Location: Chestnuthill Township

County: **Monroe**

Permit: **48-303-056**

Source: Batch Asphalt Plant w/Baghouse

Received: June 15, 1997

Company: **Eastern Industries Incorporated**

Location: Upper Mt. Bethel Township

County: **Northampton**

Permit: **48-309-082B**

Source: Clinker Convey System/8 Baghouses

Received: June 9, 1997

Company: **Keystone Portland Cement Company**

Location: East Allen Township

County: **Northampton**

Permit: **48-309-099**

Source: Cement Silos 89 to 93 w/Baghouse

Received: June 2, 1997

Company: **Federal White Cement Company**

Location: Northampton Borough

County: **Northampton**

Permit: **48-309-100**

Source: Cement Packing 2 and 3 w/Baghouses

Received: June 12, 1997

Company: **Essroc Cement Corporation**

Location: Nazareth Borough

County: **Northampton**

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**Applications received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify or reactivate air contaminant sources.**

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*Regional Office: Northcentral Regional Office, Bureau of Air Quality, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.*

**8-313-050A.** Construction of a molybdenum alloy calciner, an associated tote dumping station and associated air cleaning devices (two fabric collectors, a scrubber, and a HEPA filter) by **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) in North Towanda Township, **Bradford County**

**8-399-044B.** Installation of air cleaning devices (two fabric collectors and four absolute filters) on a molybdenum/tungsten rolling mill operation by **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) in North Towanda Township, **Bradford County**.

**8-313-038G.** Construction of a tungsten scrap impactor system and associated air cleaning devices (a cartridge collector and an absolute filter) by **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) in Towanda Borough, **Bradford County**.

### Notice of Plan Approval Application Minor Source

The following stationary sources have filed a request for a plan approval with the Department of Environmental Protection (Department), Bureau of Air Quality. Persons wishing to file protests or comments on the proposed plan approval have 30 days to submit the protest or comments to the Regional Office at the address listed below. Interested persons may also request that a hearing be held concerning the plan approval application by filing a request with the Regional Office stating the reason for the request.

The Department will evaluate and consider all protests and continents received. The Department will, where appropriate, modify the proposed plan approval based on the protests and comments received.

The final plan approval will contain terms and conditions to ensure that the source is constructed and operated in compliance with the Department's regulations contained in 25 Pa. Code Chapters 121 through 143 and the requirements of the Federal Clean Air Act. A notice of the Department's final decision on the proposed plan approval will be published in the *Pennsylvania Bulletin*. Air contaminants emitted from these sources are less than the amounts that would trigger major new source review requirements. For additional information on the following applications contact: Devendra Verma, Engineering Services Chief, (814) 332-6940.

*Northwest Regional Office, Bureau of Air Quality Control, 230 Chestnut Street, Meadville, PA 16335.*

**PA-33-143A:** The Department received a plan approval application for the operation of a coal transfer station (240,000 tpy) by **John R. Yenzi, Jr.** (Cloe Tipple, P. O. Box 287, Anita, PA 15711) in Bell Township, **Jefferson County**.

**PA-43-302A:** The Department received a plan approval application for the construction of a hot mix asphalt facility (260 TPH) by **Dunbar Asphalt Products, Inc.** (P. O. Box 477, Wheatland, PA 16161), in Wheatland, **Mercer County**. This facility is subject to 40 CFR Part 60, Subpart I.

## MINING

### CONDUCT COAL AND NONCOAL ACTIVITIES

#### MINING ACTIVITY APPLICATIONS

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

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

particular proposed mining activity, the submittal of the permit application will serve as the request for such 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—23 and § 86.31—34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed below 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.

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

#### Coal Applications Received

**65850102R. V. P. Smith Co., Inc.** (P. O. Box 242, Ligonier, PA 15658). Renewal application received for continued operation and reclamation of a bituminous surface mine located in Derry Township, **Westmoreland County**. Receiving streams unnamed tributary to McGee Run. Renewal application received June 5, 1997.

**04920101R. Amerikohl Mining, Inc.** (202 Sunset Drive, Butler, PA 16001). Renewal application received for continued reclamation of a bituminous surface mine located in Franklin Township, **Beaver County**. Receiving streams two unnamed tributaries to Camp Run and Camp Run. Renewal application received June 5, 1997.

**03970901. SBP Coal Company** (P. O. Box 11, Kittanning, PA 16201). Application received for an incidental coal extraction permit for a site located in Pine Township, **Armstrong County**, affecting 15.6 acres. Receiving streams unnamed tributary to Scrubgrass Creek to Scrubgrass Creek to Mahoning Creek. Application received June 4, 1997.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**101400-33970102-E-1. Waroquier Coal Company** (P. O. Box 128, Clearfield, PA 16830). Application for a stream encroachment. This variance allows for construction of mining and support activities to within 25 feet of unnamed tributary #3 to Kyle Run. Receiving streams unnamed tributaries to Kyle Run. Application received April 22, 1997.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*  
*Noncoal Applications Received:*

**43970302. Donald Lark & Sons, Inc.** (339 Garfield Street, West Middlesex, PA 16159). Commencement, operation and restoration of a sand and gravel operation in Shenango Township, **Mercer County** affecting 9.0 acres. Receiving streams an unnamed tributary to the Shenango River. Application to include a stream encroachment to construct and maintain an existing channel crossing across an unnamed tributary to the Shenango River. Application received June 3, 1997.

## APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

### ENCROACHMENTS

The following permit applications and requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection.

In addition to permit applications, the Bureau of Dams, Waterways and Wetlands (BDWW) and the Regional Office Soils and Waterways Sections have assumed primary responsibility for processing requests for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)), for projects requiring both a Dam Safety and Encroachments Permit, and a United States Army Corps of Engineers (ACOE) permit. Section 401(a) of the Federal Water Pollution Control Act requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1301—1303, 1306 and 1307, as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the BDWW permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Safety or Encroachment Permit, or the approval of Environmental Assessments must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the Bureau or Field Office indicated as the responsible office.

**Applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.**

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

**E46-775.** Encroachment. **PA DOT**, 200 Radnor-Chester Rd., St. Davids, PA 19087. To remove two upstream wingwalls, to construct and maintain approximately 15 linear feet of prestressed concrete box beam extension on the upstream side of an existing tee-beam bridge with a span of 30 feet and average underclearance of 9.5 feet,

and to construct and maintain new abutment extensions and wingwalls associated with this work across the Pennypack Creek (TSF, MF). This site is located along Easton intersection (Ambler, PA USGS Quadrangle N: 9.8 inches; W: 0.7 inch) in Horsham Township, **Montgomery County**.

**E23-361.** Encroachment. **Desenberg Design LTD**, 63 Llangollen Lane, Newtown Square, PA 19073. To impact approximately 660 linear feet of an unnamed tributary to Little Crum Creek (WWF) associated with the proposed New Forest residential subdivision. The project includes the following activities:

1. To modify an existing stream enclosure used to convey this stream beneath Swarthmore Avenue by removing approximately 80 linear feet of the upstream end of the enclosure and attaching 220 linear feet of twin 46-inch by 36-inch CSP enclosure.

2. To relocate aforementioned stream channel upstream of the modified enclosure and excavate approximately 140 linear feet of the 100-year floodway to accommodate construction of the proposed stormwater management facility. A request for an Environmental Assessment for on-stream nonjurisdictional dam is included as a part of this application.

3. To install and maintain 260 linear feet of 66-inch CSP stream enclosure upstream of aforementioned stormwater management facility to convey flow beneath the proposed access road impacting 0.04 acre of adjacent wetland (PFO).

The project is located at 649 Swarthmore Avenue (Lansdowne, PA Quadrangle N: 4.9 inches; W: 12.0 inches) in Springfield Township, **Delaware County**.

**E23-362.** Encroachment. **Gloria E. White**, 201 Bryn Mawr Ave., Newtown Square, PA 19073-4225. To remove an existing 36-inch reinforced concrete driveway culvert, associated masonry endwalls and retaining walls, to relocate approximately 80 linear feet of an unnamed tributary of Foxes Run (CWF-MF) to a location approximately 31 linear feet southeast of the existing culvert, and to construct and maintain approximately 46 linear feet of 64-inch by 43-inch arch pipe culvert and riprap lining protection along this relocated section of stream. This site is located along Bryn Mawr Avenue approximately 3,400 feet northeast of its intersection with West Chester Pike (SR0003) (Media USGS Quadrangle N: 21.0 inches; W: 1.2 inches) in Newtown Township, **Delaware County**.

*Southcentral Regional Office, Water Management Program, Soils and Waterways Section, One Ararat Boulevard, Room 126, Harrisburg, PA 17110, (717) 657-4590.*

**E21-266.** Encroachment. **Agincourt LP**, John Conroy, 20 Erford Road, Lemoyne, PA 17043. To fill in 0.02 acre of wetland in order to construct an office building and associated improvements located at the intersection of 12th Street and Indiana Avenue (Lemoyne, PA Quadrangle N: 11.5 inches; W: 4.9 inches) in Lemoyne Borough, **Cumberland County**.

**E21-267.** Encroachment. **R. Scott Rankin**, 2048 Southpoint Drive, Hummelstown, PA 17036. To construct and maintain a 6-foot × 3-foot squash pipe across an unnamed tributary to Yellow Breeches Creek (Kellars Gap Hollow) to provide access for farm equipment located about 1,000 feet north of the Pentecostal Church in Brushtown Village (Dickinson, PA Quadrangle N: 16.5 inches; W: 10.48 inches) in Penn Township, **Cumberland County**.

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

**Permit No. E45-326.** Encroachment. **Merilyn Chicco**, One Forge Road, East Stroudsburg, PA 18301. To maintain a private road crossing of a tributary to Stoney Run (EV), consisting of a 36-inch smooth-lined corrugated plastic pipe. The project is located on the north side of Snow Hill Road (S. R. 1010), approximately 1 mile west of the intersection of S. R. 1010 and S. R. 1005 (Skytop, PA Quadrangle N: 6.8 inches; W: 10.0 inches), in Price Township, **Monroe County** (Philadelphia District, United States Army Corps of Engineers).

**Permit No. E45-327.** Encroachment. **J. A. Snyder Entities, Inc.**, Route 611, Fountain Court, Bartonsville, PA 18321. To place fill within the floodway of Pocono Creek (HQ-CWF), and to construct and maintain a 15-inch stormwater outfall along Pocono Creek, for the purpose of constructing a commercial development, known as Fountain Springs West. The project is located on the west side of S. R. 0611, approximately 0.8 mile south of the intersection of S. R. 0611 and S. R. 0715 (Mount Pocono, PA Quadrangle N: 6.1 inches; W: 6.4 inches), in Pocono Township, **Monroe County** (Philadelphia District, United States Army Corps of Engineers).

**Permit No. E45-329.** Encroachment. **Outletter Associates**, 285 Crossings Outlet Square, Tannersville, PA 18372. To construct and maintain a bridge, having a span of 135 feet and an underclearance of approximately 9.5 feet across Pocono Creek (HQ-CWF) to access additional parking for the Crossings Outlet Center. This project is located along the west side of S. R. 0611, 400 feet south of Scotrun Avenue (TR-628) (Mount Pocono, PA Quadrangle N: 10.8 inches; W: 10.8 inches), in Pocono Township, **Monroe County** (Philadelphia District, United States Army Corps of Engineers).

**Permit No. E58-217.** Encroachment. **Chester Kilmer**, R. 1, Box 1079, Hop Bottom, PA 18824. To excavate in approximately 1 acre of PEM wetlands for the purpose of constructing 2 ponds on a 118-acre parcel. Review of this permit application will include the review of an Environmental Assessment for the construction of nonjurisdictional dams. The smaller of the proposed ponds has a surface area of approximately 1.8 acres and is located approximately 300 feet south of the intersection of S. R. 3004 and T-382 (Springville, PA Quadrangle N: 15.1 inches; W: 9.8 inches). The larger pond has a surface area of approximately 4.7 acres and is located approximately 2,000 feet southwest of the intersection of S. R. 3004 and T-382 (Springville, PA Quadrangle N: 14.3 inches; W: 10.2 inches), in Springville Township, **Susquehanna County** (Baltimore District, United States Army Corps of Engineers).

**Permit No. E58-218.** Encroachment. **Bridgewater Township Supervisors**, P. O. Box 297, Montrose, PA 18801. To remove the existing structure and to construct and maintain a road crossing of Meshoppen Creek (CWF), consisting of an 8-foot-diameter smooth wall steel culvert. The project is located on T-522, approximately 1,000 feet southwest of the intersection of T-522 and S. R. 2011 (Montrose East, PA Quadrangle N: 6.0 inches; W: 12.7 inches), in Bridgewater Township, **Susquehanna County** (Baltimore District, United States Army Corps of Engineers).

**Permit No. E58-219.** Encroachment. **Bridgewater Township Supervisors**, P. O. Box 297, Montrose, PA 18801. To remove the existing structure and to construct

and maintain a road crossing of Beebe Creek (CWF), consisting of an 8-foot-diameter smooth wall steel culvert. The project is located on T-579, approximately 1.5 miles west of the intersection of T-579 and S. R. 0706 (Montrose West, PA Quadrangle N: 15.6 inches; W: 5.3 inches), in Bridgewater Township, **Susquehanna County** (Baltimore District, United States Army Corps of Engineers).

**Permit No. E58-220.** Encroachment. **Pennsylvania Department of Transportation**, Engineering District 4-0, P. O. Box 111, Scranton, PA 18501. To remove the existing structure and to construct and maintain a single span pre-stressed concrete spread box beam bridge, having a span of 81 feet and an underclearance of 13.5 feet, across Sirocco Creek (CWF). The bridge is located on S. R. 1009, Section 570, Segment 0130, Offset 1954, in the town of Brandt (Susquehanna PA-New York Quadrangle N: 15.5 inches; W: 6.2 inches) in Harmony Township, **Susquehanna County** (Baltimore District, United States Army Corps of Engineers).

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

**E61-209.** Encroachment. **The Conair Group**, Route 8 North, Franklin, PA 16323. To fill a total of 0.3 acre of four separate wetland areas (including the 0.056 acre filled prior to this permit) for the construction of a parking area associated with expansion of an existing industrial facility along the north side of SR 8/62 approximately 0.7 mile east of SR 322 (Franklin, PA Quadrangle N: 5.5 inches; W: 7.1 inches) located in Sugarcreek Borough, **Venango County**. This project includes contribution to the wetland replacement fund for replacement of a total of 0.36 acre of wetland (0.245 acre at 1:1 and 0.056 acre at 2:1).

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## ACTIONS

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### 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 has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

A person aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does

not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions under The Clean Streams Law (P. L. 1987, No. 394) (35 P. S. §§ 691.1—691.1001).**

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

*Permits Issued*

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

**Permit No. 2397404.** Sewerage. **Middletown Township Delaware County Sewer Authority** (P. O. Box 9, Lima, PA 19037-0009). Construction of a new pump station located in Middletown Township, **Delaware County** to serve Ridley Creek Watershed and to use the existing Black Horse Lane Pump Station as a back-up facility.

**Permit No. 4697404.** Sewerage. **Franconia Sewer Authority** (671 Allentown Road, P. O. Box 128, Franconia, PA 18924). Construction and operation of a sewage pumping station located in Franconia Township, **Montgomery County** to serve Kingscote subdivision.

**Permit No. 0991423-T1. Amendment No. 1.** Sewerage. **Mr. and Mrs. George Grudberg** (1918 Swamp Road, Furlong, PA 18925). Amendment of a failing aerobic treatment system and a single free access sand filter with a dual compartment septic tank and two intermittent free access sand filters located in Buckingham Township, **Bucks County** to serve the Grudberg residence.

**Permit No. 0997403.** Sewerage. **The Municipal Sewer Authority of the Township of Lower Makefield** (1100 Edgewood Road, Yardley, PA 19067). Construction and operation of a sewer collection system, pump station and forcemain located in Lower Makefield Township, **Bucks County** to serve Clearview Estates Subdivision.

**NPDES Permit No. PA0054500.** Sewerage. **Keith Aldinger**, 184 Lone Pine Road, Barto, PA 19504 is authorized to discharge from a facility located in Douglas Township, **Montgomery County** into a tributary of the west branch of Perkiomen Creek.

**NPDES Permit No. PA0054623.** Sewerage. **Gary W. Volovnik**, 1624 Three Mile Run Road, Perkasio, PA 18944 is authorized to discharge from a facility located in East Rockhill Township, **Bucks County** into Three Mile Run.

**NPDES Permit No. PA0042943.** Sewerage. **Owen J. Roberts School District**, 901 Ridge Road, Pottstown,

PA 19465 is authorized to discharge from a facility located in East Coventry Township, **Chester County** into an unnamed tributary to Schuylkill River.

**NPDES Permit No. PA0026816.** Sewerage. **East Norriton-Plymouth-Whitpain Joint Sewer Authority**, 200 Ross Street, Norristown, PA 19401 is authorized to discharge from a facility located in Plymouth Township, **Montgomery County** into the Schuylkill River.

**NPDES Permit No. PA0011266.** Industrial waste. **Cabot Corporation**, County Line Road, Boyertown, PA 19512 is authorized to discharge from a facility located in Douglass Township, **Montgomery County** into West Swamp Creek.

**NPDES Permit No. PA0052434.** Sewerage. **Pantos Corporation**, 202 Black Mat Road, Douglassville, PA 19518 is authorized to discharge from a facility located in Chester Heights Borough, **Delaware County** into an unnamed tributary to west branch of Chester Creek.

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

**NPDES Permit No. PA0001465.** Industrial waste, **Ceramic Color and Chemical Manufacturing Company**, P. O. Box 297, New Brighton, PA 15066 is authorized to discharge from a facility located at New Brighton Borough, **Beaver County** to Blockhouse Run.

**NPDES Permit No. PA0002046.** Industrial waste, **Pittsburgh Tool Steel, Inc.**, 1535 Beaver Avenue, Monaca, PA 15061-1499 is authorized to discharge from a facility located at Monaca Borough, **Beaver County** to Ohio River.

**NPDES Permit No. PA0002887.** Industrial waste, **Union Electric Steel Corporation**, P. O. Box 465, Carnegie, PA 15106 is authorized to discharge from a facility located at Carnegie Borough, **Allegheny County** to Chartiers Creek.

**NPDES Permit No. PA0005746.** Industrial waste, **Corning Consumer Products Company**, 100 Eighth Street, Charleroi, PA 15022 is authorized to discharge from a facility located at Charleroi Borough, **Washington County** to Monongahela River.

**NPDES Permit No. PA0034665.** Industrial waste, **Beaver Valley Heat Treat, Inc.**, 1585 Beaver Avenue, Monaca, PA 15061 is authorized to discharge from a facility located at Monaca Borough, **Beaver County** to the Ohio River.

**NPDES Permit No. PA0026212.** Sewage, **Washington-East Washington Joint Authority**, P. O. Box 510, 80 East Chestnut Street, Washington, PA 15301.

This notice reflects changes from the notice published in the August 27, 1994 *Pennsylvania Bulletin*.

<i>Parameter</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
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Monitor and report requirements for the mercury and free cyanide parameters have been removed.

**NPDES Permit No. PA0026212.** Sewage, **Washington-East Washington Joint Authority**, P. O. Box 510, 80 East Chestnut Street, Washington, PA 15301 is authorized to discharge from a facility located at Washington-East Washington Sewage Treatment Plant, South Strabane Township, **Washington County**.

**NPDES Permit No. PA0095982.** Sewage, **Albert Gallatin Area School District**, 10 West Church Street, Masontown, PA 15461 is authorized to discharge from a facility located at Albert Gallatin North Junior High School (formerly known as Tri-Valley Senior High School) Sewage Treatment Plant, German Township, **Fayette County** to unnamed tributary of north branch Browns Run.

**NPDES Permit No. PA0098761.** Sewage, **NWL, Inc.**, Route 40 East, P. O. Box 188, Farmington, PA 15437 is authorized to discharge from a facility located at Nemaocolin Woodlands Sewage Treatment Plant, Wharton Township, **Fayette County** to unnamed tributary of Deadman Run.

**NPDES Permit No. PA0204200.** Sewage, **Joseph T. Jr. and Michelle A. Naviglia**, 1743 Wildlife Lodge Road, Lower Burrell, PA 15068 is authorized to discharge from a facility located at Naviglia Single Residence Sewage Treatment from an unnamed tributary of Little Pucketa Creek.

**NPDES Permit No. PA0205681.** Sewage, **Somerset Township Municipal Authority**, 2209 North Center Avenue, P. O. Box 247, Somerset, PA 15501-0247 is authorized to discharge from a facility located at Somerset Correctional Facility Sewage Treatment Plant, Black Township, **Somerset County** to unnamed tributary of Laurel Run.

**NPDES Permit No. PA0217603.** Sewage, **Cyprus Cumberland Resources Corp.**, 145 Elm Drive, P. O. Box 1020, Waynesburg, PA 15370 is authorized to discharge from a facility located at Cumberland Mine Bathhouse STP, Whiteley Township, **Greene County** to unnamed tributary of Patterson Run, PA 15033.

**Permit No. 0296405.** Sewerage, **Franklin Park Borough**, 2428 Rochester Road, Sewickley, PA 15143-8606. Construction of pump station, sanitary sewers and appurtenances located in the Borough of Franklin Park, **Allegheny County** to serve the Fish Run Sewerage Facilities.

**Permit No. 0497403.** Sewerage, **Mary Ann Turner Parish**, Black's Mobile Home Park, R. D. 2, Big Knob Road, Lot 38, Rochester, PA 15074. Construction of Sewage Treatment Plant located in the Township of New Sewickley, **Beaver County** to serve the Black's Mobile Home Park Sewage Treatment Plant.

**Permit No. 2688413-Amendment No. 2.** Sewerage, **NWL, Inc.**, Route 40 East, P. O. Box 188, Farmington, PA 15437. Construction of sewage treatment plant expansion located in the Township of Wharton, **Fayette County** to serve the Nemaocolin Woodlands Sewage Treatment Plant.

**Permit No. 2696403.** Sewerage, **United States Army Corps of Engineers**, William S. Moorhead Federal Building, 1000 Liberty Ave., Pittsburgh, PA 15222-4186. Construction of sewage treatment plant located in the Township of Luzerne, **Fayette County** to serve the Maxwell Locks and Dam Sewage Treatment Plant.

**Permit No. 465S118-Amendment No. 2.** Sewerage, **Pennsylvania State University**, Office of Physical Plant, University Park, PA 16802. Modifications to sewage treatment plant located in the Township of Upper Burrell, **Westmoreland County** to serve the Penn State New Kensington Campus.

**Permit No. 466S18-T1-Amendment No. 1.** **West Mifflin Sanitary Sewer Authority**, 1302 Lower Bull Run Road, West Mifflin, PA 15122-2902. Construction of pump station located in the Borough of West Mifflin, **Allegheny County** to serve the Kenmore Pump Station and Force Main.

**Permit No. 56924010T1-Amendment No. 2.** **Somerset Township Municipal Authority**, P. O. Box 247, Somerset, PA 15501. Installation of three 12 inch diameter openings with sluice gates in the wall which divides lagoons #1 and #3 which will permit taking lagoon #2 out of commission for dewatering if necessary

located in the Township of Black, **Somerset County** to serve the Somerset Correctional Facility Sewage Treatment Plant.

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

**NPDES Permit No. PA 0034738.** Sewage, **Howard Johnson Motor Lodge, McClelland—Jervis, Inc.**, 835 Perry Highway, Mercer, PA 16137 is authorized to discharge from a facility located in East Lackawannock Township, **Mercer County** to an unnamed tributary to Neshannock Creek.

**NPDES Permit No. PA 0030295.** Sewage, **Commodore Perry School District**, 3002 Perry Highway, Hadley, PA 16130 is authorized to discharge from a facility located in Perry Township, **Mercer County** to receiving waters named Millner Run.

**NPDES Permit No. PA 0222259.** Sewage, **Heckathorne United Methodist Church**, R. D. 1, Box 289AA, Heckathorne Church Road, Seneca, PA 16346 is authorized to discharge from a facility located in Cranberry Township, **Venango County** to an unnamed tributary to Halls Run.

**NPDES Permit No. PA 0222275.** Sewage, **Dear, Inc.—d/b/a Lakeview Estates**, 12430 East Lake Road, North East, PA 16428 is authorized to discharge from a facility located in North East Township, **Erie County** to an unnamed tributary to Lake Erie.

**WQM Permit No. 2097403.** Sewage, **City of Titusville**, 107 North Franklin Street, Titusville, PA 16354. This project is for the construction and operation of two pump stations which will be modifications to existing facilities in the City of Titusville, **Crawford County**.

**WQM Permit No. 1076201—Amendment No. 1.** Industrial waste, **Armco Inc.—Butler Works**, P. O. Box 832, Butler, PA 16003. This project is to modify the use of sludge beds for treatment of industrial wastewaters in Butler Township, **Butler County**.

## INDIVIDUAL PERMITS

### (PAS)

The following approvals for coverage under NPDES Individual Permit for Discharge of Stormwater from Construction Activities have been issued.

These actions of the Department of Environmental Protection (Department) may be appealed to the Environmental Hearing Board (Board), Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483, by any aggrieved person under the Environmental Hearing Board Act (35 P. S. § 7514); 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Appeals must be filed with the Board within 30 days from the date of this issue of the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Department's regulations governing practice and procedure before the Board may be obtained from the Board.

**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-D094	Paunnacussing Founders, Inc. Upper Mountain Road Buckingham, PA 18912-0082	Buckingham Township Bucks County	Mill Creek
PAS10-D096	Realen Homes 725 Talamore Drive Ambler, PA 19002	Lower Makefield Twp. Bucks County	Delaware River

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10S042	Lackawanna County Rail Authority 701 Wyoming Avenue Scranton, PA 18509	Monroe Co. Coolbaugh, Pocono and Tobyhanna Townships Mt. Pocono Borough	Indian Run
PAS105710	Schuylkill Economic Development Corp. P. O. Box 659 915 Progress Avenue Pottsville, PA 17901-0659	Cass, Butler and Foster Township Schuylkill Co.	Tributary to West Branch of the Schuylkill River
PAS105713	Mountain Valley Inc. Burma Road Mahanoy City, PA 17948	Schuylkill Co. Ryan Township	Mill Creek

*Southcentral Regional Office, Water Management Program, Soils and Waterways Section, One Ararat Boulevard, Room 126, Harrisburg, PA 17110, (717) 657-4590.*

**PAS-10-0611.** Individual NPDES. **F.B.G. Development Company**, 5506 Sixth Avenue, Altoona, PA 16602. To implement an erosion and sedimentation control plan for the construction of roadways, storm sewers and other utilities associated with the development of a residential subdivision known as Fox Hollow Subdivision on 250 acres in Allegheny Township, **Blair County**. The project is located along the west side of Logan Boulevard, about 1.8 miles north of USR 22 in Hollidaysburg (Hollidaysburg, PA Quadrangle N: 13.4 inches; W: 3.7 inches). Drainage will be to Brush Run.

**PAS-10-5102.** Individual NPDES. **Donald S. Failor**, 5534 Spring Road, Shermans Dale, PA 17090. To implement an erosion and sedimentation control plan for a residential subdivision called High Meadows on 86 acres in Spring Township, **Perry County**. The project is located along Briner Road (T-415) approximately 1,800 feet west of Limestone Ridge Road (T-356) (Ickesburg, PA Quadrangle N: 3.3 inches; W: 6.8 inches). Drainage will be to Montour Creek.

**INDIVIDUAL PERMITS (PAR)**

**APPROVALS TO USE NPDES GENERAL PERMITS**

The following parties have submitted Notices of Intent (NOI) for Coverage under General NPDES Permits to discharge wastewater into the surface waters of this Commonwealth. The Department of Environmental Protection approves the following coverages under the specified General Permit. This approval is subject to applicable effluent limitations, monitoring and reporting requirements and other conditions set forth in the respective 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 and special conditions, and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

List of NPDES General Permits issued by Department of Environmental Protection:

*NPDES 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



<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>
Luzerne County West Hazleton	PAR232211	The Dial Corporation 1830 North Central Avenue Phoenix, AZ 85007	Black Creek	Northeast Regional Office Regional Water Management Program 2 Public Square Wilkes-Barre, PA 18711- 0790 (717) 826-2554
Armstrong County East Franklin Township	PAR706116	IA Construction Corporation (Tarrtown Batch Plant) P. O. Box 8 Concordville, PA 19331	Allegheny River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Westmoreland County Derry Township	PAR706115	IA Construction Corporation (Torrance Drum Mix Plant) P. O. Box 8 Concordville, PA 19331	Tannery Hollow	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745
Indiana County Center Township	PAR706117	IA Construction Corporation (Homer City Batch Plant) P. O. Box 8 Concordville, PA 19331	Two Lick Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745
Beaver County Shippingport Borough	PAR216142	EastRoc LLC P. O. Box 158 Shippingport, PA 15077	Haden Run (a tributary to Ohio River)	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745

## SEWAGE FACILITIES ACT

### PLAN APPROVAL

#### **Plan disapproval under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).**

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2553.*

#### **Rice Township, Luzerne County.**

The Department has reviewed the Special Study, dated June 1996 (received by the Department on November 19, 1996), with additional information dated December 4, 1996 (received by the Department on December 6, 1996) and May 15, 1997 (received by the Department on May 15, 1997) as prepared by Milnes Engineering, Inc. on behalf of Rice Township.

During the review of any Official Sewage Facilities Plan Update Revision or Special Study, the Department must consider how various issues are addressed in a submission. In the case of the current Special Study under review for the Prospect Road Area of Rice Township, several issues remain to be adequately addressed.

The major issues remaining to be adequately addressed are:

1. A sanitary survey of the study area, conducted on October 12, 1994 by the Department, indicated additional wastewater disposal problems at the Yermal (147 Prospect Road) and Gerko (129 Prospect Road) residences. Both structures discharged greywater/wastewater to the surface of the ground on the northern portions of each

property. The Sewage Enforcement Officer (SEO) for Rice Township confirmed that both discharges do exist. Furthermore, the SEO directed the property owners to eliminate these discharges.

Please verify, through a field inspection of the properties, by the Township's SEO or engineering consultant, that these discharges have been eliminated. Also, re-inspect the onlot wastewater disposal systems on these properties to determine the operational status (operating properly, malfunctioning, and the like) of each of the systems. Specifically, examine the systems for any detrimental effects caused by the re-introduction of greywater sources into the systems. The chart and text of Pages 9 and 10 should be changed to reflect the two identified discharges and how they were/will be corrected. Text should be added to this portion of the Special Study to indicate the conditions of the onlot wastewater disposal systems observed, on the Yermal and Gerko properties, during their re-inspection.

Also, indicate what long-term method of wastewater disposal is being proposed for the following residences:

- Kanaske (street address not known)
- Smolenak (349 Prospect Road)
- Davis (331 Prospect Road)
- Haydt (street address unknown)
- Wolfe (301 Prospect Road)
- Zelinka (295 Prospect Road)

Since an existing wastewater conveyance line appears to currently be accessible (within 150' of the dwelling structure located on the property) to several of the

previously listed structures, indicate why the structures are not currently connected to the existing wastewater conveyance system. It would appear that Rice Township's mandatory connection ordinance of 1977 would require that at least several of the previously listed structures should already be connected to the existing wastewater conveyance line.

2. The financing proposed and resulting monthly user charges do not appear to be affordable when compared to wastewater collection system projects recently constructed in similar communities in the Department's Northeast Region. The Department realizes that all projects are unique. However, recently completed collection system construction projects, funded by State and Federal financing agencies, have typical user rates in the range of \$40 to \$55 per month. Project costs slightly above these figures may also be affordable when other factors such as public health and safety, environmental degradation and local household incomes are more closely examined.

The Department does not believe that the Mountaintop Area Joint Sanitary Authority (MAJSA) will be able to successfully collect monthly user fees in excess of \$148 as indicated in the Special Study. Therefore, as the current chosen wastewater disposal alternative is described, it is not implementable nor sustainable. Rice Township should re-examine the problems and wastewater disposal system limitations in the study area and develop a substantially more affordable alternative for solving the currently identified and potential future wastewater disposal problems of the Prospect Road Area.

These additional analyses should include both technical and financial alternatives not already examined. Since onlot alternatives have already been ruled out for the majority of the study area, due to physical limitations, they should not be examined further. The Department suggests that Rice Township consider expanding the proposed sewer service area in a proactive effort to prevent future onlot system malfunctions and make the project financially viable. Rice Township should further investigate the availability of other or more innovative financing schemes, such as PENNVEST, Community Development Block Grants, and the like, due to the relatively high cost of the proposed project. Rice Township should again contact the MAJSA to discuss its willingness to explore and utilize other possible financing scenarios for the proposed project. The MAJSA indicated, in its August 12, 1996 correspondence to Rice Township, its apparent willingness to explore other financing options for the proposed project.

In addition to the major issues previously listed, with several other questions/comments, must be adequately addressed by Rice Township before the Department may approve any subsequent Special Study. A complete listing of the remaining issues is available by examining the complete Official Sewage Facilities Plan files for Rice Township. These files are available for review by contacting the Department's Northeast Regional Office, Records Management Unit, 2 Public Square, Wilkes-Barre, PA 18711-0790.

#### *Conclusions*

Due to the deficiencies listed above and the lack of a written response from Rice Township to the Department's March 13, 1997 deficiency correspondence, the Department hereby disapproves the Special Study comprised of the submissions listed in the first paragraph of this notice.

Rice Township has a continuing obligation, under section 5 of the Pennsylvania Sewage Facilities Act and the

regulations promulgated thereunder, to revise its Official Sewage Facilities Plan to address existing sewage disposal needs in the vicinity of Prospect Road and provide for adequate sewage treatment facilities. Every revision to an Official Sewage Facilities Plan must take into consideration all aspects of planning, zoning, population estimates, engineering and economics so as to delineate, with all practicable precision, those portions of the area in which community sewage systems may reasonably be expected to serve within and after a 10-year period.

The Department requests that Rice Township submit a Special Study to the Department, within 100 days, which has been modified to address the concerns identified in this correspondence. The "new" submission should comply with the requirements outlined in section 71.31(a)—(f) of the Department's regulations and all applicable provisions of the Pennsylvania Sewage Facilities Act and Chapter 71 of the Department's regulations. The new submission should identify all alternatives considered by Rice Township. The Department will work closely with both the Municipal Officials and Engineering Consultant of Rice Township to ensure the development of a Special Study which addresses the current and future wastewater disposal needs of the Prospect Road area in a cost-effective and environmentally sound manner.

If Rice Township does not initiate measures necessary to revise and resubmit a Special Study which addresses the deficiencies identified in this correspondence, the Department shall initiate enforcement measures against Rice Township to compel it to revise its Official Sewage Facilities Plan in accordance with the Pennsylvania Sewage Facilities Act and the regulations promulgated thereunder.

## SAFE DRINKING WATER

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

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

**Permit No. 0997506.** Public water supply. **Northampton, Bucks County, Municipal Authority**, 111 Township Road, Richboro, PA 18954. The applicant has been issued a permit for the construction of Humphrey's Drive booster pump station along with a 3 million gallon storage tank in Northampton Township, **Bucks County**.

Type of Facility: Booster Pump Station

Consulting Engineer: Klaus Fuelborn, Pennoni Associates, Inc., 875 N. Easton Road, Doylestown, PA 18901.

*Southcentral Regional Office: Sanitarian Regional Manager, One Ararat Boulevard, Harrisburg, PA 17110, (717) 657-4692.*

**Permit No. 0696509.** Public water supply. **AVW Inc.**, Exeter Township, **Berks County**, (Donald L. Peifer, P. O. Box 264, Birdsboro, PA 19508), construction of new treatment facilities for previously unpermitted well no. 9. Well no. 9 is to be used at a rate of 67 gpm. Treatment will include sodium hypochlorite for disinfection and a shallow tray aerator for volatile organic compound removal.

**Permit No. 0196502.** Public water supply. **Hoffman Homes For Youth, Inc.**, Mt. Joy Township, **Adams County**, (Kurt Hagmayer, Residential Services Manager, 819 Orphanage Road, Littlestown, PA 17340), new well to

serve an existing community water supply. Also proposing to modify disinfection facilities.

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

**Permit No. 2595594.** Public water supply. **Woodhaven Mobile Home Park**, 7950 Page Road, Wattsburg, PA 16442. A permit has been issued for its existing facility for filtration and disinfection in Greene Township, **Erie County**.

Type of Facility: Community Water Supply

Consulting Engineer: Arthur Kuholski, P. E., Lake Engineering, 140 Meadville St., Meadville, PA 16335

Permit to Construct Issued: June 9, 1997

**Permit No. 4297503.** Public water supply. **Lewis Run Borough**, 60 Main Street, Lewis Run, PA 16738. A permit has been issued for the construction of a glass-lined raw water storage tank, in-ground pump station and 4,750 L. F. of 12 inch ductile iron transmission line.

Type of Facility: Community Water Supply

Consulting Engineer: Dwight D. Hoare, P. E., Northwest Engineering, Inc., R. D. 1, Box Q, Tidioute, PA 16351

Permit to Construct Issued: June 10, 1997

#### LAND RECYCLING AND ENVIRONMENTAL REMEDATION

##### Under Act 2, 1995

##### Preamble 3

The following final reports were submitted to the Department of Environmental Protection 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's 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 (800) 654-5984.

The Department has received the following final report:

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

**E. DeVecchis & Sons**, Ferguson Township, **Centre County**. Aaron S. Gustkey on behalf of E. DeVecchis & Sons, 1701 W. College Avenue, State College, PA 16801

has submitted a Final Report addressing soil contaminated with BTEX, PHCs and PAHs. The report is intended to document remediation of the site to meet the Statewide health standard.

## SOLID AND HAZARDOUS WASTE

### BENEFICIAL USE DETERMINATIONS

**Beneficial use requests approved under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for municipal and residual waste.**

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

**Beneficial Use Request No. 40030.** (Permit Modification). **Bark Camp Site, E & L Brokerage, Inc.** (R. D. 1, Box 455, Morrisdale, PA 16858). Modification to Beneficial Use Order for the beneficial use of dredged material in grout mixes used in abandoned mine reclamation. Facility is located in Huston Township, **Clearfield County**. Beneficial Use approved in the regional office on June 6, 1997.

## AIR POLLUTION

### OPERATING PERMITS

**Construct, modify or activate air contaminant sources**

**25 Pa. Code § 129.1**

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

*Regional Office: Northeast Regional Office, Bureau of Air Quality, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

The Department has issued the following Air Quality Operating Permits for the operation of the air contamination source and associated air cleaning device described below for the specified company.

Permit: **40-312-009C**

Source: Truck Loading Rack

Company: **Eldorado Properties Corporation**

Location: Pittston Township

County: **Luzerne**

**Operating Permits transferred under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate and operate air contamination sources of air cleaning devices.**

*Regional Office: Northcentral Regional Office, Bureau of Air Quality, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.*

**8-302-011.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a natural gas/#6 oil-fired boiler (boiler #7) previously owned and operated by Osram Sylvania, Inc. in Department 327, Building 10, in North Towanda Township, **Bradford County**.

**8-302-025.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of two natural gas/#4 oil-fired boilers (boilers #1 and #2) previously owned and operated by Osram Sylvania, Inc. in Department 327, Building 20, in North Towanda Township, **Bradford County**.

**8-302-028.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of two natural gas/#4 oil-fired boilers (boilers #8 and #9) previously owned and operated by Osram Sylvania, Inc. in Department 327, Building 25, in Towanda Borough, **Bradford County**.

**8-302-037.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a natural gas/propane-fired boiler (boiler #10) previously owned and operated by Osram Sylvania, Inc. in Department 327, Building 25, in Towanda Borough, **Bradford County**. This boiler is subject to Subpart Dc of the Federal Standards of Performance for New Stationary Sources.

**8-313-003B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of TV phosphor box furnaces, associated equipment and associated air cleaning devices (scrubbers, fabric collectors and a cartridge collector) previously owned and operated by Osram Sylvania, Inc. in Department 022, Building 10, in North Towanda Township, **Bradford County**.

**8-313-004F.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of various operations in Department 046 previously owned and operated by Osram Sylvania, Inc. in Building 25, in Towanda Borough, **Bradford County**.

**8-313-009.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of X-ray phosphors processing equipment and associated air cleaning devices (a scrubber and a fabric collector) previously owned and operated by Osram Sylvania, Inc. in Department 024, Building 10, in North Towanda Township, **Bradford County**.

**8-313-011B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a spray dryer and associated air cleaning devices (a cyclone, fabric collector and filter) previously owned and operated by Osram Sylvania, Inc. in Department 214, Building 22, in North Towanda Township, **Bradford County**.

**8-313-019B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a halophosphor hammermill, blender, sand blaster, load station and furnaces 6C, 7C and 8C and associated air cleaning devices (fabric collectors and a cartridge collector) previously owned and operated by Osram Sylvania, Inc. in Department 015, Building 5, in North Towanda Township, **Bradford County**.

**8-313-020.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of ammonium paratungstate calciners 1, 3 and 4 and associated air cleaning devices (scrubbers and fabric collectors) previ-

ously owned and operated by Osram Sylvania, Inc. in Department 002, Building 10, in North Towanda Township, **Bradford County**.

**8-313-023.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a heat treat furnace and associated air cleaning devices (electrostatic precipitators) previously owned and operated by Osram Sylvania, Inc. in Department 066, Building 27, in Towanda Borough, **Bradford County**.

**8-313-024C.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of various tungsten reduction furnace loading and dumping hoods, sifters, blenders, and the like and associated air cleaning devices (fabric collectors and a cartridge collector) previously owned and operated by Osram Sylvania, Inc. in Department 003, Building 10, in North Towanda Township, **Bradford County**.

**8-313-026B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a plasma gun area and associated air cleaning device (a fabric collector) previously owned and operated by Osram Sylvania, Inc. in Department 024, Building 28, in North Towanda Township, **Bradford County**.

**8-313-027C.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of tungsten carbide and micrograin tungsten carbide processing equipment and associated air cleaning devices (fabric collectors and cartridge collectors) previously owned and operated by Osram Sylvania, Inc. in Department 043, Buildings 22 and 28, in North Towanda Township, **Bradford County**.

**8-313-028.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of carbonate process tanks and pilot plant tanks and associated air cleaning device (a scrubber) previously owned and operated by Osram Sylvania, Inc. in Department 014, Building 3B, in North Towanda Township, **Bradford County**.

**8-313-029B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a halophosphor processing area and associated air cleaning devices (fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Department 015, Buildings 5 and 18, in North Towanda Township, **Bradford County**.

**8-313-034.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of thoriated powders/heavy met powders processing equipment and associated air cleaning devices (fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Department 008, Building 10, in North Towanda Township, **Bradford County**.

**8-313-035.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a phosphor pilot plant and associated air cleaning device (a fabric collector) previously owned and operated by Osram Sylvania, Inc. in Department 233, Building 3B, in North Towanda Township, **Bradford County**.

**8-313-038E.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box

504, Towanda, PA 18848-0504) for the operation of tungsten carbide scrap calciners, pyrolyzing oven, crushing operation, and the like and associated air cleaning devices (fabric collectors, cartridge collectors, a scrubber and a thermal fume incinerator) previously owned and operated by Osram Sylvania, Inc. in Department 009, Building 25, in Towanda Borough, **Bradford County**.

**8-313-042C.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of metals pilot plant equipment and associated air cleaning devices (cartridge collectors and a fabric collector) previously owned and operated by Osram Sylvania, Inc. in Departments 035 and 225, Building 22, in North Towanda Township, **Bradford County**.

**8-313-048.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of two ammonium dimolybdate calciners and associated air cleaning devices (scrubbers and fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Department 073, Building 10, in North Towanda Township, **Bradford County**.

**8-313-049.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of four acid storage tanks and associated air cleaning device (a scrubber) previously owned and operated by Osram Sylvania, Inc. in Departments 321, 322 and 317, in Towanda Borough, **Bradford County**.

**8-399-001B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of wire drawing operations and associated air cleaning devices (fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Department 005, Building 20, in North Towanda Township, **Bradford County**.

**8-399-003C.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of various processing equipment in Departments 212, 216 and 217 and associated air cleaning devices (a cyclone, a fabric collector and a scrubber) previously owned and operated by Osram Sylvania, Inc. in Building 15, in North Towanda Township, **Bradford County**.

**8-399-007.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a phosphor washing operation and associated air cleaning devices (a scrubber) previously owned and operated by Osram Sylvania, Inc. in Department 016, Building 10, in North Towanda Township, **Bradford County**.

**8-399-010A.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of calcium phosphate and dicalcium phosphate manufacturing and processing equipment and associated air cleaning devices (fabric collectors and a scrubber) previously owned and operated by Osram Sylvania, Inc. in Department 019, Building 3A, in North Towanda Township, **Bradford County**.

**8-399-011.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a tungsten powder blending operation and associated air cleaning device (a fabric collector) previously owned and operated

by Osram Sylvania, Inc. in Department 002, Building 10, in North Towanda Township, **Bradford County**.

**8-399-019B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a cobalt chemical process and acid digestion process (CORP) and associated air cleaning devices (scrubbers and a cartridge collector) previously owned and operated by Osram Sylvania, Inc. in Buildings 25 and 25A, in Towanda Borough, **Bradford County**.

**8-399-020B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a cobalt chemical operation and associated air cleaning devices (scrubbers) previously owned and operated by Osram Sylvania, Inc. in Department 045, Building 25, in Towanda Borough, **Bradford County**.

**8-399-022.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of cobalt powder processing equipment and associated air cleaning devices (a fabric collector and a cartridge collector) previously owned and operated by Osram Sylvania, Inc. in Department 047, Building 28, in North Towanda Township, **Bradford County**.

**8-399-023D.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of grade mix powder operations and associated air cleaning devices (fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Departments 047 and 048, Buildings 28 and 28A, in North Towanda Township, **Bradford County**.

**8-399-027.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a molybdenum chemical processing operation and associated air cleaning devices (scrubbers) previously owned and operated by Osram Sylvania, Inc. in Department 044, Building 10, in North Towanda Township, **Bradford County**.

**8-399-029A.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of four chemical pilot plant reactors and associated air cleaning device (a scrubber) previously owned and operated by Osram Sylvania, Inc. in Department 212, Building 15, in North Towanda Township, **Bradford County**.

**8-399-030A.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of minor lamp phosphor furnaces, associated processing equipment and associated air cleaning devices (fabric collectors and a cartridge collector) previously owned and operated by Osram Sylvania, Inc. in Department 025, Building 5, in North Towanda Township, **Bradford County**.

**8-399-031.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of molybdenum spray powder processing equipment and associated air cleaning device (a fabric collector) previously owned and operated by Osram Sylvania, Inc. in Department 081, Building 28, in North Towanda Township, **Bradford County**.

**8-399-032.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of zinc reclaim

equipment and associated air cleaning devices (fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Department 038, Building 28A, in North Towanda Township, **Bradford County**.

**8-399-034B.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a molybdenum reduction furnace area and associated air cleaning devices (fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Department 083, Building 10, in North Towanda Township, **Bradford County**.

**8-399-035.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a tungsten carbide milling and drying operation and associated air cleaning device (a carbon adsorption system) previously owned and operated by Osram Sylvania, Inc. in Department 864, Building 28A, in North Towanda Township, **Bradford County**.

**8-399-036D.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a thoriated tungsten ingot loading operation, plastic mold curing oven, PM parts area and associated air cleaning devices (cartridge collectors and an electrostatic precipitator) previously owned and operated by Osram Sylvania, Inc. in Departments 050 and 063, Buildings 8 and 26, in North Towanda Township, **Bradford County**.

**8-399-037.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a rapidly solidified powders operation and associated air cleaning devices (a cartridge collector and a carbon adsorption system) previously owned and operated by Osram Sylvania, Inc. in Department 226, Building 22, in North Towanda Township, **Bradford County**.

**8-399-038A.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of 29 SMD annealers and associated air cleaning device (a fabric collector) previously owned and operated by Osram Sylvania, Inc. in Department 012, Building 20, in North Towanda Township, **Bradford County**.

**8-399-039A.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of 8 thoriated tungsten treating bottles, a mercury decontamination oven and associated air cleaning devices (an absolute filter and a mercury vacuum unit) previously owned and operated by Osram Sylvania, Inc. in Department 004A, Building 20A, in North Towanda Township, **Bradford County**.

**8-399-041.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of molybdenum wire swagers and associated air cleaning device (a fabric collector) previously owned and operated by Osram Sylvania, Inc. in Department 085, Building 30, in North Towanda Township, **Bradford County**.

**8-399-043.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of cast tungsten carbide powder processing equipment and associated air cleaning device (a fabric collector) previously owned

and operated by Osram Sylvania, Inc. in Department 039, Building 28, in North Towanda Township, **Bradford County**.

**8-399-044.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of an molybdenum/tungsten rolling mill, a press furnace, a wet saw and associated air cleaning devices (fabric collectors) previously owned and operated by Osram Sylvania, Inc. in Department 055, Building 16, in North Towanda Township, **Bradford County**.

**8-399-045.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of various grinders and cutoff saws and associated air cleaning devices (a media air cleaner and a HEPA filter) previously owned and operated by Osram Sylvania, Inc. in Department 369, Building 2, in North Towanda Township, **Bradford County**.

**8-399-046.** The Department intends to issue an operating permit to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of a thermal jet sprayer and associated air cleaning device (a cartridge collector) previously owned and operated by Osram Sylvania, Inc. in North Towanda Township, **Bradford County**.

**8-313-009A.** The Department intends to issue plan approval to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the operation of an X-ray phosphors furnace and associated air cleaning device (a scrubber), approval for the construction of which was previously issued to Osram Sylvania, Inc. in Department 024, Building 10, in North Towanda Township, **Bradford County**.

**8-313-011C.** The Department intends to issue plan approval to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the installation of an air cleaning device (a scrubber) on a spray dryer, approval for the installation of which was previously issued to Osram Sylvania, Inc. in Department 048, Building 22, in North Towanda Township, **Bradford County**.

**8-313-019C.** The Department intends to issue plan approval to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the installation of air cleaning devices (a fabric collector and HEPA filter) on calcium halophosphor furnace 7C, approval for the installation of which was previously issued to Osram Sylvania, Inc. in Department 015, Building 17, in North Towanda Township, **Bradford County**.

**8-313-026C.** The Department intends to issue plan approval to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the installation of air cleaning devices (a fabric collector and an absolute filter) on various pieces of specialty metals processing equipment, approval for the installation of which was previously issued to Osram Sylvania, Inc. in Building 28, in North Towanda Township, **Bradford County**.

**8-313-049A.** The Department intends to issue plan approval to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the construction of two bulk ammonium hydroxide storage tanks, an ammonia railcar loadout and associated air cleaning device (a scrubber), approval for the construction of which was previously issued to Osram Sylvania, Inc. in Departments 319 and 320, in Towanda Borough, **Bradford County**.

**8-399-003D.** The Department intends to issue plan approval to **Osram Sylvania Products, Inc.** (Box 504, Towanda, PA 18848-0504) for the construction of an electroluminescent phosphor furnace and associated air cleaning devices (a fabric collector and a scrubber), approval for the construction of which was previously issued to Osram Sylvania, Inc. in Department 212 in North Towanda Township, **Bradford County**.

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

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

General Plan Approval and Operating Permit No. BAQ-GPA/GP-4 for Burn Off Ovens were issued to the following: **GP 4-25-968, Yates Company**, 2955 W. 17th Street, Erie, PA 16505.

#### 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.**

*Regional Office: Northeast Regional Office, Bureau of Air Quality, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

A Plan Approval has been issued by this office for the construction, modification, reactivation or operation of the air contamination source and associated air cleaning device described below for the specified company.

Permit: **39-399-043**  
Source: Wave Solder/Fluxer Machine  
Issued: June 9, 1997  
Company: **Lutron Electronics Company Inc.**  
Location: Lower Macungie Township  
County: **Lehigh**

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

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335.*

**24-307-026A.** On June 30, 1997, a Plan Approval extension was issued to **Keystone Powdered Metal Co.** (1935 State Street, St. Marys, PA 15857) for construction of a rotary tempering furnace in St. Marys, **Elk County**.

#### REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)

*Regional Office: Northeast Regional Office, Bureau of Air Quality, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

The Department intends to issue a RACT Air Quality Operating Permit (Synthetic Minor) for the air contamination sources and associated air cleaning devices described below for the specified company.

Permit: **48-000-020**

Source: Two Mineral Wool Cupola each with a rated charging capacity of 9.1 TPH.

Company: **Mineral Fiber Specialists, Inc. (MFS, Inc.)**

Location: Easton Road, Bethlehem, PA 18015

County: **Northampton**

**RACT Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations for an operating permit to comply with 25 Pa. Code § 129.91 for Reasonably Available Control Technology (RACT).**

*Northwest Regional Office: Air Quality Program, 230 Chestnut St., Meadville, PA 16335.*

**OP-10-285:** Northwest Sanitary Landfill, 1436 W. Sunbury Rd., W. Sunbury, PA 16061.

**OP-25-920:** Lakeview Landfill, 851 Robison Rd. East, Erie, PA 16509.

## MINING

### CONDUCT COAL AND NONCOAL ACTIVITIES

#### MINING ACTIVITY ACTIONS

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 such 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 Applications Issued:*

**56870103.** Permit renewal. **PBS Coals, Inc.** (P. O. Box 260, Friedens, PA 15541), commencement, operation and restoration of a bituminous strip-auger-clay removal mine in Brothersvalley and Somerset Townships, **Somerset County**, affecting 228.0 acres, receiving stream unnamed tributaries to Kimberly Run to Coxes Creek; and unnamed tributaries to Glades Creek; and unnamed tributary to Millers Run to Stony Creek, application received April 11, 1997, permit issued June 9, 1997.

**56920104.** Permit renewal. **Commercial Coal Sales, Inc.** (Box 148, Friedens, PA 15541), commencement, operation and restoration of a bituminous strip mine, valid for reclamation, only in Milford Township, **Somerset County**, affecting 71.0 acres, receiving stream unnamed tributaries to and Middle Creek; and unnamed tributaries to and the Casselman River, application received April 30, 1997, permit issued June 10, 1997.

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

**54860105R2.** **Kuperavage Enterprises, Inc.** (P. O. Box 99, Middleport, PA 17953), renewal of an existing anthracite surface mine operation in Blythe Township,

**Schuylkill County** affecting 273.84 acre, receiving stream Schuylkill River. Renewal issued June 9, 1997.

**19961301. Burnrite Coal Company** (325 Mulberry Street, Atlas, PA 17851), commencement, operation and restoration of an anthracite underground mine operation in Conyngham Township, **Columbia County** affecting 3.0 acres, receiving stream none. Permit issued June 10, 1997.

**54920201R. Northeastern Power Company** (P. O. Box 7, McAdoo, PA 18237), renewal of an existing anthracite surface/coal refuse reprocessing operation in Kline and Packer Townships, **Schuylkill and Carbon Counties** receiving stream none. Renewal issued June 13, 1997.

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

*Noncoal Permits Issued*

**5276SM1A1C. West End Mining & Processing Co., Inc.** (P. O. Box 160, Shawnee-on-Delaware, PA 18356), renewal of NPDES Permit #PA0594482 in Chestnuthill Township, **Monroe County** receiving stream McMichael's Creek and McMichael's Split. Renewal issued June 13, 1997.

