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PENNSYLVANIA BULLETIN

Volume 35
Saturday, September 17, 2005 • Harrisburg, PA
Number 38
Pages 5079—5226

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Draft Temporary Regulations

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Liquor Control Board
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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 370, September 2005

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Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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THE GOVERNOR

GOVERNOR'S OFFICE

Proclamation of Emergency Regarding Oversize Vehicles

September 3, 2005

Whereas, The President of the United States has declared major disaster emergencies for impacted areas in Louisiana, Mississippi, and Alabama due to the catastrophic events caused by Hurricane Katrina; and

Whereas, the U. S. Department of Homeland Security (DHS) is actively managing federal assistance to these affected communities in an effort to expedite response efforts and save lives; and

Whereas, the Federal Emergency Management Agency (FEMA) of DHS has issued a "Request for Waiver of State Law" to the Governors of the fifty states, requesting waivers of the enforcement of state laws and regulations that govern the transport of oversized tractor trailer loads for the limited purpose of allowing Federal Government contractors to transport mobile homes for Hurricane Katrina relief efforts.

Now Therefore, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S. Section 7101 et seq., as amended) and Section 6108 of the Pennsylvania Vehicle Code (75 Pa.C.S. Section 101, et seq.), I do hereby proclaim the existence of an emergency for the limited purpose of allowing Federal Government contractors to transport mobile homes for Hurricane Katrina relief; and

Further, I hereby direct as follows:

1. I have determined that, in order to aid in the alleviation of the emergency conditions, it is necessary to waive enforcement of applicable state laws and regulations that govern the transport of oversized loads, solely for the limited purpose of allowing Federal Government contractors to transport mobile homes for Hurricane Katrina relief efforts for a period of ninety (90) days, subject to renewal if necessary.

2. Notification of said waiver shall be disseminated to all applicable law enforcement, turnpike, and transportation authorities.

3. Confirmation by September 3, 2005, through official channels that the Commonwealth has voluntarily waived its sovereign right to enforce the applicable laws and regulations, except for the following restrictions:

A. Oversized loads up to and including fourteen (14) feet wide may move unescorted at all times. These loads and their trailers shall be well lighted front and back and along both sides during nighttimes;

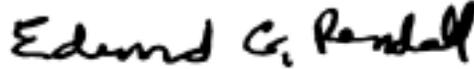
B. Loads wider than fourteen (14) feet must be escorted and may travel in convoys of not more than ten (10) vehicles with one team of escort vehicles both day and night. These loads and their trailers shall be well lighted front and back and along both sides during nighttime travel.

4. This waiver is only for the limited purpose of allowing Federal Government contractors to transport mobile homes for Hurricane Katrina relief efforts and is inapplicable to the transporting of manufactured housing units or mobile homes for normal business purposes or to any other vehicles.

Still Further, I direct the Departments of Transportation and State Police to utilize all available resources and personnel as is deemed necessary to cope with the magnitude and severity of this emergency situation in carrying out this directive, including notification of the public of this

Proclamation to increase public awareness and precautions in light of the possible increase in oversize loads traveling on Commonwealth highways.

Given under my hand and the Seal of the Governor, at the City of Harrisburg, on this third day of September in the year of our Lord two thousand and five, and of the Commonwealth the two hundred and thirtieth.



Governor

[Pa.B. Doc. No. 05-1701. Filed for public inspection September 16, 2005, 9:00 a.m.]

Proclamation of Emergency to Render Mutual Aid and to Receive and House Evacuees

September 6, 2005

Whereas, the President of the United States has declared major disaster emergencies for impacted areas in Louisiana, Mississippi, Alabama and Florida due to the catastrophic events caused by Hurricane Katrina; and

Whereas, the Commonwealth of Pennsylvania has been requested to render mutual aid to assist in the implementation of federal and state disaster emergency functions in accordance with the Emergency Management Assistance Compact, (35 Pa.C.S. Section 7101 et seq.), including those mutual aid actions listed in the letter of September 6, 2005, from Governor Edward G. Rendell to the President; and

Whereas, the continued evacuation of individuals and families from the affected areas has produced a state of emergency in several of the neighboring states; and

Whereas, the serious impact of this catastrophic event that has displaced thousands of families requires a comprehensive partnership of all levels of government for effective recovery; and

Whereas, the emergency situation has been of such magnitude and severity as to render essential the Commonwealth's supplementation of county and municipal efforts and resources and the activation of all applicable state, county, and municipal emergency response plans; and

Whereas, coordination of activities relating to temporary housing by agencies and officers of this state is an express purpose of the Pennsylvania Emergency Management Services Code (35 Pa.C.S. Section 7302).

Now Therefore, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S. Section 7101 et seq., as amended), I do hereby proclaim the existence of an emergency in the Commonwealth of Pennsylvania to adequately respond to the emergency situation caused by Hurricane Katrina.

Further, in accordance with the State Emergency Operations Plans, I direct all Commonwealth departments and agencies to utilize all available resources and personnel as is deemed necessary to cope with the magnitude and severity of this emergency situation.

Further, I hereby transfer up to \$50,000,000 in unused appropriated funds to the Pennsylvania Emergency Management Agency. The aforementioned

funds shall be used for disaster-related expenses incurred by various state agencies and departments. These funds shall be credited to a special account established by the Office of the