**45900303C. C. H. Van Why, Inc.** (5050 Milford Road, East Stroudsburg, PA 18301), renewal of NPDES Permit #PA0595276 in Middle Smithfield Township, **Monroe County**, receiving stream Suisse Creek. Renewal issued June 13, 1997.

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

*General Small Noncoal Authorizations Granted:*

**58970807. Joseph A. and Kaywood L. Decker**, (R. R. 1, Box 254, Kingsley, PA 18826), commencement, operation and restoration of a bluestone quarry operation in Gibson Township, **Susquehanna County** affecting 1.0 acre, receiving stream none. Authorization granted June 11, 1997.

**58970811. Douglas G. Kilmer**, (R. R. 1, Box 85K, Uniondale, PA 18470), commencement, operation and restoration of a small quarry operation in Apacalon Township, **Susquehanna County** affecting 2.0 acres, receiving stream none. Authorization granted June 11, 1997.

## **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 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)).

Any person 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, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice

of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board, (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.

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**Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and 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.)

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

**E15-541. Encroachment. Whitford Country Club**, 600 Whitford Hills Road, Exton, PA 19341. To place and maintain rip-rap and bioengineering devices as bank stabilization along segments of a 2,850 foot reach of an unnamed tributary of West Valley Creek (CWF, MF), to remove a collapsed railroad tie retaining wall and to place and maintain rip-rap along the embankment to protect the abutments of an existing golf cart/footbridge, to remove five severely eroded and abandoned storm sewer and irrigation pipe stream crossings, to repair and maintain three stone retaining walls and to repair an irrigation intake structure at the Whitford Country Club located on the southern side of Whitford Hills Road (Downingtown, PA Quadrangle N: 4.5 inches; W: 5.5 inches) in West Whiteland Township, **Chester County**. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

**E23-324. Encroachment permit. Anchorage Marina, Inc.**, Front and Jansen Streets, Essington, PA 19029. To maintain 0.04 acre of fill placed in the Delaware River below the mean high water mark to provide protection for an existing 3,000 gallon underground storage tank and electrical appurtenances at the existing Anchorage Marina located at the terminus of Jansen Avenue (Bridgeport, PA-NJ Quadrangle N: 19.9 inches; W: 6.35 inches) in Tincum Township, **Delaware County**.

**E46-753. Encroachment permit. Sun Pipe Line Company**, Ten Penn Center, 26th Floor, 1801 Market Street, Philadelphia, PA 19103-1694. To install and maintain approximately 280 linear feet of 14-inch gas pipe line, and remove a portion of an existing 8-inch utility line, across, along and in the stream channel of Diamond Run at a point downstream from the proposed relocation of Diamond Run (W.W.F.). (The relocation of Diamond Run will be performed by the Pennsylvania Turnpike Commission during their proposed Turnpike widening project). This site is located approximately 1,200 feet southwest from the intersection of Conshohocken Road and Ridge Pike (Norristown, PA Quadrangle N: 19.0 inches; W: 9.8 inches) in Plymouth Township, **Montgomery County**.

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



**Permit No. E35-271.** Encroachment. **Toronto Corporation**, 301 Benet Street, Scranton, PA 18505. To place fill in 0.45 acre of wetlands for the construction of 20 residential units and a 6,800 square foot commercial building and associated parking lot. The project, known as the Winola Road Development is located immediately south of the intersection of T499 (Old Winola Road) and S. R. 4024 (Winola Road) (Scranton, PA Quadrangle N: 21.0 inches; W: 12.5 inches) in South Abington Township, **Lackawanna County**. The permittee is required to provide 0.57 acre if replacement wetlands.

**Permit No. E35-277.** Encroachment. **City of Scranton**, Rear 800 Providence Road, Scranton, PA 18508. To remove the existing structure and to construct and maintain a 12-foot high concrete masonry unit retaining wall (Mesa System) having a length of approximately 60 linear feet along the right bank of Leggetts Creek. The project is located immediately downstream of the intersection of North Main Avenue and Leggetts Creek (Scranton, PA Quadrangle N: 12.6 inches; W: 2.7 inches) in the City of Scranton, **Lackawanna County**.

**Permit No. E39-323.** Encroachment. To place fill in a deminimus area of wetlands less than or equal to 0.05 acre for the construction of a 50,000 square foot, 3 story office building and associated parking lot. The project is located west of intersection of T959 (Hausmand Road) and SR 0309 (Allentown West, PA Quadrangle N: 18.7 inches; W: 9.2 inches) in South Whitehall Township, **Lehigh County**.

**Permit No. E45-314.** Encroachment. **Eldred Township Supervisors**, P. O. Box 600, Kunkletown, PA 18058. To maintain a road crossing of Borger Creek, consisting of an open-bottom corrugated metal culvert having a span of 19.0 feet and an underclearance of approximately 5.1 feet. The project is located on Township Road T-354 (known locally as 57 Road), approximately 250 feet upstream of the Carbon/Monroe County line (Palmerton, PA Quadrangle N: 19.6 inches; W: 0.2 inch), in Eldred Township, **Monroe County**.

**Permit No. E54-223.** Encroachment. **Robert A. and Charlotte A. Price**, 165 Green Tree Drive, Schuylkill Haven, PA 17972. To construct and maintain a steel I-beam bridge with wood-decking having a span of 40 feet and an underclearance of approximately 6 feet across Mahannon Creek to provide private access to a residential building lot. This project is located approximately 700 feet north of Green Tree Drive (T-695) and 600 feet east of Meadow Drive (T-964) Orwigsburg, PA Quadrangle N: 2.0 inches; W: 16.5 inches) in North Manheim Township, **Schuylkill County**.

**Permit No. E54-226.** Encroachment. **Township of East Union**, P. O. Box 295, Sheppton, PA 18248. To remove the existing structure and to construct and maintain a 14-foot by 4.5-foot concrete box culvert on a 45° skew and depressed 6-inches in the channel of a Tributary to Catawissa Creek. The project is located along Township Road T-455 (Foose Lane) 3,000 feet west of SR 0924 (Nuremburg, PA Quadrangle N: 0.5 inch; W: 3.7 inches) in East Union Township, **Schuylkill County**.

**Permit No. E54-227.** Encroachment. **Township of East Union**, P. O. Box 295, Sheppton, PA 18248. To remove the existing structure and to construct and maintain a 15.5 foot by 5.0 foot concrete box culvert depressed six inches in the channel of a Tributary to Catawissa Creek. This project is located along Township Road T-455 (Foose Lane) 1,600 feet west of SR 0924 (Nuremburg, PA Quadrangle N: 0.35 inch; W: 4.25 inches) in East Union Township, **Schuylkill County**.

**Permit No. E64-173.** Encroachment. **Dr. Paul and Mrs. Mancia**, 1485 Wyoming Avenue, Forty-Fort, PA 17965. To place fill in 0.93 acre of wetlands and in the floodway of a Tributary to Wallenpaupack Creek to develop the land for a proposed office and retail building. This project is located along the north side of SR 0590, 0.75 mile west of SR 0191 (Lake Ariel, PA Quadrangle N: 5.4 inches; W: 4.9 inches) in Salem Township, **Wayne County**. The permittee is required to provide 0.995 acre of replacement wetlands.

*Southcentral Regional Office: Water Management Program, Soils and Waterways Section, One Ararat Boulevard, Room 126, Harrisburg, PA 17110, (717) 657-4590.*

**E05-247.** Encroachment. **Bedford County Commissioners**, Norma Ickes, 230 S. Juliana St., P. O. Box 166, Bedford, PA 15522. To rehabilitate and maintain county Bridge 41 across Wills Creek on T-653 (Cunningham Drive) by replacing the timber decking located about 3,200 feet south of Hyndman Borough (Hyndman, PA Quadrangle N: 11.2 inches; W: 12.95 inches) in Hyndman Borough and Londonderry Township, **Bedford County**. This permit was issued under section 105.13(e) "Small Projects."

**E22-363.** Encroachment. **PA Dept. of Transportation**, Engineering District 8-0, John Rautzahn, 2140 Herr Street, Harrisburg, PA 17103. To construct and maintain a 5 mile section of US 22/322 and a 1 mile section of PA 225 which includes bridges, culverts, fills in the floodplain and 3.52 acres of fill in wetlands across and along the Susquehanna River, Stony Creek, Clark Creek, Buck Run and unnamed tributaries at a point from east of Dauphin Borough to north of Route 325 (Harrisburg West, PA Quadrangle N: 17.9 inches; W: 5.1 inches to Duncannon, PA Quadrangle N: 3.7 inches; W: 2.0 inches) in Dauphin Borough and Middle Paxton and Reed Townships, **Dauphin County**. The permittee is providing 5.46 acres of replacement wetlands. This permit also includes 401 Water Quality Certification.

**E36-563.** Encroachment. **Larry H. Mylin**, 2974 Shiprock Road, Willow Street, PA 17560. To construct and maintain approximately 600 L. F. of 24-foot wide driveway with 162 L. F. of gabion lines reinforced slope within the floodway of Pequea Creek for acces to the Pequea Sewer Services Septage Treatment Plant to be located on the northeast side of Herrville Road (T-493), about 1,400 feet east of its intersection with Willow Street (S. R. 272) (Conestoga, PA Quadrangle N: 12.7 inches; W: 0.8 inch) in Providence Township, **Lancaster County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

#### WATER ALLOCATIONS

**Actions taken on applications filed under the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.**

*Southcentral Regional Office, Water Supply Management Program, One Ararat Boulevard, Harrisburg, PA 17110-9333.*

*Permits Issued*

**WA 36-257C.** Water allocation. **Borough of Elizabethtown, Lancaster County**. The right to withdraw 1.5 million gallons per day (mgd), from the Cornwall Quarry to be pumped into Conewago Creek and to increase its allocation from Conewago Creek from 1.0 to 1.62 mgd with a subsequent increase to 1.62 mgd withdrawal at the Haldeman Dam.

**WA 36-799B.** Water allocation. **Borough of Akron, Lancaster County.** The right to withdraw a maximum of 98,000 gallons per day (gpd), when available, during the months of March, April, May and June, and a maximum of 36,000 gpd during the months of July through February from Akron Spring located in the Borough of Akron, **Lancaster County.**

[Pa.B. Doc. No. 97-1037. Filed for public inspection June 27, 1997, 9:00 a.m.]

## Availability of Technical Guidance

### *Governor's Office List*

Once a year on the first Saturday in August, the Governor's Office publishes a list of the nonregulatory guidance documents of all State agencies in the *Pennsylvania Bulletin*. The next publication of this list will be in the August 2, 1997, *Pennsylvania Bulletin*.

### *DEP's Technical Guidance Document Inventory*

DEP publishes a list of its technical guidance documents in its Technical Guidance Document Inventory twice a year. DEP will place the June 1997 edition of the Inventory on DEP's World Wide Web site soon. DEP's Web address is <http://www.dep.state.pa.us>. To go to the location of the Inventory once on the DEP home page, persons should choose the Public Participation Center/Technical Guidance Document/Inventory.

Bound paper copies of the June 1997 Inventory will become available in July for those who do not have access to the Web site. DEP automatically mails a paper copy of the June 1997 Inventory to persons who received a bound paper copy of the December 1996 Inventory. Persons who wish to add their address to the mailing list should call Nina Huizinga at (717) 783-8727.

### *DEP's Technical Guidance Documents on the World Wide Web*

DEP's Web address is <http://www.dep.state.pa.us>. To go to the location of DEP's Technical Guidance Documents once on the DEP home page, persons should choose the Public Participation Center. The Center contains several links to DEP's Technical Guidance Documents. Persons should look under the heading "Proposals Open to Comment" for the link to "Draft Technical Guidance." Persons should look under the heading "Proposals Recently Finalized" for the link to "Technical Guidance." Persons should look under the heading "Technical Guidance" for one link to the "Basic Inventory" and a second link to "Final Guidance." The final documents menu will list DEP's bureaus. Persons should click on the name of the bureau to get to the list of the documents from that bureau that are currently on the Web. Then, to get to see a document, persons should click on the ID number of the document. DEP will be adding its revised documents to the Web throughout 1997.

### *Help Protect the Environment: Use the Web and Save Trees*

DEP encourages members of the public who read these announcements in the *Pennsylvania Bulletin* and DEP's *UPDATE* and who have access to the World Wide Web to avoid the needless duplication of paper copies of DEP's technical guidance documents. Persons can download

those DEP documents which are posted on DEP's Web site onto their computers and read them electronically. This method saves both paper and money.

### *Ordering Paper Copies of DEP Technical Guidance*

Although DEP promotes the use of electronic copies of its technical guidance rather than paper copies, there are still reasons for DEP to continue to provide members of the public with paper copies: 1) It may be more convenient to use some documents in a paper form, 2) Not everyone has access to the World Wide Web and 3) Not all DEP documents are on DEP's Web site yet.

Persons can order an unbound 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*

Between publication of its Inventory, DEP announces changes to its technical guidance documents in its weekly newsletter, the *UPDATE* and the *Pennsylvania Bulletin*. Here is the current list of recently finalized documents, draft documents and notices of intended changes to technical guidance.

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 about the Inventory, the documents on the World Wide Web, the availability of paper copies from the printer or the technical guidance document process in general should call Nina Huizinga at (717) 783-8727.

### *Final Technical Guidance—Revisions to Existing Guidance*

[*Note:* Due to the reorganization of the Water Management Deputate, these documents will be receiving new ID numbers and new locations. This notice gives both the old and new ID numbers and the current location.]

DEP ID: 361-3200-007 (old), 391-3200-007 (new)  
Title: Stream Enrichment Risk Analysis Description: This guidance provides the established procedures to conduct stream nutrient impact surveys. Effective Date: June 10, 1997 Page Length: 25 pages Location: Volume 31, Tab 16 (until reassigned location) Contact: Rick Shertzer at (717) 783-3638.

DEP ID: 361-3200-013 (old), 391-3200-013 (new)  
Title: Evaluations of Phosphorus Discharges to Lakes, Ponds and Impoundments Description: This guidance provides the established procedures to conduct trophic status studies on impounded water bodies with a detention time of 14 days or greater. Effective Date: June 10, 1997 Page Length: 33 pages Location: Volume 31, Tab 21 (until reassigned location) Contact: Rick Shertzer at (717) 783-3638.

### *Final Technical Guidance—Minor Revisions*

The Bureau of Water Supply Management has made minor revisions (reformatting and updating changes only) to the following document. Contact: Joe Hoffman at (717) 787-5017.

<i>DEP ID</i>	<i>Title</i>	<i>Pages</i>	<i>Location</i>
383-3301-305	Laboratory Reporting Instructions for Total Trihalomethanes (TTHMs) in Public Drinking Water Systems	18	Volume 19, Tab 2C

The Bureau of Watershed Conservation has made minor revisions (reformatting and updating changes only) to the following documents. The Bureau intends to revise these documents substantively during the coming year; the "Intent to Revise" notice was published in the March 1, 1997 *Pennsylvania Bulletin*. Contact: Bill Gast at (717) 772-4048.

<i>DEP ID</i>	<i>Title</i>	<i>Pages</i>	<i>Location</i>
392-2130-001	General Policy and Procedures for the Review of Water Allocation Permit Applications	7	Volume 15, Tab 1
392-2130-002	Subsidiary Water Allocation Permit Requirements	2	Volume 15, Tab 2
392-2130-003	Attorney General Opinion No. 361	8	Volume 15, Tab 3
392-2130-004	Rescission of Water Rights	2	Volume 15, Tab 4
392-2130-005	Regulation of Interbasin Transfers	2	Volume 15, Tab 5
392-2130-006	Metering of Withdrawals under Orders of Confirmation	2	Volume 15, Tab 6
392-2130-007	Constant Gallons Per Capita Per Day (GPCD)	2	Volume 15, Tab 7
392-2130-008	Permit Life	2	Volume 15, Tab 8

#### *Draft Technical Guidance*

DEP ID: 563-2000-602 BMR PGM: II:6:2 Title: Beneficial Use of Sewage Sludge at Active Mine Sites Background: DEP encourages the use of sewage sludge of acceptable quality as a soil supplement for mine reclamation under the mining program. This policy has been in effect since June 1984. On May 27, 1997, amendments to the sewage sludge management regulations (25 Pa. Code Chapter 271, Subchapter J) became effective. This revised guidance conforms with these amended regulations. Deadline for Submittal of Comments: July 31, 1997 Contact: Alfred Dalberto at (717) 783-1507.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 97-1038. Filed for public inspection June 27, 1997, 9:00 a.m.]

#### **Mining and Reclamation Advisory Board Meeting**

The Mining and Reclamation Advisory Board (MRAB) will meet on Thursday, July 10, 1997, at 12:30 p.m. at the Best Western Inn and Conference Center in DuBois, Clearfield County.

Questions concerning the agenda can be directed to Rod Kelley at (717) 783-5338 or e-mail to Kelley.Rodney@a1.dep.state.pa.us. The agenda for this meeting will also be available through the Public Participation Center on DEP's World Wide Web site at <http://www.dep.state.pa.us>.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Rod Kelley directly at (717) 783-5338 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 97-1039. Filed for public inspection June 27, 1997, 9:00 a.m.]

#### **Technical Advisory Committee on Diesel-Powered Equipment**

A Technical Advisory Committee on Diesel-Powered Equipment was appointed by Governor Tom Ridge on April 17. Those appointed to serve as members of the Advisory Committee are Eugene Davis of Adah and Robert DuBreucq of Portage. Act 182 of 1992, which became a law on February 17, 1997, creates a two-member advisory committee to advise the secretary regarding implementation of Act 182 and evaluation of alternative technology or methods for meeting the requirements for diesel-powered equipment.

The first meeting of the Technical Advisory Committee on Diesel-Powered Equipment is scheduled for July 8 at 9 a.m. in the Fayette County Health Center in Uniontown.

Questions concerning the above can be directed to Matthew A. Bertovich at (412) 439-7469 or e-mail Bertovich.Matthew@a1.dep.state.pa.us. This notice will be available through the Public Participation Center on DEP's World Wide Web site at <http://www.dep.state.pa.us>.

Persons in need of accommodations as provided in the Americans with Disabilities Act of 1990 should contact Matthew Bertovich directly at (412) 439-7469 to discuss how the Department may accommodate their needs.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 97-1040. Filed for public inspection June 27, 1997, 9:00 a.m.]

## **DEPARTMENT OF HEALTH**

### **Review of Emergency Medical Services Regulations; Meeting Notice**

Under the Governor's Executive Order 1996-1, the Department of Health (Department) is soliciting early public input into the rulemaking process associated with the Department's review of its regulations at 28 Pa. Code Part VII (relating to emergency medical services) (28 Pa. Code §§ 1001.1—1013.7).

The Department has already prepared a preliminary draft of revisions, forwarded them to the Pennsylvania Emergency Health Services Council (Council), and sought the Council's advice and recommendations. The Department has received comments from the Council and other persons to whom the draft was distributed through the Council. However, the Department is committed to considering the ideas and comments of all persons interested in the revision of these regulations.

The draft revisions that were forwarded to the Council may be secured either from the Council or one of the 16

regional emergency medical services (EMS) councils the Department has designated throughout the Commonwealth. The names, addresses and telephone numbers of the Council and the 16 regional EMS councils are as follows:

Pennsylvania Emergency Health Services Council  
Maple Building, Suite 210  
5012 Lenker Street  
Mechanicsburg, PA 17055  
(717) 730-9000 or (800) 243-2367

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*Regional Council*

Bradford-Susquehanna Emergency Medical Services Council  
The Mansfield University Center  
200 South Wilbur Avenue  
Sayre, PA 18840-1698  
(717) 882-4604

Bucks County Emergency Health Services Council  
50 North Main Street  
Doylestown, PA 18901  
(215) 348-6100

Chester County Emergency Medical Services Council  
Department of Emergency Services  
Chester County Government Services Center  
601 Westtown Road, Suite 12  
West Chester, PA 19382-4558  
(610) 344-5000

Delaware County Emergency Health Services Council, Inc.  
201 W. Front Street  
Government Center Building, Room 117  
Media, PA 19063  
(610) 891-5310

Eastern Pennsylvania Emergency Medical Services Council, Inc.  
1405 North Cedar Crest Boulevard, Suite 208  
Allentown, PA 18104  
(610) 820-9212

Emergency Health Services Federation, Inc.  
722 Limekiln Road  
Cumberland, PA 17070  
(717) 774-7911

Emergency Medical Service Institute  
4240 Greensburg Pike  
Pittsburgh, PA 15221  
(412) 351-6604

EMMCO East, Inc.  
1411 Million Dollar Highway  
Kersey, PA 15846  
(814) 834-9212

EMMCO West, Inc.  
16271 Conneaut Lake Road  
Suite 101  
Meadville, PA 16335-3814  
(814) 337-5380

Emergency Medical Services of Northeastern Pennsylvania, Inc.  
1153 Oak Street  
Pittston, PA 18640  
(717) 655-6818

Lycoming County Emergency Medical Services Council  
2130 County Farm Road  
Montoursville, PA 17754-9621  
(800) 433-9063

*Counties*

Bradford, Susquehanna

Bucks

Chester

Delaware

Berks, Carbon, Lehigh, Monroe, Northampton, Schuylkill

Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry, York

Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington, Westmoreland

Cameron, Clearfield, Elk, Jefferson, McKean, Potter

Clarion, Crawford, Erie, Forest, Mercer, Venango, Warren

Lackawanna, Luzerne, Pike, Wayne, Wyoming

Lycoming, Sullivan, Tioga

*Regional Council*

Montgomery County Emergency Medical Services  
Office of Emergency Medical Services  
50 Eagleville Road  
Eagleville, PA 19403  
(610) 631-6520

Philadelphia Emergency Medical Services Council  
Philadelphia Fire Department  
240 Spring Garden Street  
Philadelphia, PA 19123-2991  
(215) 686-1313

Seven Mountains Emergency Medical Services Council, Inc.  
Willowbank Building, Homes Street  
Bellefonte, PA 16823  
(814) 355-1474

Southern Alleghenies Emergency Medical Services Council, Inc.  
Olde Farm Office Centre—Carriage House  
Duncansville, PA 16635  
(814) 696-3200

Susquehanna Emergency Health Services Council, Inc.  
249 Market Street  
Sunbury, PA 17801-3401  
(717) 988-3443

The Department asks that all written comments pertaining to the current regulations and the draft revisions be submitted to Kum S. Ham, Ph.D., Director, Division of Emergency Medical Services Systems, Room 1033 Health and Welfare Building, P. O. Box 90, Harrisburg, PA 17108, by the close of business on August 4, 1997. The Department will begin the next stage of its review on that date.

On August 4, 1997, the Department will also be conducting a public meeting on the regulations in Room 812 of the Health and Welfare Building, Commonwealth Avenue and Forster Street, Harrisburg, PA, commencing at 10 a.m. Any person who wishes to present testimony at this meeting should contact Ruth W. Seneca, at the same address as Dr. Ham's, by July 11, 1997. Ruth Seneca's telephone number is (717) 787-8741. If the number of people who timely contact Ruth Seneca to register to speak is large enough to warrant relocation of the meeting to a larger room, notice of a changed site for the meeting will be published in the July 26, 1997 edition of the *Pennsylvania Bulletin*.

For additional information, for persons with a disability who require an auxiliary aide service or other accommodation to attend the meeting or review the draft revisions to the regulations, contact Ruth Seneca.

The scheduled meeting is subject to cancellation without notice.

TDD: (717) 783-6514 or Network/TDD: (8) (717) 433-6514.

DANIEL F. HOFFMANN,  
*Secretary*

[Pa.B. Doc. No. 97-1041. Filed for public inspection June 27, 1997, 9:00 a.m.]

*Counties*

Montgomery

Philadelphia

Centre, Clinton, Juniata, Mifflin

Bedford, Blair, Cambria, Fulton,  
Huntingdon, Somerset

Columbia, Montour, Northumberland,  
Snyder, Union

## DEPARTMENT OF PUBLIC WELFARE

### Federal Child Care and Development Block Grant Plan PREPRINT

This is to announce the availability of the Final Child Care and Development Block Grant Plan (CCDBG) for providing child care for welfare and nonwelfare low-income families. This document is the Child Care State Plan PREPRINT, a technical plan in a prescribed format that must be filed with the United States Department of Health and Human Services by July 1, 1997. This Plan PREPRINT covers the period October 1, 1997 through September 30, 1999.

This plan PREPRINT will be available to the general public after July 1, 1997. To obtain a copy of the Plan PREPRINT, contact Karen Habel, Bureau of Child Day Care Services, 1401 North 7th Street, Harrisburg, PA, 17105 or call (717) 787-8691.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD Users) or (800) 654-5988 (Voice Users). Persons who require another alternative format should contact Thomas Vracarich at (717) 783-2209.

FEATHER O. HOUSTON,  
*Secretary*

[Pa.B. Doc. No. 97-1042. Filed for public inspection June 27, 1997, 9:00 a.m.]

### Inpatient Hospital Qualifying for Medical Assistance (MA) Disproportionate Share Payments for the Period January 1, 1997 through June 30, 1997

On July 1, 1988, the Department of Public Welfare (the Department) implemented a disproportionate share pay-

ment system. Under Pennsylvania regulations, the Department is required to annually publish the names of each inpatient acute care general hospital, psychiatric unit and rehabilitation unit of acute general hospitals, rehabilitation hospital, and private psychiatric hospital qualifying for a disproportionate share payment and their respective disproportionate share payment percentage.

*A. Disproportionate Share for Acute Care General Hospitals, Rehabilitation Hospitals and Private Psychiatric Hospitals.*

The following lists identify the inpatient acute care general hospitals, psychiatric units and rehabilitation units of acute care general hospitals, rehabilitation hospitals, and private psychiatric hospitals eligible for payment period January 1, 1997 through June 30, 1997, disproportionate share payments and their respective payment percentages. For all inpatient facilities, disproportionate share payment is calculated as a percentage of projected MA inpatient income.

**Payment period January 1, 1997 to June 30, 1997  
DISPROPORTIONATE SHARE PAYMENT PERCENTAGES**

**Acute Care Hospitals**

ALBERT EINSTEIN	5.155%
A. I. duPONT	9.422%
BARNES KASSON	4.647%
BRADDOCK MED CENTER	4.374%
CHARLES COLE MEMORIAL	3.192%
CHILDRENS HOSPITAL—PGH	9.292%
CHILDRENS HOSPITAL—PHILA	14.000%
CLARION HOSPITAL	3.855%
CLEARFIELD	1.595%
CROZER CHESTER	4.583%
DUBOIS REGIONAL MED CTR	10.000%
EPISCOPAL	9.873%
FULTON COUNTY MEDICAL CTR	1.881%
GHS—CITY AVENUE	8.016%
GHS—PARKVIEW	6.752%
HAHNEMANN HOSPITAL	6.612%
HIGHLAND HEALTH CENTER	5.436%
HOSP UNIV OF PENNA	5.054%
INDIANA HOSPITAL	1.000%
J C BLAIR	4.292%
J F KENNEDY MEMORIAL	3.556%
JAMESON MEMORIAL	1.545%
KENSINGTON	9.277%
LGH—SUSQUEHANNA DIVISION	4.773%
LOCK HAVEN	9.000%
MAGEE WOMENS	7.094%
MEADVILLE	5.930%
MED COLL HOSP—MAIN	11.700%
MEMORIAL HOSPITAL—TOWANDA	2.447%
MEMORIAL OF BEDFORD	3.996%
MERCY CATHOLIC—FITZGERALD	7.084%
MERCY CATHOLIC—MISERICORDIA	5.379%
MERCY PROVIDENCE—PGH	2.373%
MILLCREEK COMMUNITY	4.721%
MONSOUR	7.421%
MT. SINAI	7.683%
NEUMANN MEDICAL CENTER	9.736%
NPHS—GIRARD	7.458%
NPHS—ST. JOSEPHS	8.536%
PRESBYT MED CTR OF UPH	4.082%
PRESBYT UNIV HOSPITAL	4.847%
PUNXSUTAWNEY	4.990%
SOLDIERS AND SAILORS	7.519%
ST CHRISTOPHERS	15.000%
ST FRANCIS—NEW CASTLE	8.700%

TEMPLE	9.102%
THOMAS JEFFERSON	4.828%
TITUSVILLE	2.245%
TROY COMMUNITY	1.000%
VALLEY FORGE	5.500%
WAYNE COUNTY MEMORIAL	2.420%
WEST VIRGINIA	6.510%

**Psychiatric Units of Acute Care Hospitals**

ALBERT EINSTEIN	3.040%
BRADDOCK MED CENTER	2.591%
CROZER CHESTER	2.711%
DUBOIS REGIONAL MED CTR	3.104%
GHS—CITY AVENUE	4.688%
GHS—PARKVIEW	3.960%
HAHNEMANN HOSPITAL	3.880%
HIGHLAND HEALTH CENTER	3.202%
HOSP UNIV OF PENNA	2.982%
J C BLAIR	2.137%
MEADVILLE	2.407%
MED COLL HOSP—MAIN	6.811%
MERCY CATHOLIC—FITZGERALD	4.152%
MERCY CATHOLIC—MISERICORDIA	3.169%
MERCY PROVIDENCE—PGH	1.438%
MONSOUR	4.345%
MT SINAI	4.497%
NEUMANN MEDICAL CENTER	5.679%
NPHS—GIRARD	4.367%
PRESBYT MED CTR OF UPHS	2.422%
PRESBYT UNIV HOSPITAL	2.863%
SOLDIERS AND SAILORS	2.668%
ST FRANCIS—NEW CASTLE	2.882%
TEMPLE	5.314%
THOMAS JEFFERSON	2.852%

**Private Psychiatric Hospitals**

CHARTER FAIRMOUNT INSTITUT	1.922%
CLARION PSYCH CENTER	5.055%
DELAWARE VALLEY M H	9.000%
EDGEWATER	1.260%
EUGENIA HOSPITAL	2.791%
FIRST HOSP. WYOMING VALLEY	4.037%
HORSHAM HOSPITAL	3.817%
HUNTINGTON	1.000%
INSTITUTE OF PA HOSP	2.261%
LAKESWOOD PSYCH HOSP	3.422%
MEADOWS PSYCH CENTER	4.166%
MONTGOMERY COUNTY MH/MR	1.444%
NATL HOSP FOR KIDS IN CRISIS	8.880%
NORTHWESTERN	1.938%
PHILA CHILD GUIDANCE	10.000%
PHILA PSYCH CENTER (Belmont)	2.167%
PHILHAVEN	2.238%
SOUTHWOOD PSYCH CENTER	5.781%

**Drug and Alcohol Units of Acute Care Hospitals**

DUBOIS REGIONAL MED CTR D&A	2.817%
LGH—SUSQUEHANNA DIV.	2.508%
MEADVILLE	2.057%
NPHS—GIRARD	4.196%
PRESBYT MED CTR OF UPH	2.074%
VALLEY FORGE	2.965%

**Medical Rehab Units of Acute Care Hospitals**

ALBERT EINSTEIN	2.748%
CROZER CHESTER	2.389%
DUBOIS REGIONAL MED CTR MR	2.817%
HOSP UNIV OF PENNA	2.685%
JAMESON MEMORIAL	1.271%
MERCY CATHOLIC—FITZGERALD	3.961%
MERCY PROVIDENCE—PGH	1.000%
MT SINAI	4.337%

PRESBYT UNIV HOSPITAL	2.555%
ST FRANCIS—NEW CASTLE	2.554%
TEMPLE	5.229%
THOMAS JEFFERSON	2.543%

**Freestanding Rehab Hospitals**

CHILDRENS HOME—PGH	7.547%
CHILDREN'S REHAB HOSP	6.994%
CHILDRENS SEASHORE HOUSE	10.000%
EAGLEVILLE (D&A)	2.631%
H/S LAKE ERIE INSTITUTE	5.720%
MAGEE MEMORIAL	2.379%

*B. Additional Disproportionate Share Payments*

Additional disproportionate share payments are made to inpatient facilities with a Medicaid inpatient utilization rate of not less than 1% which have provided services to persons who have been determined to be low income by meeting the income and resource standards for the State's General Assistance Program. These additional disproportionate share payments are made by either the Department directly or through an intermediary.

The payment adjustments are paid directly proportional to the payment received for either General Assistance recipients for all hospital services or Title XIX recipients age 21—64 for services rendered by Institutions for Mental Disease under the fee-for-service and capitation programs.

These are the Pennsylvania hospitals eligible for this payment adjustment.

**Acute Care General Hospitals**

ABINGTON MEMORIAL  
 ALBERT EINSTEIN  
 ALIQUIPPA  
 ALLEGHENY GENERAL  
 ALLEGHENY VALLEY  
 ALLENTOWN OSTEO HOSP  
 ALTOONA  
 AMERICAN ONCOLOGICAL  
 ARMSTRONG COUNTY MEMORIAL  
 ASHLAND REG MED CTR  
 A. I. duPONT  
 BARNES KASSON  
 BERWICK  
 BLOOMSBURG  
 BRADDOCK MED CENTER  
 BRADFORD REG MED CTR  
 BRANDYWINE HOSPITAL  
 BROOKVILLE  
 BROWNSVILLE  
 BRYN MAWR  
 BUCKTAIL MEDICAL CENTER  
 BUTLER COUNTY MEMORIAL  
 CANONSBURG GENERAL  
 CARLISLE HOSPITAL  
 CENTRE COMMUNITY  
 CHAMBERSBURG HOSPITAL  
 CHARLES COLE MEMORIAL  
 CHESTER COUNTY  
 CHESTNUT HILL  
 CHILDRENS HOSPITAL—PGH  
 CHILDRENS HOSPITAL—PHILA  
 CITIZENS GENERAL  
 CLARION HOSPITAL  
 CLEARFIELD  
 COMMUNITY GENERAL OSTEO  
 COMMUNITY GENERAL—READING  
 COMMUNITY HOSP OF LANCASTER  
 COMMUNITY HOSPITAL—KANE  
 COMMUNITY MEDICAL CENTER

CONEMAUGH VALLEY  
 CORRY MEMORIAL  
 CROZER CHESTER  
 DELAWARE COUNTY  
 DELAWARE VALLEY  
 DIVINE PROVIDENCE—WMSPT  
 DOYLESTOWN  
 DUBOIS REGIONAL MED CTR  
 EASTON HOSPITAL  
 ELK COUNTY GENERAL  
 ELLWOOD CITY  
 EPHRATA COMMUNITY  
 EPISCOPAL  
 EVANGELICAL COMMUNITY  
 FORBES METRO HEALTH CNTR  
 FORBES REG HEALTH CNTR  
 FRANKFORD  
 FULTON COUNTY MEDICAL CNTR  
 GEISINGER MEDICAL CENTER  
 GEISINGER WYOMING VALLEY  
 GERMANTOWN  
 GETTYSBURG HOSPITAL  
 GHS—CITY AVENUE  
 GHS—PARKVIEW  
 GNADEN HUETTEN  
 GOOD SAMARITAN—LEBANON  
 GOOD SAMARITAN—POTTSVILLE  
 GRADUATE HOSPITAL  
 GRANDVIEW  
 GREENE COUNTY MEMORIAL  
 HAHNEMANN HOSPITAL  
 HAMOT MEDICAL CENTER  
 HANOVER GENERAL  
 HARRISBURG—POLYCLINIC MED CTR  
 HAZLETON GENERAL HOSPITAL  
 HENRY CLAY FRICK  
 HIGHLAND HEALTH CENTER  
 HOLY REDEEMER  
 HOLY SPIRIT  
 HORIZON HOSPITAL SYS, INC  
 HOSP UNIV OF PENNA  
 INDIANA HOSPITAL  
 J C BLAIR  
 J F KENNEDY MEMORIAL  
 JAMESON MEMORIAL  
 JEANES HOSPITAL  
 JEANNETTE DIST MEMORIAL  
 JEFFERSON HEALTH SERVICES  
 JERSEY SHORE HOSPITAL  
 KENSINGTON  
 LANCASTER GENERAL  
 LANKENAU  
 LATROBE AREA  
 LEE HOSPITAL  
 LEHIGH VALLEY  
 LEWISTOWN  
 LGH—SUSQUEHANNA DIVISION  
 LOCK HAVEN  
 LOWER BUCKS  
 MAGEE WOMENS  
 MARIAN COMMUNITY HOSP  
 MCKEESPORT  
 MEADVILLE  
 MED COLL HOSP—BUCKS  
 MED COLL HOSP—ELKINS PARK  
 MED COLL HOSP—MAIN  
 MEDICAL CTR BEAVER PA, INC  
 MEMORIAL—YORK  
 MEMORIAL HOSPITAL—TOWANDA  
 MEMORIAL OF BEDFORD  
 MERCY CATHOLIC—FITZGERALD

MERCY CATHOLIC—MISERICORDIA  
 MERCY HAVERFORD  
 MERCY HOSP OF NANTICOKE  
 MERCY HOSPITAL—ALTOONA  
 MERCY HOSPITAL—PGH  
 MERCY HOSPITAL—SCRANTON  
 MERCY HOSPITAL—WILKES-BARRE  
 MERCY MED CENTER—JOHNSTOWN  
 MERCY PROVIDENCE—PGH  
 METHODIST HOSPITAL  
 METRO HEALTH CENTER  
 MEYERSDALE  
 MID VALLEY  
 MILLCREEK COMMUNITY  
 MILTON HERSHEY  
 MINERS HOSPITAL  
 MINERS MEMORIAL MED CTR  
 MONONGAHELA VALLEY  
 MONSOUR  
 MONTGOMERY  
 MONTROSE GENERAL  
 MOSES TAYLOR  
 MT SINAI  
 MUHLENBERG  
 MUNCY VALLEY  
 NASON HOSPITAL  
 NAZARETH  
 NEUMANN MEDICAL CENTER  
 NORTH HILLS PASSAVANT  
 NORTH PENN  
 NORTHEASTERN  
 NORTHWEST MEDICAL CENTER  
 NPHS—GIRARD  
 NPHS—ST. JOSEPHS  
 OHIO VALLEY  
 PALMERTON  
 PAOLI MEMORIAL  
 PENNSYLVANIA HOSPITAL  
 PHILIPSBURG AREA  
 PHOENIXVILLE  
 POCONO HOSPITAL  
 PODIATRY HOSPITAL  
 POTTSTOWN MEMORIAL  
 POTTSVILLE HOSPITAL  
 PRESBYT MED CTR OF UPHS  
 PRESBYT UNIV HOSPITAL  
 PUNXSUTAWNEY  
 QUAKERTOWN  
 READING HOSPITAL  
 RIDDLE MEMORIAL  
 ROBERT PACKER  
 ROXBOROUGH MEMORIAL  
 SACRED HEART—ALLENTOWN  
 SEWICKLEY  
 SHADYSIDE  
 SHAMOKIN AREA COMM HOSP  
 SHARON  
 SOLDIERS AND SAILORS  
 SOMERSET COMMUNITY  
 SOUTHERN CHESTER  
 ST AGNES  
 ST CHRISTOPHERS  
 ST CLAIR MEMORIAL  
 ST FRANCIS CENTRAL  
 ST FRANCIS—NEW CASTLE  
 ST FRANCIS—PITTSBURGH  
 ST JOSEPH MED CTR  
 ST JOSEPH—LANCASTER  
 ST JOSEPH—READING  
 ST LUKES OF BETHLEHEM

ST MARGARET—PGH  
 ST MARY—LANGHORNE  
 ST VINCENT  
 ST. MARYS MEDICAL CENTER  
 SUBURBAN GENERAL—NORRISTOWN  
 SUBURBAN GENERAL—PGH  
 SUNBURY COMMUNITY  
 TAYLOR HOSPITAL  
 TEMPLE  
 THOMAS JEFFERSON  
 THOS. JEFFERSON—FORD RD  
 TITUSVILLE  
 TYLER MEMORIAL  
 TYRONE HOSP  
 U OF PGH MED CTR—SOUTHSIDE  
 UNION CITY  
 UNIONTOWN  
 UNITED COMMUNITY  
 VALLEY FORGE  
 WARREN GENERAL  
 WASHINGTON  
 WAYNE COUNTY MEMORIAL  
 WAYNESBORO  
 WEST VIRGINIA  
 WESTERN PENN  
 WESTMORELAND  
 WILLIAMSPORT  
 WILLS EYE HOSPITAL  
 WINDBER  
 WYOMING VALLEY HEALTH CARE SYS  
 YORK HOSPITAL

#### **Freestanding Rehab Hospitals**

ALLIED SERVICES  
 BRYN MAWR REHAB  
 CHESTNUT HILL—SPRNGFLD CTR  
 CHILDRENS HOME—PGH  
 CHILDREN'S REHAB HOSP  
 CHILDRENS SEASHORE HOUSE  
 D T WATSON  
 GOOD SHEPHERD  
 HARMARVILLE  
 H/S GREAT LAKES REHAB  
 H/S LAKE ERIE INSTITUTE  
 H/S NITTANY VALLEY REHAB  
 H/S OF MECHANICSBURG REHAB  
 H/S REHAB OF ALTOONA  
 H/S REHAB OF GREATER PGH  
 H/S REHAB OF YORK  
 JOHN HEINZ REHAB HOSP  
 MAGEE MEMORIAL  
 READING REHAB HOSP  
 REHAB INST OF PGH.

#### **Private Psychiatric Hospitals**

CHARTER FAIRMOUNT INSTITUTE  
 CLARION PSYCH CENTER  
 DELAWARE VALLEY M H  
 EDGEWATER  
 EUGENIA HOSPITAL  
 FIRST HOSP. WYOMING VALLEY  
 FRIENDS HOSPITAL  
 HORSHAM HOSPITAL  
 HUNTINGTON  
 INSTITUTE OF PA HOSP  
 LAKEWOOD PSYCH HOSP  
 MEADOWS PSYCH CENTER  
 MONTGOMERY COUNTY MH/MR  
 NAT'L HOSP FOR KIDS IN CRISIS  
 NORTHWESTERN  
 PHILA CHILD GUIDANCE



PHILA PSYCH CENTER (Belmont)  
 PHILHAVEN  
 SOUTHWOOD PSYCH CENTER

**Freestanding Drug and Alcohol Hospital**  
 EAGLEVILLE

**Drug and Alcohol Units of Acute Care Hospitals**

BUTLER COUNTY MEMORIAL  
 DUBOIS REGIONAL MED CTR  
 HAMOT MEDICAL CENTER  
 HORIZON HOSPITAL SYS, INC  
 LGH—SUSQUEHANNA DIVISION  
 MEADVILLE  
 NPHS—GIRARD  
 PRESBYT MED CTR OF UPHS  
 ST FRANCIS—PITTSBURGH  
 VALLEY FORGE  
 WESTMORELAND

**Medical Rehab Units of Acute Care Hospitals**

ABINGTON MEMORIAL  
 ALBERT EINSTEIN  
 BUCKS CO HOSP  
 CHAMBERSBURG HOSPITAL  
 COMMUNITY HOSP OF LANCASTER  
 CROZER CHESTER  
 DELAWARE COUNTY  
 DIVINE PROVIDENCE—WMSPT  
 DOYLESTOWN  
 DUBOIS REGIONAL MED CTR  
 EASTON HOSPITAL  
 ELKINS PARK HOSP  
 FORBES METRO HEALTH CNTR  
 FRANKFORD  
 GEISINGER MEDICAL CENTER  
 GEISINGER WYOMING VALLEY  
 GOOD SAMARITAN—LEBANON  
 HARRISBURG—POLYCLINIC MED CTR  
 HORIZON HOSPITAL SYS, INC  
 HOSP UNIV OF PENNA  
 JAMESON MEMORIAL  
 JEANNETTE DIST MEMORIAL  
 JEFFERSON HEALTH SERVICES  
 LANCASTER GENERAL  
 LEE HOSPITAL  
 MCKEESPORT  
 MERCY CATHOLIC—FITZGERALD  
 MERCY HOSPITAL—ALTOONA  
 MERCY HOSPITAL—PGH  
 MERCY PROVIDENCE—PGH  
 MILTON HERSHEY  
 MONONGAHELA VALLEY  
 MT SINAI  
 NAZARETH  
 NORTHWEST MEDICAL CENTER  
 POTTSVILLE HOSPITAL  
 PRESBYT UNIV HOSPITAL  
 SEWICKLEY  
 ST AGNES  
 ST FRANCIS CENTRAL  
 ST FRANCIS—NEW CASTLE  
 ST FRANCIS—PITTSBURGH  
 ST JOSEPH—LANCASTER  
 ST MARGARET—PGH  
 ST MARY—LANGHORNE  
 ST VINCENT  
 SUBURBAN GENERAL—PGH  
 TAYLOR HOSPITAL  
 TEMPLE  
 THOMAS JEFFERSON

U OF PGH MED CTR—SOUTHSIDE  
 WESTMORELAND  
 WILLIAMSPORT

**Psychiatric Units of Acute Care Hospitals**

ABINGTON MEMORIAL  
 ALBERT EINSTEIN  
 ALIQUIPPA  
 ALLEGHENY GENERAL  
 ALLEGHENY VALLEY  
 ALTOONA  
 ARMSTRONG COUNTY MEMORIAL  
 BLOOMSBURG  
 BRADDOCK MED CENTER  
 BRADFORD REG MED CTR  
 BRANDYWINE HOSPITAL  
 BROWNSVILLE  
 BRYN MAWR  
 BUCKS CO HOSP  
 BUTLER COUNTY MEMORIAL  
 CARLISLE HOSPITAL  
 CENTRE COMMUNITY  
 CHAMBERSBURG HOSPITAL  
 COMMUNITY GENERAL—READING  
 COMMUNITY HOSP OF LANCASTER  
 COMMUNITY MEDICAL CENTER  
 CONEMAUGH VALLEY  
 CROZER CHESTER  
 DELAWARE VALLEY  
 DIVINE PROVIDENCE—WMSPT  
 DOYLESTOWN  
 DUBOIS REGIONAL MED CTR  
 ELK COUNTY GENERAL  
 EPHRATA COMMUNITY  
 FORBES METRO HEALTH CNTR  
 FORBES REG HEALTH CNTR  
 GEISINGER MEDICAL CENTER  
 GHS—CITY AVENUE  
 GHS—PARKVIEW  
 GNADEN HUETTEN  
 GRANDVIEW  
 HAHNEMANN HOSPITAL  
 HAMOT MEDICAL CENTER  
 HANOVER GENERAL  
 HARRISBURG—POLYCLINIC MED CTR  
 HAZLETON GENERAL HOSPITAL  
 HIGHLAND HEALTH CENTER  
 HOLY SPIRIT  
 HOSP UNIV OF PENNA  
 J C BLAIR  
 JEFFERSON HEALTH SERVICES  
 LANCASTER GENERAL  
 LATROBE AREA  
 LEHIGH VALLEY  
 LEWISTOWN  
 LOWER BUCKS  
 MARIAN COMMUNITY HOSP  
 MCKEESPORT  
 MEADVILLE  
 MED COLL HOSP—MAIN  
 MEDICAL CTR BEAVER PA, INC  
 MEMORIAL—YORK  
 MERCY CATHOLIC—FITZGERALD  
 MERCY CATHOLIC—MISERICORDIA  
 MERCY HOSP OF NANTICOKE  
 MERCY HOSPITAL—ALTOONA  
 MERCY HOSPITAL—PGH  
 MERCY HOSPITAL—WILKES-BARRE  
 MERCY MED CENTER—JOHNSTOWN  
 MERCY PROVIDENCE—PGH  
 MILTON HERSHEY

MONONGAHELA VALLEY  
 MONSOUR  
 MONTGOMERY  
 MOSES TAYLOR  
 MT SINAI  
 MUHLENBERG  
 NAZARETH  
 NEUMANN MEDICAL CENTER  
 NORTHWEST MEDICAL CENTER  
 NPHS—GIRARD  
 PAOLI MEMORIAL  
 PENNSYLVANIA HOSPITAL  
 POCONO HOSPITAL  
 POTTSTOWN MEMORIAL  
 POTTSVILLE HOSPITAL  
 PRESBYT MED CTR OF UPHS  
 PRESBYT UNIV HOSPITAL  
 READING HOSPITAL  
 ROBERT PACKER  
 SEWICKLEY  
 SHARON  
 SOLDIERS AND SAILORS  
 SOMERSET COMMUNITY  
 ST CLAIR MEMORIAL  
 ST FRANCIS—NEW CASTLE  
 ST FRANCIS—PITTSBURGH  
 ST JOSEPH—LANCASTER  
 ST JOSEPH—READING  
 ST LUKES OF BETHLEHEM  
 ST LUKES—QUAKERTOWN  
 ST VINCENT  
 TEMPLE  
 THOMAS JEFFERSON  
 U OF PGH MED CTR—SOUTHSIDE  
 WARREN GENERAL  
 WASHINGTON  
 WESTERN PENN  
 WESTMORELAND  
 WILLS EYE HOSPITAL  
 WYOMING VALLEY HEALTH CARE SYS  
 YORK HOSPITAL

*C. Different Class of Disproportionate Share Payments*

Effective April 1, 1997, through June 30, 1997, the Department established a different class of disproportionate share payments to hospitals which render uncompensated care and which the Department determined would experience significant revenue loss as a result of recent Medical Assistance Program revisions under Act No. 1996-35.

These are the hospitals which qualify for this different class of disproportionate share payments.

Albert Einstein  
 Allegheny General  
 Barnes Kasson  
 Braddock Medical Center  
 Charles Cole Memorial  
 Clarion Osteopathic  
 Clearfield  
 Crozer Chester Medical Center  
 Dubois Regional Medical Center  
 Eagleville  
 Episcopal  
 Fulton County Medical Center  
 Graduate Hospital  
 Indiana Hospital  
 JC Blair  
 Jameson Memorial  
 Lehigh Valley

Lock Haven  
 Meadville Medical Center  
 Memorial Hospital Bedford  
 Memorial Hospital Towanda  
 Mercy Catholic—Fitzgerald  
 Mercy Catholic—Misericordia  
 Mercy Hospital—Pittsburgh  
 North Philadelphia Health System  
 Pennsylvania Hospital  
 Presbyterian Medical Center of Philadelphia  
 Punxsutawney  
 Soldiers and Sailors  
 St Francis New Castle  
 St Francis—Pittsburgh  
 Titusville  
 Valley Forge  
 Wayne County Memorial

*Contact Person*

A copy of this notice is available for review at local county assistance offices throughout this Commonwealth.

Interested persons are invited to submit written comments to this notice within 30 days of this publication. Comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17120.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users), or may use the Department of Public Welfare TDD by calling (717) 787-3616. Persons who require an alternate format should contact Thomas Vracarich at (717) 783-2209.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-NOT-147. (1) General Fund; (2) Implementing Year 1996-97 is \$22,925,000; (3) 1st Succeeding Year 1997-98 is \$0; 2nd Succeeding Year 1998-99 is \$0; 3rd Succeeding Year 1999-00 is \$0; 4th Succeeding Year 2000-01 is \$0; 5th Succeeding Year 2001-02 is \$0; (4) FY 1995-96 \$452,180,000; FY 1994-95 \$551,611,000; FY 1993-94 \$681,793,000; (7) Medical Assistance—Inpatient; (8) recommends adoption. This cost has been included in the Governor's 1996-1997 Executive Budget.

[Pa.B. Doc. No. 97-1043. Filed for public inspection June 27, 1997, 9:00 a.m.]

### Inpatient Hospital Services

The purpose of this announcement is to provide advance public notice that the Department of Public Welfare will revise its payment method for inpatient hospital services effective July 1, 1997. These revisions will affect acute care general hospitals, private psychiatric hospitals, psychiatric units of general hospitals, rehabilitation hospitals and rehabilitation units of general hospitals.

The Department currently is discussing with representatives of the hospital industry the possibility of extending the existing Hospital Rate Agreement which governs the payment methods and standards applicable to hospitals participating in the Medical Assistance Program. The Agreement was effective July 1, 1995, and will expire on June 30, 1997. If a revised Agreement is adopted by and between the Department and participating hospitals, the

Department expects the payment provisions to be generally similar to those set forth in the current Agreement and that the aggregate payments under the Agreement will be as reflected in the following fiscal note.

If the negotiated agreement is reached, it is expected that it will provide for a 2% rate increase effective January 1, 1998 and January 1, 1999. Additionally, it will include a provision to distribute to providers who are eligible for direct medical education payments and/or disproportionate share payments the amount of approximately \$158 million for fiscal year (FY) 1997-98.

In the absence of a revised rate Agreement, the Department currently intends to adopt the following significant changes to its hospital payment systems effective July 1, 1997:

1. The rebasing of inpatient hospital rates to FY 1993-94.

2. The elimination of exceptional capital payments to acute care general hospitals. All hospitals have now had a 7-year phase-in period to adjust to the Department's prospective capital payment system.

3. The acute care general hospital prospective capital add-on will be adjusted to reflect the ratio of capital to operating costs for FY 1993-94.

4. A revision to the inpatient disproportionate share eligibility criteria and payment standards. The Department has been utilizing eligibility criteria that exceed Federal requirements and payment standards. The revisions would reflect minimum eligibility criteria.

5. The discontinuation of direct medical education payments. These payments relate to costs that need not be incurred by hospitals in order to achieve licensure or certification to participate in the Medical Assistance Program and are not required to be made under either Federal or State law.

6. The discontinuation of outpatient disproportionate share payments which are not required to be made under either Federal or State law.

7. For the acute care general hospital, psychiatric hospital and rehabilitation hospital inflation factor, the use of the DRI/McGraw-Hill, PPS type hospital, market basket index, with adjustments that allow for cost and policy-related considerations not fully addressed by the DRI/McGraw-Hill Index.

8. Hospital-specific upper limits based on peer groupings for all hospital types. The Department has determined that a payment system base that relies on each hospital's historical costs allows inefficient hospitals to receive excessive payments.

9. A total cost moratorium for new or additional beds and technical changes to the current capital moratoriums will be adopted.

10. A moratorium on all new hospital enrollments in the Medical Assistance Program.

The Department is also considering the discontinuation of exceptional payments to "financially distressed" hospitals.

#### *Fiscal Impact*

This change will result in a savings of \$34.292 million in total funds (\$17.812 million in State funds) for FY 1997-98 and a savings of \$21.459 million in total funds (\$12.176 million in State funds) for FY 1998-99.

#### *Contact Person*

A copy of this notice is available for review at local county assistance offices. Interested persons are invited to submit written comments to this notice within 30 days of this publication. These comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17120.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-NOT-148. (1) General Fund; (2) Implementing Year 1996-97 is \$7,369,000; (3) 1st Succeeding Year 1997-98 is \$13,760,000; 2nd Succeeding Year 1998-99 is \$14,173,000; 3rd Succeeding Year 1999-00 is \$14,598,000; 4th Succeeding Year 2000-01 is \$15,036,000; 5th Succeeding Year 2001-02 is \$15,487,000; (4) FY 1995-96 \$452,180,000; FY 1994-95 \$551,811,000; FY 1993-94 \$681,793,000; (7) Medical Assistance-Inpatient; (8) recommends adoption.

[Pa.B. Doc. No. 97-1044. Filed for public inspection June 27, 1997, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Red Hot 7's Instant Lottery Game

Under the provisions of the State Lottery Law (72 P. S. §§ 3761-1—3761-15), and the provisions of 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Red Hot 7's.

2. *Price:* The price of a Pennsylvania Red Hot 7's instant lottery game ticket is \$1.00.

3. *Play Symbols:* Each Pennsylvania Red Hot 7's instant lottery game ticket will contain one play area. The play symbols, printed in either red or black ink, and their captions, printed in black ink, located in the play area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT) and 9 (NINE).

4. *Prize Play Symbols:* The prize play symbols and their captions, printed in black ink, located in the play area are: \$1<sup>00</sup> (ONE DOL), \$2<sup>00</sup> (TWO DOL), \$4<sup>00</sup> (FOUR DOL), \$7<sup>00</sup> (SVN DOL), \$14\$ (FRTN DOL), \$77\$ (SVTYSN) and \$7,777 (STSHSS).

5. *Prizes:* The prizes that can be won in this game are \$1, \$2, \$4, \$7, \$14, \$77, and \$7,777. The player can win up to four times on each ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 9,840,000 tickets will be printed for the Pennsylvania Red Hot 7's instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in black ink, and a prize play symbol of \$7,777 (STSHSS) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$7,777.

(b) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in black ink, and a prize play symbol of \$77\$ (SVTYSN) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$77.

(c) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in red ink, and a prize play symbol of \$7<sup>.00</sup> (SVN DOL) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$14.

(d) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in black ink, and a prize play symbol of \$7<sup>.00</sup> (SVN DOL) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$7.

(e) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in black ink, and a prize play symbol of \$4<sup>.00</sup> (FOUR DOL) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$4.

(f) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in red ink, and a prize play symbol of \$2<sup>.00</sup> (TWO DOL) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$4.

(g) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in black ink, and a prize play symbol of \$2<sup>.00</sup> (TWO DOL) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$2.

(h) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in red ink, and a prize play symbol of \$1<sup>.00</sup> (ONE DOL) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$2.

(i) Holders of tickets with a play symbol of 7 (SEVEN), with the symbol printed in black ink, and a prize play symbol of \$1<sup>.00</sup> (ONE DOL) appearing under the 7 (SEVEN) play symbol in the play area on a single ticket, shall be entitled to a prize of \$1.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>Find a Black "7" or Find a Red "7" to Double With Prize(s) of:</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 9,840,000 Tickets</i>
\$1	\$1	1:9.38	1,049,600
\$1 (D)	\$2	1:25	393,600
\$2	\$2	1:50	196,800
\$2 (D)	\$4	1:100	98,400
\$4	\$4	1:300	32,800
\$1 (D) + \$1 + \$4	\$7	1:300	32,800
\$1 + \$2 + \$4	\$7	1:300	32,800
\$7	\$7	1:300	32,800
\$2 + \$4 + \$4 + \$4	\$14	1:150	65,600
\$7 (D)	\$14	1:300	32,800
\$7 (D) + \$7	\$21	1:400	24,600
\$1 + \$2 + \$4 + \$14	\$21	1:1,200	8,200
\$77	\$77	1:5,455	1,804
\$7,777	\$7,777	1:656,000	15

(D) = A Red 7 Doubles Prize

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Red Hot 7's instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Red Hot 7's, prize money on winning Pennsylvania Red Hot 7's instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Red Hot 7's instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-1 — 3761-15), the regulations contained in Part V of Title 61 of the *Pennsylvania Code* (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. Such announcement will be disseminated through media used to advertise or promote Pennsylvania Red Hot 7's or through normal communications methods.

ROBERT A. JUDGE, Sr.,  
Secretary

[Pa.B. Doc. No. 97-1045. Filed for public inspection June 27, 1997, 9:00 a.m.]

**Pennsylvania Win \$1,000 A Week For Life II Instant Lottery Game**

Under the provisions of the State Lottery Law (72 P. S. §§ 3761-1—3761-15), and the provisions of 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Win \$1,000 A Week For Life II.

2. *Price:* The price of a Pennsylvania Win \$1,000 A Week For Life II instant lottery game ticket is \$2.00.

3. *Play Symbols:*

(a) Each Pennsylvania Win \$1,000 A Week For Life II instant lottery game ticket will contain three play areas known as Game 1, Game 2, and Game 3, respectively. Each game has a different game play method and is played separately.

(b) The play area for Game 1 will contain a "Your Numbers" area and a "Their Numbers" area. The play symbols and their captions located beneath the "Your Numbers" area and the "Their Numbers" area in the play area for Game 1 are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVEN), 12 (TWELVE), 13 (THIRTEEN), 14 (FOURTEEN) and 15 (FIFTEEN).

(c) The play symbols and their captions located in the play area for Game 2 are: \$1<sup>.00</sup> (ONE DOL), \$2<sup>.00</sup> (TWO DOL), \$4<sup>.00</sup> (FOUR DOL), \$20\$ (TWENTY), \$40\$ (FORTY), \$200 (TWO HUN) and LIFE (\$1,000/WEEK).

(d) The play area for Game 3 will contain a "Your Numbers" area and a "Lucky Number" area. The play symbols and their captions located beneath the "Your Numbers" area and the "Lucky Number" area in the play area for Game 3 are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN) and 15 (FIFTN).

4. *Prize Play Symbols.*

(a) The play area for Game 1 will contain a "Prize" area. The prize play symbols and their captions located beneath the "Prize" area in the play area for Game 1 are: \$1.<sup>00</sup> (ONE DOL), \$2.<sup>00</sup> (TWO DOL), \$4.<sup>00</sup> (FOUR DOL), \$8.<sup>00</sup> (EIGHT DOL), \$20\$ (TWENTY), \$40\$ (FORTY) and \$100 (ONE HUN).

(b) The prize play symbols and their captions located in the play area for Game 3 are: \$1.<sup>00</sup> (ONE DOL), \$2.<sup>00</sup> (TWO DOL), \$3.<sup>00</sup> (THREE DOL), \$4.<sup>00</sup> (FOUR DOL), \$8.<sup>00</sup> (EIGHT DOL), \$20\$ (TWENTY), \$40\$ (FORTY), \$100 (ONE HUN), \$200 (TWO HUN) and \$1,000 (ONE THO).

5. *Prizes.* The prizes that can be won in Game 1 are \$1, \$2, \$4, \$8, \$20, \$40 and \$100. The prizes that can be won in Game 2 are \$1, \$2, \$4, \$20, \$40, \$200 and \$1,000 a week for life (\$1 million lifetime minimum). The prizes that can be won in Game 3 are \$1, \$2, \$3, \$4, \$8, \$20, \$40, \$100, \$200 and \$1,000. The player can win up to 8 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 9,840,000 tickets will be printed for the Pennsylvania Win \$1,000 A Week For Life II instant lottery game.

7. *Determination of Prize Winners.*

(a) Determination of prize winners for Game 1 are:

(1) Holders of tickets where "Your Number" beats the "Their Number" in the same game, and a prize play symbol of \$100 (ONE HUN) in the prize area for that game, on a single ticket, shall be entitled to a prize of \$100.

(2) Holders of tickets where "Your Number" beats the "Their Number" in the same game, and a prize play symbol of \$40\$ (FORTY) in the prize area for that game, on a single ticket, shall be entitled to a prize of \$40.

(3) Holders of tickets where "Your Number" beats the "Their Number" in the same game, and a prize play symbol of \$20\$ (TWENTY) in the prize area for that game, on a single ticket, shall be entitled to a prize of \$20.

(4) Holders of tickets where "Your Number" beats the "Their Number" in the same game, and a prize play symbol of \$8.<sup>00</sup> (EIGHT DOL) in the prize area for that game, on a single ticket, shall be entitled to a prize of \$8.

(5) Holders of tickets where "Your Number" beats the "Their Number" in the same game, and a prize play symbol of \$4.<sup>00</sup> (FOUR DOL) in the prize area for that game, on a single ticket, shall be entitled to a prize of \$4.

(6) Holders of tickets where "Your Number" beats the "Their Number" in the same game, and a prize play symbol of \$2.<sup>00</sup> (TWO DOL) in the prize area for that game, on a single ticket, shall be entitled to a prize of \$2.

(7) Holders of tickets where "Your Number" beats the "Their Number" in the same game, and a prize play symbol of \$1.<sup>00</sup> (ONE DOL) in the prize area for that game, on a single ticket, shall be entitled to a prize of \$1.

(b) Determination of prize winners for Game 2 are:

(1) Holders of tickets with three matching play symbols of LIFE (\$1,000/WEEK) in the play area on a single ticket, shall be entitled to a prize of \$1,000 a week for life (\$1 million lifetime minimum) which will be paid by an initial cash payment of \$52,000 plus equal annual payments of \$52,000 over the lifetime of the winner and continuing under the provisions of 61 Pa. Code § 811.16 (relating to prizes payable after death of prize winner) until the \$1 million minimum has been paid. If the winner of the Pennsylvania \$1,000 A Week For Life II prize is younger than 18 years of age, the winner will not begin to receive the prize until the winner reaches 18 years of age. Only one claimant per ticket allowed.

(2) Holders of tickets with three matching play symbols of \$200 (TWO HUN) in the play area on a single ticket, shall be entitled to a prize of \$200.

(3) Holders of tickets with three matching play symbols of \$40\$ (FORTY) in the play area on a single ticket, shall be entitled to a prize of \$40.

(4) Holders of tickets with three matching play symbols of \$20\$ (TWENTY) in the play area on a single ticket, shall be entitled to a prize of \$20.

(5) Holders of tickets with three matching play symbols of \$4.<sup>00</sup> (FOUR DOL) in the play area on a single ticket, shall be entitled to a prize of \$4.

(6) Holders of tickets with three matching play symbols of \$2.<sup>00</sup> (TWO DOL) in the play area on a single ticket, shall be entitled to a prize of \$2.

(7) Holders of tickets with three matching play symbols of \$1.<sup>00</sup> (ONE DOL) in the play area on a single ticket, shall be entitled to a prize of \$1.

(8) A prize will be paid only for the highest Pennsylvania \$1,000 A Week For Life II instant lottery game prize won in Game 2, if the ticket meets the criteria established in 61 Pa. Code § 819.213 (relating to ticket validation and requirements).

(c) Determination of prize winners for Game 3 are:

(1) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$1,000 (ONE THO) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(2) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$200 (TWO HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$200.

(3) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$100 (ONE HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(4) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$40\$ (FORTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$40.

(5) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$20\$ (TWENTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(6) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$8.<sup>00</sup> (EIGHT DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$8.

(7) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$4.<sup>00</sup> (FOUR DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$4.

(8) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$3.<sup>00</sup> (THREE DOL) appears under the matching "Your Numbers"

play symbol, on a single ticket, shall be entitled to a prize of \$3.

(9) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$2.<sup>00</sup> (TWO DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$2.

(10) Holders of tickets where any one of the "Your Numbers" play symbols matches the "Lucky Number" play symbol and a prize play symbol of \$1.<sup>00</sup> (ONE DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$1.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>Game 1</i>	<i>Game 2</i>	<i>Get</i>	<i>Game 3</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 9,840,000 Tickets</i>
\$1 x 2				\$2	1:10.71	918,400
\$2				\$2	1:21.43	459,200
\$1	\$1		\$1 x 2	\$4	1:35.29	278,800
	\$2		\$1 x 2	\$4	1:66.67	147,600
\$2	\$2			\$4	1:120	82,000
			\$4	\$4	1:600	16,400
\$2	\$2		\$1 x 4	\$8	1:120	82,000
\$2 x 2	\$4			\$8	1:600	16,400
\$4			\$4	\$8	1:600	16,400
\$1 x 2	\$1		\$1 x 5	\$8	1:600	16,400
\$4			\$8 x 2	\$20	1:600	16,400
\$4 x 2	\$2		\$2 x 5	\$20	1:600	16,400
\$4 x 2	\$4		\$4 x 2	\$20	1:600	16,400
	\$20			\$20	1:600	16,400
\$2 x 2	\$1		\$3 x 5	\$20	1:600	16,400
\$2 x 2	\$2		\$2 + \$8 x 4	\$40	1:400	24,600
\$20	\$20			\$40	1:666.67	14,760
\$4	\$20		\$8 x 2	\$40	1:1,200	8,200
\$8 x 2	\$4		\$20	\$40	1:1,200	8,200
\$40				\$40	1:1,200	8,200
\$20	\$20		\$40 x 4	\$200	1:30,000	328
\$20 x 2	\$20		\$20 x 2 + \$100	\$200	1:30,000	328
\$40	\$40		\$40 x 3	\$200	1:30,000	328
\$100			\$100	\$200	1:30,000	328
	\$200			\$200	1:30,000	328
	\$200		\$200 x 4	\$1,000	1:120,000	82
			\$1,000	\$1,000	1:120,000	82
	\$1,000/ WK/LIFE			\$634,000	1:4,920,000	2

9. *Claiming of Prizes:* For purposes of claiming the \$1,000 a week for life prize under this game, "lifetime" for legal entities shall be defined as 20 years beginning the date the prize is claimed. Only one claimant per ticket is allowed for the \$1,000 a week for life prize.

10. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Win \$1,000 A Week For Life II instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Win \$1,000 A Week For Life II, prize money on winning Pennsylvania Win \$1,000 A Week For Life II instant lottery game tickets will be retained by the Secretary for payment to the

persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Win \$1,000 A Week For Life II instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-1—3761-15), the regulations contained in Part V of Title 61 of the *Pennsylvania Code* (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. Such announcement will be

disseminated through media used to advertise or promote Pennsylvania Win \$1,000 A Week For Life II or through normal communications methods.

ROBERT A. JUDGE, Sr.,  
Secretary

[Pa.B. Doc. No. 97-1046. Filed for public inspection June 27, 1997, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Retention of Engineering Firms

#### Clarion County Project Reference No. 08430AG2081

The Department of Transportation (Department) will retain an engineering firm to provide supplementary construction inspection staff of approximately 12 inspectors, under the Department's Inspector-in-Charge, for construction inspection and documentation services on S. R. 0080, Section 347, Interstate 80, Clarion County. This project involves roadway joint rehabilitation, patching ramps, and four lane reconstruction and rehabilitation at various locations between Exit 6 and 7 with acceleration/deceleration lane improvements at Exit 6 and expansion joint replacement and resetting of rockers on the Emlenton Bridge.

The Department will establish an order of ranking of a minimum of three firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in the Maintenance and Protection of Traffic, soils, structures, concrete, asphalt paving and drainage.
- b. Number of available inspectors in each payroll classification.
- c. Number of NICET certified inspectors in each payroll classification.
- d. Past performance.
- e. Workload.
- f. Understanding of Department's requirements, policies and specifications.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1) (NICET Highway Construction Level 4 or equivalent)	1 (1)
Transportation Construction Insp. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	3 (3)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	7 (5)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	1 (0)

The numbers in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.
5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1997:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour of Inspection</i>
(TCM-1)	\$43.61
(TCIS)	\$38.21
(TCI)	\$33.44
(TA)	\$22.98

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a preconstruction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; and perform other duties as may be required. Firms applying must have qualified personnel capable of climbing structures during painting, rehabilitation or construction, a Certified CDS Operator and a Licensed Nuclear Densometer Gauge Operator.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 1 Nuclear Densometer Gauges/License (at point of need)
- 1 Base Radio Station
- 4 Two-way Radios

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be 15% of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised projects.

Letters of interest for this project must include a letter, signed by the individuals the firm proposes for all TCM-1 and TCIS positions, giving their approval to use their name in the firm's letter of interest for this specific project.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	2
TCIS	4
TCI	9

No resumes are required for the TA Classification

The second copy of the letter of interest and required forms (see general requirements and information section) shall be sent to: Richard H. Hogg, District Engineer, District 10-0, P. O. Box 429, Route 286 South, Indiana, PA 15701.

Technical questions concerning the requirements for this project should be directed to Frederick M. Heilman, P. E., District 10-0, at (412) 357-4805.

Questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

**Clarion County  
Project Reference No. 08430AG2082**

The Department of Transportation will retain an engineering firm to provide supplementary construction inspection staff of approximately 14 inspectors, under the Department's Inspector-in-Charge, for construction inspection and documentation services on S. R. 0080, Section 345, Interstate 80, Clarion County. This project involves total reconstruction of eastbound and westbound Interstate Route 80 from Canoe Creek Bridge to east of Exit 9. Also included is the installation of a weather monitoring station.

The Department will establish an order of ranking of a minimum of three firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

a. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in the maintenance and protection of traffic, soils, structures, concrete, asphalt paving and drainage.

b. Number of available inspectors in each payroll classification.

c. Number of NICET certified inspectors in each payroll classification.

d. Past performance.

e. Workload.

f. Understanding of Department's requirements, policies and specifications.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1) (NICET Highway Construction Level 4 or equivalent)	1 (1)
Transportation Construction Insp. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	3 (3)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	9 (6)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	1 (0)

The numbers in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.

2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1997:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour of Inspection</i>
(TCM-1)	\$43.61
(TCIS)	\$38.21
(TCI)	\$33.44
(TA)	\$22.98

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.



Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a preconstruction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; the proposed inspection staff must include a Certified CDS Operator and a Licensed Nuclear Densometer Gauge Operator and perform other duties as may be required.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 1 Nuclear Densometer Gauges/License (at point of need/when needed)

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be 15% of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised projects.

Letters of interest for this project must include a letter, signed by the individuals the firm proposes for all TCM-1 and TCIS positions, giving their approval to use their name in the firm's letter of interest for this specific project.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	2
TCIS	4
TCI	11

No resumes are required for the TA Classification.

The second copy of the letter of interest and required forms (see general requirements and information section) shall be sent to: Richard H. Hogg, District Engineer, District 10-0, P. O. Box 429, Route 286 South, Indiana, PA 15701.

Technical questions concerning the requirements for this project should be directed to Frederick M. Heilman, P. E., District 10-0, at (412) 357-4805.

Questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

#### **General Requirements and Information**

Firms interested in providing the above work and services are invited to submit two copies of a letter of interest and required information for each Project Reference Number for which the applicant wishes to be considered.

The first copy of the letter of interest and required information must be submitted to Charles W. Allwein, P.E., Chief, Consultant Agreement Division, 7th Floor, Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1900.

The letter of interest and required information must be received within 13 calendar days of this notice. The deadline for receipt of a letter of interest at the above address is 4:30 p.m. prevailing time of the thirteenth day.

The second copy of the letter of interest and required information must be submitted to the appropriate District Engineer/Administrator or the Bureau Director as indicated in the individual advertisement. This copy must be postmarked or delivered on or before the deadline indicated above.

If an individual, firm or corporation not authorized to engage in the practice of engineering desires to submit a letter of interest, the individual, firm or corporation may do so as part of a joint venture with an individual, firm or corporation which is permitted under State law to engage in the practice of engineering.

If a joint venture responds to a project advertisement, the Department of Transportation will not accept separate letters of interest from the joint venture constituents. A firm will not be permitted to submit on more than one joint venture for the same Project Reference Number. Also, a firm that responds to a project as a prime may not be included as a designated subcontractor to another firm that responds as a prime to the project. Multiple responses under any of the foregoing situations will cause the rejection of all responses of the firm or firms involved. The above does not preclude a firm from being set forth as a designated subcontractor to more than one prime responding to the project advertisement.

If a goal for Disadvantaged Business Enterprise (DBE) participation is established for an advertised project, firms expressing interest in the project must agree to ensure that Disadvantaged Business Enterprise (DBE) firms as defined in the Intermodal Surface Transportation Efficiency Act of 1991 and currently certified by the Department of Transportation, shall have the maximum opportunity to participate in any subcontracting or furnishing supplies or services approved under Form 442, Section 1.10(a). The act requires that firms owned and controlled by women (WBEs) be included, as a presumptive group, within the definition of Disadvantaged Business Enterprise (DBE). The goal for DBE participation shall be as stated in the individual project advertisement. Responding firms shall make good faith efforts to meet the DBE goal using DBEs (as they were defined prior to the act), WBEs or combinations thereof.

Proposing DBE firms must be certified at the time of submission of the letter of interest. If the selected firm fails to meet the established DBE participation goal, it shall be required to demonstrate its good faith efforts to attain the goal.

Responses are encouraged by small firms, Disadvantaged Business Enterprise (DBE) firms and other firms who have not previously performed work for the Department of Transportation.

Each letter of interest must include the following information, and the information must be packaged and presented in the following order:

1. Transmittal Letter (maximum of two typed pages, one side)

The subject heading of the transmittal letter must include the project reference number for which the applicant wishes to be considered, the firm's legal name, fictitious name (if applicable) and the firm's Federal identification number. If the project advertisement indicated the Department will retain an engineering firm for the project, the applicant must indicate in the body of its transmittal letter the names and Professional Engineer License Number of individuals who are directing heads or employees of the firm who have responsible charge of the

firm's engineering activities, and whose names and seals shall be stamped on all plans, specifications, plats and reports issued by the firm.

2. Project Organization Chart (one page, one side)

This chart should show key staff from the prime and each subconsultant and their area of responsibility.

3. Standard Form 255, "Architect-Engineer and Related Services Questionnaire for Specific Project" (one Form 255 for the project team)

The Standard Form 255 must be signed, dated and filled out in its entirety, including Item No. 6 listing the proposed subconsultants and the type of work or service they will perform on the project. Under Item 4 of this form, Column A should include the number of subconsultant personnel and Column B should include the number of prime consultant personnel to be assigned to work on this project reference number.

If a Disadvantaged Business Enterprise (DBE) goal is specified for the project, the DBE must be currently certified by the Department of Transportation, and the name of the DBE and the work to be performed must be indicated in Item No. 6. If a Woman Business Enterprise (WBE) firm is substituted for the DBE, the WBE firm must also be presently certified by the Department of Transportation and indicated in Item 6.

4. Standard Form 254, "Architect-Engineer for Related Services Questionnaire"

A Standard Form 254, not more than 1 year old as of the date of this advertisement, must accompany each letter of interest for the firm, each party to a Joint Venture, and for each subconsultant the firm or Joint Venture is proposing to use for the performance of professional services regardless of whether the subconsultant is an individual, a college professor or a company, unless an acceptable Standard Form 254 for the prime and each subconsultant/subcontractor is on file in both the Bureau of Design and the Engineering District Office or Central Office Bureau identified in the individual project advertisement.

If the Standard Form 254 is not submitted with the letter of interest, the transmittal letter shall indicate the dates that the Standard Forms 254 were submitted to the Bureau of Design and appropriate Engineering District/Central Office Bureau.

These forms shall be assembled with the prime's first, followed by the subconsultant's in the same order as they appear in Item 6 of Form 255.

5. Workload Projection Graph (not required for Construction Inspection Services)

A Workload Projection Graph for the prime and each subconsultant should indicate the firm's current and anticipated workload compared to the anticipated capacity available for the next 2-year time frame. The Workload Projection Graph should be submitted for the offices where the work would be performed and should only include the personnel classifications required for providing the advertised services and work.

6. Authorization Letters (if required)

If the advertisement requires a letter signed by individuals giving their approval to use their names in the letter of interest, the letters from proposed prime employees should be first, followed by subconsultant employees, in the same order as shown in Item 6 of Form 255.

7. Registration To Do Business

Firms with out-of-State headquarters or corporations not incorporated in this Commonwealth must include, with each letter of interest, a copy of their registration to do business in this Commonwealth as provided by the Department of State. Firms who are not registered to do business in this Commonwealth at the time of this advertisement must document that they have applied for registration to the Department of State, Corporation Bureau. The telephone number for the Corporation Bureau is (717) 787-1057 or (717) 787-2004.

8. Overhead Rates (one page)

This page must show the latest audited overhead rate developed in accordance with Federal Acquisition Regulations (FAR) for the prime consultant and each subconsultant. If a FAR rate is not available, the latest rate available from a Certified Public Account must be indicated. New firms should indicate how long the firm has been in existence and when an audited overhead rate would be available.

9. Additional Information

Additional information, not to exceed ten one sided pages or five double sided pages may be included at the discretion of the submitting firm.

The assignment of the agreement/contract for the above advertisements will be made to one of the firms who submitted an acceptable letter of interest in response to the project advertisement. The assignment will be made based on the Department's evaluation of the firm's qualification and capabilities. The Department reserves the right to reject all letters submitted, to cancel the solicitations requested under this notice and/or to readvertise solicitation for the work and services.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 97-1047. Filed for public inspection June 27, 1997, 9:00 a.m.]

## ENVIRONMENTAL HEARING BOARD

### Carl Heine, et al. v. DEP and Great Valley School District, Permittee; EHB Doc. No. 97-112-C

Carl Heine, et al. has appealed the issuance by the Department of Environmental Protection of an NPDES permit to Great Valley School District for a facility in East Whiteland Township, Chester County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by an interested party on request during normal business hours. If information concerning this notice is required in an alternative form, contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code

§ 1021.62. Copies of the Board's rules of practice and procedure are available upon request from the Board.

GEORGE J. MILLER,  
*Chairperson*

[Pa.B. Doc. No. 97-1048. Filed for public inspection June 27, 1997, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### 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>
7-300	Environmental Quality Board Administration of the Land Recycling Program	6/18/97

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 97-1049. Filed for public inspection June 27, 1997, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Alleged Violation of Insurance Laws: Brian L. Shegon; Doc. No. SC97-05-026

Notice is hereby given of the Order to Show Cause issued on June 13, 1997 by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania in the above-referenced matter. Violation of the following is alleged: Sections 604, 633 and 633.1 of the Insurance Department Act (40 P. S. §§ 234, 273 and 273.1) and section 5(a)(2) of The Unfair Insurance Practices Act (40 P. S. § 1171.5(a)(2)).

Respondent shall file a written answer to the Order to Show Cause within 30 days of the date of issue. If Respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); 1 Pa. Code §§ 31.1—35.251 (relating to General Rules of Administrative Practice and Procedure); 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure) and other relevant procedural provisions of law.

Answers, motions preliminary to those at the hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed in writing with the Docket Clerk,

Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency ADA Coordinator at (717) 787-4298.

LINDA S. KAISER,  
*Insurance Commissioner*

[Pa.B. Doc. No. 97-1050. Filed for public inspection June 27, 1997, 9:00 a.m.]

### Deregulation of Accident and Health Forms

The Insurance Commissioner hereby deregulates certain group accident and health, blanket accident and sickness, and blanket student accident and sickness forms, as set forth in Annex A. This deregulation applies to forms offered by Hospital Plan Corporations operating under 40 Pa.C.S. Ch. 61 and Professional Health Services Plan Corporations operating under 40 Pa.C.S. Ch. 63. This deregulation is authorized by sections 3(A) and 3(B) of the Accident and Health Filing Reform Act, Act 159 of 1996.

#### *Statutory Authority*

Section 3(A) of Act 159, the Accident and Health Filing Reform Act, requires that insurers, including Hospital Plan Corporations and Professional Health Services Plan Corporations, file policy forms with the Insurance Department, except those which, in the opinion of the Commissioner, do not require filing. Section 3(B) of Act 159 expressly authorizes and describes the method for the Commissioner to exempt forms from the filing process. In accordance with that authority, the Commissioner hereby exempts from filing the forms for the lines of business listed in Annex A.

#### *Insurers Eligible for Exemption*

This deregulation applies only to the following entities that offer group accident and health policies, blanket accident and health policies, and blanket student accident and health policies:

A Hospital Plan Corporation, organized and operating under 40 Pa.C.S. Ch. 61.

A Professional Health Services Plan Corporation, organized and operating under 40 Pa.C.S. Ch. 63.

#### *Forms Which are Not Deregulated*

The Commissioner's action extends to certain types of group accident and health, blanket accident and health, and blanket student accident and health policy forms used by Hospital Plan Corporations and Professional Health Services Plan Corporations. Individual policy forms offered by Hospital Plan Corporations and Professional Health Services Plan Corporations are not deregulated hereunder.

Provider Agreements required to be filed in accordance with section 9 of Act 159 of 1996, are not exempted from filing by this notice.

Group Long Term Care policy forms as defined in Article XI of The Insurance Company Law of 1921 (40 P. S. § 991.1101 et seq.) and 31 Pa. Code Chapter 89, are not exempted from filing by this notice.

Group Medicare Supplement policies as defined in the Medicare Supplement Insurance Act (40 P. S. § 3101 et seq.) and 31 Pa. Code Chapter 89, are not exempted from filing by this notice.

This deregulation shall not apply to any filing required by the Department of Health.

Group accident and health, blanket accident and health, and blanket student accident and health forms issued by commercial insurance companies, health maintenance organization (HMOs) and preferred provider organizations (PPOs) are not deregulated hereunder. Such forms issued by these types of insurers were previously deregulated. See 25 Pa.B. 1453 (March 30, 1996) and 27 Pa.B. 1893 (April 12, 1997). With this deregulation notice, all types of insurers are now treated consistently with respect to the forms which are exempt from filing with the Department.

#### *Continuing Authority of the Commissioner*

Notwithstanding the deregulation of forms as specified herein, the Commissioner will retain complete authority to request and be provided a copy of any form being issued in this Commonwealth, as provided by section 10 of Act 159 of 1996.

Under section 3(B) of Act 159 of 1996, the Commissioner will retain complete authority to reassume regulatory authority over the types of forms deregulated hereunder at the Commissioner's discretion. Notice of intent to resume regulatory authority shall be published in the *Pennsylvania Bulletin*.

All forms, including those regulated herein, must continue to comply with applicable Pennsylvania law including, but not limited to:

Childhood Immunization Insurance, Act 35 of 1992, (40 P. S. §§ 3501 et seq.)

Coverage for Mammographic Examinations (40 P. S. § 764c) Women's Preventative Health Services Act (40 P. S. §§ 1571 et seq.)

#### *Effective Date*

This deregulation action is effective as of July 1, 1997.

#### *Questions*

Questions concerning this notice may be directed to Gregory Martino, Deputy Insurance Commissioner, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 783- 5079.

### **Annex A**

#### **Insurance Department**

#### **Deregulated Hospital Plan Corporation and Professional Health Services Plan Corporation Forms**

The Insurance Commissioner, by this notice, hereby deregulates the following lines of business written by Hospital Plan Corporations and Professional Health Services Plan Corporations, under the authority of sections 3(A) and 3(B) of Act 159 of 1996, effective July 1, 1997.

- 1). Group accident and health policy forms.
- 2). Blanket accident and sickness policy forms, as defined in section 621.3 of The Insurance Company Law of 1921 (40 P. S. § 756.3) and 31 Pa. Code Chapter 89.

- 3). Blanket student accident and sickness policy forms as defined in section 621.3 of The Insurance Company Law of 1921 (40 P. S. § 756.3) and 31 Pa. Code Chapter 89.

- 4). Group dental and vision policy forms as defined in section 621.2 of The Insurance Company Law of 1921 (40 P. S. § 756.2) and 31 Pa. Code Chapter 89.

- 5). Franchise accident and health policy forms as defined in section 621.4 of The Insurance Company Law of 1921 (40 P. S. § 756.4) and 31 Pa. Code Chapter 89.

- 6). For the purpose of this notice, forms include, but are not limited to the following: policies, contracts, certificates, riders, agreements, evidences of coverage, applications, endorsements, enrollee literature and advertising material.

LINDA S. KAISER,  
*Insurance Commissioner*

[Pa.B. Doc. No. 97-1051. Filed for public inspection June 27, 1997, 9:00 a.m.]

#### **Per Diem Charges for Market Conduct Examinations of Insurance Companies**

Each year, the Insurance Department updates its schedule of per diem charges for market conduct examinations conducted by the Department. These charges are authorized by section 907 of The Insurance Department Act of 1921 (40 P. S. § 323.7) and 31 Pa. Code § 12.4 (relating to per diem charges).

The new schedule of charges is as follows:

Examiner Trainee	\$227 per day
Examiner 1	\$248 per day
Examiner 2	\$267 per day
Examiner Manager	\$367 per day

As prescribed in 31 Pa. Code § 12.4(c), the Insurance Department will calculate and bill per diem charges for examination costs in 1/2 hour units.

This schedule is effective July 1, 1997.

This notice supersedes the schedule of per diem charges published at 26 Pa.B. 3902 August 10, 1996, which prior notice is hereby repealed. These new charges shall remain in effect until a subsequent notice is published in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
*Insurance Commissioner*

[Pa.B. Doc. No. 97-1052. Filed for public inspection June 27, 1997, 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 hearings will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Brozzetti, Adam; file no. 97-265-32911; Allstate Insurance Company; doc. no. PH97-06-017; July 9, 1997, at 1 p.m.;

Appeal of Glaser, Karen; file no. 97-303-70891; State Farm Mutual Automobile Insurance Co.; doc. no. PI97-06-018; July 17, 1997, at 10 a.m.;

Appeal of MacDonald, Kenneth A.; file no. 97-267-33008; The Insurance Company of the State of PA; doc. no. PH97-06-020; July 17, 1997, at 11 a.m.; appeal of Kennedy, Ann N.; file no. 97-265-33312; Prudential Property & Casualty; doc. no. PH97-06-025; July 29, 1997, at 10 a.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) 787-4289.

LINDA S. KAISER,  
*Insurance Commissioner*

[Pa.B. Doc. No. 97-1053. Filed for public inspection June 27, 1997, 9:00 a.m.]

### Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insurer has 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 the termination of the insured's automobile policy.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Erie Insurance Exchange; file no. 97-265-32530; Judy S. Andrew; doc. no. PH97-06-026; July 29, 1997, at 9 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, 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 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) 787-4289.

LINDA S. KAISER,  
*Insurance Commissioner*

[Pa.B. Doc. No. 97-1054. Filed for public inspection June 27, 1997, 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 Lima, Michael; file no. 97-303-71110; Liberty Mutual Fire Insurance Co.; doc. no. PI97-06-023; July 29, 1997, at 11 a.m.;

Appeal of Schmitz, Hans D.; file no. 97-223-32501; Selective Insurance Co. of America; doc. no. PH97-06-024; July 29, 1997, at 2 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 procedures). 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) 787-4289.

LINDA S. KAISER,  
Insurance Commissioner

[Pa.B. Doc. No. 97-1055. Filed for public inspection June 27, 1997, 9:00 a.m.]

### SWAB Wagon Company, Inc.; Doc. No. WC97-06-014

A formal administrative hearing on the above-captioned matter is scheduled for June 9, 1995 at 9 a.m. in the Administrative Hearing Office, 901 North 7th Street, Suite 200, Harrisburg, PA 17102.

The formal administrative hearing in this matter shall be held in accordance with 2 Pa.C.S. §§ 501—508, 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

A prehearing telephone conference is scheduled for July 9, 1997, at 2 p.m. to be initiated by the Administrative Hearing Office. Both parties shall contact this office at (717) 783-2126 by July 2, 1997, and supply us with a number where they can be reached at the time of the conference.

LINDA S. KAISER,  
Insurance Commissioner

[Pa.B. Doc. No. 97-1056. Filed for public inspection June 27, 1997, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board leases will expire:

Washington County, Wine & Spirits Shoppe #6303, 654 McKean Avenue, Donora, PA 15033-1003.

*Lease Expiration Date:* April 30, 1998

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,500 net useable square feet of new or existing retail commercial space serving the Donora area.

*Proposals due:* July 11, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, State Office Building, Rm. 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Tom Deal, (412) 565-5130

Chester County, Wine & Spirits Shoppe #1505, Depot Shoppes, 24 Plank Avenue, Paoli, PA 19301-1725.

*Lease Expiration Date:* February 28, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space on Route No. 30, within a 1 mile radius of Route 252, Tredyffrin or Willistown Townships.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Chester County, Wine & Spirits Shoppe #1512, Lincoln Court Shopping Center, 245 Lancaster Avenue, Malvern, PA 19355-1859

*Lease Expiration Date:* August 31, 1997

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 4,000 net useable square feet of new or existing retail commercial space on Route 30 between Route 29 and Route 352.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Delaware County, Wine & Spirits Shoppe #2313, 2012 Darby Road, Havertown, PA 19083-2305

*Lease Expiration Date:* May 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space in Haverford Township.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Delaware County, Wine & Spirits Shoppe #2328, Granite Run Mall North, 1067 W. Baltimore Pike, Media, PA 19063-5121

*Lease Expiration Date:* June 30, 1998

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space on Route 1, between Route 452 and Route 352, Middletown Township.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Montgomery County, Wine & Spirits Shoppe #4616, 100 Main Street, Schwenksville, PA 19473-1116

*Lease Expiration Date:* February 28, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space on Route 29 or Route 73 in Perkiomen Township.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Montgomery County, Wine & Spirits Shoppe #4625, 109 Town Center Road, King of Prussia, PA 19406-2330

*Lease Expiration Date:* January 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space on Route 202 between Henderson Road and Route 76, Upper Merion Township.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Montgomery County, Wine & Spirits Shoppe #4636, 1 Station Circle, Narberth, PA 19072-2432.

*Lease Expiration Date:* January 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 6,500 net useable square feet of new or existing retail commercial space in the Narberth Borough community.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Philadelphia County, Wine & Spirits Shoppe #5116, 101 E. Olney Avenue, Philadelphia, PA 19120-2499

*Lease Expiration Date:* January 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space within a half mile radius of the intersection of Front Street and Olney Avenue, Philadelphia.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Philadelphia County, Wine & Spirits Shoppe #5118, 4815 Woodland Avenue, Philadelphia, PA 19143-4433.

*Lease Expiration Date:* April 30, 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 on Woodland Avenue, between 40th and 52nd Streets, Philadelphia.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Philadelphia County, Wine & Spirits Shoppe #5132, 4729 N. Broad Street, Philadelphia, PA 19141-2105.

*Lease Expiration Date:* July 31, 1998

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space on Broad Street between Roosevelt Boulevard and Olney Avenue, Philadelphia.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Philadelphia County, Wine & Spirits Shoppe #5176, 3712 N. Broad Street, Philadelphia, PA 19140-3608.

*Lease Expiration Date:* August 31, 1997

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space on Broad Street between Erie Avenue and Roosevelt Boulevard, Philadelphia.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Philadelphia County, Wine & Spirits Shoppe #5190, 7161 Ogontz Avenue, Philadelphia, PA 19138-2015.

*Lease Expiration Date:* October 31, 1998

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 5,500 net useable square feet of new or existing retail commercial space within a half mile radius of the intersection of Ogontz Avenue and 72nd Street, Philadelphia.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Philadelphia County, Wine & Spirits Shoppe #5195, 7702 City Avenue, Philadelphia, PA 19151-2001.

*Lease Expiration Date:* April 30, 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 on City Avenue, between Lancaster Avenue and West Chester Pike, Philadelphia.

*Proposals due:* July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Philadelphia County, Wine & Spirits Shoppe #5196, 6433 Castor Avenue, Philadelphia, PA 19149-2738.

Lease Expiration Date: September 30, 1998

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 5,500 net useable square feet of new or existing retail commercial space within a one mile radius of Castor Avenue and Levick Street, Philadelphia.

Proposals due: July 25, 1997 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

JOHN JONES, III,  
 Chairperson

[Pa.B. Doc. No. 97-1057. Filed for public inspection June 27, 1997, 9:00 a.m.]

# PENNSYLVANIA INDUSTRIAL DEVELOPMENT AUTHORITY

## Participation and Interest Rates

The Pennsylvania Industrial Development Authority (PIDA) gives notice of the adoption of PIDA participation and interest rates for loans approved by the PIDA Board of Directors. The rates, which were adopted by the PIDA Board of Directors at its meeting held May 7, 1997, are effective as of July 1, 1997 and will remain in effect until changed by a notice in the *Pennsylvania Bulletin*. The rates follow as Annex A.

The PIDA Board retains the right to waive or modify the rates, to the extent that such are not mandated by law, on a case by case basis for good cause shown.

Further information can be obtained from the Pennsylvania Industrial Development Authority, Room 481, Forum Building, Harrisburg, PA 17120, (717) 787-6245.

SAMUEL A. MCCULLOUGH,  
 Chairperson

### Annex A

#### PIDA PARTICIPATION AND INTEREST RATES FOR COUNTIES AND MUNICIPALITIES\* OVER 25,000 POPULATION

	Maximum PIDA Participation			Interest Rate**
	Participation			
	(S)	%	(L)	
ADAMS	40 ***	30 ****		6.75
ALLEGHENY	40 ***	30 ****		6.75
McKeesport City	40	30 ****		3.75
Pittsburgh City	40 ***	30 ****		5.25
ARMSTRONG	40	40 ***		3.75
BEAVER	40 ***	40 ***		3.75
BEDFORD	40	40 ***		3.75

	Maximum PIDA Participation			Interest Rate**
	Participation			
	(S)	%	(L)	
BERKS	40 ***	40 ***		6.75
Reading City	40	40 ***		5.25
BLAIR	40 ***	40 ***		5.25
Altoona City	40	40 ***		5.25
BRADFORD	40 ***	40 ***		5.25
BUCKS	40 ***	40 ***		6.75
Bensalem Twp.	40 ***	40 ***		5.25
Bristol Twp.	40	40 ***		5.25
BUTLER	40 ***	40 ***		5.25
CAMBRIA	40	40		3.75
CAMERON	40	40 ***		3.75
CARBON	40	40 ***		3.75
CENTRE	30 ****	30 ****		6.75
CHESTER	30 ****	30 ****		6.75
CLARION	40	40 ***		3.75
CLEARFIELD	40	40		3.75
CLINTON	40	40		3.75
COLUMBIA	40	40 ***		3.75
CRAWFORD	40 ***	40 ***		5.25
CUMBERLAND	30 ****	30 ****		6.75
DAUPHIN	30 ****	30 ****		6.75
Harrisburg	40 ***	30 ****		6.75
DELAWARE	40 ***	30 ****		6.75
Chester City	40	30 ****		3.75
ELK	40	40 ***		5.25
ERIE	40 ***	40 ***		5.25
Erie City	40	40 ***		3.75
FAYETTE	40	40		3.75
FOREST	40	40		3.75
FRANKLIN	40 ***	30 ****		6.75
FULTON	40 ***	40 ***		5.25
GREENE	40	40		3.75
HUNTINGDON	40	40		3.75
INDIANA	40	40		3.75
JEFFERSON	40	40 ***		3.75
JUNIATA	40	40		3.75
LACKAWANNA	40	40 ***		3.75
LANCASTER	30 ****	30 ****		6.75
Lancaster City	40 ***	30 ****		5.25
LAWRENCE	40	40 ***		5.25
New Castle City	40	40 ***		3.75
LEBANON	30 ****	30 ****		6.75
Lebanon City	40 ***	30 ****		5.25
LEHIGH	40 ***	40 ***		5.25
Allentown City	40	40 ***		5.25
LUZERNE	40	40 ***		3.75
LYCOMING	40	40 ***		5.25
Williamsport City	40	40 ***		3.75
McKEAN	40 ***	40 ***		5.25



	Maximum PIDA Participation		Interest Rate**
	(S)	(L)	
MERCER	40 ***	40 ***	3.75
MIFFLIN	40	40	3.75
MONROE	40	40 ***	3.75
MONTGOMERY	30 ****	30 ****	6.75
Norristown Boro	40 ****	30 ****	5.25
Upper Dublin Twp.	40 ***	30 ****	6.75
MONTOUR	40 ***	30 ****	6.75
NORTHAMPTON	40 ***	40 ***	5.25
NORTHUMBERLAND	40	40 ***	5.25
PERRY	40 ***	40 ***	6.75
PHILADELPHIA	40	40 ***	3.75
PIKE	40 ***	40 ***	5.25
POTTER	40	40 ***	3.75
SCHUYLKILL	40	40	3.75
SNYDER	40	40 ***	5.25
SOMERSET	40	40 ***	3.75
SULLIVAN	40	40 ***	5.25
SUSQUEHANNA	40	40 ***	3.75
TIOGA	40	40 ***	3.75
UNION	40 ***	40 ***	6.75
VENANGO	40	40 ***	3.75
WARREN	40 ***	40 ***	5.25
WASHINGTON	40 ***	40 ***	5.25
WAYNE	40	40	3.75
WESTMORELAND	40 ***	40 ***	5.25
WYOMING	40	40 ***	3.75
YORK	40 ***	30 ****	6.75
York City	40	30 ****	3.75

\* Municipalities are listed *only* if PIDA rate differs from County rate.

\*\* Based on calendar year 1996 unemployment rate. Subject to change at discretion of PIDA Board.

(S) Small Business (Less than 50 existing employes, including parent, subsidiaries and affiliates.)

(L) Large Business.

*Special Note:* projects located in designated enterprise zones, planning stage enterprise zones, financially distressed municipalities under Act 47 (over), Federal empowerment zones and Federal enterprise communities will receive loans at 3.75%. Companies designated as advanced tech firms will receive an interest rate 1% less than the area rate with a floor of 3.75%

\*\*\* 10% Equity required

\*\*\*\* 20% Equity required

Effective July 1996 through June 1997

**MID MON VALLEY—Fayette, Washington and Westmoreland Counties**

PIDA Participation: 40%—Small Business  
40%—Large Business  
Interest Rate: 3.75%

Allenport	Fallowfield Twp.	Roscoe
Belle Vernon	Fayette City	Rostraver Twp.
Bentleyville	Finleyville	Smithton
Brownsville	* Forward Twp.	Speers
Brownsville Twp.	Jefferson Twp.	Stockdale
California	Long Branch	Twilight
Carroll Twp.	Monessen	Union Twp.
Charleroi	Monongahela	Washington Twp.
Coal Center	New Eagle	West Brownsville
Donora	Newell	West Newton
Dunlevy	North Belle Vernon	West Pike Run Twp.
Elco	North Charleroi	

**LOWER MON VALLEY—Allegheny County**

PIDA Participation: 40%—Small Business  
40%—Large Business\*\*  
Interest Rate: 5.25%

Braddock	Homestead	South Versailles Twp.
Braddock Hills	Jefferson	Swissvale
Chalfant	Liberty	Trafford
Clairton	Lincoln	Turtle Creek
Dravosburg	McKeesport	Versailles
Duquesne	Monroeville	Wall
East McKeesport	Munhall	West Elizabeth
East Pittsburgh	North Braddock	West Homestead
Elizabeth	North Versailles Twp.	West Mifflin
Elizabeth Twp.	Pitcairn	Whitaker
Forest Hills	Pittsburgh	White Oak
* Forward Twp.	Port Vue	Wilkins Twp.
Glassport	Rankin	Wilmerding

**SHENANGO RIVER VALLEY—Lawrence and Mercer Counties**

PIDA Participation: 40%—Small Business  
40%—Large Business \*\*  
Interest Rate: 5.25%

Clark	Jefferson Twp.	Shenango Twp.
Delaware Twp.	Mahoning Twp.	South Pymatuning Twp.
Farrell	Neshannock Twp.	Union Twp.
Greene Twp.	New Castle	West Middlesex
Greenville	Pulaski Twp.	West Salem Twp.
Hempfield	Pymatuning Twp.	Wheatland
Hermitage	Sharon	
Jamestown	Sharpsville	

(Note: Any municipality located in Mercer County receives 3.75% interest rate.)

**BEAVER VALLEY—Beaver County**

PIDA Participation: 40%—Small Business  
40%—Large Business \*\*  
Interest Rate: 3.75%

Aliquippa	Fallston	New Brighton
Ambridge	Frankfort Springs	New Galilee
Baden	Franklin Twp.	New Sewickley Twp.
Beaver	Freedom	North Sewickley Twp.
Beaver Falls	Georgetown	Ohioville
Big Beaver	Glasgow	Patterson Heights
Bridgewater	Greene Twp.	Patterson Twp.
Brighton Twp.	Hanover Twp.	Potter Twp.
Center Twp.	Harmony Twp.	Pulaski Twp.
Chippewa Twp.	Hookstown	Raccoon Twp.
Conway	Homewood	Rochester
Darlington	Hopewell Twp.	Rochester Twp.
Darlington Twp.	Independence Twp.	Shippingport
Daugherty	Industry	South Beaver Twp.
East Rochester	Koppel	South Heights
East Vale	Marion Twp.	Vanport Twp.
Economy Twp.	Midland	West Mayfield
Ellwood City	Monaca	White Twp.

\* Forward Twp. is eligible for 3.75% and 40/40%  
\*\* 10% Equity required.

**MOSHANNON VALLEY—Centre and Clearfield Counties**

PIDA Participation: 40%—Small Business  
40%—Large Business \*\*  
Interest Rate: 3.75%

**Centre County**

Philipsburg Bor.  
Rush Twp.  
South Philipsburg Bor.

**Clearfield County**

Beccaria Twp.	Bigler Twp.	Boggs Twp.
Bradford Twp.	Brisbin Bor.	Chester Hill Bor.
Coalport Bor.	Cooper Twp.	Decatur Twp.
Glen Hope Bor.	Graham Twp.	Gulich Twp.
Houtzdale Bor.	Irvona Bor.	Jordan Twp.
Knox Twp.	Morris Twp.	Osceola Mills Bor.
Ramey Bor.	Wallaceton Bor.	Woodward Twp.

[Pa.B. Doc. No. 97-1058. Filed for public inspection June 27, 1997, 9:00 a.m.]

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Abandon Service Without Hearing**

**A-310155F2000. Vista International Communications, Inc.** Application of Vista International Communications, Inc. for approval to abandon service in Pennsylvania.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the

Pennsylvania Public Utility Commission, Harrisburg, with a copy served on the applicant on or before July 14, 1997, under 52 Pa. Code (relating to public utilities).

*Applicant:* Vista International Communications, Inc., 200 Valley Road, Suite 207, Mt. Arlington, NJ 07856.

*Through and By Counsel:* Dana Frix, Esquire, Grace R. Chiu, Esquire, Swidler & Berlin, Chartered, 3000 K Street, N. W., Suite 300, Washington, DC 20007.

JOHN G. ALFORD,  
*Secretary*

[Pa.B. Doc. No. 97-1059. Filed for public inspection June 27, 1997, 9:00 a.m.]

**Gas Service Without Hearing**

**A-122150F0008. PG Energy Inc.** Application of PG Energy Inc. for approval to begin to offer, render, furnish or supply gas service to the public in additional territory in Gallagher Township, Clinton County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, Harrisburg, with a copy served on the applicant on or before July 14, 1997, under 52 Pa. Code (relating to public utilities).

*Applicant:* PG Energy Inc., One PEI Center, Wilkes-Barre, PA 18711-0601;

*Through and By Counsel:* Jan. P. Paden, Rhoads & Sinon, LLP, One South Market Square, P. O. Box 1146, Harrisburg, PA 17108-1146.

JOHN G. ALFORD,  
*Secretary*

[Pa.B. Doc. No. 97-1060. Filed for public inspection June 27, 1997, 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 21, 1997 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-00113992. David Danner** (P. O. Box 242, Mount Holly Springs, Cumberland County, PA 17065)—persons on schedule, between points within the borough of Carlisle, Cumberland County and between the township of

Hampden, Cumberland County, the village of Loysville, Tyrone Township, Perry County and the borough of Carlisle, Cumberland County over the following routes: *Route 1*, beginning at the intersection of Interstate Highway Route 81 and Highway Route 233, Cumberland County going north to Newville, thence from Newville east on Route 641 to Allen Road, thence south on Allen Road to U. S. Highway Route 11, thence east of U. S. Highway Route 11 to Shearer Drive, thence east on Shearer Drive to Industrial Drive, thence south on Industrial Drive to U. S. Highway Route 11, thence west on U. S. Highway Route 11 to Allen Road, thence south on Allen Road to the Walnut Bottom Road, thence north on Walnut Bottom Road to its intersection with Interstate Highway Route 81, thence east on Interstate Highway Route 81 to its exit onto the Holly Pike (Highway Route 34 South), thence south on Highway Route 34 through the borough of Mount Holly Springs, thence making a U-turn at West Pine Street and returning north on U. S. Highway Route 34 to South Hanover Street in the borough of Carlisle, thence east on East High Street to Spring Garden Street, thence north on Spring Garden Street to East North Street, thence east on East North Street to the Clairmont Road, thence north on the Clairmont Road to Clairmont Drive, thence south on Clairmont Drive making a U-turn at the Cumberland County Home, thence west on Clairmont Road to Sumner Road, (Carlisle Barracks), thence over various streets within the Carlisle Barracks to the Harrisburg Pike (U. S. Highway Route 11, thence north on U. S. Highway Route 11 to Wolfs Bridge Road, then making a U-turn on Wolfs Bridge Road, and returning south on U. S. Highway Route 11 to Calvary Road, thence north on Calvary Road to Carlisle Springs Road, thence north on Cavalry Road to Carlisle Springs Road, thence making a U-turn at the intersection of Carlisle Springs Road and Cranes Gap Road, thence south on Carlisle Springs Road to Crain Drive, thence west on Crain Drive to Cumberland Drive, thence west on Cumberland Drive to Douglas Drive, thence south on Douglas Drive to West Hillcrest Drive, thence east on West Hillcrest Drive to the Carlisle Springs Road, thence south on the Carlisle Springs Road to K Street, thence west on K Street to Northwest Street, thence south on Northwest Street to B Street, thence east on B Street to Fairground Avenue, thence south on Fairground Avenue to West Penn Street, thence west on West Penn Street to North Pitt Street, thence north on Pitt Street to Lincoln Street, thence west on Lincoln Street to North College Street, thence north on North College Street to B Street, thence west on B Street to Wagner's Gap Road, thence north on Wagner's Gap Road to Bellaire Drive, thence south on Bellaire Drive to West Penn Street, thence west on West Penn Street to North Orange Street, thence south on North Orange Street to West North Street, thence west on West North Street to Craig Lane, thence north on Craig Lane to Dunbar Road, thence north on Dunbar Road to Croghan Drive, thence south on Croghan Drive to West North Street, thence east on West North Street to Cherry Street, thence south on Cherry Street to U. S. Highway Route 11, thence west on U. S. Highway Route 11 to Industrial Drive, thence north on Industrial Drive to Shearer Drive, thence west on Shearer Drive to Allen Road, thence south on Allen Road to the Walnut Bottom Road, thence east on Walnut Bottom Road to South West Street, thence south on South West Street terminating at the Carlisle M. J. Mall; *Route*

2, beginning at the Carlisle M. J. Mall south on South Hanover Street to Bonnybrook Road, then making a U-turn on Bonnybrook Road onto South Hanover Street, thence north on South Hanover Street to West Willow Street, thence west on West Willow Street to South College Street, thence north on South College Street to West South Street, thence east on West South Street to East South Street, thence north on South East Street to Bedford Street, thence south on Bedford Street to East High Street, thence east on East High Street to Spring Garden Street, thence south on Spring Garden Street making a U-turn at the Giant Food Store and proceeding north on Spring Garden Street to South Spring Garden Street, thence east on Spring Garden Street onto Ashland Avenue, thence on Ashland Avenue to the York Road, thence east on the York Road to Spruce Street, thence south on Spruce Street to South Pine Street, thence east on South Pine Street to the Petersburg Road, thence south on the Petersburg Road making a U-turn at the Carlisle Airport, thence north on Petersburg Road to Westminister Drive, thence east on Westminister Drive to Forge Road, thence north on Forge Road to the York Road, thence on the York Road into the Carlisle Mall, thence east on the Trindle Road when exiting the Carlisle Mall to Clairmont Drive, thence north on Clairmont Drive to Clairmont Road, thence west on Clairmont Road to Sumner Road, thence north on Sumner Road through Carlisle Barracks over various streets onto the Harrisburg Pike (U. S. Highway Route 11), thence east on U. S. Highway Route 11 to the Wolfs Bridge Road, thence returning south on U. S. Highway Route 11 to the Cavalry Road, thence north on the Cavalry Road to Carlisle Springs Road, thence north on the Carlisle Springs Road making a U-turn at the intersection of Carlisle Springs Road and Cranes Gap Road, thence south on Carlisle Springs Road to Crain Drive, thence west on Crain Drive to Reservoir Drive, thence south on Reservoir Drive to Darr Avenue, thence west on Darr Avenue to Douglas Drive, thence south on Douglas Drive to West Hillcrest Drive, thence east on West Hillcrest Drive to Carlisle Springs Road, thence south on Carlisle Springs Road to its intersection with K Street, thence west on K Street to North West Street, thence south on North West Street to B Street, thence east on B Street to Fairground Avenue, thence south on Fairground Avenue to West Penn Street, thence west on West Penn Street to North Pitt Street, thence north on North Pitt Street to Lincoln Street, thence west on Lincoln Street to North College Street, thence north on North College Street to B Street, thence west on B Street to Wagner's Gap Road, thence north on Wagner's Gap Road to Bellaire Drive, thence south on Bellaire Drive to West Penn Street, thence west on West Penn Street to North Orange Street, thence south on North Orange Street to West North Street, thence west on West North Street to Craig Lane, thence north on Craig Lane to Dunbar Road, thence north on Dunbar Road to Croghan Drive, thence south on Croghan Drive to West North Street, thence east on West North Street to Cherry Street, thence south on Cherry Street to U. S. Highway Route 11, thence west on U. S. Highway Route 11 to Industrial Drive, thence north on Industrial Drive to Shearer Drive, thence west on Shearer Drive to U. S. Highway Route 11, thence west on U. S. Highway Route 11 to Allen Road, thence south on Allen Road to Commerce Drive, thence east on Commerce Drive to Alexander Springs Road, thence east on Alexander

Springs Road entering and existing Cedar Court, and Tyler Court, thence south on the Walnut Bottom Road, to the K-Mart Shopping Plaza, making a U-turn at the K-Mart Shopping Plaza, making a U-turn at the K-Mart Shopping Plaza and returning north on the Walnut Bottom Road to Garland Drive, thence east on Garland Drive to South Hanover Street, making a U-turn at Bonnybrook Road, thence returning north on South Hanover Street to Noble Boulevard, thence west on Noble Boulevard entering the M. J. Carlisle Mall Shopping Center; *Route 3*, beginning at the Carlisle Town Square at the intersection of Hanover and High Streets, thence north on North Hanover Street connecting with the Harrisburg Pike (U. S. Highway Route 11 North), thence east on U. S. Highway Route 11 entering and exiting the following streets: Post Road, Harmony Hall Drive, Clieb Road, ABF Roadway Intersection, Bridge Road, Bernheisel Road, Loust Road, Commerce Drive, Route 114, Sample Bridge Road, Lambs Gap Road, Silver Springs Road, Skyport Road, Brondle Road, Jeffries Road, and Van Patten at the Navy Ships Parts Control Center, thence returning west on U. S. Highway Route 11 retracing the same stops terminating at the Carlisle Town Square; *Route 4*, beginning in the Town Square in Loysville, Tyrone Township, Perry County, thence south on Route 850 through Landisburg and Falling Springs to its intersection with Highway Route 34, thence south on Highway Route 34 to Highway Route 944 at Sterrets Gap, thence southeast on Highway Route 944 to its intersection with Intersection Highway Route 81, thence exiting Interstate Highway Route 81 onto Highway Route 114, thence south on Highway Route 114 to the Harrisburg Pike (U. S. Highway Route 11), thence west on U. S. Highway Route 11 to the borough of Carlisle; all rights above subject to the following condition: that no right, power or privilege is granted to both pick up and drop off passengers at the Carlisle M. J. Mall, South Hanover Street, North Hanover Street, and points on U. S. Highway Route 11 North, between the hours of 6:00 a.m. and 6 p.m., Monday through Friday. Application for temporary authority has been filed seeking the rights cited above.

**A-00114051. Shahriar Shjaian, t/d/b/a Shawn Limo** (9328-A Jamison Avenue, Philadelphia, Philadelphia County, PA 19115),—persons, in limousine service, between points in the city and county of Philadelphia, and from points in the said city and county, to points in Pennsylvania, and return.

**A-00114058. Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service** (562 East Heatherfield Way, Red Lion, York County, PA 17356),—persons, in limousine service, between points in the counties of York, Lancaster and Dauphin, and from points in the said territory to points in Pennsylvania, and return. *Attorney*: Harry M. Ness, 43 North Duke Street, York, PA 17401.

**Application of the following for the approval of the transfer of stock as described under each application.**

**A-00110557, F. 5001. Five Star Limo Service, Inc., t/d/b/a Flamingo Limousine Service, Ltd.** (309 Felton Avenue, Collingdale, Delaware County, PA 19023), a corporation of the Commonwealth of Pennsylvania—stock transfer—for approval of the transfer of all issued and outstanding stock from Ernest Roselli (50 shares) and Anthony DiMauro (50 shares) to Delaware County Transportation Service, Inc. *Attorney*: Richard T. Mulcahey, Jr., 1500 John F. Kennedy Boulevard, 1400 Two Penn Center, Philadelphia, PA 19102.

### 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 July 14, 1997.

- A-00114044 Alfonso V. Mangione, Jr., t/d/b/a V. M. Mangione Trucking  
12 Johnson Street, Pittston, PA 18640
- A-00114045 Alex E. Paris Equipment & Sales Corp.  
Route 18, Atlasburg, Pa 15004
- A-00114046 James R. Krumenaker  
P. O. Box 12, 139 First Street, Cassandra, PA 15925
- A-00114047 Bruce R. Patterson, Jr., t/d/b/a B and D Mailing Services  
2716 Long Farm Lane, Lancaster, PA 17601
- A-00114048 Harry C. Houser, t/d/b/a Houser Excavating  
11116 Kenmar Drive, North East, PA 16428; Richard A. Levick, 120 West 10th Street, Erie, PA 16501
- A-00114052 Thomas K. Baker, t/d/b/a Baker Trucking  
1223 Otter Street, Franklin, PA 16323; Dwight L. Koerber, Jr., P. O. Box 1320, Clearfield, PA 16830
- A-00114053 Cheryl B. Sprenkle, t/d/b/a CBS Express  
820 Manor Road, Windsor, PA 17366
- A-00114054 Bett-a-Way Beverage Distributors, Inc.  
P. O. Box 411, Edison, NJ 08817; Gerald F. Smith, One Broadway, Suite 201, Denville, NY 07834
- A-00114055 Blair America, Inc.  
P. O. Box 839, Duncansville, PA 16635-0839, A. Thomas Farrell, 110 Lakemont Park Boulevard, Altoona, PA 16602.
- A-00114056 Frederick A. Farabaugh, t/d/b/a Farabaugh Trucking Company  
Box 217, Miller Road, Ebensburg, PA 15931; R. L. Pawlowski, 710 Ninth Street, Barnesboro, PA 15714-1479
- A-00114057 Shedden Trucking, Inc.  
P. O. Box 66, Canton, PA 17724; Charles J. McKelvey, P. O. Box 7, Williamsport, PA 17703

JOHN G. ALFORD,  
*Secretary*

[Pa.B. Doc. No. 97-1061. Filed for public inspection June 27, 1997, 9:00 a.m.]

### Telecommunications

**A-310513F0002. GTE North Incorporated and Sprint Spectrum L. P.** Joint Application of GTE North Incorporated and Sprint Spectrum L. P. for approval of an interconnection agreement under sections 251 and 252 of The Telecommunications Act of 1996.

GTE North Incorporated and Sprint Spectrum L. P., by its counsel, filed on June 6, 1997, at the Pennsylvania Public Utility Commission, a Joint Application for ap-

proval of an interconnection agreement under sections 251 and 252 of The Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. All such comments are due on or before 20 days after the date of publication of this notice. Copies of the GTE North Incorporated and Sprint Spectrum L. P. Joint Application are on file with the Pennsylvania Public Utility Commission and are available for public inspection. The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-7466.

JOHN G. ALFORD,  
*Secretary*

[Pa.B. Doc. No. 97-1062. Filed for public inspection June 27, 1997, 9:00 a.m.]

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**Water Service  
Without Hearing**

**A-212460F2000. Ralston Water and Water Power Company.** Application of Ralston Water and Water Power Company for approval of the discontinuance of water service to the Village of Ralston, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, Harrisburg, with a copy served on the applicant on or before July 14, 1997, under 52 Pa. Code (relating to public utilities).

*Applicant:* Ralston Water and Water Power Company, P. O. Box 93, Ralston, PA 17763;

*Through and By:* John P. Orr, President, P. O. Box 93, Ralston, PA 17763.

JOHN G. ALFORD,  
*Secretary*

[Pa.B. Doc. No. 97-1063. Filed for public inspection June 27, 1997, 9:00 a.m.]

## STATE EMPLOYEES' RETIREMENT BOARD

### Hearings Scheduled

Hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of Claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Harrisburg, PA 17108:

August 13, 1997	Ray L. Martin (Cash Payment)	1 p.m.
September 10, 1997	William Hutchinson (Decd) (Interest Death Benefit)	10 a.m.
	Betty L. Burris (American Red Cross)	1 p.m.
September 17, 1997	William C. Uricchio (Benefit Reduction)	1 p.m.
September 24, 1997	S. Lynn Brace (Mandatory Debt)	1 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 4 Pa. Code § 250.01 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rule of Administrative Practice and Procedure) unless specific exemption is granted.

JOHN BROSIUS,  
*Secretary*

[Pa.B. Doc. No. 97-1064. Filed for public inspection June 27, 1997, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

**EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.**

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employes and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

### Reader's Guide

#### Legal Services & Consultation—26

- ① Service Code Identification Number
- ② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services  
 Location: Harrisburg, Pa.  
 Duration: 12/1/93-12/30/93  
 Contact: Procurement Division  
 787-0000

③ Contract Information

④ Department

⑦

⑤ Location

(For Commodities: Contact:)  
 Vendor Services Section  
 717-787-2199 or 717-787-4705

⑥ Duration

#### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## GET THAT COMPETITIVE EDGE—FOR FREE!

Do you want to do business with your state government? The Treasury Department's office of Contract Information Services can assist you by providing you with information that may be helpful to you in successfully bidding on State contracts.

Act 244 of 1980 requires Commonwealth departments and agencies to file with the Treasury Department a copy of all contracts involving an expenditure of \$5,000 or more.

These fully executed contracts usually contain the vendor's name, dollar value, effective and termination dates and contract specifications. Some contracts also include the names of other bidding vendors and the bid proposal compiled by the awarded vendor. There is a minimal cost for photocopying contracts.

Allow the Treasury Department to "make a difference for you." For contract information call the office of Contract Information Services TOLL-FREE (in Pennsylvania) at 1-800-252-4700 or (717) 787-4586. Or you may write or visit the office at Room G13, Finance Building, Harrisburg, Pa. 17120.

BARBARA HAFER,  
*State Treasurer*

**Online Subscriptions At <http://www.statecontracts.com> 1-800-334-1429 x340**

### Commodities

**8970520** Agricultural machinery and supplies—2 each latest model mower, tractor w/sickle bar.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**8970260** Construction, mining, excavating and highway maintenance equipment—2 each latest model widener, grader mounted.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**8970460** Construction, mining, excavating and highway maintenance equipment—6 each latest model chipper, wood, articulated.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**8970560** Construction, mining, excavating and highway maintenance equipment—2 each saw, rock, skid steer attachment.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**8970630** Construction, mining, excavating and highway maintenance equipment—4 each plow, hyd, underboy scraper (includes all materials and installation).

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**8211760** Laboratory instruments and equipment—12 each portable retroreflector for pavement markings.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**8970290** Motor vehicles, trailers and cycles—2 each trailer, utility, enclosed 10,000 lbs.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**8970620** Motor vehicles, trailers and cycles—22 each truck, anti-icing conversion (retrofit—includes all material and installation).

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

**1081157** Prefab structures and scaffolding—1 each ADA request toilet partitions, various sizes.

**Department:** Wernersville  
**Location:** Wernersville, Berks County, PA  
**Duration:** FY 1996-97  
**Contact:** Vendor Services: Fax request to (717) 783-6241 or call (717) 787-2199

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# SERVICES

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## Advertising, Public Relations—01

**ITP 1997-02** The Department of Aging is seeking to secure interested organizations to prepare and submit proposals for the publication and distribution of a periodical "Guide to Retirement in Pennsylvania." The publication is to promote Pennsylvania as an attractive place for older persons to reside. This periodical will be designated as an official State publication, and all costs will be borne by the publisher through the sale of advertising. Sealed proposals will be received until 3 p.m. on August 15, 1997 at the Department of Aging, 400 Market Street, Rachel Carson State Office Building, 6th Floor, Harrisburg, PA 17101-2301. A preproposal conference will be held July 17, 1997 at 1:30 p.m. in the 6th Floor Conference Room at the above address. Interested bidders must request a copy of the Invitation to Publish by calling (717) 783-3704, or in writing to the above address. Attention: Patricia Lingle.

**Department:** Aging  
**Location:** Statewide  
**Duration:** November 16, 1997 through November 15, 2002  
**Contact:** Patricia Lingle, (717) 783-3704

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## Audio/Video—04

**WC 657** West Chester University is soliciting sealed bids for the provision of a 24-strand fiber optic cable (FOC) and a 100-pair copper cable, a distance of approximately 465 feet, as well as, a 12-strand FOC and a 50-pair copper cable, a distance of approximately 65 feet. These cables are to be installed in existing ducts or attached to the exterior of buildings. A fire alarm cable shall be run within and between two buildings, a distance of approximately 265 feet in existing conduit. The work also includes the termination, protection and testing of the cables and documentation of the work. Prevailing wages apply.

**Department:** State System of Higher Education  
**Location:** West Chester University, West Chester, PA 19383  
**Duration:** 30 calendar days after Notice to Proceed  
**Contact:** Jacki Marthinsen, Contracts Manager, (610) 436-2705

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## Computer Related Services—08

**25-1644382** Integrated Medical Malpractice Claims/Coverage Applications. The Medical Professional Liability Catastrophe Loss Fund is issuing an RFQ for a turnkey system solution for processing all medical malpractice claims and coverage data. The successful bidder must supply the necessary hardware, software and services to satisfy the bid requirements. The services include: training, application customization, installation and post-implementation support. Interested bidders must request a copy of the RFQ in writing from the Medical Professional Liability Catastrophe Loss Fund, c/o Mr. Jean-Paul Rebillard, P. O. Box 1230, 30 North Third Street, Harrisburg, PA 17101.

**Department:** Medical Professional Liability Catastrophe Loss Fund  
**Location:** P. O. Box 12030, 30 North Third Street, Harrisburg, PA 17101  
**Duration:** September 1, 1997 through December 31, 1998  
**Contact:** Jean-Paul Rebillard, (717) 783-3770

## Construction Maintenance—09

**080978** District Wide Group 1-97-RPM; Crawford County Hike/Bike Trail; Snyder County SR 2016 (06M); Berks County Group 5-97-POC1B; Lehigh County Group 5-97-POC3D; Lehigh County Group 5-97-POC3E; Chester County SR 1005 (30M); Delaware County Lindbergh Memorial Bridge; Bedford County Group 9197-RS2; Blair County Group 9297-RS2; Cambria County SR 56/20M, 3016/07M; Cambria County Group 9397-RS3; Huntingdon County Group 9597-RS2; Armstrong County Ford City Bike Trail; Indiana County SR 286 (405/491); Allegheny County SR 4009 (A02/A03); Allegheny County Group 111-97-7135-5; Fayette County SR 281 (J10); Greene County Ten Mile Creek Bridge I; Greene County Ten Mile Creek Bridge II; Northampton County SR 9900 (TE2).

**Department:** Transportation  
**Location:** Districts 1-0, 3-0, 5-0, 6-0, 9-0, 10-0, 11-0, 12-0  
**Duration:** FY 1996-97  
**Contact:** V. C. Shah, (717) 787-5914

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**080979** Chester County Group 6-97-SP2; Delaware County Group 6-97-SP8.

**Department:** Transportation  
**Location:** District 6-0  
**Duration:** FY 1996-97  
**Contact:** V. C. Shah, (717) 787-5914

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**DGS 964-24** Project title: New Armory. Brief description: Construction of new 21,830 S. F. single story building and site improvements. New armory consists of steel structure, masonry walls, concrete floor and metal roof with hot water HVAC system, complete plumbing systems and electrical systems including lighting, communications and alarm systems. General. HVAC, plumbing and electrical construction. Plans deposit: \$135 per set. Payable to: Burkavage Design Associates. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail request to: Burkavage Design Associates, Abington Executive Park, Clarks Summit, PA 18411, (717) 586-0719. Bid date Wednesday, July 23, 1997 at 11 a.m.

**Department:** General Services  
**Location:** Indiana County Armory, Indiana, Indiana County, PA  
**Duration:** 300 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

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**SP284334** Contractor shall provide all materials and labor required for repairing and/or resurfacing asphalt roadways and parking lots. Base course (BCBC) and surface course (1 1/2" thick after compaction of 1/2" ID2A waring course) shall be in accordance with PennDOT 408 specs. Overlay areas shall be sprayed with E8 tack oil. New paving shall be true and even (no puddles). All building and curbing joints shall be sealed with AC20 black sealer, and all areas must drain to established drains. All materials and/or debris shall be removed from campus. Surface course shall only be applied when base course is dry and air temperature is 50° or above.

**Department:** Military and Veterans Affairs  
**Location:** Scotland School for Veterans' Children, 3583 Scotland Road, Scotland, PA 17254-0900  
**Duration:** July 1, 1997—June 30, 1998 (2 year option to renew)  
**Contact:** T. Edward Kump, Facilities Maintenance Manager, (717) 264-7187, ext. 674

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**SP-313859** ADA asphalt paving—the contractor shall provide all labor, materials and equipment necessary to pave two additional parking areas on the hospital grounds. Total of area to be paved will be approximately 422 square yards. Complete details and specifications are available from the hospital upon request.

**Department:** Public Welfare  
**Location:** Wernersville State Hospital, Wernersville, Berks County, PA 19565  
**Duration:** July 14, 1997 through October 31, 1997  
**Contact:** Karl Koenig, Purchasing Agent, (610) 670-4127



**Demolition—11**

**0800-R/W 0022-002** The Department of Transportation is seeking bids for the demolition and/or removal of structures from properties located in the Borough of Dauphin, and in Middle Paxton Township, Dauphin County, PA. Sealed bids will be accepted by the Department of Transportation at 2140 Herr Street, Harrisburg, PA 17103-1699 until 1 p.m. on Friday, July 25, 1997. The project will involve approximately 19 parcels which will be open for inspection on Wednesday, July 2, 1997. For bid forms, specifications and further information contact Jerry Williams, Appraisal Supervisor, Universal Field Services, Inc., 96 Royal Street, Reedsville, PA 17084 (717) 667-2022. Bidders must be prequalified as demolition contractors by the Commonwealth.

**Department:** Transportation  
**Location:** R/W District 8-0 R/W Unit, 2140 Herr Street, Harrisburg, Dauphin County, PA 17103-1699  
**Duration:** Demolition to be completed within 60—90 days from authorization to proceed  
**Contact:** Jerry Williams, (717) 667-2022

**Engineering Services—14**

**08430AG2081** Construction inspection and documentation services for S. R. 0080, Section 347, Clarion County.

**Department:** Transportation  
**Location:** Engineering District 10-0  
**Duration:** 24 months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2082** Construction inspection and documentation services for S. R. 0080, Section 345, Clarion County.

**Department:** Transportation  
**Location:** Engineering District 10-0  
**Duration:** 18 months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**Environmental Maintenance Services—15**

**BF 412-101.1** Abandoned Mine Land Reclamation Project at Bear Hollow Mining Company site. Involves 3,100 c. y. of grading, 1.5 acres of selective grading and 4.5 acres of seeding.

**Department:** Environmental Protection  
**Location:** South Beaver Township, Beaver County, PA  
**Duration:** 180 days after Notice to Proceed  
**Contact:** Construction Contract Unit, (717) 783-7994

**BOGM 96-9R** Clean out and plug one abandoned gas well on Kozlosky property. Well is estimated to be 1,000 feet deep.

**Department:** Environmental Protection  
**Location:** Borough of Ford City, Armstrong County, PA  
 30 days after Notice to Proceed  
**Contact:** Construction Contract Unit, (717) 783-7994

**BOGM 97-2** Clean out and plug five abandoned oil and gas wells on Commonwealth property. Wells estimated to be 480 feet maximum depth.

**Department:** Environmental Protection  
**Location:** Cornplanter Township, Venango County, PA  
 60 days after Notice to Proceed  
**Contact:** Construction Contract Unit, (717) 783-7994

**NCF 004-101.1** Abandoned Mine Land Reclamation Project at Leroy B. Davis site. Involves an estimated 900 c. y. of grading, dewatering impoundment and seeding.

**Department:** Environmental Protection  
**Location:** Roulette Township, Potter County, PA  
 60 days after Notice to Proceed  
**Contact:** Construction Contract Unit, (717) 783-7994

**Food—19**

**4620-02** The Department of Transportation will solicit vending services for Mercer County, Site E, Lawrence County, Sites 15 and 16 and Venango County Sites 21 and 22. Items vended will be limited to nonperishables such as soda/juice, candy/snacks, ice cream, sandwiches and hot drinks. The vendor will be responsible for the installation, stocking and maintenance of a minimum of five vending machines. General liability insurance will be required. Contracts will be awarded to the highest monthly fee bid to the Department of Transportation expressed in lump sum bid form. Persons interested in obtaining a proposal to bid should contact the name listed below within 10 days of this notice. Bid opening is July 14, 1997, in Room F7B, 7th Floor, Forum Place, Harrisburg, PA 17101 at 2 p.m.

**Department:** Transportation  
**Location:** Mercer, I-80 EB; Lawrence, I-79 NB and SB; Venango, I-79 NB and SB  
**Duration:** 2 years, 3 months per specifications and provisions  
**Contact:** LuAnn J. Shadle, (717) 787-0188

**Fuel Related Services—20**

**Project No. AST-154** Project title: install 16 ASTs. Project description: install 16 1,000 gallon gas/1,000 gallon diesel dual above-ground fuel storage tanks (ASTs). Fuel tanks, tank accessories and concrete base slabs provided by the Game Commission. Contractor to coordinate tank delivery and provide crane to lift and set tank; install electrical conduit, junction boxes, conductors, light fixture and switches; install leak detection probes and alarm box. Bid opening date: July 11, 1997.

**Department:** Game Commission  
**Location:** 16 sites in 16 counties throughout the Commonwealth of Pennsylvania  
**Duration:** 90 calendar days from issuance of contract  
**Contact:** Engineering and Contract Management Division, (717) 787-9620

**HVAC—22**

**AE-2544** Installation of emergency/standby electrical generator. FAX (717) 783-7971.

**Department:** Transportation  
**Location:** Maintenance District 1-6, 2579 West PA Avenue, Warren, Warren County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-2909** Housing and exhaust fans installation. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** PennDOT Stockpile No. 9, Bald Eagle Township, Clinton County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5061** Installation of emergency/standby power supply system. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 5-0, Oxford and Fish Hatchery, Allentown, PA 18103  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5062** Installation of emergency/standby power supply system. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 5-5, 3300 Freemansburg Avenue, Easton, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5063** Installation of emergency standby power supply system. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 5-3, 1712 Lehigh Street, Allentown, Lehigh County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5070** Installation of emergency/standby electrical generator. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 3-4, 355 Dewalt Street, Sunbury, Northumberland County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5071** Installation of emergency/standby power supply system. FAX (717) 787-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 3-5, Freeburg Road, Selinsgrove, Snyder County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5072** Installation of emergency/standby power supply system. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 3-7, 6 Berwart Street, Wellsboro, Tioga County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5073** Installation of emergency/standby power supply system. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 3-8, Old Fairground Road, Lewisburg, Union County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**AE-5074** Installation of emergency/standby power supply system. FAX (717) 783-7971.  
**Department:** Transportation  
**Location:** Maintenance Building, District 3-9, 340 York Avenue, Towanda, Bradford County, PA  
**Duration:** 90 calendar days; proposed bid July 1997  
**Contact:** Tina Chubb, (717) 787-7001

**JC-25-97** Plumbing repairs/services. The maintenance and repair of the Mercer County Job Center plumbing system. Services are to be available on a 24 hour basis. Any materials furnished to be of first quality. Materials and parts are to be at contractor's cost plus no more than 10%.

**Department:** Labor and Industry  
**Location:** Mercer County Job Center, 663 East State Street, Sharon, Mercer County, PA 16146-2098  
**Duration:** October 01, 1997—September 30, 2000  
**Contact:** Eugene W. Kouch, (412) 983-5120

**JC-26-97** Heating and air conditioning repairs/services. The maintenance and repair of the Mercer County Job Center heating and air conditioning system. Services are to be available on a 24 hour basis. Any materials furnished to be of first quality. Materials and parts are to be at contractor's cost plus no more than 10%. This will be a 3 year contract.

**Department:** Labor and Industry  
**Location:** Mercer County Job Center, 663 East State Street, Sharon, Mercer County, PA 16146-2098  
**Duration:** October 01, 1997—September 30, 2000  
**Contact:** Eugene W. Kouch, (412) 983-5120

**JC-27-97** Electrical repairs/services. The maintenance and repair of the Mercer County Job Center electrical system. Services are to be available on a 24 hour basis. Any materials furnished to be of first quality. Materials and parts are to be at contractor's cost plus no more than 10%. This will be a 3 year contract.

**Department:** Labor and Industry  
**Location:** Mercer County Job Center, 663 East State Street, Sharon, Mercer County, PA 16146-2098  
**Duration:** October 01, 1997—September 30, 2000  
**Contact:** Eugene W. Kouch, (412) 983-5120

**DDC-SYS-97** Maintenance contract for McClure Automatrix DDC System. Contractor to provide monthly preventive maintenance and 2 complete system checks per year to include all panels, solo controllers, sensors, relays, transducers, transmitters, fiber optic converters, Sage communications panels, personal computers, etc.

**Department:** Corrections  
**Location:** State Correctional Institution Houtzdale, State Route 2007, Houtzdale, PA 16698-1000  
**Duration:** October 01, 1997—September 30, 1998  
**Contact:** Diana K. Davis, Purchasing Agent II, (814) 378-1000

**Project No. 9806** Kitchen exhaust (range) hood, including controls, fan motor, filters, duct work, etc.

**Department:** Military and Veterans Affairs  
**Location:** PAARNG Armory, 1000 East Cumberland Street, Lebanon, Lebanon County, PA  
**Duration:** 1 July 97—30 September 98  
**Contact:** Emma Schroff, (717) 861-8518

## Janitorial Services—23

**304-202** The awarded contractor shall thoroughly wash and clean all interior and exterior windows and entrance glass partitions in the Scranton State Office Building. Contractor shall furnish the required labor, materials, equipment, tools and supervision to thoroughly clean and wash the window and glass portions of the building. Work schedule shall consist of 2 visits to the site for window cleaning and washing during the contract period. (Spring and Fall).

**Department:** General Services  
**Location:** Buildings and Grounds, Scranton State Office Building, 100 Lackawanna Avenue, Scranton, PA 18503  
**Duration:** July 1, 1997 through June 30, 2000  
**Contact:** Joseph G. Barrett, (717) 963-4817

**JC-28-97** Janitorial services and floor maintenance: daily sweeping, mopping and vacuuming of floors and general janitorial duties (dusting, emptying trash, etc.). Weekly and monthly cleaning and scrubbing (furniture, windows, telephone, fixtures). Also must supply all paper products, soap, trash bags and floor care products needed for maintenance and daily use by the local office. Involves 6,859 square feet of space. More detailed specifications can be obtained by contacting Eugene W. Kouch, Manager, Mercer County Job Center. This is a three year contract.

**Department:** Labor and Industry  
**Location:** Mercer County Job Center, 663 East State Street, Sharon, Mercer County, PA 16146-2098  
**Duration:** October 01, 1997—September 30, 2000  
**Contact:** Eugene W. Kouch, (412) 983-5120

**JC-30-97** Janitorial service—daily, weekly, monthly, semi-annual and annual cleaning duties, i.e., cleaning floors, restrooms (employee and public), furniture, walls, woodwork, carpets and any and all other cleaning required to keep the premises clean and neat at all times. Furnish equipment and supplies. Office occupies 4,000 square feet. Contract includes snow removal.

**Department:** Labor and Industry  
**Location:** Employment Security, Bedford County Job Center, 107 South Richard Street, Bedford, Bedford County, PA 15522  
**Duration:** October 01, 1997 through September 30, 2002  
**Contact:** Karen A. Carstensen, E. S. Manager I, (814) 623-6107

**SP 274349** Sealed bids will be received at the Regional Office No. 2, P. O. Box 387, 195 Park Road, Prospect, PA 16052-0387 and publicly opened and read. A bid opening date has not yet been set. For janitorial service to 11 family cabins and park office at Moraine State Park. A bid proposal containing all pertinent information must be obtained from the office of the Park Manager, Moraine State Park.

**Department:** Conservation and Natural Resources  
**Location:** Moraine State Park Complex, 225 Pleasant Valley Road, Portersville, PA 16051  
**Duration:** September 1, 1997 to December 31, 2000  
**Contact:** Moraine State Park, (412) 368-8811

**SP-355222** Vendor to provide janitorial services at the Kossman Building in Pittsburgh, PA. Vendor to furnish all labor, equipment and supplies to provide these services. Duties are to be performed between the hours of 8:30 a.m. and 5 p.m. 5 days per week, Monday through Friday except State holidays. Complete details and specifications may be obtained by contacting the Procurement Office.

**Department:** Public Welfare  
**Location:** 400 Stanwix Street, Pittsburgh, PA 15222-1302  
**Duration:** September 01, 1997—June 30, 1999 with two 1 year renewal options  
**Contact:** Ed Blandy, (717) 772-4883

**Laboratory Services—24**

**H-5539** Clinical laboratory tests. To receive specifications, send written request to Purchasing Office, Hamburg Center, Hamburg, PA 19526, FAX: (610) 562-6025.

**Department:** Public Welfare  
**Location:** Hamburg Center, Hamburg, PA 19526  
**Duration:** January 01, 1998—December 31, 2000  
**Contact:** Irvin G. Reinert, Purchasing Agent, (610) 562-6031

**Medical Services—29**

**321155** Contractor shall provide mobile radiology and diagnostic interpretation, as required by the Bensalem Youth Development Center. The service shall be available 7 days per week, 24 hours per day. Contractor shall provide complete onsite radiology services when deemed necessary by the Facility's staff physician.

**Department:** Public Welfare  
**Location:** Bensalem Youth Development Center, 3701 Old Trevoise Road, Bensalem, PA 19020  
**Duration:** October 1, 1997 through June 30, 2000  
**Contact:** Sharon Maxwell, (215) 953-6406

**Real Estate Services—35**

**995A** Lease Office Space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Office of Attorney General with 9,100 useable square feet of new or existing office space in Harrisburg, Dauphin County, PA, with minimum parking for 38 vehicles, within the following boundaries: North: Boas Street; South: Chestnut Street; East: Seventh Street; West: Front Street. Proposals due: July 14, 1997. Solicitation no.: 92505.

**Department:** General Services  
**Location:** Real Estate, 505 North Office Building, Harrisburg, PA 17105  
**Duration:** Indeterminate 1996-97  
**Contact:** Doris Deckman or Cynthia T. Lentz, (717) 787-4394

**010318** Provide professional appraisal services for various types of properties located on projects in Engineering District 1-0; these projects being located in Erie County and Crawford County including but not limited to SR 4304-A50, WO 96080 and SR 0027-02S. All appraisers must be generally State certified and be currently on the Department's Pre-Qualified Fee Appraiser and Consultant List.

**Department:** Transportation  
**Location:** PennDOT District Office, 1140 Liberty Street, Franklin, PA 16323  
**Duration:** July 01, 1997 to June 30, 2002  
**Contact:** William R. Pixley, Chief Appraiser, (814) 437-4203

**Sanitation—36**

**0470-03565** Provide one 30 cubic yard container with a minimum of 12 pickups and/or a maximum of 24 pickups for the period.

**Department:** Transportation  
**Location:** 1 Franklin Avenue, District 4-7, Tunkhannock, Wyoming County, PA 18657  
**Duration:** 4 year contract to include price escalation per CPI  
**Contact:** Diane Salsman, (717) 836-3141

**Security Services—37**

**Project No. 555** Security guards.

**Department:** Military and Veterans Affairs  
**Location:** PAARNG Armory, Johnstown Municipal Airport, 447 Airport Road, Johnstown, Cambria County, PA  
**Duration:** October 1, 1997—September 30, 2000  
**Contact:** Emma Schroff, (717) 861-8518

**96-07-10** As authorized by Federal regulations, 7 CFR Part 246 the Special Supplemental Food Programs for Women, Infants and Children (WIC), the contractor will perform investigations of selected retail stores participating in the Program. The investigations will be made to collect evidence of improper retail store practices and for the purpose of deterring fraud, recovery of funds and/or sanctions. The contractor staff performing under the agreement must be available to testify at fair hearings or other judicial proceedings.

**Department:** Health  
**Location:** Division of Special Food Programs (WIC), P. O. Box 90, Room 604, Health and Welfare Building, Harrisburg, PA 17108  
**Duration:** 5 years  
**Contact:** Michael Schappell, Retail Store Coordinator, (717) 783-1289

**Vehicle, Heavy Equipment—38**

**0800-97-WS-0701-97-1** The Department of Transportation intends to rent one mobile organic resource processor (wood shredder) with a qualified operator. A reference model is "Willibald MZA 2500" or a functional equivalent or greater.

**Department:** Transportation  
**Location:** The following District 8-0 counties: Adams, Cumberland, Franklin, York, Dauphin, Lancaster, Lebanon and Perry  
**Duration:** August 15, 1997 to August 14, 2000  
**Contact:** R. A. Wiest, (717) 783-0443

**1200-97-001** Rental of winter maintenance equipment with operator. Equipment needs include: single and tandem axle trucks with plow and spreader, loaders and graders. Winter rented equipment 3 year contract, District 12-0.

**Department:** Transportation  
**Location:** District 12-0, Fayette, Greene, Washington and Westmoreland Counties  
**Duration:** November 01, 1997 to April 30, 1998; November 01, 1998 to April 30, 1999; November 01, 1999 to April 30, 2000  
**Contact:** Liberty Hill, (412) 439-7361

**B-315-97** On-call rental of one low boy tractor trailer unit for use in the bituminous coal region. One hundred percent (100%) of this contract is financed by the Federal Government.

**Department:** Environmental Protection  
**Location:** Bituminous Coal Region of PA  
**Duration:** 1 year after Notice to Proceed  
**Contact:** Construction Contracts Unit, (717) 783-7994

## Miscellaneous—39

**Request for Information (RFI 1-97)** The Department of Public Welfare (DPW) is looking for qualified bidders who have developed a Diagnostic Related Group (DRG) auditing system that electronically audits DRG paid hospital claims and have the ability to perform DRG audits from the claims identified by their software system. The software functions are as follows: 1) electronically evaluates all DRG paid claims to identify DRG optimization, miscoding, upcoding, medical necessity issues and place of service issues; 2) software edits must be capable of customization, including edit on/off functions; 3) must be able to electronically identify new DRG assignment by correcting coding error; 4) must produce summary reports to identify claims with DRG coding errors; 5) detail claim by claim audit reports of claim DRG coding errors and the corrective action; 6) must produce trending reports to identify hospitals with DRG coding errors. The system requirements are as follows: 1) system must be able to evaluate two million inpatient claims and have the ability to download suspect claims from mainframe to a compatible PC product; 2) PC product must contain ICD-9-CM encoder, multiple versions of the DRG grouper software, end-user reporting capability, letter generation module, and easy import/export functions. If interested and for audit requirements contact: Fortuna Kostelac at (717) 772-4602, Office of Medical Assistance Programs, Bureau of Program Integrity.

**Department:** Public Welfare  
**Location:** Statewide  
**Duration:** Indeterminate 1996-97  
**Contact:** Fortuna P. Kostelac, (717) 772-4602

[Pa.B. Doc. No. 97-1065. Filed for public inspection June 27, 1997, 9:00 a.m.]

**Project No. 810** Stormwater management survey to include quantitative data collection and testing, recommendation for facility improvements in order to bring facility into compliance with Federal, State and local regulations. If survey indicates NPDES permits are required, contractor will prepare application.

**Department:** Military and Veterans Affairs  
**Location:** PAARNG Armory, 358 West Main Street, Ligonier, Westmoreland County, PA  
**Duration:** July 1, 1997—September 30, 1998  
**Contact:** Emma Schroff, (717) 861-8518

**1190-W** The contractor shall provide all labor, equipment, tools and protective clothing necessary to install approximately 3,316 lineal feet of installed-length double coil 30"/24" type II general purpose barbed tape obstacle (razor ribbon) and 13,264 lineal feet of installed-length single coil 60" concertina (razor ribbon) on perimeter security fences and/or rooftop security perimeter fence lines at the State Correctional Institution at Greensburg.

**Department:** Corrections  
**Location:** State Correctional Institution at Greensburg, R. D. 10, Box 10, Route 119 South, Greensburg, PA 15601-8999  
**Duration:** September 29, 1997 to June 30, 1998  
**Contact:** Jack Loughry, (412) 837-4397, ext. 339

**102-0-001** Preventive maintenance services and repairs on overhead doors for Building No. 048-5762, and services and repairs to the truck-wash facility.

**Department:** Transportation  
**Location:** 351 New Castle Road, Butler, PA 16001  
**Duration:** 1 year, with three 1-year renewals  
**Contact:** Andy Skunda, (412) 284-8226

**LB&FC No. 1997-2** The Legislative Budget and Finance Committee (LB&FC) has been requested to conduct an immediate study of the physical health component of the HealthChoices program in southeastern Pennsylvania in order to ascertain the adequacy of the rates contained in contracts between DPW and managed care organizations. This requires the evaluation to be conducted by an independent actuary with experience in evaluating Medicaid managed care. It is anticipated that initial Requests for Proposal will be available for distribution on or after June 30, 1997.

**Department:** Legislative Budget and Finance Committee  
**Location:** Harrisburg, PA  
**Duration:** August 30, 1997 through December 1, 1997 (estimated)  
**Contact:** Philip R. Durgin, (717) 783-1600

**200000-3500** Provide work station modification and design for Herman Miller furniture.

**Department:** Transportation  
**Location:** PennDOT sites in the Harrisburg Area, Harrisburg, PA  
**Duration:** 2 years  
**Contact:** Sue Sobotor, (717) 783-3931

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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,  
*Secretary*

STATE CONTRACT INFORMATION

3137

**Contract Awards**

The following awards have been made by the Department of General Services, Bureau of Purchases:

<b>Requisition or Contract #</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
0038-02	06/20/97	Sowers Printing	525,757.84
0038-02	06/20/97	Digital Ink	371,085.00
0038-02	06/20/97	Boyer Printing and Binding Co., Inc.	457,638.00
0044-02	06/20/97	Five Thousand Forms	80,000.00
0044-02	06/20/97	Phonix Data, Inc. c/o Progressive Label	80,000.00
0044-02	06/20/97	Wise Business Forms c/o Van Guard Group	80,000.00
0044-02	06/20/97	Digital Ink	80,000.00
0044-02	06/20/97	Eagle Graphics c/o Progressive Label	80,000.00
0044-02	06/20/97	Standard Register Co.	80,000.00
0044-02	06/20/97	Duplex/ Reynolds and Reynolds	80,000.00
0044-02	06/20/97	American Business Printing	80,000.00
0044-02	06/20/97	Moore Business Forms	80,000.00
1002117-01	06/11/97	Dairypak Division	102,080.00
1068157-01	06/11/97	Yorkaire, Inc.	3,825.47
1657316-01	06/11/97	Pierce-Phelps, Inc.	251,078.20
1687386-01	06/11/97	Elliott & Frantz, Inc.	108,860.00
1709386-01	06/13/97	Cambria Tractor and Equipment Co.	176,244.00
1736216-01	06/13/97	Curran Taylor, Inc.	14,412.00
1749356-01	06/17/97	Viking Instruments Corp.	168,388.00
1788116-01	06/17/97	Herre Bros., Inc.	9,995.00
1802226-01	06/11/97	McClure Johnston Co.	14,518.65

<b>Requisition or Contract #</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
1819386-01	06/11/97	Troxell Communications, Inc.	4,509.04
1830216-01	06/11/97	Cyclone Fence	13,367.00
1836116-01	06/17/97	Digital Biometrics, Inc.	45,390.00
1837116-01	06/11/97	ATR Systems, Inc.	11,970.00
1838076-01	06/11/97	Ansell Institutional Sales	23,890.00
1843356-01	06/13/97	Graseby Anderson	18,650.00
1879156-01	06/13/97	Northern Video Systems, Inc.	28,733.00
1879156-02	06/13/97	Peirce Phelps, Inc. Audio/Video Systems Div.	4,462.00
1880126-01	06/11/97	Body Care Therapeutic Center	11,550.00
1883126-01	06/17/97	Les Equipment Adaptes Physipro, Inc.	5,081.80
1888206-01	06/17/97	Digital Biometrics, Inc.	90,780.00
1924076-01	06/17/97	Roche Diagnostic Systems	30,188.39
1929236-01	06/11/97	Garden State Highway Products	13,248.55
1933076-01	06/13/97	Spectrum Pool Products	20,794.00
1941116-01	06/11/97	Amity Fence Co.	16,561.62
1945816-01	06/17/97	Nolen Associates	5,500.00
1963216-01	06/11/97	Collinson, Inc.	31,539.20
1970206-01	06/11/97	Stratton Hats, Inc.	13,485.00
1977076-01	06/13/97	Ansell Institutional Sales	28,750.00
1979116-01	06/11/97	H & H Sales Associates, Inc.	9,777.00
2001076-01	06/11/97	Mirage Marketing Co.	7,307.50
2001076-02	06/11/97	Philip Levin Co.	1,132.00

## STATE CONTRACT INFORMATION

Requisition or Contract #	Awarded On	To	In the Amount Of	Requisition or Contract #	Awarded On	To	In the Amount Of
2001076-03	06/11/97	Cornerstone Recognition	1,890.00	7313700-01	06/13/97	Pittsburgh Material Handling, Inc.	111,181.00
3610-04	06/20/97	A. M. Multigraphics	40,000.00	7485-01	06/20/97	Statewide Of- fice Products	25,000.00
3610-04	06/20/97	Washington Printing Supplies	110,000.00	7485-01	06/20/97	Unisys/State Gov't. Dis- trict	115,000.00
3610-04	06/20/97	Standard Du- plicating Machines	20,000.00	7485-01	06/20/97	Xerox Corp.	75,000.00
3610-04	06/20/97	E. N. Dunlap, Inc.	110,000.00	7485-01	06/20/97	Granville As- sociates	275,000.00
3610-04	06/20/97	The Pitman Company	25,000.00	7485-01	06/20/97	Rudolph's Of- fice Supply	90,000.00
3610-04	06/20/97	E. Thomas Brett Bus. Machines	25,000.00	7485-01	06/20/97	Memtek Prod- ucts, Inc.	30,000.00
3610-04	06/20/97	Franklin Printers Supply Co.	30,000.00	7485-01	06/20/97	TBS Printware Corp.	80,000.00
3610-04	06/20/97	G. E. Richards Graphic Supply Co.	305,000.00	7485-01	06/20/97	Miami Com- puter Sup- ply Co.	80,000.00
3610-04	06/20/97	A. B. Dick Company	20,000.00	7485-01	06/20/97	Richard Young Journal	90,000.00
3610-04	06/20/97	Heidelberg USA, Inc.	15,000.00	7485-01	06/20/97	Alling & Cory Co.	90,000.00
3610-04	06/20/97	Harrisburg Copiers	10,000.00	7485-01	06/20/97	Media Recov- ery, Inc.	30,000.00
3610-04	06/20/97	Savin Corp.	15,000.00	7485-01	06/20/97	Uneq, Inc.	50,000.00
3610-04	06/20/97	Central Penn Graphics	10,000.00	7485-01	06/20/97	Swifteagle En- terprises	60,000.00
3610-04	06/20/97	Riso, Inc.	30,000.00	7510-07	06/20/97	Systematic Fil- ing Prod- ucts, Inc.	201,564.00
3610-04	06/20/97	Phillips Office Products	15,000.00	8129580-01	06/17/97	Calcium Chlo- ride Sales, Inc.	106,542.90
3610-04	06/20/97	General Bind- ing Corp.	15,000.00	8503800-01	06/13/97	Scicchitano Hardware, Inc.	21,400.00
5665-03	06/20/97	Energy Absorbtion Systems, Inc.	127,945.00				
6530-08	06/20/97	Hollister, Inc.	35,000.00				
6530-08	06/20/97	Owens & Mi- nor, Inc.	60,000.00				

GARY E. CROWELL,  
Secretary

[Pa.B. Doc. No. 97-1066. Filed for public inspection June 27, 1997, 9:00 a.m.]

# PROPOSED RULEMAKING

## DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 123 AND 127]  
General Provisions of Act 57 of 1996

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), proposes to provide clarifications and detailed guidance for the uniform application of the provisions of the act of June 24, 1996 (P. L. 350, No. 57) (Act 57), which amended the Workers' Compensation Act (act) (77 P. S. §§ 1—2626). Chapter 123 (relating to general provisions—Part II) proposed to be added. In addition, because Act 57 abrogated the reconsideration stage of the utilization review (UR) process, the Department proposes to repeal and amend certain portions of Chapter 127 (relating to workers' compensation medical cost containment). Specifically, the Department proposes the deletion of §§ 127.501—127.515 (relating to UR—reconsideration). The Department also proposes to delete language throughout Chapter 127 which references both the initial and reconsideration stages of UR. Additionally, the Department proposes to amend § 127.105 (relating to outpatient providers subject to Medicare fee schedule—chiropractors) due to changes in the Medicare fee schedule relating to the reimbursement of chiropractic treatment. The procedural code A2000 under the Medicare Fee Schedule has been repealed and replaced effective January 1, 1997; therefore, reimbursement of chiropractors is to be governed by the new procedure codes. Further, the Department proposes to amend: (1) § 127.251 (relating to Medical fee disputes—review by the Bureau) to incorporate the statute of limitations imposed on providers wishing to file applications for Medical Fee Review under Act 57; (2) § 127.452 (relating to initial requests for UR—filing and service) to clarify who the provider under review is when a UR request is filed; (3) § 127.751 (relating to employer's option to establish a list of designated health care providers); (4) § 127.752 (relating to contents of list of designated health care providers); and (5) § 127.755 (relating to required notice of employe rights and duties). The amendments to §§ 127.751, 127.752 and 127.755 are proposed so as to incorporate the amendments of Act 57 which permit the inclusion of four Coordinated Care Organizations (CCOs) on the employer's list of designated providers and which require an employe to treat with an employer-designated provider for 90 days, and which may require continued treatment for an additional 90 days when an employer-designated physician recommends invasive surgery for the employe.

### *Statutory Authority*

These amendments are proposed under the authority provided in sections 401.1 and 435 of the act (77 P. S. §§ 710 and 991) which provide that the Department adopt regulations which are necessary or desirable for the enforcement of the act and which are reasonably calculated to provide interested parties of their rights under the act. These amendments are proposed under the additional authority of sections 204(d) and 306(f.2)(7) of the act (77 P. S. §§ 71 and 511.2(f.2)(7)), which charge the Department with establishing regulations implementing those sections which govern the offset of workers' compensation benefits by amounts received in unemploy-

ment compensation, Social Security (old age) benefits, severance and pension benefits and the certification of CCOs.

### *Background*

On June 24, 1996, Governor Tom Ridge signed into law Act 57, which substantially amended the act. The amendments are intended to address the rising costs of workers' compensation in this Commonwealth while preserving the rights of employes to be adequately compensated for their work-related injuries. Among the amendments are provisions which allow an executive officer of a nonprofit corporation to elect not to be an employe for the purposes of workers' compensation coverage, provisions which allow the offset of workers' compensation benefits from certain amounts received from Social Security (old age), severance and pension benefits, and provisions which require that, in order for an employer's spouse or child to be deemed an employe for purposes of workers' compensation coverage, an employer of agricultural labor shall file an express written contract for hire with the Department. The amendments also call for the abrogation of the reconsideration stage of the UR process and the placement of time limitations on health care providers wishing to file applications for medical fee review. The amendments also require that an employe's earning power be determined by expert opinion, and that the Department establish the qualifications of vocational experts. Further, Act 57 provides for an impairment rating evaluation after the receipt of 104 weeks of total disability compensation. If the impairment rating is less than 50%, the employe's benefit status shifts from total to partial disability with benefits capped at 500 weeks. In addition, Act 57 establishes an automatic request for supersedeas when a petition alleging an employe's full recovery is filed accompanied by a physician's affidavit to that effect.

Act 57 added two sections to the act which address situations in which employes who have returned to work are receiving both wages and workers' compensation benefits. These sections call for the suspension or modification of benefits after notice and an affidavit are submitted which allege that the employe has returned to work. Act 57 also places new reporting requirements on employes who file for (or are receiving) compensation under section 306(a) or (b) of the act. Employes are required to regularly report amounts received from unemployment compensation, Social Security (old age), severance and pension benefits. Additionally, employes are required to report information regarding employment and self-employment, as well as any other information which is relevant in determining the entitlement to or amount of compensation. Further, insurers are permitted to submit forms to employes in order for employes to provide verification that the employes' status regarding their entitlement to receive workers' compensation benefits has not changed. Act 57 also created an informal conference procedure to expedite the workers' compensation adjudication process, and a process by which employers and employes can enter into Compromise and Release Agreements which may extinguish the employer's liability for a work-related injury. Act 57 permits an employer and the recognized or certified exclusive representatives of its employes to bargain collectively over specified issues relating to workers' compensation in order to facilitate the resolution of claims. In an effort to promote workplace safety and reduce employe injuries and employer costs, Act 57 granted a 5% premium discount to employers with



Department-certified safety committees for a maximum period of 5 years. Act 57 also increased penalties as a result of unreasonable or excessive delays.

Act 57 amended section 306(f.2) of the act by transferring the authority for certification of CCOs from the Department of Health to the Department. Accordingly, the Department will develop procedures and issue an application form for CCO certification. CCOs currently certified by the Department of Health will continue to be certified until the new procedures for CCO certification are published in the *Pennsylvania Bulletin*. Section 31.2 of Act 57 provides that the regulations promulgated by the Department of Health under section 306(f.2)(7) of the act shall be deemed regulations of the Department. The Department intends to operate under the existing statement of policy published by the Department of Health in 28 Pa. Code Chapter 9, Subchapter B (relating to coordinated care organizations—statement of policy).

Since the passage of Act 57 and the publication of the Department's notice at 26 Pa. B. 3979 (August 17, 1996), the Department has received various written and verbal comments regarding the interpretation of various provisions of Act 57. Additionally, consistent with the Governor's policy, as set forth in Executive Order 1996-1, the Department has consulted with stakeholders affected by the passage and implementation of Act 57. In addition to the stakeholders, the Department considered the comments and suggestions made by members of the Pension and Independent Medical Examination (IME) Task Forces, as well as the section 450 subcommittee to the Governor's Committee on Labor-Management Partnerships, organized to lend interpretive guidance on the implementation of sections 204, 306(a.2) and 450 of the act respectively.

The Department published a statement of policy at 27 Pa.B. 1731 (April 5, 1997) in an effort to provide interpretive guidance to all parties of their rights and obligations under Act 57. The statement of policy was written in the spirit of implementing the Legislative intent of achieving the greatest cost savings in amounts paid in workers' compensation premiums, benefits payments and litigation costs, while preserving the rights of employees to be adequately compensated for their work-related injuries. The statement of policy invited all interested parties to provide written comments to the Bureau. Written comments received were considered in the promulgation of these proposed amendments.

This notice of proposed rulemaking further clarifies and expands upon the previous interpretation of Act 57 provided in the statement of policy. In response to comments received and stakeholder meetings, some changes have been made to the interpretations published on April 5, 1997. The Department intends to delete the statement of policy which appears in Chapter 122 (relating to general provisions of Act 57 of 1996—statement of policy) when the proposed addition of Chapter 123 is adopted.

#### *Purpose*

The purpose of these proposed amendments is to effectuate the provisions of Act 57. The amendments at sections 204; 306(a.2); (b)(2) and (3), (f.1)(1)(i) and (f.1)(5); 311.1; 402.1; 413(a.1), (c) and (d); and 450 were intended to curtail the escalating costs associated with work-related injuries, while preserving the right of injured workers to be adequately compensated for their work-related injuries. Generally, these cost savings are effectuated through the offset of workers' compensation benefits

by amounts received by employees in unemployment compensation, Social Security (old age), severance and pension benefits; the abrogation of the reconsideration stage of the UR process and the placement of time limitations on health care providers for the filing of applications for medical fee review; the addition of an impairment rating evaluation after the employee's receipt of 104 weeks of total disability benefits in order to determine the percentage of whole body impairment; the addition of new employee reporting requirements; and the allowance of collective bargaining over certain issues relating to workers' compensation benefits and the compromise and release of claims.

Since the passage of Act 57, interested parties have expressed their desire for the expeditious promulgation of regulations to provide definitive interpretations and guidance in order that all parties have a clear understanding of their rights and obligations under the Act 57 amendments. These proposed amendments provide the guidance needed to ensure consistent application and compliance with Act 57.

#### *Affected Persons*

Those affected by these proposed amendments are private and public sector employers in this Commonwealth, workers' compensation insurance carriers, self-insured employers, health care providers and injured workers.

#### *Fiscal Impact*

There is no significant fiscal impact associated with this proposed rulemaking. Although Act 57 required the creation of new Departmental forms for public use, most of these forms were created prior to the effective date of Act 57, therefore, significant costs are not expected. Furthermore, any costs to the regulated community associated with the implementation of these proposed amendments will be offset by the expected savings of Act 57's amendments. Cost savings to the regulated community are estimated at over \$225 million for the first policy year which commenced on February 1, 1997. Additionally, any costs to the Commonwealth will be offset by the savings experienced by the Commonwealth as a self-insured employer.

#### *Summary of Proposed Rulemaking. Chapter 123*

(1) *Organization of Chapter 123.* These proposed amendments provide detailed guidelines implementing the general provisions of Act 57 relating to workers' compensation. The chapter is divided into ten subchapters, with Subchapter A (relating to offset of unemployment compensation, Society Security (old age), severance and pension benefits) devoted to provisions relating to the offset of workers' compensation benefits by amounts received in unemployment compensation, Social Security (old age), severance and pension benefits. Subchapter B (relating to impairment ratings) details the method of obtaining an impairment rating evaluation and the method for the shift of benefit status from total to partial. Subchapter C (relating to qualifications for vocational experts approved by the Department) establishes the qualifications for vocational experts approved by the Department. Subchapter D (relating to earning power determinations) sets forth employer prerequisites to seeking a modification or suspension of benefits. Additionally, this subchapter sets forth the standard for which an employee's earning power will be determined. Subchapter E (relating to collective bargaining) provides guidance on the use of alternative dispute resolution systems in collective bargaining agreements by an employer and its

organized labor force. Subchapter F (relating to employe reporting and verification requirements) sets forth employe reporting and verification requirements. Subchapter G (relating to special supersedeas) establishes the procedures for automatic requests for supersedeas and return-to-work suspensions and modifications. Subchapter H (relating to informal conferences) clarifies the representation requirements of informal conferences. Subchapter I (relating to use of optically scanned documents) governs the use of optically scanned documents and the admissibility of copies into evidence. Finally, Subchapter J (relating to unreasonable or excessive delays) sets forth the time period for which an employer's delay may be considered unreasonable or excessive in connection with the assessment of penalties.

(2) *Subchapter A. Offset of workers' compensation benefits*

Prior to Act 57, section 204 of the act provided for the offset of workers' compensation benefits by amounts an employe received in unemployment compensation. Act 57 amended section 204 of the act by providing additional offsets for Social Security (old age), severance and pension benefits. While the offset for unemployment compensation benefits applies to all work-related injuries, the offset for Social Security (old age), severance and pension benefits applies only to claims for injuries which are suffered on or after June 24, 1996.

Section 204 of the act requires employes to regularly report the receipt of unemployment compensation, Social Security (old age), severance and pension benefits received subsequent to the date of injury. The report shall be made on Form LIBC-756A, "Employee's Report of Benefits (Unemployment Compensation, Social Security (old age), Severance and Pension Benefits) for Offsets."

Consistent with the Department's statement of policy in § 122.3 (relating to employe report of benefits subject to offset) the proposed amendments interpret the term "regularly" to mean within 30 days of any change in the receipt of the benefits mentioned above, but in any event no less than every 6 months. The proposed amendments provide that the offset shall apply only to wage-loss benefits (as opposed to medical benefits, specific loss or survivor benefits), and that the wage-loss benefits shall be offset by the net amount received by the employe. The net amount is the amount of any unemployment compensation, Social Security (old age), pension or severance benefits received by the employe after the required deductions for local, State and Federal taxes and amounts deducted under the Federal Insurance Contributions Act (FICA) (26 U.S.C.A. §§ 3101—3126).

Unemployment compensation benefits received by an employe are not initially subject to the required deductions for taxes. Accordingly, the net amount of unemployment compensation is determined when employes who have received unemployment compensation benefits file the required tax forms at the end of the tax year. Therefore, insurers who have offset workers' compensation benefits by amounts received in unemployment compensation benefits may be required to reimburse the employe for the amount offset which is attributable to the employe's tax liability. Employes who are required to pay taxes on amounts received in unemployment compensation benefits may notify the insurer of these payments in writing. Insurers are not required to repay an employe until the employe provides this notification.

The proposed amendments provide that after receipt of the completed Form LIBC-756A, an insurer may calculate

and achieve the offset of benefits received by the employe from any of the sources enumerated in section 204 of the act. Consistent with the Department's statement of policy in § 122.4 (relating to application of the offset, generally) the proposed amendments provide for a self-executing offset after notification. The insurer shall notify the employe and the employe's counsel, if known, and the Department on Form LIBC-761, "Notice of Workers' Compensation Benefit Offset," that the workers' compensation benefits will be offset. The notice shall be provided to the employe at least 15 days prior to the offset of workers' compensation benefits. This notice shall indicate the amount and type of the offset; how the offset was calculated, with supporting documentation; when the offset commences; and the amount of any recoupment, if applicable. Supporting documentation may include, but is not limited to, any information supplied by employes to insurers by Forms LIBC-756A, "Employee's Report of Benefits (Unemployment Compensation, Social Security (Old Age), Severance and Pension Benefits) for Offsets;" LIBC-750, "Employee Report of Wages (other than Workers' Compensation Benefits Received)"; LIBC-760, "Employee Verification of Employment, Self-employment or Change in Physical Condition."

The employe may challenge the offset by filing a petition for review with the Department. It is the insurer's burden to demonstrate that the notice of worker's compensation benefit offset was received by the employe. The insurer's burden is met if it provides evidence that the notice was mailed to the employe, at the employe's last known address, by first-class mail.

Consistent with the Department's statement of policy in § 122.5 (relating to credit for benefits already received), these proposed amendments provide that in the event the insurer receives information that the employe is receiving or has already received unemployment compensation, Social Security (old age), severance or pension benefits prior to receiving Form LIBC-756A, the insurer shall be entitled to recoup the offset for amounts already received by the employe in a lump-sum manner. This recoupment results in an offset against future payments of workers' compensation benefits until the offset amount has been fully recouped.

Subchapter A provides the manner in which an offset of workers' compensation from amounts received in unemployment compensation, Social Security (old age), severance and pension benefits shall be achieved. These proposed amendments provide the specific methods of calculating the offset dependent upon the type of benefit received by the employe. The offset to workers' compensation benefits shall apply only for amounts an employe receives which are attributable to the same time period in which an employe also receives workers' compensation benefits. The offset is not applicable to any benefit to which an employe may be entitled or eligible, but is not receiving.

The Department created a Pension Task Force to aid in the promulgation of proposed amendments to effectuate the provisions relating to the offset of workers' compensation benefits by amounts received in pension benefits. Consistent with the Department's statement of policy in § 122.8 (relating to Offset of pension benefits, generally), these proposed amendments interpret the term "pension benefits" as benefits received from defined-benefit plans and defined-contribution plans. Further, the definition of pension benefits is to be construed consistently with Title 1 of ERISA. The offset is applicable only to the extent the pension benefit is funded by the employer directly liable for the payment of workers' compensation benefits.

In promulgating these pension offset provisions, the Department attempted to achieve the most favorable result in terms of effectuating the projected savings of this section, while at the same time preserving pension funds which are intended for an employee's retirement. Therefore, these proposed amendments provide that workers' compensation benefits may not be offset by pension benefits which are rolled over into an Individual Retirement Account (IRA) or other similarly restricted account, provided that the employee does not utilize or otherwise withdraw funds from the account while at the same time receiving workers' compensation benefits from the liable employer. However, the Department determined that when the employee receives the pension in the form of a lump-sum payout and is utilizing the pension benefit, the pension offset shall be calculated based upon the actuarial equivalent of the lump sum with respect to the annuity options (qualified joint and survivor annuity or life annuity) available at the time of the employee's receipt. Therefore, the monthly amount the employee would have received from an annuity, had the employee chosen to accept the pension in the form of an annuity, shall be used to calculate the weekly offset amount. The annuity options available at the time of receipt are those options, based upon interest and mortality, which were generally available for purchase by the employee at the time the employee received the pension.

If the employee receives a pension from a multi-employer funded pension plan, the offset shall be calculated based on the proportion of the liable employer's contribution to the pension fund. Contributions from other employers in the multi-employer funded pension plan shall not be included in the offset. Therefore, the "extent funded by the liable employer" shall be obtained by calculating that portion of the annuity which was actually contributed by the employer at the time of the employee's receipt of the pension benefits.

Severance benefits, which are received subsequent to the work-related injury, shall be offset to the extent funded by the employer directly liable for the payment of compensation. Consistent with the Department's statement of policy in § 122.2 (relating to definitions), these proposed amendments define severance benefits as any benefit which is taxable to the employee and which is paid as a result of the employee's separation from employment. Severance benefits include benefits received in the form of tangible property; however, the term may not include earned income, such as payments based on an employee's unused vacation or sick leave.

### (3) *Subchapter B. Impairment Ratings*

Section 306 of the act was amended by Act 57 to provide for an impairment rating evaluation (IRE) to determine the percentage of whole body impairment due to the compensable injury at the expiration of an employee's receipt of 104 weeks of total disability compensation. The impairment rating is a mechanism for adjusting the status of workers' compensation benefits between total and partial. As established by the Department's statement of policy in § 122.102 (relating to Impairment rating evaluation requests), and in § 123.102 (relating to impairment rating evaluation requests), an insurer may request an IRE within 60 days of the employee's receipt of 104 weeks of total disability benefits. These proposed amendments interpret this section to allow an insurer to request an evaluation beginning 60 days prior to the expiration of the 104 weeks and continuing up to 60 days after the expiration of the employee's receipt of 104 weeks of total disability benefits. If the evaluation is requested

and performed during this time period, the adjustment of disability status shall relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits. In cases where the evaluation takes place more than 60 days past the expiration of 104 weeks, the adjustment of disability status shall be effective as of the date of the evaluation or as determined by the evaluating physician. Absent agreement between the parties, the IRE may not be performed prior to the expiration of the employee's receipt of 104 weeks of total disability benefits.

Consistent with the Department's statement of policy in § 122.103 (relating to physicians), these proposed amendments provide that the physician performing the IRE shall be a physician licensed in this Commonwealth who is certified by an American Board of Medical Specialties-approved board or its osteopathic equivalent and who is active in clinical practice at least 20 hours per week. These proposed amendments interpret the phrase "active in clinical practice" to mean the act of providing preventive care and the evaluation, treatment and management of the medical conditions of patients on an ongoing basis. The Department reserves the right to establish additional requirements for physicians appointed by the Department for purposes of conducting IREs. The Department has established through these proposed amendments a process and time frame for the appointment of physicians to perform IREs. Where the parties are unable to reach agreement on a physician to perform the evaluation, the insurer may request appointment of a physician by the Department. This request shall be made on a form prescribed by the Department. Within 20 days of receipt of an appointment request, the Department will provide the parties with the name and address of the physician appointed to perform the IRE. The insurer is responsible for scheduling the date and time of the evaluation. The Department has established through the statement of policy and these proposed amendments a process whereby the physician performing IREs shall indicate the impairment rating of the employee on an "Impairment Rating Determination Face Sheet" (face sheet). Physicians are to attach the "Report of Medical Evaluation" as utilized by the "AMA Guides to the Evaluation of Permanent Impairment" to the face sheet and provide the completed Face Sheet and report to the insurer, employee, employee's counsel, if known, and the Department within 30 days of the date of the IRE.

These proposed amendments interpret section 306(a.2) of Act 57 as self-executing after notice to the employee. Therefore, after receipt of the face sheet, if appropriate, an insurer may adjust the employee's benefit status by providing written notice to the employee, employee's counsel, if known, and the Department, on a form prescribed by the Department, that: (1) the evaluation has resulted in an impairment rating of less than 50%; (2) 60 days from the date of the notice the employee's benefit status shall be adjusted from total to partial; (3) the adjustment of benefit status does not change the amount of the weekly workers' compensation benefit; (4) the employee may appeal an adjustment of benefit status by filing a Petition for Review with the Department; and (5) an employee may only receive partial disability benefits for a maximum of 500 weeks.

If an IRE is performed within 60 days of the expiration of the employee's receipt of 104 weeks of total disability benefits, the adjustment of benefit status from total to partial shall relate back to the date of the expiration of 104 weeks of total disability benefits. If the IRE is performed more than 60 days after the expiration of the employee's receipt of 104 weeks of total disability benefits,

the adjustment of benefits from total to partial shall be effective as of the date of the evaluation or as determined by the evaluating physician.

Under section 306(a.2)(2) of the act, no reduction shall be made until 60 days notice of modification is given. Therefore, although an adjustment of the benefit status may relate back to the expiration of 104 weeks of total disability benefits, the insurer is required to provide the employe with 60 days notice prior to effectuating the retroactive benefit status adjustment.

At any time during the receipt of the 500 weeks of partial disability benefits, an employe may appeal the adjustment of benefit status to a Workers' Compensation judge by filing a petition for review with the Department. The employe shall produce a physician's determination that the employe's impairment rating is equal to or greater than 50% under the "AMA Guides to the Evaluation of Permanent Impairment." The physician chosen by the employe to perform the impairment rating shall be licensed in this Commonwealth and Board-certified by an American Board of Medical Specialty or its osteopathic equivalent and be active in clinical practice for at least 20 hours per week.

*(4) Subchapter C. Qualifications for Vocational Experts Approved by the Department*

Subchapter C focuses on the amendment to section 306(b)(2) of the act which provides that insurers may require an employe to submit to an interview by an expert approved by the Department and selected by the insurer. These proposed amendments interpret the term "expert" to mean a vocational evaluator who will conduct earning power assessment interviews. To ensure the level of expertise and professionalism required to conduct earning power assessment interviews, the Department has established, through these proposed amendments, minimum qualifications an individual must meet in order to be considered as an expert approved by the Department. These qualifications ensure access to vocational evaluators without increasing costs to insurers and employes seeking earning power assessments.

*(5) Subchapter D. Earning Power Determinations*

Subchapter D effectuates the amendments to section 306(b)(2) and (b)(3) of the act. The Department, through these proposed amendments, interprets section 306(b)(3) of the act to require that notice be provided to the employe and the employe's counsel, if known, regardless of whether the insurer intends to seek a modification or suspension of the employe's benefits. If the insurer intends to seek a modification or suspension of the employe's benefits, the notice must be provided to the employe prior to or contemporaneous with the filing of a petition for modification or suspension.

Section 306(b)(2) of the act provides that if a specific job vacancy exists with the liable employer that the employe is capable of performing, the employer must offer that job to the employe. The Department interprets this section as a threshold requirement prior to seeking a modification or suspension of benefits based on earning power. These proposed amendments provide that this threshold requirement may be satisfied if the employer avers on the petition for modification or suspension and provides evidence at a hearing that: (1) the employe was notified of a job vacancy and failed to respond; (2) a specific job vacancy was offered to the employe, which the employe refused; (3) the employer offered a modified job to the employe, which the employe refused; or (4) no job vacancy exists within the usual employment area.

The Department has determined that the employer's obligation to offer a job that the employe is capable of performing arises when the insurer notifies the employe that the employe is able to return to work and provides the notice as required under section 306(b)(3) of the act. The liable employer's obligation continues for a period of 30 days from the date of the notice or until the insurer files a petition for modification or suspension, whichever is longer.

To provide further clarification of the employer's obligation under section 306(b)(2) of the act, § 123.302 (relating to employer job offer obligation) of these proposed amendments provides that while the obligation to offer a specific job continues for a minimum of 30 days, employers are not required to hold a job open for the employe for 30 days. Job offers are to be made consistent with the employer's usual business practice. Accordingly, if the employer's business practice mandates that a job be held open for 5 days after the making of an offer, the employer is required to utilize this same practice when offering a job to an injured employe. If a specific job vacancy, which the employe is capable of performing, becomes available during the 30-day period, the employer is under an obligation to offer the job to the employe. In cases where more than one job which the employe is capable of performing becomes available, the employer maintains the right to select which job will be offered to the employe. If the employe fails to respond to the offer or refuses the offer, the employer's obligation has been met. Furthermore, the provisions of a collective bargaining agreement which govern the manner in which job offers are made shall control for purposes of offering a specific job vacancy to the employe under section 306(b)(2) of the act. Further, a job may not be considered vacant if the employer is precluded from offering the job to a particular employe because a collective bargaining agreement limits the type of position that the employe may hold.

Where the employer avers that no job vacancy exists, the employe may rebut the employer's averment by demonstrating facts which may include, but are not limited to, the following: (1) the employer is or was actively recruiting for a specific job vacancy that the employe is capable of performing; or (2) the employer has posted or announced the existence of a specific job vacancy, that the employe is capable of performing, which the employer intends to fill. In all situations the employe must meet or exceed the requirements of the position. In addition, the existence of specific jobs as averred by the employe is only relevant during the period in which the employer had a duty to offer a specific job.

*(6) Subchapter E. Collective Bargaining*

Act 57 amended the act to permit any employer and the recognized or certified and exclusive representative of its employes to establish, through collective bargaining, certain binding obligations and procedures for the resolution of claims relating to workers' compensation. Act 57 encourages utilization of this enabling language and the Department's Office of Labor-Management Cooperation is available to provide assistance to interested parties.

It is envisioned that this section will provide flexibility between management and labor organizations to resolve workers' compensation claims in an expeditious manner, while preserving the benefits and protections of the act.

Collective bargaining agreements may provide an alternative dispute resolution (ADR) system which may include, but is not limited to, arbitration, mediation and conciliation for the resolution of claims for work-related injuries.

Standard forms utilized by the Department and filing requirements of the act remain in effect for parties participating in an ADR system under section 450 of the act (77 P. S. § 1000.6). Forms submitted to the Department shall indicate that the parties involved are participating in an ADR system.

All determinations made under an ADR system established under section 450 of the act shall be binding and enforceable. Appeals from determinations rendered under an ADR system are limited to those made under the conditions specified by 42 Pa.C.S. § 7314 (relating to vacating award by court).

Collective bargaining agreements may provide that in the event of the termination or expiration of the agreement, the parties shall be subject to the terms and conditions of the expired agreement until a new collective bargaining agreement becomes effective. In that instance, ADR systems in place at the time the agreement expires shall continue to be the exclusive system for the resolution of the workers' compensation claims.

*(7) Subchapter F. Employee Reporting and Verification Requirements*

Act 57 creates new reporting requirements for employees who file for, or are receiving, workers' compensation benefits. The reporting requirements are intended not only to facilitate the management of claims, but also to reduce fraud within the workers' compensation system. The insurer shall notify the employee, at the time of the work injury or upon commencing payment of compensation, of the duty to report under this section, and shall provide the employee with the necessary forms.

Under section 311.1(a) of the act (77 P. S. § 631.1), employees who file for, or are receiving, compensation shall report information to the insurer which is relevant to determining the entitlement to, or the amount of, compensation. The information includes, but is not limited to, information regarding employment, including voluntary employment, self-employment, wages earned, and the receipt of any benefits referred to in section 204 of the act. The employee is obligated to report this information on form LIBC-750, "Employee Report of Wages (other than Workers' Compensation Benefits Received)" within 30 days of commencing employment or self-employment.

Under section 311.1(d) of the act, insurers may submit form LIBC-760, "Employee Verification of Employment, Self-employment or Change in Physical Condition" to an employee and the employee's counsel, if known, to verify that the employee's status regarding the entitlement to receive compensation has not changed. The form requires that the employee supply all information which is relevant to determining the amount of, or entitlement to, compensation. The employee shall complete and return the verification form to the insurer within 30 days of its receipt. The employee's failure to return the form in the specified time period may result in a suspension of the employee's workers' compensation wage-loss benefits, under section 311.1(g) of the act. It is the insurer's burden to establish that the employee has received the verification form. The insurer's burden is met if it provides evidence that the form was mailed to the employee's last known address, by first-class mail.

The Department has interpreted the provisions of section 311.1(d) of the act to be self-executing upon notification by the insurer. The insurer shall suspend payments of compensation by providing written notice to the employee and the employee's counsel, if known, on Form LIBC-762, "Notice of Suspension for Failure to Return

Form LIBC-760 (Employee Verification of Employment, Self-employment or Change in Physical Condition)," that the workers' compensation benefits have been suspended as a result of the employee's failure to return the verification form within the statutory time period. The notice shall further inform the employee that the workers' compensation benefits shall be reinstated within 15 days of the insurer's receipt of the verification form. In addition, the notice shall inform the employee of the right to challenge the suspension of benefits by filing a petition for review with the Department. Employees are not entitled to payments of compensation during the period of noncompliance with this section. Failure to comply with section 311.1(d) of the act may subject the employee to prosecution under Article XI of the act relating to fraud. In addition, failure to reinstate compensation within 15 days of receiving the form may subject the insurer to penalties under section 435 of the act (77 P. S. § 991).

Upon receipt of the completed verification form, the insurer shall reinstate benefits for which the employee is eligible. The insurer shall submit Form LIBC-763, "Notice of Reinstatement of Workers' Compensation Benefit," to the employee, employee's counsel, if known, and the Department, indicating the date of receipt of the verification form and the date of reinstatement of workers' compensation benefits. A failure to do so may result in the imposition of penalties under section 435 of the act.

*(8) Subchapter G. Automatic Request for Supersedeas and Return to Work*

Act 57 amended section 413 of the act by adding subsection (a.1) and (d) and amending subsection (c) (77 P. S. §§ 771(a.1), 774.2 and 774.3). Subsection (a.1) provides for an automatic request for supersedeas when a petition alleging full recovery is filed, accompanied by a physician's affidavit to that effect. The physician's affidavit alleging full recovery must have been completed in connection with an examination which occurred within 21 days of the filing of the petition.

These proposed amendments provide in § 123.601 (relating to disposition of automatic request for special supersedeas) that if a Workers' Compensation judge fails to conduct a special supersedeas hearing within 21 days of assignment of the request or fails to issue a written order within 7 days of the hearing, the supersedeas request shall be deemed denied.

Section 413(c) and (d) of the act (77 P. S. §§ 774.2 and 774.3) allows an insurer to suspend or modify compensation upon the employee's return to work. If the employee is receiving wages greater than or equal to the pre-injury wage, the insurer is entitled to suspend the payment of wage-loss benefits. If the employee has returned to work at wages less than the pre-injury wage, the insurer is entitled to a modification of the wage-loss benefits. Sections 413(c) and (d) of the act are self-executing upon the filing of the required forms and affidavit by the insurer. These subsections require the insurer to notify the employee and the employee's counsel, if known, and the Department, by Forms LIBC-751, "Notification of Suspension or Modification under §§ 413(c) & (d)" and LIBC-752, "Insurer's Affidavit Pursuant to Section 413(c) & (d)," within 7 days of suspending or modifying benefits. In cases where the insurer has previously modified or suspended the employee's benefits under section 413(c) or (d) of the act, to effectuate the subsequent modification or suspension of the workers' compensation benefits, the insurer must file additional forms under this section indicating the change in the employee's wages and the corresponding change in the workers' compensation ben-

efits. These proposed amendments provide in § 123.603 (relating to employe request for special supersedeas hearing) that the insurer's right to modify or suspend the employe's workers' compensation benefits may not continue when the employe has requested a special supersedeas hearing and the Workers' Compensation judge fails to hold a special supersedeas hearing within 21 days or fails to issue a written order within 14 days of the hearing approving the modification or suspension of the employe's benefits.

(9) *Subchapter H. Informal Conferences*

Act 57 amended the act by adding section 402.1 (77 P. S. § 711.1) which provides a mechanism for informal conferences. Act 57 intended that informal conferences would expedite the workers' compensation adjudication process by allowing parties the opportunity to meet informally and discuss issues involved in an ongoing case. An informal conference shall only be held when both parties agree to the conference. Section 402.1(b)(iii) of the act provides that each party may be represented, but the employer may only be represented by an attorney at the informal conference if the employe is also represented by an attorney. The Department, through these proposed amendments, construes this section to permit the representation of a corporation in the informal conference by an agent or representative of the corporation other than an attorney. However, when the case is transferred to a Workers' Compensation judge for an adjudication, the corporation shall be represented by an attorney.

(10) *Subchapter I. Use of Optically Scanned documents*

In conjunction with Act 57, the Bureau has implemented a Statewide Comprehensive Information Management Systems (CIMS) Project which is a five phase plan for installation of the Bureau's state-of-the-art computer system for administration of the act. Subchapter I permits the Bureau's use of optically scanned documents and permits these documents to be admissible as evidence. The purpose of this section is optimize the Bureau's use of optically scanned documents where practical and cost efficient, while preserving the integrity of records.

(11) *Subchapter J. Penalty for Unreasonable and Excessive Delay*

Act 57 amended section 435(d)(3) of the act by increasing the penalty to employers for violations of the act accompanied by unreasonable or excessive delay. This change provides incentive for employers and insurers to comply with the act. This section sets forth the time period for which an employer's delay in complying with the act may be deemed unreasonable or excessive.

*Summary of Proposed Rulemaking for Chapter 127*

Act 57 amended section 306(f.1) of the act by: (1) extending the time period when an injured employe must treat with an employer-designated health care provider; (2) establishing a procedure when the employe is informed of the necessity of invasive surgery; (3) creating a statute of limitations for the filing of applications for Medical Fee Review; (4) eliminating the reconsideration stage of the UR process; and (5) establishing that in cases where a request for UR is filed for physical therapy or occupational therapy, the review will be performed by a reviewer licensed in this Commonwealth in the same profession and having the same specialty as the provider of the treatment under review, regardless of the specialty of the provider who prescribed the treatment.

*Organization*

This summary is organized consistent with the order these topics are covered by the Medical Cost Containment regulations. Therefore, the proposed amendments will be addressed in the following order.

*Subchapter B. Medical Fees and Fee Review*

The Department proposes an amendment to § 127.208(e) (relating to time for payment of medical bills) to delete the language which references both the initial and reconsideration stages of UR. The Department further proposes the amendment of the regulations in this subchapter relating to review of medical fee disputes to provide for the statute of limitations placed on providers by Act 57 for those who wish to file applications for fee review.

*Subchapter C. Medical Treatment Review*

The Department proposes the amendment of this subchapter to delete any language which references the initial or reconsideration stage of UR. Due to the elimination of the reconsideration stage, the initial request for UR is the only UR available, prior to a de novo hearing before a workers' compensation judge. Therefore, the initial language is extraneous and does not reflect the nature of the UR process as it exists after the passage of Act 57. The Department proposes the deletion of §§ 127.505—127.515. However, the Department maintains the right to collect outstanding amounts owing due to the previous reconsideration of a utilization review determination.

*Subchapter D. Employer List of Designated Providers*

The Department proposes the amendment of Subchapter D to incorporate Act 57's amendment to the time period for which an employe is required to treat with an employer-designated health care provider and which establishes the procedure the employe is required to follow when a designated provider prescribes invasive surgery for the employe.

*Effective Date*

These proposed amendments will be effective immediately upon publication.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Labor Relations Committee and the Senate Committee on Labor and Industry (Standing Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the standing Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

If the standing Committees have objections to any portion of the proposed amendments, they will notify the Department within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notifications shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments. The Regulatory Review Act specifies detailed procedures for review by the Department,

the General Assembly and the Governor, of objections raised prior to final publication of the final-form regulations.

*Public Comment and Contact Person*

For further information regarding this proposed rulemaking, interested parties may contact Richard A. Himler, Director, Bureau of Workers' Compensation, P. O. Box 3466, Harrisburg, PA 17105. Interested persons are invited to submit written comments to Richard A. Himler, Director, at the address listed above, within 30 days following publication in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

JOHNNY J. BUTLER,  
*Secretary*

**Fiscal Note:** 12-50. No fiscal impact; (8) recommends adoption. There will be undeterminable costs to the Department of Labor and Industry association with these amendments. These costs will be offset by expected savings to the Commonwealth as a self-insured employer.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY  
PART VIII. BUREAU OF WORKERS'  
COMPENSATION**

**CHAPTER 123. GENERAL PROVISIONS—PART II**

**Subch.**

- A. OFFSET OF UNEMPLOYMENT COMPENSATION, SOCIAL SECURITY (OLD AGE), SEVERANCE AND PENSION BENEFITS
- B. IMPAIRMENT RATINGS
- C. QUALIFICATIONS FOR VOCATIONAL EXPERTS APPROVED BY THE DEPARTMENT
- D. EARNING POWER DETERMINATIONS
- E. COLLECTIVE BARGAINING
- F. EMPLOYE REPORTING AND VERIFICATION REQUIREMENTS
- G. SPECIAL SUPERSEDEAS
- H. INFORMAL CONFERENCES
- I. USE OF OPTICALLY SCANNED DOCUMENTS
- J. UNREASONABLE OR EXCESSIVE DELAYS

**Subchapter A. OFFSET OF UNEMPLOYMENT COMPENSATION, SOCIAL SECURITY (OLD AGE), SEVERANCE AND PENSION BENEFITS**

**Sec.**

- 123.1. Purpose.
- 123.2. Definitions.
- 123.3. Employee report of benefits subject to offset.
- 123.4. Application of the offset, generally.
- 123.5. Offset for benefits already received.
- 123.6. Application of offset for unemployment compensation (UC) benefits.
- 123.7. Application of offset for Social Security (old age) benefits.
- 123.8. Offset for pension benefits, generally.
- 123.9. Application of offset for pension benefits.
- 123.10. Multi-employer pension fund offsets.
- 123.11. Application of offset for severance benefits.

**§ 123.1. Purpose.**

This subchapter interprets the provisions of the act which require the offset of workers' compensation benefits by amounts received in unemployment compensation, Social Security (old age), severance and pension benefits, subsequent to the work-related injury.

**§ 123.2. Definitions.**

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

*Act*—The Workers' Compensation Act (77 P.S. §§ 1—2626).

*Actuarial equivalent*—The value of lump-sum pension payout in terms of a monthly benefit had the funds been

used to purchase an annuity (either qualified joint and survivor or life annuity) available on the market, considering interest and mortality, at the time of the employee's receipt of the lump-sum benefit.

*Defined-benefit plan*—A pension plan in which the benefit level is established at the commencement of the plan and actuarial calculations determine the varying contributions necessary to fund the benefit at an employee's retirement.

*Defined-contribution plan*—A pension plan which provides for an individual account for each participant and for benefits based solely upon the amount of accumulated contributions and earnings in the participant's account. At the time of retirement the accumulated contributions and earnings determine the amount of the participant's benefit either in the form of a lump-sum distribution or annuity.

*IRA*—Individual retirement account as that term is utilized in 26 U.S.C.A. §§ 219 and 408(a).

*Multi-employer pension plan*—A plan to which more than one employer is required to contribute and is maintained under one or more collective bargaining agreements between one or more employe organizations and more than one employer.

*Net*—The amount of unemployment compensation, Social Security (old age), severance or pension benefits received by the employe after required deductions for local, State and Federal taxes and amounts deducted under the Federal Insurance Contributions Act (FICA) (26 U.S.C.A. §§ 3101—3126).

*Pension*—A plan or fund established or maintained by an employer, an employe organization, or both, which provides retirement income, in the form of retirement or disability benefits to employes or which results in deferral of income by employes extending to termination of employment and beyond.

*Severance benefits*—A benefit which is taxable to the employe and paid as a result of the employe's separation from employment by the employer liable for the payment of workers' compensation, including benefits in the form of tangible property. The term does not include payments received by the employe based on unused vacation or sick leave or otherwise earned income.

*Social Security (old age)*—Benefits received by an employe under the Social Security Act (42 U.S.C.A. §§ 301—1397(e)) (relating to Social Security Retirement Income).

**§ 123.3. Employee report of benefits subject to offset.**

(a) Employes shall report to the insurer amounts received in unemployment compensation, Social Security (old age), severance and pension benefits on Form LIBC-756(A). This includes amounts withdrawn or utilized from pension funds which were rolled over into an IRA or other similarly restricted account while at the same time the employe is receiving workers' compensation benefits.

(b) Form LIBC-756(A) shall be completed and forwarded to the insurer within 30 days of the employe's receipt of any of the benefits specified in subsection (a) or within 30 days of any change in the receipt of the benefits specified in subsection (a), but in any event no less than every 6 months.

**§ 123.4. Application of the offset, generally.**

(a) After receipt of Form LIBC-756(A), the insurer may offset workers' compensation benefits by amounts received by the employe from any of the sources in § 123.3 (relating to employe report of benefits subject to offset).

The offset of workers' compensation benefits shall only apply with respect to amounts of unemployment compensation, Social Security (old age), severance and pension benefits received subsequent to the work-related injury.

(1) The offset shall apply only to wage-loss benefits (as opposed to medical benefits, specific loss or survivor benefits).

(2) The offset for amounts received in Social Security (old age), severance and pension benefits shall only apply to individuals with claims for injuries suffered on or after June 24, 1996.

(3) The offset for amounts received in unemployment compensation benefits applies to all claims regardless of the date of injury.

(b) At least 15 days prior to taking the offset, the insurer shall notify the employe, on Form LIBC-761, "Notice of Workers' Compensation Benefit Offset," that the workers' compensation benefits will be offset. The notice shall indicate:

(1) The amount of the offset.

(2) The type of offset (that is—unemployment compensation, Social Security (old age), severance or pension).

(3) How the offset was calculated, with supporting documentation, which may include information provided by the employe.

(4) When the offset commences.

(5) The amount of any recoupment, if applicable.

(c) Whenever the insurer's entitlement to the offset changes, the insurer shall notify the employe of the change at least 15 days prior to the adjustment on the form specified in subsection (b).

(d) The insurer shall provide a copy of the form, specified in subsections (b) and (c), to the employe, the employe's counsel, if known, and the Department. It is the insurer's burden to establish that the employe has received a copy of the form specified in subsections (b) and (c). The insurer's burden is met if it provides evidence that the form was mailed to the employe, at the employe's last known address, by first-class mail.

(e) The employe may challenge the offset by filing a petition for review with the Department.

#### **§ 123.5. Offset for benefits already received.**

(a) If the insurer receives information that the employe has received benefits from one or more of the sources in § 123.3 (relating to employe report of benefits subject to offset), the insurer shall be entitled to an offset to the workers' compensation benefit.

(b) The net amount received by the employe shall be calculated consistent with §§ 123.6—123.11. The amount received by the employe, prior to notification to the insurer, shall be divided by the weekly workers' compensation rate. The result shall be the number of weeks, and fraction thereof, the insurer is entitled to offset against future payments of workers' compensation benefits.

(c) The insurer shall notify the employe, the employe's counsel, if known, and the Department of the offset as specified in § 123.4(b) (relating to application of the offset, generally).

(d) The employe may challenge the offset by filing a petition for review with the Department.

#### **§ 123.6. Application of offset for unemployment compensation (UC) benefits.**

(a) Workers' compensation benefits otherwise payable shall be offset by the amount an employe receives in UC benefits subsequent to the work-related injury. This offset shall apply only to UC benefits which an employe receives and which are attributable to the same time period in which an employe also receives workers' compensation benefits.

(b) The offset may not apply to benefits for which an employe may be eligible, but is not receiving.

(c) When an employe calculates and remits payment for amounts due for Federal, State and local taxes, the insurer may be required to repay the employe for amounts previously offset from workers' compensation benefits, when the offset was calculated on the pretax amount of the UC benefit. To receive repayment for amounts previously offset, the employe shall notify the insurer in writing of the amounts paid in taxes.

(d) The offset to workers' compensation benefits for amounts received in UC benefits is triggered when an employe becomes eligible and begins receiving the UC benefits.

(1) When an employe receives UC benefits which the employe is later required to repay based upon a determination of ineligibility, the insurer may not offset the workers' compensation benefits.

(2) When an employe's workers' compensation benefits have been offset by the amount received in UC benefits and the employe is required to repay UC benefits based upon a determination of ineligibility, the insurer shall repay the employe for the amounts previously offset from the workers' compensation benefits. The employe may request that the insurer remit repayment directly to the Bureau of Unemployment Compensation Benefits and Allowances (BUCBA).

(e) When an employe receives a lump-sum award from BUCBA, the insurer may offset the amount received by the employe against future payments of workers' compensation benefits. The amount received by the employe shall be divided by the weekly workers' compensation rate. The result shall be the number of weeks, and fraction thereof, the insurer is entitled to offset against future payments of workers' compensation benefits.

#### **§ 123.7. Application of offset for Social Security (old age) benefits.**

(a) Workers' compensation benefits otherwise payable shall be offset by 50% of the net amount received in Social Security (old age) benefits. The offset shall only apply to amounts which an employe receives subsequent to the work-related injury. The offset may not apply to Social Security (old age) benefits which commenced prior to the work-related injury and which the employe continues to receive subsequent to the work-related injury.

(b) The offset may not apply to benefits to which an employe may be entitled, but is not receiving.

(c) The offset shall be applied on a weekly basis. To calculate the weekly offset, 50% of the net monthly Social Security (old age) benefit received by the employe shall be divided by 4.34.

#### **§ 123.8. Offset for pension benefits, generally.**

(a) Workers' compensation benefits otherwise payable shall be offset by the amount an employe receives in pension benefits to the extent funded by the employer directly liable for the payment of workers' compensation.



(b) The pension offset shall apply to amounts received from defined-benefit and defined-contribution plans.

(c) The offset may not apply to pension benefits to which an employe may be entitled, but is not receiving.

(d) In calculating the offset amount for pension benefits, investment income attributable to the employer's contribution to the pension plan shall be included on a pro-rata basis.

**§ 123.9. Application of offset for pension benefits.**

(a) Offsets of amounts received from pension benefits shall be achieved on a weekly basis. If the employe receives the pension benefit on a monthly basis, the net amount contributed by the employer and received by the employe shall be divided by 4.34. The result is the amount of the weekly offset to the workers' compensation benefit.

(b) When an employe receives a pension benefit in the form of a lump-sum payment, the actuarial equivalent of the lump-sum with respect to the annuity options (qualified joint and survivor annuity or life annuity) available at the time of the employe's receipt shall be used as the basis for calculating the offset to the workers' compensation benefit. The monthly annuity equivalent shall be divided by 4.34. The result shall be the offset to the workers' compensation benefit on a weekly basis.

(c) Pension benefits which are rolled over into an IRA or other similarly restricted account may not offset workers' compensation benefits, so long as the employe does not utilize or otherwise withdraw funds from the account while simultaneously receiving workers' compensation benefits from the liable employer.

(d) If the employe, while receiving workers' compensation benefits from the liable employer, utilizes or otherwise withdraws funds from the IRA or other similarly restricted account, when the IRA or account is funded in whole or in part by the liable employer's contributions, the insurer shall be entitled to an offset to workers' compensation benefits.

(1) If the employe begins receiving a monthly payment from the IRA or other similarly restricted account, the insurer shall receive an offset to the workers' compensation benefit equal to the offset the insurer would be entitled to if the employe were receiving a monthly pension benefit under subsection (a).

(2) If the employe utilizes or otherwise withdraws an amount from the IRA or other similarly restricted account which is greater than the actuarial equivalent of the lump sum with respect to the annuity options (qualified joint and survivor annuity or life annuity) available at the time of the employe's receipt, the insurer may be entitled to an offset against future payments of workers' compensation benefits in an amount equal to the amount of the funds utilized or otherwise withdrawn by the employe.

(e) The employe shall report the subsequent receipt of funds from the IRA or other similarly restricted account to the insurer on Forms LIBC-756A or LIBC-750.

**§ 123.10. Multi-employer pension fund offsets.**

(a) When the pension benefit is payable from a multi-employer pension plan, only that amount which is contributed by the employer directly liable for the payment of workers' compensation shall be utilized in calculating the offset to workers' compensation benefits.

(b) To calculate the appropriate offset amount, the portion of the annuity purchased by the liable employer's

contributions shall be as determined by the pension fund's actuary. The ratio of the portion of the annuity purchased by the liable employer's contributions to the total annuity shall be multiplied by the net amount received by the employe from the pension fund on a weekly basis. The result is the amount of the offset to be applied to the workers' compensation benefit on a weekly basis.

(c) If the employe receives the multi-employer pension benefit on a monthly basis, the net amount received by the employe shall be multiplied by the ratio of the liable employer's contribution to the pension plan on behalf of the employe; and that product shall be divided by 4.34. The result is the amount of the offset to be applied to the workers' compensation benefit on a weekly basis.

(d) If the employe receives the multi-employer pension benefit in a lump sum, the actuarial equivalent of the lump sum with respect to the annuity options (qualified joint and survivor annuity or life annuity) available at the time of the employe's receipt of the benefit shall be used as the basis for calculating the offset to the workers' compensation benefit. The ratio of the employer's contribution to the pension plan shall be multiplied by the monthly annuity value of the pension benefit. The result shall be divided by 4.34 to achieve the offset to the workers' compensation benefit on a weekly basis.

**§ 123.11. Application of offset for severance benefits.**

(a) Workers' compensation benefits otherwise payable shall be offset by amounts an employe receives in severance benefits subsequent to the work-related injury. The offset may not apply to severance benefits to which an employe may be entitled, but is not receiving.

(b) The net amount of any severance benefits shall offset workers' compensation benefits on a weekly basis, except as provided in subsections (c) and (d).

(c) When the employe receives severance benefits in a lump-sum payment, the net amount received by the employe shall be divided by the weekly workers' compensation rate. The result is the number of weeks, and fraction thereof, the insurer may offset against future payments of workers' compensation benefits.

(d) When an employe receives a severance benefit in the form of tangible property, the market value of the property, as determined for Federal tax purposes, shall be divided by the weekly workers' compensation rate. The result is the number of weeks, and fraction thereof, the insurer may offset against future payments of workers' compensation benefits.

**Subchapter B. IMPAIRMENT RATINGS**

- Sec.  
123.101. Purpose.  
123.102. Impairment rating evaluation (IRE) requests.  
123.103. Physicians.  
123.104. Appointment of physician by Department.  
123.105. Impairment rating determination.

**§ 123.101. Purpose.**

This subchapter interprets section 306(a.2) of the act (77 P. S. § 511.2) which provides for a determination of whole body impairment due to the compensable injury after the receipt of 104 weeks of total disability compensation.

**§ 123.102. Impairment rating evaluation (IRE) requests.**

(a) Commencing 60 days prior to, and continuing up to 60 days after, the expiration of the employe's receipt of

104 weeks of total disability benefits, the insurer may request the employee's attendance at an IRE. If the evaluation is requested and performed during this time period the adjustment of the benefit status shall relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits. When the evaluation is performed more than 60 days after the expiration of the employee's receipt of 104 weeks of total disability benefits, the adjustment of the disability status shall be effective as of the date of the evaluation or as determined by the evaluating physician.

(b) Absent agreement between the insurer and the employee, an IRE may not be performed prior to the expiration of the employee's receipt of 104 weeks of total disability benefits.

(c) The employee's receipt of 104 weeks of total disability benefits shall be calculated on a cumulative basis.

(d) The insurer shall request the employee's attendance at the IRE in writing on a form designated by the Department, and therein specify the date, time and location of the evaluation and the name of the physician chosen to perform the evaluation. The request shall be made to the employee and employee's counsel, if known.

(e) If the parties cannot agree upon the physician to perform the IRE, the Department will appoint a physician consistent with § 123.104 (relating to appointment of physician by Department).

(f) The insurer's failure to request the evaluation within 60 days of the expiration of 104 weeks of total disability may not result in a waiver of the insurer's right to compel the employee's attendance at an IRE. The insurer maintains the right to request and receive an IRE twice in a 12-month period. The request and performance of IREs may not preclude the insurer from compelling the employee's attendance at independent medical examinations or other expert interviews under section 314 of the act (77 P. S. § 651).

(g) The employee's failure to attend the IRE under this section may result in a suspension of the employee's right to benefits consistent with section 314(a) of the act.

#### § 123.103. Physicians.

(a) Physicians performing impairment rating evaluations (IREs) shall:

(1) Be licensed in this Commonwealth and certified by an American Board of Medical Specialties-approved board or its osteopathic equivalent.

(2) Be active in clinical practice at least 20 hours per week.

(b) For purposes of this subchapter, the phrase "active in clinical practice" means the act of providing preventive care and the evaluation, treatment and management of medical conditions of patients on an ongoing basis.

(c) Physicians chosen by employees to perform IREs, for purposes of appealing a previous adjustment of benefit status, shall possess the qualifications enumerated in subsections (a) and (b).

#### § 123.104. Appointment of physician by Department.

(a) When the parties are not able to reach agreement on the physician to perform the impairment rating evaluation (IRE), the parties may request the Department to appoint the physician.

(b) The parties may request the Department to appoint a physician on a form designated "Request for Appointment of Physician to Perform Impairment Rating Evaluation."

(c) Within 20 days of receipt of the appointment request, the Department will appoint a physician to perform the IRE.

(d) The Department will provide the name and address of the physician appointed to perform the IRE to the employee, the insurer or employer, and the attorneys, if known. The insurer is responsible for scheduling the time and date of the evaluation.

#### § 123.105. Impairment rating determination.

(a) When properly requested under § 123.102 (relating to impairment rating evaluation requests), an impairment rating evaluation (IRE) shall be conducted in all cases and an impairment rating determination must result, unless the evaluating physician indicates on the "Impairment Rating Determination Face Sheet" (Face Sheet) that the impairment of the employee is not subject to being rated under the most recent edition of the "AMA Guides to the Evaluation of Permanent Impairment."

(b) To ascertain an accurate percentage of the employee's whole body impairment, in cases when the evaluating physician determines that the compensable injury incorporates more than one pathology, the evaluating physician may refer the employee to one or more physicians specializing in the specific pathologies which constitute the compensable injury. The referring physician remains responsible for determining the whole body impairment rating of the employee.

(c) The physician performing the IRE shall complete a face sheet, which sets forth the impairment rating as determined by the physician. The physician shall attach to the face sheet the "Report of Medical Evaluation" as utilized by the "AMA Guides to the Evaluation of Permanent Impairment." The face sheet and report is to be provided to the employee, employee's counsel, if known, insurer and the Department within 30 days from the date of the impairment evaluation.

(d) If the evaluation results in an impairment rating that is equal to or greater than 50%, the employee shall be presumed totally disabled and shall continue to receive total disability compensation. The presumption of total disability may be rebutted at any time by a demonstration of earning power in accordance with section 306(b)(2) of the act (77 P. S. § 512(b)(2)) or by an IRE which results in an impairment rating of less than 50%.

(e) If the evaluation results in an impairment rating of less than 50%, the employee shall receive benefits partial in character. To adjust the status of the employee's benefits from total to partial, the insurer shall provide notice to the employee, the employee's counsel, if known, and the Department, on a form to be prescribed by the Department, of the following:

(1) The evaluation has resulted in an impairment rating of less than 50%.

(2) Sixty days from the date of the notice the employee's benefits status shall be adjusted from total to partial.

(3) The adjustment of benefit status does not change the amount of the weekly workers' compensation benefit.

(4) An employee may only receive partial disability benefits for a maximum of 500 weeks.

(5) The employe may appeal the adjustment of benefit status to a Workers' Compensation judge by filing a petition for review with the Department.

(f) At any time during the receipt of 500 weeks of partial disability compensation, the employe may appeal the adjustment of benefit status to a Workers' Compensation judge by filing a petition for review.

**Subchapter C. QUALIFICATIONS FOR  
VOCATIONAL EXPERTS APPROVED BY THE  
DEPARTMENT**

Sec.

123.201. Purpose.

123.202. Qualifications.

**§ 123.201. Purpose.**

This subchapter interprets the provisions of the act which require the Department to approve experts who will conduct earning power assessment interviews under sections 306(b)(2) and 449 of the act (77 P.S. §§ 512(b)(2) and 1000.5). The experts contemplated by this subchapter are vocational evaluators.

**§ 123.202. Qualifications.**

To be an expert approved by the Department for the purposes of conducting earning power assessment interviews, the individual shall possess a minimum of one of the following:

(1) Both of the following:

(i) Certification by one of the following Nationally recognized professional organizations:

(A) The American Board of Vocational Evaluators.

(B) The National Board of Certified Rehabilitation Counselors.

(C) The National Certification of Disability Management Specialists.

(ii) One year experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include, but are not limited to, the following:

(A) Job seeking skills.

(B) Job development.

(C) Job analysis.

(D) Career exploration.

(E) Placement of individuals with disabilities.

(2) Certification by a Nationally recognized professional organization under the direct supervision of an individual possessing the criteria in paragraph (1).

(3) Possession of a Bachelor's degree or a valid license issued by the Department of State's Bureau of Professional and Occupational Affairs, so long as the individual is under the direct supervision of an individual possessing the criteria in paragraph (1).

(4) At least 5 years experience primarily in the workers' compensation field prior to August 23, 1996, as a vocational evaluator, with experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include, but are not limited to, the following:

(i) Job seeking skills.

(ii) Job development.

(iii) Job analysis.

(iv) Career exploration.

(v) Placement of individuals with disabilities.

**Subchapter D. EARNING POWER  
DETERMINATIONS**

Sec.

123.301. Notice of ability to return to work.

123.302. Employer job offer obligation.

123.303. Evidence of earning power.

**§ 123.301. Notice of ability to return to work.**

(a) After receipt of medical evidence which indicates that an employe is able to return to work in any capacity, the insurer shall provide prompt written notice on Form LIBC-757, "Notice of Ability to Return to Work," to the employe of the following:

(1) The nature of the employe's physical condition or change in condition.

(2) The employe's obligation to seek available employment and that proof of available employment may jeopardize the employe's right to receive benefits.

(3) The employe's right to consult with an attorney.

(b) This notice shall be provided prior to, or contemporaneous with, the filing of a petition for modification or suspension. The insurer shall provide the notice required by subsection (a), to the employe and the employe's counsel, if known, regardless of whether the insurer intends to file a petition for modification or suspension.

**§ 123.302. Employer job offer obligation.**

(a) If a specific job vacancy exists, within the usual employment area, with the liable employer, which the employe is capable of performing, the employer shall offer that job to the employe prior to seeking a modification or suspension of benefits based on earning power.

(b) The employer's obligation to offer a specific job vacancy to the employe commences when the insurer provides the notice to the employe required by § 123.301 (relating to notice of ability to return to work) and shall continue for 30 days or until the filing of a petition for modification or suspension, whichever is longer.

(c) When more than one job which the employe is capable of performing becomes available, the employer maintains the right to select which job will be offered to the employe.

(d) The employer's duty under subsections (a)—(c) does not require the employer to hold a job open for a minimum of 30 days. Job offers shall be made consistent with the employer's usual business practice. If the making of job offers is controlled by the provisions of a collective bargaining agreement, the offer shall be made consistent with those provisions.

(e) The employer's duty under subsections (a)—(c) may be satisfied if the employer avers on the petition for modification or suspension and provides evidence that one of the following exists:

(1) The employe was notified of a job vacancy and failed to respond.

(2) A specific job vacancy was offered to the employe, which the employe refused.

(3) The employer offered a modified job to the employe, which the employe refused.

(4) No job vacancy exists within the usual employment area.

(f) Where the employer avers that no job vacancy exists, the employe may rebut the employer's averment by demonstrating facts which may include, but are not limited to, the following:

(1) During the period in which the employer has or had a duty to offer a specific job, the employer is or was actively recruiting for a specific job vacancy that the employe is capable of performing.

(2) During the period in which the employer had a duty to offer a specific job, the employer posted or announced the existence of a specific job vacancy, that the employe is capable of performing, which the employer intends to fill.

(g) A job will not be considered vacant if the employe's ability to fill the position is precluded by any applicable collective bargaining agreement.

**§ 123.303. Evidence of earning power.**

An insurer may demonstrate an employe's earning power by expert opinion evidence relative to the employe's capacity to perform a job and the existence of a job in the usual employment area of the employe. For injuries suffered on or after June 24, 1996, the employer's job offer obligation to the employe is limited as set forth in § 123.302 (relating to employer job offer obligation).

**Subchapter E. COLLECTIVE BARGAINING**

Sec.  
123.401. Use of alternative dispute resolution (ADR) systems.

**§ 123.401. Use of alternative dispute resolution (ADR) systems.**

(a) Collective bargaining agreements (CBAs) may provide for an ADR system which may include, but is not limited to, arbitration, mediation and conciliation, for the resolution of claims for work-related injuries.

(b) Standard forms and filing requirements of the act remain in effect for parties participating in an ADR system under section 450 of the act (77 P. S. § 1000.6). Forms submitted to the Department shall indicate that the parties involved are participating in an ADR system under section 450 of the act (77 P. S. § 1000.6).

(c) Once established by a CBA, an ADR system shall be the exclusive system for resolving claims for work-related injuries during the existence of the CBA or longer, if the CBA provides for the continuation of the ADR system. When the ADR system governing a work-related injury is no longer in effect, resolution of claims regarding the work-related injury shall be fully subject to the act, including review by a Workers' Compensation judge.

(d) Determinations rendered under an ADR system shall be binding and enforceable.

(e) Appeals from determinations rendered under an ADR system are limited to those made under the conditions specified by 42 Pa.C.S. § 7314 (relating to Vacating award by court).

**Subchapter F. EMPLOYE REPORTING AND VERIFICATION REQUIREMENTS**

Sec.  
123.501. Reporting requirement .  
123.502. Verification.

**§ 123.501. Reporting requirement.**

An insurer shall notify the employe of the employe's reporting requirements under sections 204 and 311.1(a) and (d) of the act (77 P. S. §§ 71 and 631.1(a) and (d)). In addition, the insurer shall provide to the employe the forms required to fulfill the employe's reporting and verification requirements.

**§ 123.502. Verification.**

(a) Insurers may submit Form LIBC-760, "Employee Verification of Employment, Self-employment or Change in Physical Condition," to the employe and employe's counsel, if known, to verify that the status of the employe's entitlement to receive compensation has not changed.

(b) The employe shall complete and return the verification form to the insurer within 30 days of receipt of the form.

(c) If the employe fails to comply with subsection (b), the insurer may suspend payments of wage-loss benefits until the verification form is returned by the employe. It is the insurer's burden to demonstrate that the employe received the verification form. The insurer's burden is met if it provides evidence that the form was mailed to the employe at the employe's last known address, by first-class mail.

(d) To suspend payments of compensation due to the employe's failure to comply with subsection (b), the insurer shall provide written notice to the employe, the employe's counsel, if known, and the Department, on Form LIBC-762, "Notice of Suspension for Failure to Return Form LIBC-760 (Employee Verification of Employment, Self-employment and Change in Physical Condition)" of the following:

(1) The workers' compensation benefits have been suspended because of the employe's failure to return the verification form within the statutorily prescribed time period.

(2) The workers' compensation benefits shall be reinstated by the insurer within 15 days of receipt of the completed verification form.

(3) The employe has the right to challenge the suspension of benefits by filing a petition for review with the Department.

(e) Within 15 days of receipt of the completed verification form, the insurer shall reinstate the workers' compensation benefits for which the employe is eligible. The insurer shall provide written notice to the employe, employe's counsel, if known, and the Department, on Form LIBC-763, "Notice of Reinstatement of Workers' Compensation Benefits," that the employe's workers' compensation benefits have been reinstated due to the return of the completed verification form. The notice shall further indicate the date the verification form was received by the insurer and the date of reinstatement of workers' compensation benefits.

(f) Employes are not entitled to payments of workers' compensation during periods of noncompliance with subsection (b).

**Subchapter G. SPECIAL SUPERSEDEAS**

Sec.  
123.601. Disposition of automatic request for special supersedeas.  
123.602. Return to work—modification or suspension.  
123.603. Employe request for special supersedeas hearing.

**§ 123.601. Disposition of automatic request for special supersedeas.**

(a) The filing of a petition alleging full recovery, accompanied by a physician's affidavit to that effect, which was prepared in connection with an examination of the employe no more than 21 days from the filing of the petition, shall act as an automatic request for supersedeas.

(b) A special supersedeas hearing will be held within 21 days of the assignment of the petition filed under this section.

(c) The Workers' Compensation judge shall approve the request for supersedeas if prima facie evidence of a change in the medical status or of any other fact which would serve to modify or terminate the payment of compensation is submitted at the hearing. In making this determination the Workers' Compensation judge shall consider the physician's affidavit alleging full recovery and may consider the following:

- (1) The report of the physician.
- (2) The testimony of a party or witness.
- (3) The records of a physician, hospital or clinic or other similar entity.
- (4) The written statements or reports of another person expected to be called by a party at the hearing of the case.

(5) Other evidence relevant to the request for supersedeas.

(d) If the judge to whom the special supersedeas request has been assigned fails to hold a hearing within 21 days of assignment of the request to the judge or fails to issue a written order within 7 days of the hearing of the supersedeas request, the automatic request for supersedeas shall be deemed denied.

(e) The automatic request for supersedeas shall remain denied until the judge issues a written order granting the supersedeas, in whole or in part.

**§ 123.602. Return to work—modification or suspension.**

(a) If an employe returns to work the insurer may modify or suspend the workers' compensation benefits.

(b) The insurer shall complete and file Form LIBC-751, "Notification of Modification or Suspension Pursuant to §§ 413(C) & (D) and Form LIBC-752, "Insurer's Affidavit Pursuant to Section 413(c) and (d)." Both forms shall be provided to the employe, employe's counsel, if known, and the Department within 7 days of the effective date of the suspension or modification of the workers' compensation benefits.

(c) When the insurer previously modified or suspended the employe's benefits under section 413(c) or (d) of the act (77 P.S. § 774.2 or § 774.3), to effectuate a subsequent modification or suspension of the employe's workers' compensation benefits, the insurer shall file the forms under subsection (b) indicating the change in the employe's wages and corresponding change in the employe's workers' compensation benefits.

**§ 123.603. Employe request for special supersedeas hearing.**

(a) This section governs the disposition of an employe's request for a special supersedeas hearing made in connection with a challenge to the suspension or modification of workers' compensation benefits under section 413(c) and (d) of the act (77 P. S. §§ 774.2 and 774.3).

(b) A special supersedeas hearing will be held within 21 days of the employe's filing of the notice of challenge.

(c) The Workers' Compensation judge to whom the notice of challenge has been assigned will issue a written order on the challenge within 14 days of the hearing.

(d) If the judge fails to hold a hearing within 21 days or fails to issue a written order approving the suspension

or modification of benefits within 14 days of the hearing, the insurer shall reinstate the employe's workers' compensation benefits at the weekly rate the employe received prior to the insurer's suspension or modification of benefits under section 413(c) or (d) of the act.

**Subchapter H. INFORMAL CONFERENCE**

Sec. 123.701. Representation of corporation at informal conferences.

**§ 123.701. Representation of corporation at informal conference.**

A corporation may be represented by an agent or other representative of the corporation, other than an attorney, at an informal conference conducted under section 402.1 of the act (77 P. S. § 711.1). When the case is transferred from an informal conference to a Workers' Compensation judge for an adjudication, a corporation shall be represented by an attorney.

**Subchapter I. USE OF OPTICALLY SCANNED DOCUMENTS**

Sec. 123.801. Use of optically scanned documents.

**123.801. Use of optically scanned documents.**

(a) The Bureau may optically scan original documents, or make other images or paper copies which accurately reproduce the originals, and may dispose of the originals so copied.

(b) A copy made under this section, and certified by the custodian of records for the Bureau, shall be admissible in evidence in a proceeding with the same effect as though it were an original.

**Subchapter J. UNREASONABLE OR EXCESSIVE DELAY**

Sec. 123.901. Penalty for unreasonable or excessive delay.

**123.901. Penalty for unreasonable or excessive delay.**

An employer which violates a provision of the act or regulations accompanied by an unreasonable or excessive delay may be assessed a penalty of up to 50% of the sum of compensation awarded. A delay of 10 or more days shall be presumed to be an unreasonable or excessive delay.

**CHAPTER 127. WORKERS' COMPENSATION MEDICAL COST CONTAINMENT**

**§ 127.105. Outpatient providers subject to the Medicare fee schedule—chiropractors.**

\* \* \* \* \*

(b) Payments for spinal manipulation procedures by chiropractors shall be based on the Medicare fee schedule for HCPCS [code A2000] codes 98940-98943, multiplied by 113%.

\* \* \* \* \*

**BILLING TRANSACTIONS**

**§ 127.208. Time for payment of medical bills.**

\* \* \* \* \*

(e) The 30-day period in which payment shall be made to the provider may be tolled only if review of the reasonableness or necessity of the treatment is requested during the 30-day period under the UR provisions of Subchapter C (relating to medical treatment review). The insurer's right to suspend payment shall continue throughout [both the initial review and the recon-

sideration review of ] the UR process. The insurer's right to suspend payment shall further continue beyond the UR process to a proceeding before a Workers' Compensation judge, unless there is a UR determination made [ at reconsideration ] that the treatment is reasonable and necessary.

(f) The nonpayment to providers within 30 days shall only apply to that particular treatment or portion thereof in dispute; if a portion of the treatment is not in dispute, payment shall be made within 30 days.

(g) If a URO determines that medical treatment is reasonable or necessary, [ at reconsideration, ] the insurer shall pay for the treatment. Filing a petition for review before a Workers' Compensation judge, does not further suspend the obligation to pay for the treatment once there has been a determination [ at reconsideration ] that the treatment is reasonable or necessary. If it is finally determined that the treatment was not reasonable or necessary, and the insurer paid for the treatment in accordance with this chapter, the insurer may seek reimbursement from the Supersedeas Fund under section 443(a) of the act (77 P. S. § 999(a)).

REVIEW OF MEDICAL FEE DISPUTES

§ 127.252. Application for fee review—filing and service.

(a) Providers seeking review of fee disputes shall file the original and one copy of a form prescribed by the Bureau as an application for fee review. The application shall be filed no more than 30 days following notification of a disputed treatment or 90 days following the original billing date of the treatment which is the subject of the fee dispute, whichever is later. The form shall be accompanied by documentation required by § 127.253 (relating to application for fee review—documents required generally).

\* \* \* \* \*

(d) The time for filing an application for fee review will be tolled if the insurer has the right to suspend payment to the provider due to a dispute regarding the reasonableness and necessity of the treatment under Subchapter C (relating to medical treatment review).

Subchapter C. MEDICAL TREATMENT REVIEW

§ 127.401. Purpose—review of medical treatment.

\* \* \* \* \*

(c) UR may be requested by [ by multiple parties, depending on whether it is an initial request or a reconsideration request ] or on behalf of the employer, insurer or employe.

[ (1) The initial request for UR may be made by, or on behalf of, the employer, insurer or employe.

(2) The request for reconsideration may be made by, or on behalf of the employer, insurer, employe or health care provider. ]

(d) A party, including a health care provider, aggrieved by the UR [ reconsideration ] determination, may file a petition for review of UR, to be heard and decided by a Workers' Compensation judge.

§ 127.404. Prospective, concurrent and retrospective review.

\* \* \* \* \*

(b) If an insurer or employer seeks retrospective review of treatment, the [ initial ] request for UR shall be filed within 30 days of the receipt of the bill and medical report for the treatment at issue. Failure to comply with the 30-day time period shall result in a waiver of retrospective review. If the insurer is contesting liability for the underlying claim, the 30 days in which to request retrospective UR is tolled pending an acceptance or determination of liability.

(c) If an employe files [ an initial ] a request for UR of treatment, the Bureau will confirm whether the insurer is liable for the underlying alleged work injury. The Bureau will process the UR request only where workers' compensation liability for the underlying injury has been accepted or determined.

(d) If an employe files [ an initial ] a request for UR of prospective treatment which satisfies the requirements of subsection (c), the Bureau will determine whether the insurer is denying payment for the treatment.

(1) The Bureau will send a copy of the employe's [ initial ] request for UR to the insurer, together with a written notice asking the insurer whether it will accept payment for the treatment or is denying payment for the treatment. The insurer shall respond in writing to the Bureau's written notice within 7 days of receipt of the notice.

\* \* \* \* \*

(3) If the insurer is denying payment for the treatment, the insurer shall state the reasons for the denial in its written response. If no reasons are stated for the denial, or if the insurer's written response to the Bureau notice is untimely, the insurer shall pay for the cost of the [ initial ] UR and pay for treatment found to be reasonable or necessary by an uncontested UR determination.

\* \* \* \* \*

§ 127.405. UR of medical treatment in medical only cases.

\* \* \* \* \*

(b) If the insurer files [ an initial ] a request for UR in a medical only case, then the insurer shall be responsible for paying for the costs of the [ initial ] UR.

(c) If the insurer files [ an initial ] a request for UR in a medical only case, then the insurer shall be liable to pay for treatment found to be reasonable or necessary by an uncontested UR determination.

UR—[ INITIAL ] REQUEST

§ 127.451. [ Initial requests ] Requests for UR—who may file.

[ Initial requests ] Requests for UR may be filed by an employe, employer or insurer. Health care providers may not file [ initial ] requests for UR.

§ 127.452. [ Initial requests ] Requests for UR—filing and service.

(a) A party seeking UR of treatment rendered under the act shall file the original and 8 copies of a form prescribed by the Bureau as [ an initial ] a request for UR. All information required by the form shall be pro-

vided. If available, the filing party shall attach authorizations to release medical records of the providers listed on the request.

(b) The [initial] request for UR shall be served on all parties and their counsel, if known, and the proof of service on the form shall be executed. If the proof of service is not executed, the request for UR will be returned by the Bureau.

(c) [Initial requests] Requests for UR shall be sent to the Bureau at the address listed on the form.

(d) The request for UR shall identify the provider under review. Except as specified in subsection (e), the provider under review shall be the provider who rendered the treatment or service which is the subject of the UR request.

(e) When the treatment or service requested to be reviewed is anesthesia, incident to surgical procedures, diagnostic tests, prescriptions or durable medical equipment, the request for UR shall identify the provider who made the referral, ordered or prescribed the treatment or service as the provider under review.

§ 127.453. [Initial requests] Requests for UR—assignment by the Bureau.

\* \* \* \* \*

§ 127.454. [Initial requests] Requests for UR—reassignment.

\* \* \* \* \*

(c) A URO shall return a request for UR assigned to it by the Bureau if the URO has a conflict of interest with the request, as set out in § 127.455 (relating to [initial] requests for UR—conflicts of interest).

§ 127.455 [Initial requests] Requests for UR—conflicts of interest.

\* \* \* \* \*

§ 127.456. [Initial requests] Requests for UR—withdrawal.

(a) A party who wishes to withdraw [an initial] a request for UR shall notify the Bureau of the withdrawal in writing. The withdrawal notice may not be sent directly to the URO.

\* \* \* \* \*

§ 127.457. Time for requesting medical records.

A URO shall request records from the treating provider listed on the [initial] request for UR within 5 days from receipt of the Bureau's notice of assignment.

§ 127.465. [Initial requests] Requests for UR—deadline for URO determination.

\* \* \* \* \*

§ 127.466. Assignment of UR request to reviewer by URO.

[(a)] Upon receipt of the medical records, the URO shall forward the records, the [initial] request for UR, the notice of assignment and a Bureau-prescribed instruction sheet to a reviewer licensed by the Commonwealth in the same profession and having the same specialty as the provider under review.

[(b) Review of physical therapy, occupational therapy, anesthesia incident to surgical procedures, diagnostic tests, prescriptions and durable medical equipment shall be performed by a reviewer licensed by the Commonwealth in the same profession and having the same specialty as the provider who made the referral, ordered or prescribed the treatment or service.]

§ 127.477. Payment for [initial] requests for UR.

The insurer or the employer shall pay the reasonable and customary charge of the URO for the [initial] UR determination, regardless of who the requesting party is. Payment shall be made within 30 days of the date the [initial] UR determination was received. The URO shall send its itemized bill to the insurer responsible for payment and a copy of the itemized bill to the Bureau.

§ 127.479. Determination against insurer—payment of medical bills.

If the [initial] UR determination finds that the treatment reviewed was reasonable or necessary, the insurer shall pay the bills submitted for the treatment in accordance with § 127.208 (relating to time for payment of medical bills) [unless the insurer timely files a request for reconsideration of the initial UR determination under § 127.502 (relating to reconsideration—time for filing)].

(Editor's Note: The Department is proposing to delete §§ 127.501—127.515 (relating to UR—reconsideration) as they currently appear in the Pennsylvania Code at pps. 127-54—127-58 (serial pps. (203498)—(203502)).

UR—PETITION FOR REVIEW

§ 127.551. Petition for review by Bureau of UR determination.

If the provider under review, the employe, the employer or the insurer disagrees with the determination rendered [on reconsideration] by the URO, a request for review by the Bureau may be filed on a form prescribed by the Bureau as a petition for review of a UR determination.

§ 127.552. Petition for review by Bureau—time for filing.

The original and eight copies of the petition for review shall be filed with the Bureau within 30 days of receipt of the URO's determination [on reconsideration].

§ 127.553. Petition for review by Bureau—notice of assignment and service by Bureau.

\* \* \* \* \*

(c) Before assigning a petition for review, the Bureau will review the petition to ensure that a [reconsideration] UR has been filed and a determination has been rendered.

§ 127.555. Petition for review by Bureau—transmission of URO records to Workers' Compensation judge.

(a) Upon the Workers' Compensation judge's own motion, or motion of any party to the proceeding, the Workers' Compensation judge may order the URO to forward all medical records obtained for its [reviews] review to the Workers' Compensation judge. The URO shall forward all records within 10 days of the date of the Workers' Compensation judge's order.

(b) [ The URO may not forward the report of the reviewer to the Workers' Compensation judge. ] When a petition for review has been filed, the Bureau will forward the URO report to the Workers' Compensation judge assigned to the case.

\* \* \* \* \*

§ 127.556. Petition for review by Bureau—de novo hearing.

The hearing before the Workers' Compensation judge shall be a de novo proceeding. The URO report shall be part of the record before the Workers' Compensation judge and the Workers' Compensation judge shall consider the report as evidence; however, [ The ] the Workers' Compensation judge will not be bound [ by prior determinations made during the UR process ] by the URO report.

Subchapter D. EMPLOYER LIST OF DESIGNATED PROVIDERS

§ 127.751. Employer's option to establish a list of designated health care providers.

\* \* \* \* \*

(b) If an employer has established a list of providers which meets the requirements of the act and this subchapter, an employe with a work-related injury or illness shall seek treatment with one of the designated providers from the list. The employe shall continue to treat with the same provider or another designated provider for [ 30 ] 90 days from the date of the first visit for the treatment of the work injury or illness.

\* \* \* \* \*

(d) An employe may not be required to obtain emergency medical treatment from a listed provider. However, once emergency conditions no longer exist, the injured employe shall treat with a listed provider for the remainder of the [ 30 ] 90-day period.

\* \* \* \* \*

(g) If a designated provider prescribes invasive surgery for the employe, the employe may seek an additional opinion from any health care provider of the employe's choice. If the additional opinion differs from the opinion of the designated provider and the additional opinion provides a specific and detailed course of treatment, the employe shall determine which course of treatment to follow. If the employe opts to follow the course of treatment outlined by the additional opinion, the treatment shall be performed by one of the health care providers on the employer's designated list for a period of 90 days from the date of the first visit to the provider of the additional opinion.

§ 127.752. Contents of list of designated health care providers.

(a) If an employer establishes a list of designated health care providers, there shall be at least six providers on the list.

\* \* \* \* \*

(2) No more than [ two ] four of the providers on the list may be CCOs.

\* \* \* \* \*

(e) The employer may change the designated providers on a list. However, changes to the list may not affect the

options available to an employe who has already commenced the [ 30 ] 90-day treatment period.

§ 127.755. Required notice of employe rights and duties.

\* \* \* \* \*

(b) The contents of the written notice shall, at a minimum, contain the following information [ that the employe has ]:

(1) That the employe has the duty to obtain treatment for work-related injuries and illnesses from one or more of the designated health care providers for [ 30 ] 90 days from the date of the first visit to a designated provider.

(2) That the employe has the right to have all reasonable medical supplies and treatment related to the injury paid for by the employer as long as treatment is obtained from a designated provider during the [ 30 ] 90-day period.

(3) That the employe has the right, during this [ 30 ] 90-day period, to switch from one health care provider on the list to another provider on the list, and that all the treatment shall be paid for by the employer.

\* \* \* \* \*

(5) That the employe has the right to seek emergency medical treatment from any provider, but that subsequent nonemergency treatment shall be by a designated provider for the remainder of the [ 30 ] 90-day period.

(6) That the employe has the right to seek treatment or medical consultation from a nondesignated provider during the [ 30 ] 90-day period, but that these services shall be at the employe's expense for the applicable [ 30 ] 90 days.

(7) That the employe has the right to seek treatment from any health care provider after the [ 30 ] 90-day period has ended, and that treatment shall be paid for by the employer, if it is reasonable and necessary.

\* \* \* \* \*

(9) That the employe has the right to seek an additional opinion from any health care provider of the employe's choice when a designated provider prescribes invasive surgery for the employe. If the additional opinion differs from the opinion of the designated provider and the additional opinion provides a specific and detailed course of treatment, the employe shall determine which course of treatment to follow. If the employe opts to follow the course of treatment outlined by the additional opinion, the treatment shall be performed by one of the health care providers on the employer's designated list for a period of 90 days from the date of the first visit to the provider of the additional opinion.

\* \* \* \* \*

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# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### STATE CONSERVATION COMMISSION

[25 PA. CODE CH. 83]

#### Nutrient Management Regulations

The State Conservation Commission (Commission) by this order adopts Chapter 83, Subchapter D (relating to nutrient management). These final regulations implement major provisions of the Nutrient Management Act (act) (3 P. S. §§ 1701—1719) by establishing criteria, nutrient management planning requirements, an implementation schedule and financial assistance for the application of nutrient management measures on certain agricultural operations which generate or utilize animal manure. The proposed regulations were published at 25 Pa.B. 6161 (December 30, 1995).

This order was adopted by the Commission at its meeting of March 13, 1997.

#### A. *Effective Date*

These regulations will go into effect on October 1, 1997.

#### B. *Contact Person*

For further information contact Karl Brown, Executive Secretary, State Conservation Commission, Room 209, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 787-8821. Persons with a hearing disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). In support of the Commission, the Department of Environmental Protection (Department) has made this final rulemaking available electronically through the Department's website (<http://www.dep.state.pa.us>).

#### C. *Statutory Authority*

This final rulemaking is being made under the authority of section 4(1) of the act (3 P. S. § 1704(1)), which requires the Commission to promulgate regulations establishing minimum criteria for nutrient management plans and other requirements necessary to implement the act; section 4 of the Conservation District Law (3 P. S. § 852), which authorizes the Commission to promulgate rules and regulations as may be necessary to carryout its functions; and section 503(d) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(d)) which modified the authority and responsibilities of the Commission, the Department and the Department of Agriculture.

#### D. *Background and Summary*

The act was enacted in May 1993, to improve farm efficiency and prevent the nonpoint source pollution of surface water and groundwater from agricultural nutrients. It requires the Commission, in conjunction with the Department of Agriculture, the Department, the Penn State Cooperative Extension, the Nutrient Management Advisory Board (Advisory Board) and county conservation districts, to develop a program for the proper utilization and management of nutrients. Nitrogen is identified in the act as the nutrient of primary concern. The Commission is also required to provide education, technical assistance and financial assistance to the agricultural community regarding proper nutrient management.

Section 503(d) of the Conservation and Natural Resources Act which was enacted July 1, 1995, modified the authority and responsibility of the Commission, the Department and the Department of Agriculture under the act. An office and staff were created within the Department of Agriculture to assist in the development, implementation and enforcement of Commission programs that solely affect production of agriculture, including the nutrient management program. The staff of both the Department and the Department of Agriculture provided critical support to the Commission and the Advisory Board in the development of these final regulations and other components of the nutrient management program.

The Commission developed these final regulations in conjunction with the Advisory Board as required by the act. The Advisory Board, which represents a wide range of agricultural, governmental, environmental and private interests, provided diligent assistance to the Commission for the last 3 1/2 years in an effort to develop workable and effective final regulations. It is estimated the Advisory Board volunteered in excess of 15,000 hours to this effort. The final regulations were also developed with the assistance of the major farm organizations, county conservation districts, the Penn State Cooperative Extension and the Natural Resources Conservation Service (NRCS).

These final regulations directly affect the concentrated animal operations (CAOs) that are required to plan under the act as well as other agricultural operations that voluntarily plan under the act or receive financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program. Only about 5%-10% of agricultural operations in this Commonwealth will meet the criteria for mandatory planning under the act. The Commission is working to obtain the voluntary participation of other agricultural operations in the nutrient management program. The final regulations were developed to streamline planning and other requirements, where possible, to encourage maximum voluntary participation by non-CAOs. The Commission believes that a strong voluntary program must operate simultaneously with the mandated regulatory program to assure proper nutrient management.

Nutrient management plans for CAOs are required to be developed by nutrient management specialists certified by the Department of Agriculture. Additionally, plans are to be submitted to the Commission or delegated county conservation districts for approval. Nutrient management planning responsibilities for CAOs and for other agricultural operations that develop voluntary plans or as a condition for receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program are set forth in detail. Minimum standards for the construction, location, storage capacity and operation of animal manure storage facilities on agricultural operations that develop a plan under the act are included. Manure management procedures in emergency situations where there is an outbreak of contagious disease must be consistent with the existing quarantine requirements set by the Department of Agriculture. Agricultural operations may apply for financial assistance to implement nutrient management plans as well as incentives to develop nutrient management plans. CAOs shall receive priority funding. Commission responsibilities for administering and enforcing the act and regulations may be delegated to local county conservation districts.

Agricultural operations that are fully and properly implementing an approved nutrient management plan are offered a limited liability protection as well as protection from fines and penalties for damages alleged to have been caused by the management or utilization of nutrients under the implementation of a plan (see section 13 of the act (3 P. S. § 1713)). In accordance with section 17 of the act (3 P. S. § 1717) (relating to preemption of local ordinances), local municipalities may not regulate nutrient management practices or manure storage facilities in a manner that is inconsistent with or more stringent than the requirements of the act and these regulations.

#### E. Summary of Changes

##### *Section 83.201—Definitions*

New definitions have been included for the terms "critical runoff problem areas," "mechanical incorporation of manure" and "spring." Definitions of the terms "erosion," "sediment," "sedimentation" and "conservation plan" have been deleted from the final rulemaking. The definition of "farming resources" has been revised to clarify what lands are part of an operation and, therefore, required to be in the plan. Minor changes have been made to other definitions.

##### *Section 83.202—Scope*

Language has been added to clarify that this subchapter also specifies minimum criteria and requirements for nutrient management plans on agricultural operations that receive financial assistance under the act or under the Chesapeake Bay Nonpoint Source Pollution Abatement Program. Language has also been added stating that this subchapter also specifies the criteria for the awarding of financial incentives for the development of nutrient management plans.

##### *Section 83.204—Applicability of requirements*

Changes have been made to clarify which sections of the regulations are applicable to CAOs and which are applicable to volunteers planning under the act. A phrase clarifying that these requirements also apply to those operations receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program has also been added.

##### *Section 83.205—Preemption of local ordinances*

This new section outlines the preemption of local ordinances provisions set forth in section 17 of the act.

##### *Section 83.206—Limitation of liability*

This new section outlines the limitation of liability provisions found in section 13 of the act (3 P. S. § 1713).

##### *Section 83.207—Compliance assistance and enforcement*

This new section tracks the relevant portions of section 503(d) of the Conservation and Natural Resources Act, which modified the authorities and responsibilities of the Commission, the Department and the Department of Agriculture.

##### *Sections 83.211—83.216—Plan development incentives program*

These sections set forth the criteria for the awarding of financial incentives for the development of nutrient management plans. This funding is in addition to that set forth in the financial assistance provisions of the regulation which outline the criteria for the awarding of financial assistance for the implementation of nutrient management plans.

##### *Section 83.223 (Formerly § 83.353)—Financial assistance eligibility criteria*

Language has been added to clarify that only those best management practices (BMPs) listed in an approved plan or plan amendment will be eligible for financial assistance.

##### *Section 83.224 (Formerly § 83.355)—Project evaluation and prioritization criteria*

Language has been added outlining the prioritization criteria for applications for financial assistance. CAOs shall receive priority evaluation from October 1, 1997, to September 30, 1998. CAOs producing livestock on October 1, 1997, receive first priority.

##### *Section 83.225 (Formerly § 83.354)—Application procedure*

Language has been added clarifying that the Commission's actions on financial assistance applications may be appealed to the Environmental Hearing Board as set forth in section 15 of the act (3 P. S. § 1715).

##### *Section 83.226 (Formerly § 83.356)—Eligible costs for the implementation of an approved plan*

Language has been added to this section to clarify that the costs eligible for financial assistance are those necessary for the implementation of an approved plan.

##### *Section 83.229 (Formerly § 83.359)—Grants*

The funding limits for the maximum amount of a grant award have been deleted from the final regulations. Maximum grant limitations will be those established in policy by the Commission.

##### *Section 83.231 (Formerly § 83.361)—Funding limitations*

Maximum limits for total assistance provided under loans, grants and loan guarantees have been deleted in the final regulations. Total funding limits will be established in policy by the Commission.

##### *Section 83.232 (Formerly § 83.362)—Implementation and reporting*

Language has been added to subsection (d) requiring that a request for disbursement of approved financial assistance must include a statement certifying that a project or BMP was completed as planned. Language has been added to subsection (e) requiring that financial assistance recipients keep financial expenditures and plan implementation records.

##### *Section 83.233 (Formerly § 83.363)—Delegation of financial assistance*

Changes have been made which state that the Commission retains final approval authority for all applications for financial assistance. The Commission has the ability to delegate the authority to review and make recommendations on financial assistance applications to an agent. However, the final approval authority rests with the Commission.

##### *Section 83.251 (Formerly § 83.381)—Compliance plans*

Changes to this section clarify that those plans required on operations found to be in violation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) shall meet the same requirements for those plans on CAOs.

##### *Section 83.261 (Formerly § 83.211)—General*

Dates have been added reflecting the effective date of these regulations, that is October 1, 1997, and setting

forth the deadlines by which CAOs are required to submit a nutrient management plan.

*Section 83.262 (Formerly § 83.212)—Identification of CAOs*

A sentence has been added to subsection (a)(1)(i) stating that for those animal types not appearing in the accompanying Table A, the average animal weight for the particular operation may be used. The restriction which required that land suitable for manure application, for the sole purpose of CAO calculation, be located within 10 miles of the point of manure generation has been deleted.

*Section 83.272 (Formerly § 83.222)—Content of plans*

Cross reference clarifications have been made to coincide with the splitting of the regulations to two main parts, the first applicable to CAOs, the second to volunteers. Also included is new language in subsection (d) which requires the BMPs listed in a plan to be consistent with other plans developed for the particular operation such as a conservation plan.

*Section 83.281 (Formerly § 83.223)—Identification of agricultural operations and acreage*

Language has been added requiring the operator's concurrence on the nutrient management plan. The nutrient management specialist preparing the plan is also required to indicate his nutrient management certification identification number. Information on the availability of NRCS soil survey maps, with soil identification legends, has also been added to the final regulations.

*Section 83.282 (Formerly § 83.224)—Summary of plan*

Changes have been made requiring a plan summary that contains a chart which lists the total amount of manure generated on the operation annually, the total amount of manure to be used on the operation annually and the total amount of manure to be exported from the operation annually.

*Section 83.291 (Formerly § 83.231)—Determination of available nutrients*

Several changes have been made to this section in the final rulemaking as summarized as follows:

1. Language has been changed in subsection (b)(1) to clarify that the plan must include the average number of animals of each type on a typical production day on the agricultural operation.
2. Subsection (b)(2) has been changed to require the storage capacity of any present manure storage facilities to be considered when developing the plan.
3. The requirement for manure sampling and chemical analysis contained in subsection (b)(3) has been deleted. Manure sampling is now recommended, but standard book values such as those contained in the *Manure Management Manual* or the *Pennsylvania Agronomy Guide* may be used. The nutrient content of the manure is required to be recorded in the plan. CAOs exporting manure are required to test manure.
4. A sentence has been added to subsection (c) clarify that the amount of nitrogen available in the manure and the planned manure incorporation times are required to be included in the plan.
5. The soil testing requirements of subsection (e) have been clarified. Soil tests are required for the initial plan development, however, soil tests conducted within the previous 3 years are acceptable. Subsequent soil tests are

required at least every 6 years. Soil tests are not required to be submitted with the plan but shall be kept on record at the operation.

*Section 83.292 (Formerly § 83.232)—Determination of nutrients needed for crop production*

This section has been significantly revised to provide more flexibility in determining expected crop yields.

*Section 83.293 (Formerly § 83.233)—Determination of nutrient application rates*

Language has been included to clarify that the planned manure application rates based on nitrogen are required to be included in the plan.

*Section 83.294 (Formerly § 83.234)—Nutrient application procedures*

Significant changes have been made to paragraph (5) which contains manure spreading restrictions. Manure spreading is prohibited within 100 feet of an open sinkhole and within 100 feet of an active private drinking water well unless the manure is mechanically incorporated within 24 hours. The proposed regulations contained a complete prohibition on manure spreading in these areas. Other changes include the clarification of spreading restrictions within concentrated water flow areas where vegetation is maintained versus where vegetation is not maintained. Additionally, other water sources such as springs, agricultural drainage systems and pipe outlet terraces have been included in the spreading prohibitions. Finally, other changes clarify that certain spreading restrictions only apply where surface water flow is toward the particular area.

*Section 83.301 (Formerly § 83.201)—Excess manure utilization plans for CAOs*

Language has been added to clarify that the estimated amount of excess manure to be exported from the operation shall be included in the plan.

*Section 83.311 (Formerly § 83.251)—Manure management*

Language has been added to clarify that the nutrient management specialist may seek the expertise of NRCS or conservation district personnel in reviewing the adequacy of manure management practices on a particular operation. The review is required to take into consideration the normal climatic conditions of the area. Further clarifications have been made to clarify that the nutrient management plan is not to include specific designs for BMPs to address any identified problem areas, but that the operator is responsible for obtaining the necessary BMP designs to implement those practices contained in the approved plan.

*Section 83.321 (Formerly § 83.261)—Stormwater runoff control*

This section has been significantly revised from the proposed regulation. The requirement for an erosion and sedimentation control plan meeting the requirements of Chapter 102 (relating to erosion control) to be included as part of a nutrient management plan under the act has been deleted. Nutrient management plans developed under the act are now required to include BMPs to address critical runoff problem areas in fields, crop lands and pastures. Critical runoff problem areas are defined in the definition section as those nonvegetated water flow areas and those areas where runoff containing nutrients that were applied after the growing season directly discharge into surface water or groundwater. These critical areas must be addressed on owned and rented land. Further-

more, language has been added to clarify that these regulations do not relieve operations from complying with the existing requirement for an erosion and sedimentation control plan contained in Department regulations in Chapter 102.

*Section 83.331 (Formerly § 83.271)—Implementation schedule*

Language has been added to clarify that the implementation schedule contained in a plan on a CAO is consistent with the implementation deadlines of § 83.362.

*Section 83.341—General recordkeeping requirements*

This new section of the recordkeeping portion of this regulation specifies that records that are required to be kept under the subchapter are not required to be submitted to the Commission or delegated conservation district, but are required to be retained by the agricultural operation for at least 3 years.

*Section 83.342 (Formerly § 83.291)—Recordkeeping related to the application of nutrients*

Amendments have been made to clarify that this provision of the regulation applies to recordkeeping for nutrient management plans developed for CAOs and that crop yield records may be estimates.

*Section 83.343 (Formerly § 83.292)—Alternative manure utilization recordkeeping*

Subsection (f) has added the requirement that operators of CAOs exporting manure determine the nutrient content of the manure using manure sampling and chemical analysis methods outlined in the *Manure Management Manual* or the *Pennsylvania Agronomy Guide*. Additional changes clarify which CAOs must submit manure export records.

*Section 83.344 (Formerly § 83.293)—Exported manure information packets*

In addition to minor clarifications, this section has been amended to require that a CAO exporting manure is required to provide information to the importer relating to the nutrient content of manure, applicable sections of the *Manure Management Manual* and an informational publication on proper nutrient management. Subsection (c) has also been amended to state that the exporter is required to provide the items listed only if the Commission or delegated conservation district makes available those documents.

*Section 83.301—Recordkeeping for manure transfers from CAOs*

Because of the restructuring of these final regulations into two main parts which specify the planning requirements for CAOs and volunteers respectively, this section has been deleted from the final regulations.

*Section 83.302—Exporting manure informational packets for distribution by CAOs*

Because of the restructuring of the final regulations, this section has also been deleted from the final regulations.

*Section 83.351 (Formerly § 83.311)—Minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities*

This section which specifies the standards for manure storage facilities on CAOs have been significantly amended from the proposed regulations. These amendments are summarized as follows:

1. Language has been added to specify that these standards also include criteria for the removal from service of manure storage facilities constructed or expanded as part of a nutrient management plan.

2. Subsection (a)(2) which required Commission or district approval of a particular design that did not exist in the *Pennsylvania Technical Guide* has been deleted. All manure storage facilities must be designed consistent with the standards in the *Pennsylvania Technical Guide*.

3. The setback provisions related to the manure storage facilities have also been amended. Two separate subsections have been created that specify setback requirements for operations producing livestock or poultry on or before October 1, 1997, and those coming into existence after October 1, 1997, respectively. Setback requirements from active public drinking water supplies have been included. These setbacks apply unless other State or Federal laws require a greater isolation distance. The property line setback requirement has been increased for those CAOs coming into existence after October 1, 1997.

4. The waiver criteria of subsection (a)(2)(vi) have been amended to provide that the waiver provisions only apply to CAOs that were producing livestock on or before October 1, 1997, with the exception of the setbacks from public drinking water supplies. Additional language has also been added to specify that there shall be no waivers from the setback requirements of manure storage facilities regardless of when the operation came into existence for public water supplies. The waiver language has also been revised to state that where a waiver is requested from a private water well, the well must meet the construction criteria that the Commission, in consultation with the NRCS, deems necessary to protect water quality.

5. Contingency plans for manure storage facilities must be developed in accordance with the standards contained in the *Pennsylvania Technical Guide*. Language has also been added incorporating § 101.2(a) (relating to incidents causing or threatening pollution) by reference, which sets forth the existing notification requirements for the reporting of a leak or spill.

*Section 83.361 (Formerly § 83.321)—Initial plan review and approval*

The provision of subsection (a) which authorized a 45-day deemed approval for volunteer plans has been deleted from the final rulemaking. Additional amendments require the Commission or delegated conservation district to notify the operator of any missing or incomplete plan components within 10 days of receipt. Subsection (d) has been amended by deleting the term "person" and replacing it with the term "operator."

*Section 83.362 (Formerly § 83.322)—Plan implementation*

Subsection (d) was added to remind operators that the limited liability protection of § 83.206 is provided to those operations properly implementing an approved plan.

*Section 83.371 (Formerly § 83.331)—Plan amendments*

Amendments clarify criteria that trigger a required plan amendment. Specific clarifications require plan amendments when the figures used in the plan are inconsistent with those contained in the *Manure Management Manual* or *Pennsylvania Agronomy Guide* unless otherwise justified; when a different BMP other than that contained in the plan is proposed; and when, after the first 3 years of implementation, actual yields are less than 80% of the expected crop yields used in the plan.

*Section 83.372 (Formerly § 83.332)—Amendments due to unforeseen circumstances*

Language has been added to clarify that amendments under this section are not required to be reviewed and approved by the Commission prior to implementation, but are required to temporarily become part of the plan until normal operations are resumed. Amendments under this section must be submitted to the district within 30 days of implementation. Other amendments clarify examples of unforeseen circumstances that would cause a significant change in the management of nutrients.

*Section 83.373 (Formerly § 83.333)—Plan transfers*

Subsection (b) has been amended to allow for the submission of any necessary plan amendments before actual notice of the transfer is provided to the Commission or delegated conservation district.

*Section 83.381 (Formerly § 83.341)—Manure management in emergency situations*

Amendments have been added encouraging the harvesting of cover crops to facilitate excess nutrient removal incurred as a result of a manure quarantine, and clarifying that soil tests will be necessary for crop fields where the quarantine required that nutrients be applied in excess of the amount the crop can use.

*Sections 83.391—83.491—Nutrient management for volunteer or financial assistance agricultural operations*

These new sections specifically outline the planning requirements for volunteer operations and those operations receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program. Instead of cross referencing the requirements for volunteers, the nutrient management planning requirements for these operations are set forth in detail. Requirements for volunteers and financial assistance plans differ from those in the following major areas:

1. *Section 83.441—implementation schedule.* Volunteers are not required to comply with the strict implementation time frames for CAOs.
2. *Section 83.452—recordkeeping.* Recordkeeping for nutrient application for volunteers has been streamlined.
3. *Section 83.453—alternative manure utilization recordkeeping.* Volunteers are not required to maintain manure export or alternative manure utilization records with the same detail as those required for CAOs.
4. Clarifications have been made to §§ 83.452, 83.461, 83.472 and 83.481 which state that these sections apply to agricultural operations receiving financial assistance under the act and those seeking the limited liability protection contained in § 83.206 and section 13 of the act.

*F. Summary of Major Comments and Responses on Proposed Rulemaking*

*Requirements of volunteers*

*Comment:* To encourage volunteer participation in the program, the development of a separate area of the regulations for volunteers is needed.

*Response:* The Commission agrees with the comment and has divided the subchapter into two main parts, the first outlining the requirements of CAOs, and the other outlining the requirements of volunteers. The Commission recognizes that this revision has increased the length of the subchapter, but believes that this revision was needed to better explain the requirements of the volunteer participants in a more user friendly format.

*Preemption of local ordinances*

*Comment:* The general provisions area of the regulations would be an appropriate area to add language regarding the preemption of local ordinances into the regulations. Section 17 of the act provides language that should be included in this area of the regulations to provide reference to this important provision of the act.

*Response:* The Commission agrees with the comment and has included this language from the act into the final regulations in § 83.205. This will assure that interested parties recognize the role the act and these regulations play in assuring consistent nutrient management efforts across this Commonwealth.

*Financial assistance*

*Comment:* Sections 83.351—83.363 outline procedures and conditions for financial assistance, but do not reflect that CAOs should receive priority over voluntary, non-CAOs in receiving financial assistance. If it is acceptable to “single out” certain operators for more stringent regulation, then it seems only fair that these same operations have priority in receiving any financial assistance available to help offset the cost of compliance.

*Response:* The Commission agrees with the comment and has revised the final regulations to state that CAOs receive the highest priority status for distribution of BMP implementation funding.

*Comment:* If the Commission believes it has the authority to delegate the administration of the financial assistance program, it is requested that it provide specific legal authorization for the delegation.

*Response:* Section 83.233 of the final regulations has been revised to state that the Commission will retain final approval authority for all applications for financial assistance for plan implementation.

*Comment:* Setting a limit on the amounts of funds available through a grant will not necessarily further the purpose of the act. Instead, the Commission should limit funds on a case by case basis to assist those farmers who cannot afford to put the necessary protections in place with their own funds. Expensive manure storage facilities should not be required by the regulations, except in rare situations. There should be some limiting language that would allow no more than 50% of the cost be provided to a farmer through grant or loan money. This would be consistent with § 83.356, to implement the plan, and within § 83.251(c)(1), which implies that the money for storage facilities may not be the most cost-effective option when compared to other BMPs.

*Response:* To provide for maximum flexibility in future program needs, the financial limits for loans and grants have been deleted from the final regulations and will be set by Commission policy. This will avoid the need to change the regulations when significant changes in the cost of implementing BMPs or the farm economy occur. The regulations specifically state that manure storages are not required for all plans developed under the act. The evaluation of BMPs will require consideration of all alternative methods to protect surface water and groundwater including least cost alternatives. The operator is to be involved in selecting BMPs which will best be incorporated into the operation.

*Identification of CAOs*

*Comment:* The individual farmer should be the one who determines whether it is reasonable to apply manure to a field 5, 10 or 15 miles away rather than have a

governmental entity set an arbitrary standard. It is recommended eliminating § 83.262 from the final-form rulemaking.

*Response:* The Commission, in conjunction with the Advisory Board, has discussed this issue at length and has revised § 83.262. The 10-mile limit has been eliminated because some farmers currently transport manure as part of their normal operation more than 10 miles for application, and this will probably become more common in the future. This change will allow operators to include land any distance from the animal facility for purposes of CAOs calculations, as long as the land is to be used for the application of manure generated on the agricultural operation. This will eliminate the need for a mileage restriction.

*Determination of available nutrients*

*Comment:* Current wording in § 83.231 is unclear to what the farmer is required to do. Are they required to soil test, and if so, how often.

*Response:* The Commission has reworded this section to state that soil tests are required at least every 6 years.

*Comment:* There should be no requirement that manure be tested as indicated in § 83.231(b)(3). Available data indicates that manure sampling and testing results may vary to a degree that they are of no more value than standard book values. In some cases, this may be a valuable farm management tool. It should be an individual farm operator decision, not mandated by regulation.

*Response:* The Commission agrees that manure testing, when done improperly, or under circumstances that are not representative for the system, can give results that may not be representative of the manure to be applied. The Commission also understands the burden that proper manure testing may place on some producers and has, therefore, revised the final regulations to allow for the use of book values or manure tests. The Commission still recognizes the importance of proper manure testing and still encourages its proper use for the development of the plan. The Commission did retain the requirement for manure testing for those CAOs exporting manure to provide nutrient information to importers. This manure test information will then be documented on the manure transfer sheet provided to the importer.

*Determination of nutrients needed for crop production*

*Comment:* Most producers do not have the crop yield records required, and using the soil productivity information would limit the farmers' ability to fertilize their land. Let the farmer select a yield goal, if it is too high let the reviewer and the farmer determine what an acceptable goal would be.

*Response:* The Commission, along with the Advisory Board, has discussed this issue at length and has revised this section of the final regulations to state that initial yield goals need to be realistic for the given soil types in the given location. This change has been made with the understanding that not all farms have yield data available for their acreage, and book values may be outdated for some soil types. For future plan updates and amendments, expected yields need to be based on yield records, which will allow some flexibility for the farmer to plan for optimistic yields that are realistic. The Commission is attempting to give some flexibility to the farmer in determining these expected yields, with the understanding that the plan reviewer will be evaluating the plan to assure yield goals are not unrealistic. Where the reviewer

sees that the yield goals are higher than shown to be realistic for the area, the farmer will need to provide documentation to support the use of the higher yield goals.

*Nutrient application procedures*

*Comment:* Section 83.294(1)(iv)—(vi) each include the wording "during times when soil is frozen, snow covered or saturated," should be removed from each. These areas should be protected regardless of the physical condition of the soils.

*Response:* The Commission recognizes that manure properly applied to meet crop needs, and at times when soil conditions are right for the nutrients to be absorbed into the soil, can be a very important and safe source of nutrients to meet crop needs, even in those areas adjacent to water bodies.

*Comment:* What is the basis for the application setbacks? Other State programs are inconsistent with the proposed regulations, such as residual waste regulations for sewage sludge which require on agricultural land a 300 feet isolation distance from drinking water sources and 1,000 feet upstream from surface water intakes. The *Manure Management Manual* is also in conflict with these setback provisions. The Commission needs to review all of the current regulations and laws governing the protection of water quality to determine if these new limitations are either consistent, more stringent or new standards. The Commission will need to justify the standards if they are either new or more stringent. If these standards cannot be justified, they should be deleted and replaced with a more reasonable standard that will achieve the necessary protection.

*Response:* Other State programs such as those related to sewage sludge are still in effect and would continue to address applications of these products. The *Manure Management Manual* provided the basic guidelines for the development of these manure application setbacks outlined in these regulations. These regulations provide further refinement of the application setbacks provided for in the current version of the *Manure Management Manual*. This refinement is needed to assure that the agricultural community thoroughly understands its requirements and the agencies involved with the program can consistently oversee program implementation. The *Manure Management Manual* is proposed to be revised consistent with the standards set in these regulations.

*Comment:* In relation to the application setback from private wells, what do these limits mean with regard to any of the specified situations on adjacent property not under the control of the operator? Will he lose the availability of that land for manure application?

What if a plan is already approved and implemented and any of these conditions then occur on an adjacent property, will the farmer have to change his approved nutrient management plan?

Is it a property right issue when an adjacent landowner can impose limits on the use of an individual's property?

*Response:* The regulations have been revised to allow for the application of manure within the private well setback area if the manure is incorporated within 24 hours of application. With this revision, a farmer could continue to apply manure up to the property line even if a neighboring landowner installed a private well within 100 feet of the property line.

*Manure export plan*

*Comment:* Section 83.281 provides guidance for excess manure utilization plans for CAOs and raises two questions.

(a) Why do known manure importers, their available acreage, and the estimated amount that each could import all need to be recorded as part of the exporter's plan when the importer has no obligation under the law?

(b) Why is this paper trail required for manure exporters when no requirements exist for commercial fertilizer dealers who have no direct responsibility for how their products are used by their customers?

*Recommendation:* When manure leaves the farm where it was generated it should be considered to be nothing other than organic fertilizer and subject to no more stringent requirements or regulations than other organic fertilizers.

*Response:* Unless the importer is a CAO, the importer has no obligation under the act to report manure importing or application information. It was the concern of the Commission and the Advisory Board to assure that this program focused on the better distribution of manure nutrients throughout this Commonwealth, and did not discourage possible manure importers from agreeing to accept manure. The plan is required to demonstrate that the exporter has found a suitable site for the excess manure generated on the participating operation. The records maintained by the exporter indicate that the manure was able to be exported as planned. This information is especially important for the liability protection provisions of the program to assure that the plan is being properly implemented and that the excess manure generated on the operation is exported to an environmentally safe site.

*Comment:* Section 83.293(a) requires an agricultural operation to provide the importer with an "appropriately" completed Manure Transfer Sheet. What is considered appropriate?

The requirements of § 83.293(b) place an unnecessary burden on CAOs and volunteer operations, and it is requested that the Commission provide strong justification for placing the requirements for providing documents with the exporter. If justification cannot be provided, the deletion of subsection (b) from final-form rulemaking is recommended.

If the Commission provides justification for subsection (b), it is not clear how an exporting farmer would be encouraged to provide the materials. If the Commission believes this is a reasonable requirement, it should be stated as a requirement rather than a suggestion. If this subsection is retained in final-form rulemaking it should be revised as an enforceable requirement by making the following revisions: "If the manure is to be land applied, the exporter is [encouraged] required to provide the following information to the importer."

*Response:* The CAO exporting manure best knows the amount and nutrient value of the exported manure at the time of exporting. This information is of critical importance to the importer in calculating the field application rate for the imported manure. The exporter is the most appropriate source of this information because these records are maintained by the exporter. The final regulations require the CAO to document this information on the Manure Transfer Sheet which is given to the importer at the time of the manure transfer. The importer will

then have important information concerning the amount and nutrient content of the manure.

*Section 83.293(a)*

The word "appropriately" has been deleted from the final regulations.

*Section 83.293(b)*

The Commission agrees that this is an administrative requirement that can be eliminated from the volunteer's requirements under the act and has done so. However, the Commission continues to believe that it is important for CAOs to provide this information to assure that the importer has the best information to make nutrient application decisions. Therefore, the Commission has revised the regulations to make this provision only applicable to CAOs.

*Manure management*

*Comment:* Section 83.201 deals with definitions, and it is important to note that "stormwater management practices" is defined along with others under "BMP—best management practices." This definition was taken directly from the act and is the only reference to stormwater in the act. It should not, therefore, be used as the sole justification for the manure management section of the proposed regulations which mandate stormwater control practices for approved plans. This far-reaching interpretation of language in the act expands upon its intent, and will have a severe detrimental effect on both mandatory and voluntary compliance with its provisions, as well as provide for selective enforcement on those complying with Act 6.

*Response:* The Commission, along with the Advisory Board, has looked very closely into the issue of including the manure management requirements in a plan and the Commission believes it has the authority to do so. The Commission believes that the runoff from the barnyard and manure management areas of the operation are, in many instances, a major source of nutrient pollution. These areas are of critical importance when developing a plan to minimize nutrient pollution to surface water or groundwater. For this reason, the Commission believes that it is important to address this area in the plan. Also, the inclusion of the barnyard area in the plan will help assure, to the extent possible, that those operations following these regulations will also meet the Federal requirements for a Concentrated Animal Feeding Operation (CAFO), and will not need to do more to comply with this Federal program.

*Stormwater runoff control*

*Comment:* Even if it was the intent of the Legislature that some erosion and sedimentation and stormwater runoff controls be possible elements or BMPs in nutrient management plans, it is questionable whether or not it was their desire to go to the extent of mandating the degree suggested by the proposed regulations. The discussion concerning House Bill 100 within the *Legislative Journal-House* February 2 indicated that the House did not want to mandate a linkage between what they perceived to be nutrient management planning and what is clearly conservation planning. Furthermore, the inclusion of E & S Controls and Stormwater Runoff Controls in the proposed regulations for Act 6 presents an opportunity for selective enforcement of existing law on only certain farm operations. It is recommended that § 83.261 (a)(2)—(4) be deleted.

*Response:* The Commission, with the assistance of the Advisory Board, has looked into this issue very closely

and has worked hard to develop a response to this comment. The Commission recognizes the need for proper stormwater management in fields to assure that manure placed in the field stays where it is applied. But, the Commission also recognizes that Chapter 102 currently requires measures to be taken to address erosion and sedimentation due to agricultural plowing and tilling. The Commission has addressed this comment by deleting the requirement for an erosion and sedimentation control plan (or conservation plan) to be submitted as part of the nutrient management plan under the act. The Commission still recognizes that there are critical areas in fields that need to be addressed to minimize nutrient contamination of surface water and groundwater and the Commission has retained these critical in-field runoff problem areas as areas needing to be addressed as part of the nutrient management plan. These critical in-field runoff problem areas are defined in the regulations as those nonvegetated gullies or ditches that directly discharge into water bodies, and those areas where manure is applied after the growing season, and due to land features, soil cover and the timing of planting the next crop, that will discharge nutrient runoff into surface water or groundwater. These regulations do not alter the existing Department requirement found in Chapter 102 which requires an erosion and sedimentation control plan for agricultural plowing and tilling.

*Comment:* It is of specific concern that the stormwater requirements will encompass all acreage used in a plan, including rented ground, which in turn raises the question of who is responsible, the owner or the operator?

*Response:* The Commission has eliminated the need for a full erosion and sedimentation control plan (conservation plan) to be implemented as part of these regulations, but the operator will still need to address critical runoff problem areas (as defined) on both owned and rented land in the operation. The Commission could not justify why a problem area would be critical on owned land, but not rented land. Therefore, the regulations require that these problem areas be addressed for both owned and rented land. An operator of an operation participating in the program will be responsible for addressing the critical runoff problem areas on the operation, including any rented land. For the implementation of BMPs which require construction activities on rented land, the regulations allow for the operator to enter into an agreement with the person owning the rented land to implement the BMP. The *Pennsylvania Technical Guide* provides many nonstructural BMPs that can be implemented at little or no cost to address the critical runoff problem areas on owned and rented land (that is, minimum tillage, no-till, strip cropping, residue management, contour farming, and the like).

#### *Recordkeeping requirements*

*Comment:* Recordkeeping must be kept simple. The Commission should create a simple form that can be distributed by extensions and districts. This will also help to convince farmers to voluntarily participate in the program.

*Response:* The Commission agrees with this comment. To encourage volunteer participation, the regulations have been divided into two main areas, one for CAOs and one for volunteers. Within the volunteer area, the recordkeeping section has been simplified by reducing the recordkeeping requirements for volunteers. As program implementation and education efforts are developed, simple recordkeeping forms will be provided by the Commission to assist participating operators with the

recordkeeping requirements. It is also expected that crop consultants will also create these types of forms to assist their customers.

*Comment:* Section 83.292(a) provides that a Manure Transfer Sheet shall be used for all manure transfers from land under the control of agricultural operations falling under the act. For clarification purposes, it is recommended that the regulations be amended to provide that a Manure Transfer Sheet shall be used for all manure transfers from a CAO.

*Response:* The Commission agrees with the comment and has revised the final regulations to require Manure Transfer Sheets to be used only for manure transfers from CAOs.

*Comment:* In § 83.292, the Commission needs to clarify the categories of CAOs who must submit copies of Manure Transfer Sheets or Summaries of Manure Transfers to the agency.

*Response:* The Commission agrees. Language has been added clarifying that all CAOs, other than those exporting to known landowners, will need to submit records within 1 year of plan approval.

*Comment:* Section 83.301(b) provides that submittal of manure transfer records for subsequent years will be at the discretion of the agency which approved the plan. Criteria is needed to determine when Manure Transfer Sheets will be required to be submitted in subsequent years.

*Response:* The Commission has revised the final regulations to only require manure export record submission for CAOs within 1 year of plan approval. The final regulations do not authorize the reviewing agency to require record submission after the first year.

#### *Manure storage criteria*

*Comment:* Siting of new manure storage facilities should be prohibited in floodplains.

*Response:* The regulations require that for those storage facilities to be placed within the floodplain, the construction and location of these storages need to be consistent with local ordinances developed under the Flood Plain Management Act (32 P. S. §§ 679.101—679.601). The *Pennsylvania Technical Guide*, which is the base reference document to be used in providing the standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities, provides the necessary technical standards to assure that facilities built within the floodplain are designed properly for the location. Operators need flexibility in the placement of these facilities to assure these practices can fit into their current operation, and are practical to build and implement.

*Comment:* Many municipalities have no floodplain ordinances. What restrictions would be permissible on the location of retention pits, lagoons and transfer pipes which could be easily flooded? There is currently a required isolation distance of 100 feet from surface water, wells or sinkholes.

*Response:* In general, storage facilities, including lagoons, are to be set back from streams, lakes, wells, sinkholes, and the like 100 to 200 feet, depending on the slope of the area and the volume of the facility. Retention pits and transfer pipes are not required to follow the setback distances because in most cases the operator does not have an option of where to place these structures because they need to be placed in or beside the barn



where the manure is generated. Most barns on older operations were placed near the stream or other water source. These manure transfer items are often needed to transfer the manure out of the setback areas. The design of these manure transfer items will need to take into account any possible flood concerns to prevent water pollution, as provided for in the *Pennsylvania Technical Guide*.

*Comment:* Section 83.311(a)(2) provides that where standards for a proposed storage facility are not contained in the *Pennsylvania Technical Guide*, the Commission or delegated conservation district will approve the design, operation and maintenance for the facility based on best available technology. However, the regulations do not define what is best available technology nor specify a timeframe within which the Commission will make a decision on the facility. The regulations need to be amended to define best available technology and adopt a 30 to 45 day maximum time limit to make a decision. Also, technical training will need to be provided to those involved in this approval process. Assistance from the NRCS may be needed to assist in making these decisions.

*Response:* The Commission has, in cooperation with the Advisory Board, reevaluated this provision of the proposed regulations and has deleted the provision allowing the approval of a facility that falls outside of the standards provided in the *Pennsylvania Technical Guide*. The Commission understands that the technical agencies currently assisting with the review of these types of facilities are not authorized to approve facilities outside of the *Pennsylvania Technical Guide*. Therefore, the Commission would have no technical support to rely on to approve these facilities. If a facility was proposed that falls outside of the standards in the *Pennsylvania Technical Guide*, the technical agencies which maintain the *Pennsylvania Technical Guide* will evaluate that design. After researching the specifications provided to the technical agencies, they will, if the design is sound, include the design into the *Pennsylvania Technical Guide*.

*Comment:* To be consistent with the wellhead protection program, the manure storage setback for public wells should be revised to read "facilities may not be constructed within 100 feet of a public water source unless Federal or State laws or regulations specify a greater isolation distance."

*Response:* The Commission agrees with this comment. To assure that these regulations are not in conflict with the Department's wellhead protection program, the suggested revision has been made to the regulations. The Commission has also provided language in the regulations to state that waivers will not be granted for the manure storage setbacks from public wells to assure program consistency.

*Comment:* For years the *Pennsylvania Technical Guide* has provided a base for the considerations of sound environmentally sensitive designs of storage facilities. The additional design criteria in subsection (a)(3) should be eliminated. The waiver places considerable liability upon the delegated districts. The rationale for the necessity of setbacks is currently incorporated and professionally evaluated utilizing the *Pennsylvania Technical Guide*, thus making the setback standards unnecessary.

*Response:* The Commission has worked with the Advisory Board to reevaluate the manure storage setbacks requirement at length in light of this comment. Section 4 of the act requires the Commission to develop standards for the construction, location, storage capacity and opera-

tion of manure storage facilities. The *Pennsylvania Technical Guide* does provide excellent base standards and specifications for location, design, construction, and the like, for facilities. However, the location standards in the *Pennsylvania Technical Guide* are very general in nature and are not specific enough to provide consistent guidance to the regulated community or to those responsible for the implementation of the act and regulations. The specific setbacks outlined in the regulations will allow for consistent implementation of the provisions of the act and regulations, and assure that proper distance around storages is maintained in order to allow for the correction of problem situations that may occur with the facility. Also, since these regulations are used as the base for local nutrient management ordinances throughout this Commonwealth, specific criteria were needed to assure consistent understanding of the requirements for manure storage facilities.

*Comment:* The act should provide greater flexibility to existing operations and hold new operations to higher standards, particularly with design and siting.

*Response:* The Commission agrees. The Commission has provided for this concept by allowing waivers from the manure storage setback requirements for existing operations, but not allowing for waivers for new operations. An additional step the Commission has taken in the final regulations is to provide for a greater setback requirement from property lines for new operations than that required for existing operations.

*Comment:* Section 83.311(d) refers to a "site specific contingency plan" and notification of "known downstream users." There needs to be clarification of what is meant by both of these terms in order that a farm operator will know what is expected, and it is not an arbitrary interpretation by field personnel in the event of a leak or spill.

*Response:* The *Pennsylvania Technical Guide* is the reference guide for understanding the scope of the contingency plan. The guide describes a contingency plan, which is part of an overall operation and maintenance plan, as a plan that outlines procedures used to address a leak or spill from a manure storage facility built under the act, and who would be called in those instances where the leak or spill will cause pollution to surface or groundwater. The notification language in this final regulation has been revised to incorporate the notification requirement in § 101.2(a) by reference.

*Comment:* Section 83.311(d) provides that in the case of a leak or spill from a manure storage facility, the operator is responsible for implementation of the "site specific contingency plan developed for the facility." A question arises whether the site specific contingency plan is a component of the site specific design in subsection (c), or whether this is a requirement in the *Pennsylvania Technical Guide*. It is recommended that the Commission provide the authority for the requirement of a site specific plan and how it will be reviewed and approved. Also, what constitutes a "health hazard" needs to be defined.

*Response:* The regulations call for storages to be operated and maintained in accordance with the standards in the *Pennsylvania Technical Guide*. As a part of the *Pennsylvania Technical Guide*, the facility is to have an operation and maintenance plan which includes a contingency plan component. This contingency plan component will outline procedures to be followed in the case of a manure storage leak or spill. The contingency plan is a very important element of a manure storage system. This

contingency plan will provide the operator with the needed information for addressing an emergency situation when immediate action is needed. A contingency plan is not required to be reviewed or approved as a provision of these regulations. The operation and maintenance plan, including the contingency plan component, is provided to and reviewed with the operator when the storage is ready to be used.

*Comment:* Are the manure storage standards in these regulations a duplication of existing regulations and not needed? The publication "Manure Management For Environmental Protection" document MMI October, 1986 states ". . . its supplements provide guidelines that comply with DER regulations concerning animal manures." Reading this, one would believe that there are existing regulations.

*Response:* Section 4 of the act specifically requires the Commission to develop standards for manure storage facilities. The existing guidelines provided in the *Pennsylvania Technical Guide* and the *Manure Management Manual* are very general in nature and not easily implemented in a consistent manner. The Commission has worked with the Advisory Board and numerous agencies and organizations to come to a consensus on effective manure storage standards that are able to be consistently implemented throughout this Commonwealth. The firm numbers established in these regulations will provide specific direction to the regulated community, those assisting with the implementation of the act, and to those developing local ordinances related to manure storages.

*Comment:* Currently many facilities are sitting full with manure or stormwater, or both, on farms to be sold. These are disasters waiting to happen, and prevention through closure regulation is preferred to clean up efforts and possible fines.

*Response:* The Commission agrees with this comment and has added a provision in the final regulations for the removal from service of facilities built under the act. The facilities are required to be removed from service in accordance with *Pennsylvania Technical Guide* standards.

*Comment:* It appears there are various regulations and guidelines that may be duplicative or inconsistent governing the location, design and operation of manure storage facilities. The Commission, in conjunction with the Department, needs to provide one set of clear standards and rules that will be required for all manure storage facilities in this rulemaking.

*Response:* Section 4 of the act specifically requires the Commission to develop standards for manure storage facilities. The Commission has attempted to bring together all the affected and involved parties to develop the one set of rules for manure storage standards contained in these regulations. The Commission has attempted to standardize these requirements to the greatest degree possible and believes that these standards are not in conflict with the requirements of other programs. Rather, the criteria listed in these regulations provide the needed detail to consistently implement the act. The Commission understands that these regulations will apply to those operations planning under the act, and more specifically related to manure storage criteria, only those operations constructing or expanding manure storage facilities required under the act. However, local municipalities may adopt standards which are consistent with and no more stringent than those provided in these regulations.

#### *Plan review and approval*

*Comment:* Under § 83.321, voluntary plans are given 45 days to be reviewed, and CAO plans are given 90 days to be reviewed. This creates a dual tracking system which may be burdensome and unnecessary. It also places voluntary plans ahead of plans required on CAOs in the review priority.

*Response:* The Commission agrees with the comment and has revised the final regulations to provide a 90-day review period for both CAOs and volunteers. The 45-day deemed approval for volunteers has been eliminated.

*Comment:* Section 83.321(e), which states that plans may be resubmitted if no action is taken in 90 days, is unclear. Is it the responsibility of the operator to submit a second copy of the original plan after the initial 90-day time period? After the initial 90-day period an operator is authorized to implement their plan, what happens if they initiate a plan which is subsequently not approved? Also, what is the legal difference of plans which are "authorized to implement," "deemed approved" and "approved."

*Response:* This section of the regulation tracks the language of section 6(e) of the act (3 P. S. § 1706(e)). The Commission believes this provision of the act allows operators to implement a plan prior to approval if no action is taken in 90 days. This will assure minimal disruption of the farmer's operation. The operator implementing a plan that was not acted on within the first 90 days does not have an approved plan. The plan would need to be resubmitted by the operator to get that approval. However, the operator may implement the plan to avoid disruption of time sensitive farming operations. It would be the recommendation of the Commission to not implement major capital improvements listed in the plan until the plan is approved or deemed approved. The Commission believes that a formally approved plan and a deemed approved plan are equally authorized to be implemented.

*Comment:* Some consideration should be given regarding the status of an approved and implemented Chesapeake Bay Plan. If a CAO has a plan, can it be revised and resubmitted for approval as an Act 6 plan? If this is the case, considering these operations have already voluntarily undertaken many of the steps mandated by the regulations, consideration should be given to a revision which would allow these plans to "grandfather," at least for their initial approval.

*Response:* The Commission believes strongly that consistency within the technical requirements of nutrient management plans approved under the act is very important, especially considering the limited liability protection afforded under the act. Existing Chesapeake Bay plans may only need very minor revisions to assure that these plans meet the same technical requirements as outlined in these regulations. Existing Chesapeake Bay plans will not need to be revised to meet these requirements if these operators do not want to participate in this program and if they are not CAOs. Only those new Chesapeake Bay Program participants, entering into agreements after the effective date of the regulations, will need to assure that they meet the requirements of these regulations.

*Comment:* Section 83.321(b) states the Commission or delegated conservation district shall approve, modify or disapprove the plan or plan amendments within 90 days of receipt. The clock should not start until a plan is determined to be administratively complete, therefore, it is recommended that the phrase "after it has been determined to be administratively complete," be added to the regulations.

*Response:* The Commission agrees with this comment and has revised the regulations to provide for a 10-day time period for the reviewing agency to inform an operator that the plan submission is incomplete. Notification will be provided to the operator in those cases when an initial plan submission is incomplete and the 90-day review period will start again when the completed plan is received by the reviewing agency.

*Comment:* NMPs previously written by districts or consultants should be grandfathered if it is determined by the district that the plan meets all the requirements of the regulations.

*Response:* Plans have been developed for a variety of different reasons in the past, and plan content has varied based on the intended purpose of the plan. With this program the Commission, with the help of the Advisory Board, has outlined what it believes are the critical components of a complete nutrient management plan. All old plans that wish to be recognized under this act will need to be certified by a nutrient management specialist that they meet the criteria for a plan as outlined in these regulations. Credit will be given for those portions of these plans that comply with the act and these regulations.

*Plan implementation*

*Comment:* Under § 83.322(a), the CAO is given 3 years to implement the plan and an additional 2 years if (a)(2)...“a sum of \$2 million or more has not been appropriated for the grants and loans.” In the event that little or no funding is available, the extension of time is little consolation to the farmers that may not be able to afford such expenses. The implementation deadline should state “until adequate funding is provided.”

*Response:* The conditions established for the extension of the time period for plan implementation are specifically set forth in section 6 of the act.

*General program comments*

*Comment:* What incentives are being offered to encourage volunteer participation? How are goals of improved efficiency and water quality to be met when key tools like flexibility and individual cost share incentives are taken away?

*Response:* The act provides for financial assistance and limited liability protection for participating operators. Also, the requirements for volunteer participation are less than those imposed on CAOs. The fact that the development of a plan on a volunteer operation can, in most instances, improve farm efficiency and profitability is an incentive in itself. Lastly, the Commission has attempted to develop a program that provides for maximum flexibility for the farmer, as well as provide financial assistance, as resources allow, to support participation in the program.

*Comment:* In regards to Executive Order 1996-1, Regulatory Review and Promulgation, the proposed regulations are in direct conflict with item 1(b) of the order. Item 1(b) states that “costs of regulations shall not outweigh their benefits.”

There is no evidence to suggest that this will be the case and it is doubtful that the cost of compliance with the enforcement of these regulations to both the Commonwealth and the private sector will more than likely far outweigh any definable, quantifiable benefit.

*Response:* The act requires the Commission to develop regulations to implement the provisions of the act. The

program is being developed to provide resources to the regulated community, as well as those volunteering to comply, to minimize the financial burden on the existing farm community. The program has been developed in such a way as to provide for maximum flexibility in the selection of BMPs to solve identified problem areas on the operation. For most problems, there may be solutions that can be selected that can be implemented for little or no cost to the operator or cost share agency. Water quality improvement efforts such as those required under this program should relieve State and local governments and private landowners from incurring costs associated with nitrogen pollution in drinking water.

*Comment:* In regards to Executive Order 1996-1, Regulatory Review and Promulgation, the proposed regulations are in direct conflict with item 1(g) of the order. Item 1(g) states that “where viable nonregulatory alternatives exist, they shall be preferred over regulations.”

There exist viable, nonregulatory alternatives currently available which are yielding very positive results. Some examples are: the response of private enterprise to situations where there is excess manure in creating services to move substantial quantities between Pennsylvania farmers and in many cases out of State; the fact that a high percentage of farmers, especially those that will be determined to be CAOs, have already implemented nutrient management plans; and the abundance of articles in the farm press about successful farm conservation practices.

*Response:* The act requires the Commission to develop regulations to implement the provisions of the act. The act requires a regulatory program to address CAOs, which are those operations with the highest probability of having difficulty in finding ways to distribute their manure nutrients. The CAOs, which represent about 5–10% of the total farms in this Commonwealth, are the only portion of the farm community that must comply with these regulations. The remainder of the farm community can volunteer to comply in order to get financial assistance or to get the limited liability protection provided for in the act. Throughout the development of this program, the Commission has attempted to maximize the use of the private sector in implementing this program and has attempted to maintain maximum flexibility for producers.

*Comment:* In regards to Executive Order 1996-1, Regulatory Review and Promulgation, the proposed regulations are in direct conflict with item 1(i) of the order. Item 1(i) requires that “regulations shall not hamper Pennsylvania’s ability to compete effectively with other states.” No other state has regulations as potentially costly to producers as these. They will put Pennsylvania producers at a severe competitive disadvantage. The proposed regulations hamper the ability for farmers to compete within this Commonwealth.

*Response:* The act requires the Commission to develop regulations to implement the provisions of the act. Over 25% of the states in the country have already enacted similar programs to address agricultural nutrient pollution. Some state programs have more stringent requirements. Vermont’s program, for example, prohibits the winter spreading of manure. The provisions of these regulations have been developed through the Advisory Board to develop a program that will be acceptable to this Commonwealth’s farm community and other sectors of society. The Commonwealth’s program has been set up to provide compliance assistance, both technically and financially, to those complying with the regulations to mini-

mize any impact on the farm community. The provisions of the act and these regulations will provide for a more sustainable agriculture in this Commonwealth, thus providing for a more competitive industry now and in the future. The requirements of these regulations will assure that the farm community can prosper agronomically and economically, while maintaining good neighbor relations in an ever expanding suburban society.

#### G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final regulations.

##### *Benefits*

The intended result of the regulations is to establish nutrient management planning requirements and criteria for the application of nutrient management measures on concentrated agricultural operations in order to prevent the pollution of surface water and groundwater and maximize the use of animal manure resources. The act requires the Commission, in consultation with the Department of Agriculture, the Department and the Advisory Board, to promulgate regulations for nutrient management plans and other requirements to implement the act. Operators of CAOs will be the main beneficiaries of these regulations. Manure has important nutrient value. Nutrient management planning will lead to more efficient use of the manure resource. Improvement of management can result in savings of time, fuel and hours of equipment use for farmers. Regulations will also result in more even distribution of manure across farmland. This will improve the natural resource base of agriculture for the future as well as increased productivity in the present.

Many of the benefits are difficult to quantify. Nutrient management is intended to maximize the potential fertilizer value of manure for crop production. Statewide, these potential values are significant. The 25 million tons of manure produced in this Commonwealth each year contain an estimated 148,000 tons of nitrogen valued at \$460 per ton. It also contains 77,000 tons of phosphorus, worth \$440 per ton. The total value of the nitrogen and phosphorus in the manure is \$133.2 million.

In contrast, the nitrogen content of all the chemical fertilizer sold in this Commonwealth in 1989 was about 74,000 tons and the amount of phosphorus sold in chemical fertilizer was 55,000 tons. The greatest amount of fertilizer is sold in the southeast and southcentral portions of this Commonwealth, which are the regions producing the greatest amounts of manure.

On a typical dairy farm in this Commonwealth of 106 acres and 65 dairy cows with an existing manure storage facility, Penn State researchers have shown that the benefit of accounting for the value of the manure applied on farm as well as the nitrogen produced by legumes could increase profits by as much as \$1,700 per year.

Citizens of this Commonwealth in general will also benefit. Implementation of these regulations will help contribute to the cleanup of the 694 miles of streams in this Commonwealth known to be degraded by agriculture and will reduce further pollution of surface and groundwaters. Downstream uses of water will be protected for recreational, industrial, municipal and agricultural use. Tourism is this Commonwealth's second largest industry, and many elements of tourism are dependent upon surface water quality. The cost of purification of surface and groundwater by the municipality should be reduced. Rural citizens will experience health benefits as

a result of reduction of nitrates in the groundwater. Livestock will also experience health benefits from drinking unpolluted water.

##### *Compliance Costs*

In the private sector today, the costs for developing a plan vary widely, ranging from \$50-\$1,000 or more. The costs depend mainly on the nature of the operation and how much existing information is available. A survey of the 10 crop management associations in this Commonwealth showed an average cost of about \$5.50 per acre for the following services: collect and prepare soil samples; collect manure samples; collect and analyze field specific nutrient data; calculate farm manure production; and write the plan by calculating field specific nutrient application rates and overall farm nutrient balance. Using this cost, a nutrient application plan for a 150-acre farm with 30 fields would cost \$825 (these results are based on 5-acre fields; farms with larger fields may have lower costs). Other sources cited costs from \$150-\$250 for a midsize farm if some sample results and maps are already available or more than \$1,000 if considerable work needs to be done by the private consultant. For CAOs who export all of their manure, the costs of plan development would be minimal.

Consultant costs would also be subject to market forces driven by demand for and availability of certified specialists in different geographical regions. Farm operators can avoid consultant costs by becoming certified to write their own plans. Therefore, Statewide estimates of the total costs are not practical.

The cost of a manure storage structure averages \$38,000 dollars per unit. The cost of in-field nutrient runoff control practices such as diversions and vegetative filter strips averages \$4,750 per operation. These costs are based on information compiled from the Chesapeake Bay Nonpoint Source Pollution Abatement Program. These practices will not necessarily be required on all farms participating in the program.

The costs to local governments have, until now, been viewed as externalities of the costs of production of livestock products. These regulations require certain livestock producers to incorporate the costs of nutrient management into their operation. This will help prevent State and local government and private landowners from incurring the costs associated with nitrogen pollution in drinking water. In Lancaster County alone, about 100 (nearly 20%) of the public water suppliers apply treatment to remove excess nitrates from drinking water. Costs for communities to install nitrate removal facilities have ranged from \$90,000 to nearly \$1.3 million, not including costs to properly dispose of wastewater from the treatment process.

There will be increased program costs for the Commission to implement the program. In addition to providing support to county conservation districts implementing the program, the Commission has entered into an agreement with the Penn State Cooperative Extension to have them provide educational services, workshops, teleconferences, training workshops and computer software development that will be needed by the program. This educational program will cost approximately \$125,000 per year over a period of 5 years.

The Commission intends to seek funding for nutrient management plan development and loans and grants for financial assistance for the implementation of nutrient management plans on existing operations. In the first year following the adoption of the regulations, the Com-

mission will request a minimum of \$2 million from the General Assembly. Additional funding could come from various sources, for example, general fund appropriations, loan funds from the State Revolving Fund and the \$25 million authorized for loans for nutrient management under Act 130 of 1994, Agriculture-Linked Investment Program.

County conservation districts will have to hire some new nutrient management specialists. These costs to the districts would be reimbursed by the Nutrient Management Fund.

*Compliance Plan*

The act requires the Commission, in cooperation with the Department of Agriculture, the Advisory Board, the Penn State Cooperative Extension and the conservation districts, to provide educational and technical assistance to the farming community. The Department of Agriculture has assumed the lead in assisting the Commission in developing this program. Contracts have been signed with the Cooperative Extension of the Pennsylvania State University for training and workshops to provide the farming community and nutrient management specialists with the information and skills necessary to participate in the program.

*Paperwork Requirements*

Fertilization rates are based on plant nutrient needs. These needs are determined based on the specific crop planted and soil characteristics. A soil test will be part of the data required to write a plan and should be kept on record at the operation. Agricultural operations that develop plans under the act will be required to maintain records of how their manure is used. For manure transfers off a CAO, this will be done by using a form entitled "A Manure Transfer Sheet," which will be provided by the Commission. Some CAOs will be required to report their manure transfers by submitting a copy of the Manure Transfer Sheet, or the optional Summary of Manure Transfers form, to the Commission or local conservation district.

The act offers limited liability protection from manure pollution events. This is one of the main incentives for compliance, especially for voluntary involvement with the program. Good recordkeeping will be important to farmers who want to take advantage of this provision. The educational component of the nutrient management program will include instruction on how to keep these records, both to meet the letter of the law and to maximize efficient use of the manure resource.

The regulations have been written so that paperwork will be reduced as much as possible. Aside from submitting a copy of the nutrient management plan to enroll in the program, a majority of the agriculture operators participating are not expected to have to file any additional paperwork. Efforts have been made to minimize the need for plan amendments, especially for volunteers. Those agricultural operations that do have to submit records of manure exports can use the annual summary of manure transfers, which will reduce the amount of paperwork submitted.

Required forms will be supplied by the Commission. However, recognizing that many plans will be developed using a computer, computer generated forms will be accepted.

*H. Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Commission to determine whether these regulations effectively fulfill the goals for which they were intended.

*I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 18, 1995, the Commission submitted a copy of the notice of proposed rulemaking, published at 25 Pa. B. 6161 (December 30, 1995) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Agriculture and Rural Affairs Committees for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee on April 21, 1997. IRRC met on May 1, 1997, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

*J. Findings of the Commission*

The Commission 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 regulations do not enlarge the purpose of the proposal published at 25 Pa. B. 6161.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

*K. Order of the Commission*

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

- (a) The regulations of the Department, 25 Pa. Code Chapter 83, are amended by adding §§ 83.201—83.207, 83.211—83.216, 83.221—83.233, 83.241, 83.251, 83.261, 83.262, 83.271, 83.272, 83.281, 83.282, 83.291—83.294, 83.301, 83.311, 83.321, 83.331, 83.341—83.344, 83.351, 83.361, 83.362, 83.371—83.373, 83.381, 83.391, 83.392, 83.401—83.404, 83.411, 83.421, 83.431, 83.441, 83.451—83.453, 83.461, 83.471, 83.472, 83.481—83.483 and 83.491 to read as set forth in Annex A.
- (b) The Chairperson of the Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review 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 Agriculture and Rural Affairs Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Commission 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 October 1, 1997.

JAMES M. SEIF,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 2490 (May 17, 1997).)*

**Fiscal Note:** 7-291. (1) Nutrient Management Fund; (2) Implementing Year 1996-97 is \$796,900; (3) 1st Succeeding Year 1997-98 is \$1,022,000; 2nd Succeeding Year 1998-99 is \$1,270,000; 3rd Succeeding Year 1999-00 is \$1,038,000; 4th Succeeding Year 2000-01 is \$1,095,000; 5th Succeeding Year 2001-02 is \$1,144,000; (4) Fiscal Year 1995-96 \$94,415; Fiscal Year 1994-95 \$Not Applicable; New Program; Fiscal Year 1993-94 \$Not Applicable; New Program; (7) State Conservation Commission; (8) recommends adoption. The increased costs to the Nutrient Management Fund have been included in the 1997-1998 Governor's Executive Budget Proposal and have also been carried forward for planning purposes. Additional funds for grants and loans may be appropriated by the General Assembly through the budget process.

### Annex A

## TITLE 25. ENVIRONMENTAL PROTECTION

### PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE I. LAND RESOURCES

#### CHAPTER 83. STATE CONSERVATION COMMISSION

#### Subchapter D. NUTRIENT MANAGEMENT

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**GENERAL PROVISIONS**

**§ 83.201. Definitions.**

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

*AEU—Animal equivalent unit*—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

*AEU per acre*—An animal equivalent unit per acre of cropland or acre of land suitable for application of animal manure.

*Act*—The Nutrient Management Act (3 P. S. §§ 1701—1718).

*Agent*—An entity delegated Commission powers and duties under the authority of section 4(3) of the Conservation District Law (3 P. S. § 852(3)), including a partnership, association, corporation, municipality, municipal authority, political subdivision of this Commonwealth and an agency, department, commission or authority of the Commonwealth.

*Agricultural operations*—The management and use of farming resources for the production of crops, livestock or poultry.

*Animal concentration areas*—Barnyards, feedlots, loafing areas, exercise lots, or other similar animal confinement areas that will not maintain a growing crop, or where deposited manure nutrients are in excess of crop needs. The term excludes areas managed as pastures or other cropland. The term excludes pasture access ways, if they do not cause direct flow of nutrients to surface water or groundwater.

*BMP—Best management practice*—A practice or combination of practices determined by the Commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface water and groundwater taking into account applicable nutrient requirements for crop utilization. The term includes, but is not limited to:

- (i) Conservation tillage.
- (ii) Crop rotation.
- (iii) Soil testing.
- (iv) Manure testing.
- (v) Diversions.
- (vi) Manure storage facilities.

(vii) Stormwater management practices.

(viii) Nutrient application.

*CAO—Concentrated animal operation*—Agricultural operations where the animal density exceeds two AEU's per acre on an annualized basis.

*Commission*—The State Conservation Commission established by the Conservation District Law (3 P. S. §§ 849—864).

*Concentrated water flow areas*—Those natural or manmade areas where stormwater runoff is channeled and conveyed directly to a surface water body or groundwater. The term includes, but is not limited to, ditches, waterways, gullies and swales.

*Conservation district*—A county conservation district established under the Conservation District Law.

*Cooperative Extension*—The Penn State Cooperative Extension.

*Critical runoff problem areas*—Those nonvegetated concentrated water flow areas directly discharging into surface water bodies or groundwater, and those areas where runoff containing nutrients that were applied after the growing season discharge directly into surface water or groundwater. The term includes gullies and unprotected ditches.

*Crop group*—A crop field or group of crop fields that are planted to the same crop, managed as a unit, have similar levels of residual nutrients and will produce similar crop yields.

*Farming resources*—The animals, facilities and lands used for the production of crops, livestock or poultry. The lands are limited to those located at the animal production facility which are owned by the operator, and lands under agreement or under the management control of the operator that are an integral part of the production of crops, livestock or poultry and the associated management of nutrients generated by the animal production facility.

*Fund*—The Nutrient Management Fund established under section 10 of the act (3 P. S. § 1710).

*Manure Management Manual*—The guidance manual entitled "Manure Management Manual for Environmental Protection" and its supplements developed by an inter-agency workgroup and published by the Department. The manual describes approved manure management practices for which a permit or approval from the Department is not required as set forth in § 101.8 (relating to pollution control and prevention from agricultural operations).

*Manure storage facility*—A permanent structure or facility, or portion of a structure or facility, utilized for the primary purpose of containing manure. The storage facility of a waste management system is the tool that gives the manager control over the scheduling and timing of the spreading or export of manure. Examples include: liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities. The term does not include the animal confinement areas of poultry houses, horse stalls, freestall barns or bedded pack animal housing systems.

*Mechanical incorporation of manure*—The combination of manure with the soil by means of farm tillage or manure injection equipment, including disks and twisted

shank chisel plows, in order to minimize the potential of overland runoff of the manure.

*NRCS—Natural Resources Conservation Service*—The Natural Resources Conservation Service of the United States Department of Agriculture, formerly known as the Soil Conservation Service.

*Nutrient*—A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

*Nutrient management specialist*—A person satisfying the requirements of the Department of Agriculture's Nutrient Management Certification Program in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).

*Pastures*—Crop areas managed for forage production that are harvested by livestock or livestock and haying and where animal management practices assure that uncollected manure nutrients are limited to the amounts utilized by the crop.

*Pennsylvania Agronomy Guide*—The quick reference book published by the Cooperative Extension as a practical guide to grain and forage production, soil fertility management, pest management and erosion control, with special reference to Pennsylvania conditions.

*Pennsylvania Technical Guide*—A primary reference document published by the United States Department of Agriculture's NRCS, which is used by technically trained persons to plan and apply appropriate BMPs.

*Perennial stream*—A body of water that normally flows year-round in a defined channel or bed, and is capable, in the absence of pollution or other manmade stream disturbances, of supporting bottom dwelling aquatic animals.

*Permanent manure stacking areas*—Designated, improved storage areas that are used for the long term or recurring storage of solid manure.

*Plan—nutrient management plan*—A written site-specific plan which incorporates BMPs to manage the use of plant nutrients for crop production and water quality protection, consistent with the criteria in sections 4 and 6 of the act (3 P. S. §§ 1704 and 1706), and in §§ 83.271, 83.272 and 83.281—83.331 for CAOs or §§ 83.271, 83.272 and 83.391—83.441 for nonCAOs planning under the act.

*Spring*—A place where groundwater flows naturally from rock or soil onto the land surface or into a surface water body, for a total of 183 days or more per year.

*Stormwater*—Runoff from the surface of the land resulting from rain or snow or ice melt.

*Surface water and groundwater*—All rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

*Temporary manure stacking areas*—Unimproved areas, preferably located in crop fields, that are planned to be used in unforeseen circumstances for the storage of solid manure to be used during the next growing season, or for other acceptable uses.

### § 83.202. Scope.

This subchapter specifies minimum criteria and requirements for:

(1) Nutrient management plans required under the act for CAOs.

(2) Voluntary nutrient management plans developed on other agricultural operations and submitted to the Commission or delegated conservation district for approval under the act.

(3) Plans on other agricultural operations receiving financial assistance under the act or under the Chesapeake Bay Nonpoint Source Pollution Abatement Program.

(4) Compliance plans submitted by an agricultural operation found to be in violation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(5) The construction, location, storage capacity and operation of animal manure storage facilities constructed and existing facilities expanded or repaired as part of a plan developed under the act.

(6) Manure handling in emergency situations when there is an outbreak of a contagious disease that poses a threat to animal or human health.

(7) The awarding of financial assistance under the act for the implementation of plans for existing agricultural operations.

(8) The awarding of incentives for the development of plans under the Plan Development Incentives Program in §§ 83.211—83.216.

### § 83.203. Purpose.

The purposes of this subchapter are to:

(1) Assure the proper utilization and management of nutrients on CAOs.

(2) Encourage the proper utilization and management of nutrients on other agricultural operations.

(3) Protect the quality of surface water and groundwater.

### § 83.204. Applicability of requirements.

(a) CAOs required to plan under the act shall refer to the following sections for applicable requirements: §§ 83.261 and 83.271—83.381.

(b) Agricultural operations that plan voluntarily under the act or as a condition of receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program, shall refer to the following sections for applicable requirements: §§ 83.261, 83.271, 83.272 and 83.391—83.491.

### § 83.205. Preemption of local ordinances.

(a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations.

(b) After October 1, 1997, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by the act or this subchapter if the municipal ordinance is in conflict with the requirements of the act and this subchapter.



(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent and no more stringent than the requirements of the act and this subchapter.

(d) No penalty will be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

**§ 83.206. Limitation of liability.**

If an operator is fully and properly implementing a plan approved by a delegated county conservation district or the Commission and maintained under the act and this subchapter, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients under the implementation.

**§ 83.207. Compliance assistance and enforcement.**

(a) The Department of Agriculture will assist the Commission in developing programs to assist those engaged in production agriculture to comply with the act and this subchapter.

(b) The Department of Agriculture will act as an ombudsman to help resolve issues related to county conservation district implementation of the act and this subchapter for those conservation districts delegated nutrient management program responsibilities under § 83.241 (relating to delegation to local agencies).

(c) The Commission will be responsible for taking enforcement actions under the act and this subchapter. In the exercise of its enforcement authority, the Commission will be assisted by the staff of the Department for actions resulting in violations of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and will be assisted by the Department of Agriculture for all other violations.

**PLAN DEVELOPMENT INCENTIVES PROGRAM**

**§ 83.211. Applicant eligibility.**

(a) In addition to seeking financial assistance for the implementation of a plan under §§ 83.221—83.233 (relating to financial assistance), the operator of a CAO or other agricultural operation planning under the act, may apply for funding under the Plan Development Incentives Program for the development of a plan.

(b) Only agricultural operations that were producing livestock or poultry as of October 1, 1997, are eligible to receive funding under this program.

(c) For the time period of October 1, 1997, to September 30, 1998, only CAOs are eligible to receive funding under this program.

**§ 83.212. Application procedure.**

(a) An application for funding from the Plan Development Incentives Program shall be made on forms developed by the Commission and shall be addressed to the Commission or delegated conservation district.

(b) An application received by the Commission or delegated conservation district will be reviewed for completeness, eligibility and the appropriate level of funding.

(c) If the application is determined to be incomplete, the Commission, or delegated conservation district, will provide the applicant with a written explanation of the reason for the determination, and request the additional information needed to complete the application process.

(d) The Commission or delegated conservation district will approve or disapprove each application submitted. Within 45 days of receipt of the required information, applicants will be notified in writing of actions taken on their applications and their rights to appeal the actions.

(e) If the approval of applications for funding from the Plan Development Incentives Program is delegated to a county conservation district under § 83.241 (relating to delegation to local agencies), actions of conservation districts shall be deemed actions of the Commission unless an applicant aggrieved by an action of a conservation district seeks Commission review of the action within 30 days from actual or constructive notice of the action.

(f) The applicant may appeal a decision of the Commission to the EHB as provided for in section 15 of the act (3 P. S. § 1715).

**§ 83.213. Application prioritization criteria.**

(a) Only CAOs are eligible for funding from this program for the time period of October 1, 1997, to September 30, 1998.

(b) After September 30, 1998, the distribution of funding shall be provided to the extent funds are available based on the following prioritization:

- (1) CAOs coming into existence after October 1, 1997, due to loss of rented acres.
- (2) Non-CAOs volunteering to comply with the act.
- (3) CAOs in existence before October 1, 1997.
- (4) Other CAOs coming into existence after October 1, 1997.

**§ 83.214. Eligible costs.**

(a) Eligible costs considered by the Commission are those fees incurred for the development of the plan.

(b) Only those soil and manure test costs included in the service fee charged for plan development are eligible for reimbursement.

**§ 83.215. Funding limitations.**

(a) The Commission will limit individual awards in the amounts it deems appropriate for the particular classification of operation.

(b) Funding under this program will be limited to a one-time reimbursement payment for plan development costs incurred after the operator's application has been approved.

(c) Funding under this program will not be available for planning efforts initiated prior to approval of the request for participation in the program.

**§ 83.216. Implementation and reporting.**

(a) The Commission will develop implementation and reporting documents defining the terms and conditions under which funding under this program will be provided and other documents determined to be necessary by the Commission.

(b) Only plans meeting the requirements of this subchapter will be eligible for reimbursement under this program.

(c) The applicant shall maintain financial records for 3 years to substantiate reimbursement expenditures covered by this program.

**FINANCIAL ASSISTANCE****§ 83.221. Applicant eligibility.**

(a) An owner or operator of an agricultural operation existing as of October 1, 1997, may apply for financial assistance for the implementation of plans developed under the act. The owner or operator shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

(b) If the applicant is a lessee or operator, the applicant shall apply jointly with the owner of the agricultural operation for financial assistance. The lessee or operator and owner shall be jointly responsible for the repayment of financial assistance.

**§ 83.222. Condition for receipt of financial assistance.**

An agricultural operation approved to receive financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program after October 1, 1997, or otherwise receiving financial assistance under the act for plans shall agree to develop and implement a plan as a condition for receiving the financial assistance.

**§ 83.223. Financial assistance eligibility criteria.**

(a) The Commission will consider the following criteria in reviewing applications for financial assistance:

(1) Whether the project will improve the health, safety or environment of the people of this Commonwealth and otherwise satisfy the purposes of the act and this subchapter.

(2) The long-term financial or operational viability, or both, of the agricultural operation.

(3) The cost effectiveness of the proposed BMPs in comparison with other alternatives.

(4) The applicant's ability to operate and maintain the BMPs in a proper manner.

(b) Only those BMPs listed in an approved plan or plan amendment are eligible to receive funding under the plan implementation category of the Financial Assistance Program.

**§ 83.224. Project evaluation and prioritization criteria.**

(a) Applications for financial assistance will be evaluated in accordance with project evaluation criteria guidelines developed by the Commission. CAOs will receive priority evaluation from October 1, 1997, to September 30, 1998.

(b) Applications for financial assistance will be prioritized for consideration as follows:

(1) CAOs in existence on October 1, 1997, complying with the act and this subchapter.

(2) CAOs coming into existence after October 1, 1997, due to loss of rented acres.

(3) Non-CAOs with critical BMPs.

(4) Other agricultural operations.

**§ 83.225. Application procedure.**

(a) An application for financial assistance shall be made on forms approved by the Commission and shall be addressed to the Commission or a delegated agent.

(b) An application received by the Commission or delegated agent will be reviewed for completeness and eligibility. An application shall include a summary of the

approved plan which identifies the proposed BMPs for which financial assistance is being requested.

(c) If the application is determined to be incomplete, the Commission or a delegated agent will provide the applicant with a written explanation of the reasons for the determination, and request the additional information needed to complete the application process.

(d) The Commission will approve or deny each application submitted. Within 45 days of receipt of all required information, applicants will be notified in writing of actions taken on their applications and their right to appeal the actions.

(e) The applicant may appeal a decision of the Commission to the EHB as provided for in section 15 of the act (3 P. S. § 1715).

**§ 83.226. Eligible costs for the implementation of an approved plan.**

(a) Eligible project costs considered by the Commission shall be the costs necessary to implement the plan and may include the following:

(1) Project design and engineering including plans, specifications, cost estimates, certifications and surveys.

(2) Costs associated with obtaining the financial assistance and may include loan origination or loan application fees, or both, title fees and filing fees.

(3) Project construction, including labor, materials, machinery, equipment and site preparation associated with the project.

(4) Other costs the Commission has determined to be necessary.

(b) Funds encumbered or advanced for the project which are not used for eligible costs in the project shall be returned to the fund or account from which they originated for reallocation and use in the implementation of other plans.

**§ 83.227. Loans.**

(a) The Commission will issue loans and set applicable terms and conditions it deems appropriate. The Commission may consider factors it deems relevant, including the following:

(1) Current market interest rates.

(2) The financial ability of the applicant to repay.

(3) The necessity to maintain the fund in a financially sound manner.

(b) Loans may be based on the ability to repay from future revenue to be derived from the applicant's agricultural operation. Loans may be secured by a mortgage or the security interest, or both, or by any other fiscal manner which the Commission deems appropriate. The minimum rate of interest to be paid on any loan made is 1%.

(c) The term of loans may not exceed 10 years from the day the loan agreements are executed.

(d) The Commission may defer the initiation of the repayment of principal up to 12 months from the date the loan agreements are executed. The borrower may begin principal and interest payments sooner than required, if the borrower so desires.

**§ 83.228. Loan guarantees.**

The Commission may make loan guarantees if the Commission determines that it is an appropriate method to accomplish the purposes of the act or this subchapter.

**§ 83.229. Grants.**

(a) A grant will be considered when funds have been made available to the Commission and the Commission determines that the financial condition of the recipient is such that the repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of BMPs without a grant.

(b) The Commission may limit individual grant awards to whatever amount it deems appropriate. The maximum amount of a grant may not exceed those maximum grant limits established by the Commission. An agricultural operation that has received or is approved to receive financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program is eligible for grants under the Nutrient Management Financial Assistance Program up to the grant limit established by the Commission in grants from combined sources of the Chesapeake Bay Program and the Nutrient Management Financial Assistance Program.

(c) A grant will be made subject to the terms and conditions the Commission establishes.

**§ 83.230. Grants and loans.**

The Commission will, when it deems it appropriate and to the extent financial circumstances permit, mix grant funds with loan funds.

**§ 83.231. Funding limitations.**

(a) *Total funding limits.* Total assistance provided under loans, grants and loan guarantees for the implementation of a single plan may not exceed those funding limits established by the Commission.

(b) *Partial funding.* The Commission reserves the right to provide funding for only a portion of the total costs of the project or only a portion of the amount requested in a financial assistance application.

(c) *Least cost alternative.* Financial assistance provided may not exceed that amount necessary for the least-cost alternative for each BMP included.

(d) *Limitation.*

(1) No financial assistance will be made available that might jeopardize or compromise the fund.

(2) Financial assistance will not be available for refinancing.

(3) Financial assistance will not be available for BMPs if construction is initiated prior to submission of an application for financial assistance, unless a letter of no prejudice has been issued by the Commission as provided in subsection (e).

(e) *Letters of no prejudice.* Exceptions to the general prohibition against initiation of construction prior to consideration by the Commission may be made when plan implementation is required to proceed before an application for financial assistance can be submitted to the Commission. In this case, a potential applicant may apply to the Commission for a letter of no prejudice wherein the Commission agrees to consider a future application for financial assistance without limitation or prejudice even if project construction has begun at that time. If the Commission issues a letter of no prejudice, project construction can begin without jeopardizing or benefitting a future application.

**§ 83.232. Implementation and reporting.**

(a) The Commission will develop financial assistance documents which will define the terms and conditions

under which the financial assistance is offered and specify other documents determined to be necessary by the Commission.

(b) Unless otherwise approved by the Commission, the applicant shall begin construction of the project, in accordance with its application within 6 months after approval by the Commission. If the applicant does not begin implementation within the specified time period and continue work without unreasonable interruption, the financial assistance may be withdrawn by the Commission.

(c) Design and construction of BMPs shall conform to the standards found in the *Pennsylvania Technical Guide*. The applicant may not significantly deviate from the scope, design or time schedule for a project unless prior written approval is given by the Commission or delegated agent. The term "scope," as used in this subsection, means the extent of project activities determined by the Commission to be eligible for financial assistance.

(1) A request for significant changes in scope shall be submitted in writing to the Commission for approval. When changes in scope require a plan amendment under the criteria of § 83.371 or § 83.481 (relating to plan amendments), the applicant shall provide a copy of the approved plan amendment.

(2) Funding eligibility for a change in scope will be based on the criteria described in § 83.223 (relating to financial assistance eligibility criteria). Consent of the Commission to a change in scope will not be deemed to increase the amount of financial assistance provided without the express approval of the Commission. Funding for changes in the scope of an assistance project will be approved only in the following circumstances:

(i) The change in scope is a result of new or revised requirements, Federal legislation, or a Federal regulation thereunder, State legislation or State regulation thereunder, the act, this subchapter, The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or regulations thereunder.

(ii) The change in scope is necessary to protect the structural or process integrity of the facilities.

(iii) Adverse conditions are identified during the construction of the facilities which could not have been foreseen by the design engineer prior to encountering the condition.

(iv) The change is necessary to relieve emergency conditions occurring during construction of the facilities.

(d) A request for a disbursement of financial assistance shall be on forms approved by the Commission, shall include a statement certifying the project was completed as planned, and shall be submitted on a schedule approved by the Commission.

(e) The applicant shall maintain project progress and financial records to substantiate expenditures, as well as plan implementation records as outlined in §§ 83.341—83.344 for CAOs or §§ 83.451—83.453 for volunteers.

(f) If the applicant fails to comply with this section, the Commission may withdraw the remaining funds allocated to the project, as well as take other action which it is legally entitled to take.

**§ 83.233. Delegation of financial assistance.**

(a) Under section 4(3) of the Conservation District Law (3 P. S. § 852(3)) and subject to this section, the Commission may by written agreement delegate to one or more agents the administration of the financial assistance provisions of this subchapter in §§ 83.221—83.232. The

Commission will retain final approval authority for all applications for financial assistance.

(b) To the extent delegated by the agreement, the delegations may include the authority to review and make recommendations to the Commission on applications for financial assistance under the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to administer the Financial Assistance Program. The Commission will retain final approval authority for all applications for financial assistance received by a delegated agent.

(c) A delegation agreement shall:

(1) Specify the powers and duties to be performed by the delegated agents.

(2) Provide for the commitment of sufficiently trained staff and resources to perform the process and duties to be delegated.

(3) Require the delegated agent to maintain records of activities under the delegation.

(4) Provide for the monitoring and supervision by the Commission of performance by the delegated agents of the functions delegated under the agreement.

(d) When the Commission delegates one or more of its powers and duties to an agent, the Commission will retain the concurrent power to administer the financial assistance provisions of this subchapter.

#### DELEGATION TO LOCAL AGENCIES

##### § 83.241. Delegation to local agencies.

(a) Under section 4(8) of the act (3 P. S. § 1704(8)) and subject to this section, the Commission may by written agreement delegate to a conservation district one or more of its administrative or enforcement authorities under the act.

(b) The delegation of administrative or enforcement authority may be made to a conservation district when the district demonstrates it has or will have an adequate program and sufficient resources to accept and implement the delegation.

(c) To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to implement the act.

(d) A delegation agreement shall:

(1) Specify the powers and duties to be performed by the delegated district.

(2) Provide for the commitment of sufficient trained staff and resources to perform the powers and duties to be delegated.

(3) Require the delegated conservation district to maintain records of activities performed under the delegation.

(4) Provide for the monitoring and supervision by the Commission of performance by the delegated conservation district of the functions delegated under the agreement.

(e) When the Commission delegates one or more of its powers and duties to a delegated conservation district, the Commission will retain the concurrent power to administer and enforce the act and this subchapter.

#### COMPLIANCE PLANS

##### § 83.251. Compliance plans.

An agricultural operation found to be in violation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) may be required to submit a plan that meets the requirements of the act and §§ 83.261—83.381 within 3 months or notification thereof and shall be implemented in accordance with the schedule as approved.

#### NUTRIENT MANAGEMENT PLANS

##### § 83.261. General.

(a) A CAO in existence on October 1, 1997, shall submit to the Commission or a delegated conservation district, a plan by October 1, 1998.

(b) A CAO which comes into existence after October 1, 1997, shall submit to the Commission or a delegated conservation district a plan by January 1, 1998, or prior to the commencement of manure operations, whichever is later. It is recommended that the CAO submit the plan for review and approval prior to construction.

(c) An agricultural operation which, because of expansion of animal units or loss of land suitable for manure application, meets the criteria for a CAO shall submit to the Commission or a delegated conservation district a plan within 3 months after the date of completion of the expansion or the loss of land. It is recommended that an operator who intends to expand an existing agricultural operation submit the plan for review and approval prior to expansion.

(d) An agricultural operation other than a CAO may voluntarily submit a plan at any time after October 1, 1997. It is recommended that the operator of an agricultural operation voluntarily submitting a plan under the act, submit the plan for review and approval prior to construction, if construction activities are called for in the plan.

(e) Plans and plan amendments shall be developed by nutrient management specialists certified in accordance with the Department of Agriculture's Nutrient Management Specialist Certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification). The specialists shall certify that the plans are in accordance with the act and this subchapter.

##### § 83.262. Identification of CAOs.

(a) *Procedure.* To determine if a particular agricultural operation is a CAO which is required to develop a plan, the number of AEUs per acre on the agricultural operation shall be calculated using the following procedure:

(1) The number of AEUs on the agricultural operation shall be calculated by using the following steps:

(i) Multiply the average number of animals on the agricultural operation on a typical production day by the standard animal weight contained in Table A to equal a total weight. Nonstandard weights may be used in place of those in Table A, if there is sufficient documentation to support the use of the nonstandard weights. For those animal types not included in Table A, the average animal weight for the operation shall be used for this calculation, taking into account, if applicable, the range of animal weights throughout the production cycle of the animal.

(ii) Multiply the total weight reached in subparagraph (i) by the number of production days per year, then divide by 365 days.

(iii) Divide the number reached in subparagraph (ii) by 1,000 to equal the number of AEUs for each type of animal.

(iv) Total the number of AEUs for each type of animal to equal the total number of AEUs on the agricultural operation.

**Table A**

<i>Type of Animal</i>	<i>Standard Weight in Pounds During Production (Range)</i>
<i>Swine</i>	
Nursery Pig	30 (15—45)
Finishing Pig	145 (45—245)
Gestating Sow	400
Sow and Litter	470
Boar	450
<i>Beef</i>	
Calf 0—8 Mo.	300 (100—500)
Finishing 8—24 Mo.	850 (500—1,200)
Cow	1,150
<i>Veal</i>	
Calf 0—16 Wk.	250 (100—400)
<i>Poultry</i>	
Layer 18—65 Wk.	3.25 (2.75—3.76)
Layer 18—105 Wk.	3.48 weighted avg.
Layer Brown Egg 20—65 Wk.	4.3 (3.6—5)
Layer Brown Egg 20—105 Wk.	4.63 weighted avg.
Pullets 0—18 Wk.	1.42 (0.08—2.75)
Broiler, Lg. 0—57 Days	3.0 (0.09—5.9)
Broiler, Med. 0—43 Days	2.3 (0.09—4.5)
<i>Roaster</i>	
Male 0—8 Wk.	3.54 (0.09—7)
Female 0—10 Wk.	3.54 (0.09—7)
Turkey, Tom 0—18 Wk.	14.1 (0.12—28)
Turkey, Hen 0—14 Wk.	7.1 (0.12—14)
Duck 0—43 Days	3.56 (0.11—7)
Guinea 0—14 to 24 Wk.	1.9 (0.06—3.75)
<i>Pheasant</i>	
0—13 to 43 Wk.	1.53 (0.05—3)
<i>Chukar</i>	
0—13 to 43 Wk.	0.52 (0.04—1)
<i>Quail</i>	
0—13 to 43 Wk.	0.26 (0.02—0.5)
<i>Dairy</i>	
<i>Holstein/Brown Swiss</i>	
Cow	1,300
Heifer 1—2 Yr.	900 (650—1,150)
Calf 0—1 Yr.	375 (100—650)
Bull	1,500
<i>Ayrshire/Guernsey</i>	
Cow	1,100
Heifer 1—2 Yr.	800 (575—1,025)
Calf 0—1 Yr.	338 (100—575)
Bull	1,250
<i>Jersey</i>	
Cow	900
Heifer 1—2 Yr.	600 (400—800)
Calf 0—1 Yr.	225 (50—400)
Bull	1,000
<i>Sheep</i>	
Lamb 0—26 Wk.	50 (10—90)
Ewe	150
Ram	185
<i>Goat</i>	
Kid 0—10 Mo.	45 (5—85)
Doe	125

<i>Type of Animal</i>	<i>Standard Weight in Pounds During Production (Range)</i>
Buck	170
<i>Horse</i>	
Foal 0—6 Mo.	325 (125—625)
Yearling	750 (625—875)
Nondraft Breeds, Mature	1,000
Draft Breeds, Mature	1,700

(2) The number of AEUs per acre shall be calculated by dividing the total number of AEUs by the total number of acres of land suitable for the application of manure to equal the number of AEUs per acre.

(i) Land suitable, for the sole purpose of determining whether an agricultural operation is a CAO, is land in the management control of the operator, that meets the following criteria:

(A) The land is cropland, hayland or pastureland that is an integral part of the agricultural operation, as demonstrated by title, rental agreements, crop records or form provided by the Commission.

(B) The land is or will be used for the application of manure generated by the agricultural operation.

(ii) The term "land suitable" does not include farmstead areas or forest land.

(b) *Example of AEU per acre calculation.* An operation has an average number of 10,000 medium broilers on a typical production day with an average weight during production of 2.3 pounds. During the year there are six flocks with a production period of 43 days per flock. This amounts to 258 production days per year. During the remaining down time, no manure is produced. The farmstead is 2 acres. There are 3 acres of woodlands and 7 acres of cropland. The following is the AEU per acre calculation for this operation:

Step 1. 10,000 med. broilers × 2.3 lb. avg. wt. = 23,000 lb. total weight

Step 2. 23,000 lb. total weight × 258 production days per year divided by 365 days = 16,257 lbs.

Step 3. 16,257 lbs. divided by 1,000 lbs. per AEU = 16.25 AEUs

Step 4. Total number of AEUs on the agricultural operation is 16.25

Step 5. 16.25 AEUs divided by 7 acres of land suitable = 2.3 AEUs per acre

**CONTENT REQUIREMENTS FOR ALL PLANS**

**§ 83.271. Scope of plan.**

Plans developed under the act shall comply with the act and this subchapter.

**§ 83.272. Content of plans.**

(a) Plans developed for CAOs shall, at a minimum, comply with §§ 83.261 and 83.271—83.331.

(b) A plan developed for an agricultural operation under the act either voluntarily, or as a condition of receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program shall, at a minimum, comply with §§ 83.261, 83.271, 83.272 and 83.391—38.441.

(c) A plan shall be organized to correspond to the appropriate sections described in subsections (a) and (b). A plan shall have a separate section for each of these sections. The operator shall be consulted during the preparation of all sections of the plan.

(d) The BMPs listed in the plan shall be consistent with the management practices listed in other relevant plans, such as a conservation plan, developed for the operation, unless otherwise justified in writing by the planner to the Commission or delegated conservation district.

#### **PLAN SUMMARY INFORMATION FOR CAO PLANS**

##### **§ 83.281. Identification of agricultural operations and acreage.**

(a) The plan shall include an agricultural operation identification sheet which shall include the following information:

- (1) The operator name, address and telephone number.
- (2) The signature of the operator, indicating the operator's concurrence with the practices outlined in the plan.
- (3) The counties where land included in the plan is located.
- (4) The watersheds of land included in the plan. The existence of any special protection waters, as identified in § 93.9 (relating to designated water uses and water quality criteria), shall also be noted.
- (5) The total acreage of the agricultural operation included in the plan.

(6) The total acreage of land on which nutrients shall be applied. The total acreage shall be separated into acres of owned land and acres of rented land.

(7) The number of AEUs per acre on the agricultural operation.

(8) The name and nutrient management certification program identification number, of the nutrient management specialist that prepared the plan, the date of plan preparation and the date of revisions, if any.

(b) The plan shall contain maps or aerial photographs of sufficient scale which clearly identify:

- (1) The location and boundaries of the agricultural operation.
- (2) Individual field boundaries under the plan.
- (3) Field number and acreage of each field.
- (4) The identification of all soil types and slopes on the agricultural operation. An NRCS soil survey map with the soil identification legend shall be sufficient to satisfy this requirement. These soil survey maps may be available at the county NRCS office or conservation district office.

(5) The location of areas where manure application may be limited based on § 83.294(5) (relating to nutrient application procedures).

##### **§ 83.282. Summary of plan.**

(a) The plan shall contain a summary that includes:

- (1) A chart listing:
  - (i) The total amount of manure generated on the operation annually.
  - (ii) The total amount of manure to be used on the operation annually.
  - (iii) The total amount of manure to be exported from the operation annually.
- (2) Nutrient application rates by field or crop group.
- (3) Procedures and provisions for the utilization or proper disposal of excess manure.

(b) Manure management and storage practices, stormwater runoff control practices and other appropriate BMPs necessary to protect the quality of surface water and groundwater shall be referenced in the summary.

#### **NUTRIENT APPLICATION FOR CAO PLANS**

##### **§ 83.291. Determination of available nutrients.**

(a) The plan shall include the amount of each type of nutrient source used on the operation, including: manure, sludges, compost, cover crops, commercial fertilizers and other nutrients that will be applied to the agricultural operation.

(b) The amount and nutrient content of manure to be applied on the agricultural operation shall be determined as follows:

(1) The plan shall include the average number of animals of each animal type, on a typical production day, for the agricultural operation.

(2) The amount of manure produced and when it is available for spreading on the agricultural operation shall be calculated based on the average number of AEUs on the agricultural operation or actual production data, and the storage capacity of manure storage facilities, if present. Bedding, wash water, rain and runoff, when mixed with the manure, shall be included in determining the total volume of manure to be applied.

(3) For the preparation of the plan and plan amendments, it is recommended that the nutrient content of the manure be determined by using accepted manure sampling and chemical analysis methods as outlined in the *Manure Management Manual*, or the *Pennsylvania Agronomy Guide*. When sampling and analysis is not done, the nutrient management specialist shall use standard book values such as those contained in the *Manure Management Manual* or the *Pennsylvania Agronomy Guide* to determine the nutrient content of the manure. The nutrient content of the manure shall be recorded in the plan.

(c) The nitrogen available from manure shall be based on the appropriate availability factors such as those contained in the *Manure Management Manual* or the *Pennsylvania Agronomy Guide*. The amount of nitrogen available in the manure, and the planned manure incorporation time used to determine the nitrogen available, shall be included in the plan.

(d) The residual nitrogen from legume crops and applications of manure, as described in the *Pennsylvania Agronomy Guide*, shall be recorded in the plan and credited when determining nutrient application rates.

(e) For the development of the initial plan, soil tests shall be required to represent the fields in the operation for phosphorus (P), potassium (K), soil pH and lime requirement using those procedures for the Northeastern United States, Bulletin #493, published by the University of Delaware, or other Commission approved procedures. Soil tests conducted within the previous 3 years prior to submitting the initial plan are acceptable. After the approval of the initial plan, soil tests shall be required at least every 6 years from the date of the last test. Soil tests, or the results of the soil tests, are not required to be submitted with the plan, but shall be kept on record at the operation.

##### **§ 83.292. Determination of nutrients needed for crop production.**

(a) The plan shall include the acreage and realistic expected crop yields for each crop group.

(b) For the development of the initial plan, expected crop yields may not exceed those considered realistic for the soil type and climatic conditions, as set by the operator and the specialist, and approved by the Commission or delegated conservation district. If actual yield records are available during the development of the initial plan, the expected crop yields may be based on these records.

(1) If after the first 3 years of implementing the plan, the yields do not average at least 80% of the planned expected yield, the plan shall be amended to be consistent with the documented yield levels unless sufficient justification for the use of the higher yields is provided in writing to the Commission or delegated conservation district.

(2) For determining expected crop yields for future plan updates and amendments, expected crop yields shall be based on documented yield levels achieved for the operation. Expected crop yields higher than historically achieved may be used if the operator provides sufficient justification in writing for the use of the higher yields to the Commission or delegated conservation district.

(c) The plan shall include a determination of the amount of nutrients necessary for realistic expected crop yields.

(d) The *Pennsylvania Agronomy Guide* or *Manure Management Manual* may be used to assist in determining the amount of nutrients necessary for achieving realistic expected crop yields.

**§ 83.293. Determination of nutrient application rates.**

(a) Nitrogen shall be applied only in the amounts necessary to achieve realistic expected crop yields or at a rate not exceeding what the crop will utilize for an individual crop year.

(b) The planned manure application rate shall be recorded in the plan. The planned manure application rate may be any rate equal to or less than the balanced manure application rate based on nitrogen. The balanced manure application rate based on nitrogen shall be determined by first subtracting the amount of available residual nitrogen and any other applied nitrogen, such as nitrogen applied in the starter fertilizer, from the amount of nitrogen necessary for realistic expected crop yields and then dividing this by the available nitrogen content of the manure as determined by standard methods.

(c) The plan shall include calculations indicating the difference between the recommended nitrogen necessary for realistic expected crop yields and nitrogen applied including, but not limited to, manure, sludge, starter fertilizer and other fertilizer. A deficit may be made up with supplemental nitrogen applications. A nitrogen availability test may also be used to determine supplemental nitrogen needs.

**§ 83.294. Nutrient application procedures.**

The plan shall include nutrient application procedures that meet the following criteria:

(1) Nutrients shall be uniformly applied to fields during times and conditions that will hold the nutrients in place for crop growth, and protect surface water and groundwater in accordance with the approved manure management practices as described in the *Manure Management Manual*.

(2) Intended target spreading periods for the application of manure shall be included in the plan.

(3) Application rates and procedures shall be consistent with the capabilities, including capacity and calibration range of available application equipment.

(4) Application rates for liquid manure irrigation shall be based on the lesser of either the nutrient plan application rates determined in accordance with § 83.293(a) and (b) (relating to determination of nutrient application rates), or the rates determined to be within infiltration capabilities of the soil such as those contained in the NRCS *Pennsylvania Irrigation Guide* or the Mid West Plan Service, *Livestock Waste Facilities Handbook*.

(5) Manure may not be applied in the following situations:

(i) Within 100 feet of an open sinkhole where surface water flow is toward the sinkhole, unless the manure is mechanically incorporated within 24 hours of application.

(ii) Within 100 feet of active private drinking water sources such as wells and springs, where surface water flow is toward the water source, unless the manure is mechanically incorporated within 24 hours of application.

(iii) Within 100 feet of an active public drinking water source, unless other State or Federal laws or regulations require a greater isolation distance.

(iv) Within concentrated water flow areas in which vegetation is maintained, such as ditches, waterways, gullies and swales, during times when soil is frozen, snow covered or saturated.

(v) Within concentrated water flow areas in which vegetation is not maintained, such as intermittent streams, gullies and ditches.

(vi) Within 100 feet of streams, springs, lakes, ponds, intakes to agricultural drainage systems (such as in-field catch basins, and pipe outlet terraces), or other types of surface water conveyance, where surface water flow is toward the identified area, when soil is frozen, snow covered or saturated.

(vii) Within 200 feet of streams, springs, lakes, ponds, intakes to agricultural drainage systems (such as in-field catch basins, and pipe outlet terraces), or other types of surface water conveyance, where surface water flow is toward the identified area and where the slope is greater than 8% as measured within the 200 feet, during times when soil is frozen, snow covered or saturated.

(6) If winter spreading of manure is anticipated, the application procedures for the winter spreading of manure shall be described in the plan. The procedures described in the plan shall be consistent with those contained in the *Manure Management Manual*. If procedures other than those in the *Manure Management Manual* are to be used, approval shall be obtained from the Department or a delegated conservation district.

**ALTERNATIVE USES FOR EXCESS MANURE FOR CAO PLANS**

**§ 83.301. Excess manure utilization plans for CAOs.**

(a) When manure will be exported to known landowners or operators for agricultural land application, the plan shall list:

(1) The name and general location of the proposed importing agricultural operation.

(2) The estimated number of acres available for spreading manure at each importing agricultural operation.

(3) The estimated amount of manure to be exported annually to known landowners or operators for agricultural land application.

(4) The estimated amount of manure that could be exported to each agricultural operation.

(5) The intended season for the manure transfer.

(b) When manure will be transported through a manure broker, the plan shall list:

(1) The broker's name.

(2) The estimated amount of manure the exporting agricultural operation will transfer through the broker annually.

(3) The intended season for the manure transfer.

(c) When manure will be transferred to a known importer for use other than agricultural land application, the plan shall include the following information:

(1) The name and general location of the importing agricultural operation.

(2) A brief description of the planned use of the imported manure.

(3) The estimated amount of manure the operator plans to transfer to the importer annually.

(4) The intended season for the manure transfer.

(d) Where manure is to be processed or utilized on the CAO in a manner other than for agricultural land application, the plan shall briefly describe the planned use of the manure, including the estimated amount expected to be processed or utilized annually.

(e) Plans for CAOs that come into existence after October 1, 1997, or agricultural operations newly classified as CAOs due to expansion after October 1, 1997, shall provide for the utilization of excess manure by meeting one of the following:

(1) Demonstrate agricultural land is available for application by providing the information as in subsection (a).

(2) Include written agreements with importers or brokers and follow subsection (b) or (c).

(3) If manure is to be used on the agricultural operation for purposes other than for land application, describe how the manure is to be processed or utilized as in subsection (d).

(f) Agricultural operations newly classified as CAOs due to the loss of land available for manure application, may use any of the manure utilization options described in this section.

(g) When manure is to be marketed from an existing agricultural operation using an open advertising system and the importers cannot be identified at planning time, the plan shall describe the proposed marketing scheme, including the estimated amount of manure expected to be marketed annually using an open advertising system.

#### MANURE MANAGEMENT FOR CAO PLANS

##### § 83.311. Manure management.

(a) In the preparation of a plan, the nutrient management specialist, or specialist in conjunction with other individuals with nutrient runoff control expertise such as NRCS or conservation district personnel, shall conduct a review of the adequacy of existing manure management practices to prevent surface water or groundwater pollution under normal climatic conditions for the location. Practices to be evaluated in this review include manure handling, collection, barnyard runoff control, storage and spreading practices. Examples of inadequate manure management practices include the following:

(1) Manure, contaminated water or nutrients leaving manure storage or animal concentration areas and discharging into surface water or groundwater.

(2) The uncontrolled flow of stormwater into, or across, manure storage facilities, temporary manure stacking areas and animal concentration areas.

(3) Manure storage facilities overflowing or maintained at levels above design full levels.

(4) Manure storage facilities that are sized for less than the projected manure accumulation based on the expected application periods used in the plan.

(5) Leaking or unstable manure storage facilities.

(b) As part of a plan certification, the nutrient management specialist shall assure that the review required under subsection (a) was undertaken in the preparation of the plan. The plan will contain those BMPs that are necessary to correct identified water contamination sources and protect surface water and groundwater. During the implementation of the approved plan, the BMPs shall meet the specifications contained in the *Pennsylvania Technical Guide*. The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs to implement the BMPs listed in the approved plan. The BMP designs shall be kept on record by the operator as a supplement to the plan.

(c) The following BMPs may be used to protect water quality and to control water in farmstead, manure storage and animal concentration areas:

(1) Manure storage facilities including permanent manure stacking areas. The construction of manure storage facilities is not required unless necessary to protect surface water and groundwater as part of an integrated nutrient management system.

(2) Adequate collection of manure from animal concentration areas for utilization on cropland or for other acceptable uses.

(3) Diversion of contaminated runoff within animal concentration areas to a storage, lagoon, collection basin, vegetated filter area, or another suitable site or facility.

(4) Diversion or elimination of contaminated water sources unless required for proper operation of the manure management system.

(5) Temporary manure stacking areas if they are located outside concentrated water flow areas and areas where manure application is restricted or prohibited based on § 83.294(5) (relating to nutrient application procedures).

(6) Other appropriate BMPs acceptable to the Commission.

(d) When temporary manure stacking areas may be necessary for the implementation of the plan, the plan shall identify those areas available for the storage of manure due to unforeseen circumstances such as adverse weather conditions. Manure shall be removed from temporary stacking areas for utilization on cropland or other acceptable uses as soon as feasible.

(e) Information contained in other sections of the plan may be used by the specialist when addressing this section.

(f) The siting, design and installation of manure storage facilities shall meet the requirements in § 83.351 (relating to minimum standards for the design, construc-



tion, location, operation, maintenance and removal from service of manure storage facilities) and the *Pennsylvania Technical Guide*.

**STORMWATER RUNOFF CONTROL FOR CAO PLANS**

**§ 83.321. Stormwater runoff control.**

(a) *Field runoff control.*

(1) In the preparation of a plan, the nutrient management specialist, or specialist in conjunction with other individuals with nutrient runoff control expertise such as NRCS or conservation district personnel, shall conduct a review of the adequacy of existing runoff control practices on fields, croplands and pastures included in the plan. This review shall be included in the plan and shall identify those critical runoff problem areas where nutrients directly discharge into surface water or groundwater.

(2) The plan shall contain a list of specific runoff control BMPs to address those critical runoff problem areas identified in the review required under paragraph (1). This list of runoff control BMPs may not be in conflict with other relevant plans, such as a current conservation plan, developed for the operation, unless otherwise justified in writing by the planner to the Commission or delegated conservation district.

(3) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs to implement the BMPs listed in the approved plan, and these BMP designs shall be kept on record by the operator as a supplement to the plan.

(4) BMPs listed in the plan to address critical runoff problem areas shall be designed, installed, operated and maintained in accordance with the standards contained in the *Pennsylvania Technical Guide*.

(5) Although an erosion and sedimentation control plan, meeting the requirements of Chapter 102 (relating to erosion control), is not required as part of a plan under the act, meeting the requirements of this section will not eliminate the operator's responsibility to comply with Chapter 102 or other relevant State laws or regulations relating to the control of erosion and sedimentation from earth moving activities such as agricultural plowing and tilling.

(6) For areas on rented land that have been identified as critical runoff problem areas which will require the installation of BMPs requiring construction activities, the operator shall do one of the following:

- (i) Implement the listed BMP.
- (ii) Enter into an agreement with the landowner requiring the landowner to implement the BMP.
- (b) *Animal concentration areas.*

(1) The plan shall address stormwater runoff controls in animal concentration areas in a manner that meets the provisions of § 83.311(a)—(c) (relating to manure management).

(2) Runoff controls in animal concentration areas shall be designed, installed, operated and maintained in accordance with the standards contained in the *Pennsylvania Technical Guide*.

(3) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs to implement the BMPs listed

in the approved plan, and these BMP designs shall be kept on record by the operator as a supplement to the plan.

**IMPLEMENTATION SCHEDULES FOR CAO PLANS**

**§ 83.331. Implementation schedule.**

A plan or plan amendment shall contain a schedule that identifies when the necessary capital improvements and management changes will be made, consistent with the time frames in § 83.362 (relating to plan implementation).

**RECORDKEEPING AND INFORMATIONAL REQUIREMENTS FOR CAOS**

**§ 83.341. General recordkeeping requirements.**

Unless otherwise specified, records required under this subchapter are not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation complying with the act, for at least 3 years.

**§ 83.342. Recordkeeping relating to application of nutrients.**

(a) Plans developed for CAOs shall, at a minimum, be supported by the information required in this section and §§ 83.343 and 83.344.

(b) The operator of a CAO shall keep the following accurate records of the land application of nutrients, crop yields and soil tests on the CAO.

(1) Records of soil testing results shall be maintained consistent with § 83.291(e) (relating to determination of available nutrients).

(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with §§ 83.291(b)(3) and 83.343(f) (relating to alternative manure utilization recordkeeping).

(3) Land application of nutrients on a CAO shall be documented on an annual basis by recording the following information for each source of nutrients:

- (i) The locations and number of acres of nutrient application.
- (ii) The months of nutrient application.
- (iii) The rate of nutrient application for each field or crop group.

(4) Approximate annual crop yield levels for each crop group shall be recorded.

(5) Annual manure production calculated consistent with procedures in § 83.291(b)(2) shall be recorded.

**§ 83.343. Alternative manure utilization recordkeeping.**

(a) *Recordkeeping for manure transfers.*

(1) A manure transfer sheet shall be used for all manure transfers from CAOs.

(2) The Commission or delegated conservation district shall make copies of the manure transfer sheet available to CAOs.

(3) Computer-generated forms other than the manure transfer sheet provided by the Commission may be used if they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

(4) Recordkeeping related to the application of exported manure shall comply with the following:

(i) The exporter is responsible for the completion of section 1 of the Manure Transfer Sheet.

(ii) When the exporter, or person working under the direction of the exporter, applies the manure to the land, the exporter is responsible for completion of section 2 of the Manure Transfer Sheet.

(b) *Recordkeeping for alternative manure utilization by means other than manure transfer.* Operators shall keep annual records of the amount of manure utilized in any manner other than through manure transfers.

(c) *Exporting manure.* Those exporters following plans that detail the exporting of manure to known landowners, as in § 83.301(a) (relating to excess manure utilization plans for CAOs), need not submit manure transfer records to the agency approving the plan, but shall retain these records for review by the appropriate agency personnel in accordance with § 83.341 (relating to general recordkeeping requirements). CAOs exporting manure other than to known landowners are required to, within 1 year of approval of the plan, submit to the agency which approved the plan a copy of the manure transfer sheets or the summary of manure transfers of all manure transfers. Manure transfer records shall be maintained by the exporter for 3 years.

(d) *Summary of manure transfers.* When manure transfer records are required to be submitted to the reviewing authority, the exporter may either submit the manure transfer sheets for all manure transfers or the exporter may summarize the information from these sheets on the annual summary of manure transfers and submit this form only.

(e) *Computer generated forms.* The summary of manure transfer forms will be provided by the Commission. Computer-generated forms other than the summary of manure transfers provided by the Commission may be used if they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

(f) *Determination of nutrient content.* During the implementation of the plan, operators of CAOs exporting manure will be required to determine the nutrient content of the manure by using accepted manure sampling and chemical analysis methods as outlined in the *Manure Management Manual* or the *Pennsylvania Agronomy Guide*.

#### **§ 83.344. Exported manure informational packets.**

(a) When manure is exported from a CAO, the exporter will provide the importer with a completed Manure Transfer Sheet.

(b) If the manure is to be land applied, the exporter is required to provide the following information to the importer or broker, as supplied by the Commission or its delegated agent:

(1) A fact sheet allowing for quick estimation of manure application rates.

(2) The applicable sections of the *Manure Management Manual*.

(3) A concise educational publication describing the key concepts of nutrient management.

(4) Additional informational items as supplied by the Commission for this purpose.

(c) The Commission will provide the materials in subsection (b) for distribution by the exporter. The exporter is

only required to provide those items in subsection (b) that have been made available to the exporter by the Commission or its delegated agent.

(d) The exporter is responsible for providing the informational materials described in subsection (b) only if the importer or broker does not already have a current copy of the informational materials.

#### **MINIMUM STANDARDS FOR MANURE STORAGE FACILITIES ON CAOS**

#### **§ 83.351. Minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities.**

(a) The minimum standards contained in this section apply to new manure storage facilities constructed and existing manure storage facilities expanded as part of a plan developed for a CAO.

(1) Manure storage facilities shall be designed, constructed, located, operated, maintained, and, when no longer used for the storage of manure, removed from service, to prevent the pollution of surface water and groundwater, and the offsite migration of pollution, by meeting the standards contained in the *Pennsylvania Technical Guide*, except if these standards conflict with this subchapter.

(2) In addition to complying with paragraph (1), manure storage facilities shall be designed and located in accordance with the following criteria:

(i) Facilities shall comply with the applicable criteria in Chapter 105 (relating to dam safety and waterway management).

(ii) The location and construction of facilities to be placed within a floodplain shall be consistent with local ordinances developed under the Pennsylvania Flood Plain Management Act (32 P. S. §§ 679.101—679.601), which relates to the dangers and damage of floodwaters.

(iii) The sides of facilities located in a floodplain shall be protected from erosion and scouring from a 25 year flood event.

(iv) For CAOs that were producing livestock or poultry on or before October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of a perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a private water well, or open sinkhole.

(C) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(D) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of a property line, unless the landowners within the 100 feet distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(F) Within 200 feet of a perennial stream, river, spring, lake, pond, reservoir or any water well where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8% or have a capacity of 1.5 million gallons or greater.

(G) Within 200 feet of a property line, where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8%, where the slope

is toward the property line, or have a capacity of 1.5 million gallons or greater, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(v) For CAOs on agricultural operations that come into existence after October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of a perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a private water well, or open sinkhole.

(C) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(D) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 200 feet of a property line, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(F) Within 200 feet of a perennial stream, river, spring, lake, pond, reservoir or any water well where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8% or have a capacity of 1.5 million gallons or greater.

(G) Within 300 feet of a property line, where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8%, where the slope is toward the property line, or have a capacity of 1.5 million gallons or greater, unless the landowners within the 300 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vi) The Commission or a delegated conservation district may waive the distance restrictions in subparagraph (iv)(A), (B) and (E)—(G), if the following can be demonstrated to the satisfaction of the Commission or a delegated conservation district:

(A) The siting restrictions contained in subparagraph (iv) would make the placement economically unreasonable or physically impractical.

(B) A site investigation—including consultation with affected landowners—has been conducted which demonstrates that the proposed system will protect water quality and protect against offsite migration of nutrients.

(C) The type, design and contingency plan developed for the facilities meet additional criteria the Commission or delegated conservation district, in consultation with the NRCS, may require to protect water quality, and protect against offsite migration of nutrients.

(D) In the case of a private water well, the well construction meets the criteria that the Commission, in consultation with the NRCS, deems necessary to protect water quality. There will be no waivers granted from the setback requirements for public water wells or sources.

(3) The designer of the manure storage facility required by the plan shall address the following:

(i) Verification of the minimum manure storage period and minimum manure storage volume documented in the current plan.

(ii) Determination of the type and dimensions of facilities considering the environmental and space limitations of the site, as well as the operator's preference.

(iii) An onsite investigation to evaluate the site suitability for a facility in accordance with the standards in the *Pennsylvania Technical Guide*.

(b) The repair of an existing manure storage facility that is part of a plan developed for a CAO shall comply with applicable standards in the *Pennsylvania Technical Guide*. The location standards do not apply to these facility repairs.

(c) The site specific design for the construction, expansion or major repair of a liquid or semisolid manure storage facility covered under the act shall be done or approved by an engineer registered in this Commonwealth. The engineer shall certify that the design complies with the applicable design standards described in the *Pennsylvania Technical Guide*. The responsible engineer and construction contractor shall certify to the Commission or delegated conservation district that construction of the manure storage facility was completed according to the design and construction standards.

(d) A written site specific contingency plan, developed in accordance with the standards contained in the *Pennsylvania Technical Guide*, addressing actions to be taken in the event of a manure leak or spill from a manure storage facility covered under the act, shall be developed and kept onsite at the operation. In the case of a leak or spill of manure from a manure storage facility covered under the act, the operator is responsible for implementation of the site specific contingency plan developed for the operation. The contingency plan shall contain information necessary to meet the notification requirements for reporting leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 101.2(a) (relating to incidents causing or threatening pollution).

(e) It is recommended that the operator provide a copy of the contingency plan to the local emergency management agency that would assist during a major leak or spill event.

**PLAN REVIEW AND IMPLEMENTATION FOR CAOS**

**§ 83.361. Initial plan review and approval.**

(a) Plans or plan amendments required for CAOs shall be submitted for initial review and approval to delegated conservation districts or alternatively to the Commission for CAOs located in counties not delegated administrative authority under § 83.241 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's nutrient management specialist certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).

(b) The Commission or a delegated conservation district shall approve, modify or disapprove the plan or plan amendment within 90 days of receipt of a complete plan or plan amendment. The notice of determination to modify or disapprove a plan or plan amendment shall be provided in writing to the operator submitting the same and include an explanation specifically stating the reasons for modification or disapproval. The Commission or a delegated conservation district will, within 10 days from the date of receipt of the plan or plan amendment, provide notice to the operator indicating any missing or incomplete elements of the plan submission.

(c) Approvals will be granted only for those plans or plan amendments that satisfy the requirements of the act and this subchapter.

(d) If a plan or plan amendment is disapproved, the operator submitting the plan or plan amendment for the first time shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan or plan amendment.

(e) An agricultural operation that submits a complete plan or plan amendment is authorized to implement the same if the Commission or a delegated conservation district fails to act within 90 days of submittal. When the Commission or a delegated conservation district fails to act within 90 days of plan submission and the plan or plan amendment is resubmitted and the delegated conservation district or Commission again fails to act within 90 days of resubmittal, it shall be deemed approved.

#### **§ 83.362. Plan implementation.**

(a) A CAO shall fully implement the plan within 3 years of the date the plan is approved or deemed approved or for which implementation is otherwise authorized under § 83.361(e) (relating to initial plan review and approval), unless extended upon approval of the Commission for cause shown or a plan amendment (see § 83.371 (relating to plan amendments)). The 3-year implementation schedule shall be extended an additional 2 years for individual substantial capital improvements required under an approved plan for an operation required to submit a plan under § 83.261(a) (relating to general) if the following occur:

(1) The owner or operator demonstrates that the cost of all or part of the individual improvements for which the extension is applicable cannot be financed through available funding mechanisms.

(2) A sum of \$2 million or more has not been appropriated for grants and loans to the nutrient management fund above any Chesapeake Bay Nonpoint Source Pollution Abatement moneys that may be appropriated to the fund by October 1, 1998.

(b) Whatever adjustments are made in the implementation of the approved plan, the nutrient application rates shall be balanced as described in § 83.293 (relating to determination of nutrient application rates). The owner, operator or specialist shall review the approved plan at least annually to ensure that this condition is met.

(c) At least every 3 years, the plan shall be reviewed by a nutrient management specialist. If the agricultural operation is still consistent with the approved plan, the specialist shall provide notice of this to the reviewing agency. A plan amendment shall be submitted to the reviewing agency in accordance with § 83.361(a), if the agricultural operation has changed from that described in the approved plan (see § 83.371 (relating to plan amendments)).

(d) Limited liability protection, as described in § 83.206 (relating to limitation of liability), is afforded to those operators properly implementing an approved plan.

#### **PLAN AMENDMENTS AND TRANSFERS FOR CAOS**

##### **§ 83.371. Plan amendments.**

(a) A plan amendment is required when the operator of a CAO expects to make significant changes in the management of nutrients from those contained in the approved plan. Those significant changes in the management of a nutrient which would require a plan amendment are as follows:

(1) A net increase of greater than 10% occurs in AEU's per acre.

(2) A change in crop management that results in a reduction of greater than 20% in nitrogen necessary for realistic expected crop yields or the amount the crops will utilize for an individual crop year.

(3) A change in the method of excess manure utilization under § 83.301 (relating to excess manure utilization plans for CAOs).

(4) When calculations in the plan as originally submitted are in error, or figures used in the plan are inconsistent with those contained in the *Pennsylvania Agronomy Guide* and the *Manure Management Manual*, and adequate justification has not been given in writing for the inconsistency.

(5) When a different BMP, than that called for in the approved plan, is proposed to address a manure management or stormwater management concern.

(6) When, after the first 3 years of implementing the plan, actual yields are less than 80% of the expected crop yields used in the development of the plan.

(b) A plan amendment shall be developed and certified by a nutrient management specialist and shall be submitted to the reviewing agency in accordance with § 83.361(a) (relating to initial plan review and approval).

##### **§ 83.372. Amendments due to unforeseen circumstances.**

Changes in the implementation of plans due to unforeseen circumstances shall be certified by a nutrient management specialist as meeting applicable requirements of this subchapter and submitted to the district within 30 days of implementation. The amendments called for under this section will not require the review and approval of the Commission or a delegated conservation district, but shall temporarily become part of the plan until normal operations are resumed. Unforeseen circumstances include the following:

(1) Outbreak of contagious disease. Manure management shall be consistent with the procedures in § 83.381 (relating to manure management in emergency situations).

(2) Failures or malfunctions of equipment or storage that require a change in manure handling procedures.

(3) Other unforeseen circumstances that cause a significant change in the management of nutrients on the agricultural operation, such as:

(i) Unforeseen weather conditions which significantly impact plan implementation or crop failure due to adverse weather conditions.

(ii) Unanticipated loss of rented land that would create a reduction of greater than 20% in the nitrogen necessary for expected crop yields.

##### **§ 83.373. Plan transfers.**

(a) An approved nutrient management plan may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or delegated conservation district, unless the transfer results in operational changes requiring a plan amendment under § 83.371 (relating to plan amendments).

(b) If the transfer of the plan results in operational changes requiring a plan amendment under § 83.371, the plan amendment shall be submitted for approval of the Commission or a delegated conservation district along with, or before, the notification required under subsection (a).

**CONTAGIOUS DISEASE EMERGENCIES ON CAOS**

**§ 83.381. Manure management in emergency situations.**

(a) In situations when there is an outbreak of a contagious disease as regulated by the Department of Agriculture, manure management shall be consistent with requirements in the Department of Agriculture's order of quarantine issued under the Domestic Animal Act (3 P. S. §§ 311—354) and regulations thereunder.

(b) The Department of Agriculture will notify the Commission when a quarantine is imposed on an agricultural operation covered by the act. The Department of Agriculture will supply the Commission and delegated conservation district with a copy of the quarantine document.

(c) Unless otherwise directed by the quarantine, an amended plan shall be developed addressing the management of manure under the quarantine. This plan shall be certified by a nutrient management specialist prior to implementation and submitted to the reviewing agency within 30 days of implementation.

(d) Where nutrients are applied in excess of crop need due to the quarantine restrictions placed on the manure, and the cropping sequence permits, cover crops shall be planted to the site to minimize the loss of these nutrients. The harvesting of these cover crops is encouraged to facilitate the removal of excess nutrients.

(e) The temporary storage of manure during the quarantine shall be done under § 83.311 (relating to manure management).

(f) The application of manure during the quarantine shall be done under § 83.294(5) (relating to nutrient application procedures).

(g) Standard soil tests will be required each year for crop fields where the implementation of the quarantine required that nutrients be applied in excess of the amount the crop can use. In addition to the standard test, an appropriate test indicating the amount of nitrogen available for crop uptake will be required for 1 year beyond the cessation of excess manure application.

**PLAN SUMMARY INFORMATION FOR VOLUNTEER OR FINANCIAL ASSISTANCE PLANS**

**§ 83.391. Identification of agricultural operations and acreage.**

(a) The plan shall include an agricultural operation identification sheet which includes the following information:

- (1) The operator name, address and telephone number.
- (2) The signature of the operator, indicating the operator's concurrence with the practices outlined in the plan.
- (3) The counties where land included in the plan is located.
- (4) The watersheds of land included in the plan. The existence of special protection waters, as identified in § 93.9 (relating to designated water uses and water quality criteria), shall also be noted.

(5) The total acreage of the agricultural operation included in the plan.

(6) The total acreage of land on which nutrients shall be applied. The total acreage shall be separated into acres of owned land and acres of rented land.

(7) The number of AEUs per acre on the agricultural operation.

(8) The name, and nutrient management certification program identification number, of the nutrient management specialist that prepared the plan, the date of plan preparation and the date of revisions, if any.

(b) The plan shall contain maps or aerial photographs of sufficient scale which clearly identify:

- (1) The location and boundaries of the agricultural operation.
- (2) Individual field boundaries under the plan.
- (3) Field number and acreage of each field.
- (4) The identification of all soil types and slopes on the agricultural operation. An NRCS soil survey map with the soil identification legend shall be sufficient to satisfy this requirement. These soil survey maps may be available at the county NRCS office or conservation district office.

(5) The location of areas where manure application may be limited based on § 83.404(5) (relating to nutrient application procedures).

**§ 83.392. Summary of plan.**

(a) The plan shall contain a summary that includes:

- (1) A chart listing:
  - (i) The total amount of manure generated on the operation annually.
  - (ii) The total amount of manure to be used on the operation annually.
  - (iii) The total amount of manure to be exported from the operation annually.
- (2) Nutrient application rates by field or crop group.
- (3) Procedures and provisions for the utilization or proper disposal of excess manure.

(b) Manure management and storage practices, stormwater runoff control practices and other appropriate BMPs necessary to protect the quality of surface water and groundwater may be referenced in the summary but shall be covered by the appropriate section of the plan.

**NUTRIENT APPLICATION FOR VOLUNTEER OR FINANCIAL ASSISTANCE PLANS**

**§ 83.401. Determination of available nutrients.**

(a) The plan shall include the amount of each type of nutrient source used on the operation, including: manure, sludges, compost, cover crops, commercial fertilizers and other nutrients that will be applied to the agricultural operation.

(b) The amount and nutrient content of manure to be applied on the agricultural operation shall be determined as follows:

- (1) The plan shall include the average number of animals of each animal type, on a typical production day, for the agricultural operation.
- (2) The amount of manure produced and when it is available for spreading on the agricultural operation shall be calculated based on the average number of AEUs on the agricultural operation or actual production data, and the storage capacity of manure storage facilities, if present. Bedding, wash water, rain and runoff, when

mixed with manure, shall be included in determining the total volume of manure to be applied.

(3) For the preparation of the plan and plan amendments, it is recommended that the nutrient content of the manure be determined by using accepted manure sampling and chemical analysis methods as outlined in the *Manure Management Manual* or the *Pennsylvania Agronomy Guide*. When sampling and analysis are not done, the nutrient management specialist shall use standard book values such as those contained in the *Manure Management Manual* or the *Pennsylvania Agronomy Guide* to determine the nutrient content of the manure. The nutrient content of the manure shall be recorded in the plan.

(c) The nitrogen available from manure shall be based on the appropriate availability factors such as those contained in the *Manure Management Manual* or *Pennsylvania Agronomy Guide*. The amount of nitrogen available in the manure, and the planned manure incorporation times used to determine the nitrogen available, shall be included in the plan.

(d) The residual nitrogen from legume crops and applications of manure, as described in the *Pennsylvania Agronomy Guide*, shall be recorded in the plan and credited when determining nutrient application rates.

(e) For the development of the initial plan, soil tests shall be required to represent the fields in the operation for phosphorus (P), potassium (K), soil pH and lime requirement using those procedures for the Northeastern United States, Bulletin #493, published by the University of Delaware, or other Commission approved procedures. Soil tests conducted within the previous 3 years prior to submitting the initial plan are acceptable. After the approval of the initial plan, soil tests shall be required at least every 6 years from the date of the last test. Soil tests, or the results of the soil tests, will not be required to be submitted with the plan, but shall be kept on record at the operation.

**§ 83.402. Determination of nutrients needed for crop production.**

(a) The plan shall include the acreage and realistic expected crop yields for each crop group.

(b) For the development of the initial plan, expected crop yields may not exceed those considered realistic for the soil type and climatic conditions, as set by the operator and the specialist, and approved by the Commission or a delegated conservation district. If actual yield records are available during the development of the initial plan, the expected crop yields may be based on these records.

(c) If after the first 3 years of implementing the plan, the yields do not average at least 80% of the planned expected yield, the plan shall be amended to be consistent with the documented yield levels unless sufficient justification for the use of the higher yields is provided in writing to the Commission or a delegated conservation district.

(d) For determining expected crop yields for future plan updates and amendments, expected crop yields shall be based on documented yield levels achieved for the operation. Expected crop yields higher than historically achieved may be used if the operator provides sufficient justification in writing for the use of the higher yields to the Commission or delegated conservation district.

(e) The plan shall include a determination of the amount of nutrients necessary for realistic expected crop yields.

(f) The *Pennsylvania Agronomy Guide* or *Manure Management Manual* may be used to assist in determining the amount of nutrients necessary for achieving realistic expected crop yields.

**§ 83.403. Determination of nutrient application rates.**

(a) Nitrogen shall be applied only in the amounts necessary to achieve realistic expected crop yields or at a rate not exceeding what the crop will utilize for an individual crop year.

(b) The planned manure application rates shall be recorded in the plan. The planned manure application rate may be any rate equal to or less than the balanced manure application rate based on nitrogen. The balanced manure application rate based on nitrogen shall be determined by first subtracting the amount of available residual nitrogen and any other applied nitrogen, such as nitrogen applied in the starter fertilizer, from the amount of nitrogen necessary for realistic expected crop yields and then dividing this by the available nitrogen content of the manure as determined by standard methods.

(c) The plan shall include calculations indicating the difference between the recommended nitrogen necessary for realistic expected crop yields and nitrogen applied including, but not limited to, manure, sludge, starter fertilizer and other fertilizer. A deficit may be made up with supplemental nitrogen applications. A nitrogen availability test may also be used to determine supplemental nitrogen needs.

**§ 83.404. Nutrient application procedures.**

The plan shall include nutrient application procedures that meet the following criteria:

(1) Nutrients shall be uniformly applied to fields during times and conditions that will hold the nutrients in place for crop growth, and protect surface water and groundwater in accordance with the approved manure management practices as described in the *Manure Management Manual*.

(2) Intended target spreading periods for the application of manure shall be included in the plan.

(3) Application rates and procedures shall be consistent with the capabilities, including capacity and calibration range of available application equipment.

(4) Application rates for liquid manure irrigation shall be based on the lesser of either the nutrient plan application rates determined in accordance with § 83.403(a) and (b) (relating to determination of nutrient application rates), or the rates determined to be within infiltration capabilities of the soil such as those contained in the NRCS *Pennsylvania Irrigation Guide* or the Midwest Plan Service *Livestock Waste Facilities Handbook*.

(5) Manure may not be applied in the following situations:

(i) Within 100 feet of an open sinkhole where surface water flow is toward the sinkhole, unless the manure is mechanically incorporated within 24 hours of application.

(ii) Within 100 feet of active private drinking water sources such as wells and springs, where surface water flow is toward the water source, unless the manure is mechanically incorporated within 24 hours of application.

(iii) Within 100 feet of an active public drinking water source, unless other State or Federal laws or regulations require a greater isolation distance.

(iv) Within concentrated water flow areas in which vegetation is maintained, such as ditches, waterways, gullies and swales, during times when soil is frozen, snow covered or saturated.

(v) Within concentrated water flow areas in which vegetation is not maintained, such as intermittent streams, gullies and ditches.

(vi) Within 100 feet of streams, springs, lakes, ponds, intakes to agricultural drainage systems (such as in-field catch basins, and pipe outlet terraces), or other types of surface water conveyance, where surface water flow is toward the identified area, when soil is frozen, snow covered or saturated.

(vii) Within 200 feet of streams, springs, lakes, ponds, intakes to agricultural drainage systems (such as in-field catch basins, and pipe outlet terraces), or other types of surface water conveyance, where surface water flow is toward the identified area and where the slope is greater than 8% as measured within the 200 feet, during times when soil is frozen, snow covered or saturated.

(6) If winter spreading of manure is anticipated, the application procedures for the winter spreading of manure shall be described in the plan. The procedures described in the plan shall be consistent with those contained in the *Manure Management Manual*. If procedures other than those in the *Manure Management Manual* are to be used, approval shall be obtained from the Department or a delegated conservation district.

**ALTERNATIVE USES FOR EXCESS MANURE FOR VOLUNTEER OR FINANCIAL ASSISTANCE PLANS**

**§ 83.411. Alternative manure utilization plans.**

For agricultural operations other than CAOs, the plan shall contain a description of the following:

- (1) The estimated amount of manure to be utilized for other than land application on the operation.
- (2) The intended season for the alternative manure utilization.
- (3) The alternative manure utilization method such as:
  - (i) Land application by known importers.
  - (ii) Transfer through a manure broker.
  - (iii) Use on the agricultural operation in a manner other than land application.
  - (iv) Marketing through an open advertising system.

**MANURE MANAGEMENT FOR VOLUNTEER OR FINANCIAL ASSISTANCE PLANS**

**§ 83.421. Manure management.**

(a) In the preparation of a plan, the nutrient management specialist, or specialist in conjunction with other individuals with nutrient runoff control expertise such as NRCS or conservation district personnel, shall conduct a review of the adequacy of existing manure management practices to prevent surface water or groundwater pollution under normal climatic conditions for the location. Practices to be evaluated in this review include manure handling, collection, barnyard runoff control, storage and spreading practices. Examples of inadequate manure management practices include the following:

(1) Manure, contaminated water or nutrients leaving manure storage or animal concentration areas and discharging into surface water or groundwater.

(2) The uncontrolled flow of stormwater into, or across, manure storage facilities, temporary manure stacking areas and animal concentration areas.

(3) Manure storage facilities overflowing or maintained at levels above design full levels.

(4) Manure storage facilities that are sized for less than the projected manure accumulation based on the expected application periods used in the plan.

(5) Leaking or unstable manure storage facilities.

(b) As part of a plan certification, the nutrient management specialist shall assure that the review required under subsection (a) was undertaken in the preparation of the plan. The plan will contain those BMPs that are necessary to correct identified water contamination sources and protect surface water and groundwater. During the implementation of the approved plan, the BMPs shall meet the specifications contained in the *Pennsylvania Technical Guide*. The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs to implement the BMPs listed in the approved plan. The BMP design shall be kept on record by the operator as a supplement to the plan

(c) The following BMPs may be used to protect water quality and to control water in farmstead, manure storage and animal concentration areas.

(1) Manure storage facilities including permanent manure stacking areas. The construction of manure storage facilities is not required unless necessary to protect surface water and groundwater as part of an integrated nutrient management system.

(2) Adequate collection of manure from animal concentration areas for utilization on cropland or for other acceptable uses.

(3) Diversion of contaminated runoff within animal concentration areas to a storage, lagoon, collection basin, vegetated filter area, or another suitable site or facility.

(4) Diversion or elimination of contaminated water sources unless required for proper operation of the manure management system.

(5) Temporary manure stacking areas if they are located outside concentrated water flow areas and areas where manure application is restricted or prohibited based on § 83.404(5) (relating to nutrient application procedures).

(6) Other appropriate BMPs acceptable to the Commission.

(d) When temporary manure stacking areas may be necessary for the implementation of the plan, the plan shall identify those areas available for the storage of manure due to unforeseen circumstances such as adverse weather conditions. Manure shall be removed from temporary stacking areas for utilization on cropland or other acceptable uses as soon as feasible.

(e) Information contained in other sections of the plan may be used by the specialist when addressing this section.

(f) The siting, design and installation of manure storage facilities shall meet the requirements in § 83.461 (relating to minimum standards for manure storage facilities) and the *Pennsylvania Technical Guide*.

**STORMWATER RUNOFF CONTROL FOR VOLUNTEER OR FINANCIAL ASSISTANCE PLANS**

**§ 83.431. Stormwater runoff control.**

(a) *Field runoff control.*

(1) In the preparation of a plan, the nutrient management specialist, or specialist in conjunction with other individuals with nutrient runoff control expertise such as NRCS or conservation district personnel, shall conduct a review of the adequacy of existing runoff control practices on fields, croplands and pastures included in the plan. This review shall be included in the plan and shall identify those critical runoff problem areas where nutrients directly discharge into surface water or groundwater.

(2) The plan shall contain a list of specific runoff control BMPs to address those critical runoff problem areas identified in the review required under paragraph (1). This list of runoff control BMPs may not be in conflict with other relevant plans, such as a current conservation plan, developed for the operation, unless otherwise justified in writing by the planner to the Commission or delegated conservation district.

(3) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs to implement the BMPs listed in the approved plan, and these BMP designs shall be kept on record by the operator as a supplement to the plan.

(4) BMPs listed in the plan to address critical runoff problem areas shall be designed, installed, operated and maintained in accordance with the standards contained in the *Pennsylvania Technical Guide*.

(5) Although an erosion and sedimentation control plan, meeting the requirements of Chapter 102 (relating to erosion control), is not required as part of a plan under the act, meeting the requirements of this section will not eliminate the operator's responsibility to comply with Chapter 102 or other relevant State laws or regulations relating to the control of erosion and sedimentation from earth moving activities such as agricultural plowing and tilling.

(6) For areas on rented land that have been identified as critical runoff problem areas which will require the installation of BMPs requiring construction activities, the operator shall do one of the following:

(i) Implement the listed BMP.

(ii) Enter into an agreement with the landowner requiring the landowner to implement the BMP.

(b) *Animal concentration areas.*

(1) The plan shall address stormwater runoff controls in animal concentration areas in a manner that meets the provisions of § 83.421(a)—(c) (relating to manure management).

(2) Runoff controls in animal concentration areas shall be designed, installed, operated and maintained in accordance with the standards contained in the *Pennsylvania Technical Guide*.

(3) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs to implement the BMPs listed in the approved plan, and these BMP designs shall be kept on record by the operator as a supplement to the plan.

**IMPLEMENTATION SCHEDULE FOR VOLUNTEER OR FINANCIAL ASSISTANCE PLANS**

**§ 83.441. Implementation schedule.**

A plan or plan amendment shall contain a reasonable implementation schedule. The schedule shall identify when the necessary capital improvements and management changes will be made.

**RECORDKEEPING AND INFORMATIONAL REQUIREMENTS FOR VOLUNTEERS**

**§ 83.451. General recordkeeping requirements.**

Unless otherwise specified, records required under this subchapter are not required to be submitted to the Commission or a delegated conservation district, but shall be retained by the agricultural operation complying with the act, for at least 3 years.

**§ 83.452. Recordkeeping relating to application of nutrients.**

(a) An approved plan voluntarily developed for agricultural operations seeking the limited liability protection under § 83.206 (relating to limitation of liability) shall, at a minimum, be supported by the information required in this section and § 83.453 (relating to alternative manure utilization recordkeeping).

(b) The operator of an agricultural operation that develops a plan under the act shall keep the following accurate records of the land application of nutrients, crop yields and soil tests on the agricultural operation.

(1) Records of soil testing results shall be maintained consistent with § 83.401(e) (relating to determination of available nutrients).

(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with § 83.401(b)(3).

(3) Land application of nutrients on an agricultural operation shall be documented on an annual basis by recording the following information for each source of nutrients:

(i) The locations and number of acres of nutrient application.

(ii) The months of nutrient application.

(iii) The rate of nutrient application for each field or crop group.

(4) Approximate annual crop yield levels for each crop group shall be recorded.

(5) Annual manure production calculated consistent with procedures in § 83.401(b)(2) shall be recorded.

**§ 83.453. Alternative manure utilization recordkeeping.**

(a) *Recordkeeping for manure transfers.* When manure is exported from an operation voluntarily complying with the act, records shall be kept which indicate the amount of manure exported, when it was exported and to whom it was exported.

(b) *Recordkeeping for alternative manure utilization by means other than manure transfer.* Operators shall keep annual records of the amount of manure utilized in any manner other than through manure transfers.



**MINIMUM STANDARDS FOR MANURE STORAGE FACILITIES ON VOLUNTEER OR FINANCIAL ASSISTANCE OPERATIONS**

**§ 83.461. Minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities.**

(a) The minimum standards contained in this section apply to new manure storage facilities constructed and existing manure storage facilities expanded as part of a plan developed and approved as a condition of receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program, or developed for volunteers seeking the limited liability protection under § 83.206 (relating to limitation of liability).

(1) Manure storage facilities shall be designed, constructed, located, operated, maintained, and, when no longer used for the storage of manure, removed from service, to prevent the pollution of surface water and groundwater, and the offsite migration of pollution, by meeting the standards contained in the *Pennsylvania Technical Guide*, except when these standards conflict with this subchapter.

(2) In addition to complying with paragraph (1), manure storage facilities shall be designed and located in accordance with the following criteria:

(i) Facilities shall comply with the applicable criteria in Chapter 105 (relating to dam safety and waterway management).

(ii) The location and construction of facilities to be placed within a floodplain shall be consistent with local ordinances developed under the Pennsylvania Flood Plain Management Act (32 P. S. §§ 679.101—679.601), which relates to the dangers and damage of floodwaters.

(iii) The sides of facilities located in a floodplain shall be protected from erosion and scouring from a 25 year flood event.

(iv) For agricultural operations that were producing livestock or poultry on or before October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of a perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a private water well, or open sinkhole.

(C) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(D) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of a property line, unless the landowners within the 100 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(F) Within 200 feet of a perennial stream, river, spring, lake, pond, reservoir or any water well where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8% or have a capacity of 1.5 million gallons or greater.

(G) Within 200 feet of a property line, where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8%, where the slope is toward the property line, or have a capacity of 1.5 million gallons or greater, unless the landowners within

the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(v) For agricultural operations that come into existence after October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of a perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a private water well, or open sinkhole.

(C) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(D) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 200 feet of a property line, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(F) Within 200 feet of a perennial stream, river, spring, lake, pond, reservoir or any water well where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8% or have a capacity of 1.5 million gallons or greater.

(G) Within 300 feet of a property line, where these facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8%, where the slope is toward the property line, or have a capacity of 1.5 million gallons or greater, unless the landowners within the 300 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vi) The Commission or a delegated conservation district may waive the distance restrictions in subparagraph (iv)(A), (B) and (E)—(G), if the following can be demonstrated to the satisfaction of the Commission or delegated conservation district:

(A) The siting restrictions contained in subparagraph (iv) would make the placement economically unreasonable or physically impractical.

(B) A site investigation—including consultation with affected landowners—has been conducted which demonstrates that the proposed system will protect water quality and protect against offsite migration of nutrients.

(C) The type, design and contingency plan developed for the facilities meet additional criteria the Commission or delegated conservation district, in consultation with the NRCS, may require to protect water quality, and protect against offsite migration of nutrients.

(D) In the case of a private water well, the well construction meets the criteria that the Commission, in consultation with the NRCS, deems necessary to protect water quality. There will be no waivers granted from the setback requirements for public water wells or sources.

(3) The designer of the manure storage facility required by the plan shall address the following:

(i) Verification of the minimum manure storage period and minimum manure storage volume documented in the current plan.

(ii) Determination of the type and dimensions of facilities considering the environmental and space limitations of the site, as well as the operator's preference.

(iii) An onsite investigation to evaluate the site suitability for a facility in accordance with the standards in the *Pennsylvania Technical Guide*.

(b) The repair of an existing manure storage facility that is part of a plan developed under the act shall comply with applicable standards in the *Pennsylvania Technical Guide*. The location standards do not apply to these facility repairs.

(c) The site specific design for the construction, expansion or major repair of a liquid or semisolid manure storage facility covered under the act shall be done or approved by an engineer registered in this Commonwealth. The engineer shall certify that the design complies with the applicable design standards described in the *Pennsylvania Technical Guide*. The responsible engineer and construction contractor shall certify to the Commission or delegated conservation district that construction of the manure storage facility was completed according to the design and construction standards.

(d) A written site specific contingency plan, developed in accordance with the standards contained in the *Pennsylvania Technical Guide*, addressing actions to be taken in the event of a manure leak or spill from a manure storage facility covered under the act, shall be developed and kept onsite at the operation. In the case of a leak or spill of manure from a manure storage facility covered under the act, the operator is responsible for implementation of the site specific contingency plan developed for the operation. The contingency plan shall contain information necessary to meet the notification requirements for reporting leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 101.2(a) (relating to incidents causing or threatening pollution).

(e) It is recommended that the operator provide a copy of the contingency plan to the local emergency management agency that would assist during a major leak or spill event.

#### **PLAN REVIEW AND IMPLEMENTATION FOR VOLUNTEERS OR FINANCIAL ASSISTANCE RECIPIENTS**

##### **§ 83.471. Initial plan review and approval.**

(a) Plans or plan amendments for agricultural operations other than CAOs may be submitted for initial review and approval to delegated conservation districts or alternatively to the Commission for agricultural operations located in counties not delegated administrative authority under § 83.241 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's nutrient management specialist certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).

(b) A plan or plan amendment voluntarily developed for an agricultural operation other than a CAO and submitted to the Commission or delegated conservation district shall be deemed approved unless disapproved by the Commission or conservation district within 90 days of receipt of a complete plan or plan amendment. The notice of determination to modify or disapprove a plan or plan amendment shall be provided in writing to the operator submitting the same and include an explanation specifically stating the reasons for modification or disapproval. The Commission or delegated conservation district shall, within 10 days from the date of receipt of the plan or plan amendment, provide notice to the operator indicating any missing or incomplete elements of the plan submission.

(c) Approvals shall be granted only for those plans or plan amendments that satisfy the requirements of the act and this subchapter.

##### **§ 83.472. Plan implementation.**

(a) Plans developed and approved for non-CAOs as a condition for receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program, or for volunteers seeking the limited liability protection under § 83.206 (relating to limitation of liability), shall be implemented in accordance with the implementation schedule contained in the plan as agreed upon by the operator and the Commission or a delegated conservation district.

(b) Whatever adjustments are made in the implementation of the approved plan, the nutrient application rates shall be balanced as described in § 83.403 (relating to determination of nutrient application rates). The owner, operator or nutrient management specialist shall review the approved plan at least annually to ensure that this condition is met.

(c) At least every 3 years, the approved plan shall be reviewed by a nutrient management specialist. If the agricultural operation is still consistent with the approved plan, the specialist shall provide notice of this to the reviewing agency. A plan amendment shall be submitted to the reviewing agency in accordance with § 83.471(a) (relating to initial plan review and approval), if the agricultural operation has changed from that described in the approved plan (see § 83.481 (relating to plan amendments)).

(d) Limited liability protection, as described in § 83.206, is afforded to those operators properly implementing an approved plan.

#### **PLAN AMENDMENTS AND TRANSFERS FOR VOLUNTEERS AND FINANCIAL ASSISTANCE RECIPIENTS**

##### **§ 83.481. Plan amendments.**

(a) For plans approved for non-CAOs as a condition for receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program, or for volunteers seeking the limited liability protection under § 83.206 (relating to limitation of liability), a plan amendment is required when the operator of an agricultural operation expects to make significant changes in the management of nutrients from those contained in the approved plan. Those significant changes in the management of nutrients which would require a plan amendment are as follows:

(1) A net increase of greater than 10% occurs in AEUs per acre.

(2) A change in crop management that results in a reduction of greater than 20% in nitrogen necessary for realistic expected crop yields or the amount the crops will utilize for an individual crop year.

(3) When calculations in the plan as originally submitted are in error, or figures used in the plan are inconsistent with those contained in the *Pennsylvania Agronomy Guide* and the *Manure Management Manual*, and adequate written justification has not been given for the inconsistency.

(4) When a different BMP than that called for in the approved plan is proposed to address a manure management or stormwater management concern.

(5) When, after the first 3 years of implementing the plan, actual yields are less than 80% of the expected crop yields used in the development of the plan.

(6) When an operation changes from a non-CAO status to a CAO, and the original plan needs to be updated to include those items required of only CAO plans.

(b) A plan amendment, as required in subsection (a), shall be developed and certified by a nutrient management specialist and shall be submitted to the reviewing agency in accordance with § 83.471(a) (relating to initial plan review and approval).

**§ 83.482. Amendments due to unforeseen circumstances.**

Changes in the implementation of approved plans due to unforeseen circumstances shall be certified by a nutrient management specialist as meeting applicable requirements of this subchapter and submitted to the district within 30 days of implementation. The amendments called for under this subsection will not require the review and approval of the Commission or delegated conservation district, but shall temporarily become part of the plan until normal operations are resumed. Unforeseen circumstances shall include the following:

(1) Outbreak of contagious disease. Manure management shall be consistent with the procedures in § 83.491 (relating to manure management in emergency situations).

(2) Failures or malfunctions of equipment or storage that require a change in manure handling procedures.

(3) Other unforeseen circumstances that cause a significant change in the management of nutrients on the agricultural operation, such as:

(i) Unforeseen weather conditions which significantly impact plan implementation, or crop failure due to adverse weather conditions.

(ii) Unanticipated loss of rented land that would create a reduction of greater than 20% of the nitrogen necessary for expected crop yields.

**§ 83.483. Plan transfers.**

(a) An approved plan may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or a delegated conservation district, unless the transfer results in operational changes requiring plan amendment under § 83.481 (relating to plan amendments).

(b) If the transfer of the approved plan results in operational changes requiring plan amendment under § 83.481, the plan amendments shall be submitted for approval of the Commission or a delegated conservation

district along with, or before, the notification required under subsection (a).

**CONTAGIOUS DISEASE EMERGENCIES ON VOLUNTEER OR FINANCIAL ASSISTANCE OPERATIONS**

**§ 83.491. Manure management in emergency situations.**

(a) If there is an outbreak of a contagious disease as regulated by the Department of Agriculture, manure management shall be consistent with requirements in the Department of Agriculture's order of quarantine issued under the Domestic Animal Act (3 P. S. §§ 311—354) and regulations thereunder.

(b) The Department of Agriculture will notify the Commission when a quarantine is imposed on an agricultural operation covered by the act. The Department of Agriculture will supply the Commission and delegated conservation district with a copy of the quarantine document.

(c) Unless otherwise directed by the quarantine, those volunteers receiving financial assistance under the act or the Chesapeake Bay Nonpoint Source Pollution Abatement Program, or those volunteers seeking the limited liability protection under § 83.206 (relating to limitation of liability), shall develop an amended plan addressing the management of manure under the quarantine. This plan shall be certified by a nutrient management specialist prior to implementation and submitted to the reviewing agency within 30 days of implementation.

(d) If nutrients are applied in excess of crop need due to the quarantine restrictions placed on the manure, and the cropping sequence permits, cover crops shall be planted to the site to minimize the loss of these nutrients. The harvesting of these cover crops is encouraged to facilitate the removal of excess nutrients.

(e) The temporary storage of manure during the quarantine shall be done in accordance to § 83.421 (relating to manure management).

(f) The application of manure during the quarantine shall be done in accordance with § 83.404(5) (relating to nutrient application procedures).

(g) Standard soil tests will be required each year for crop fields when the implementation of the quarantine required that nutrients be applied in excess of the amount the crop can use. In addition to the standard test, an appropriate test indicating the amount of nitrogen available for crop uptake shall be required for 1 year beyond the cessation of excess manure application.

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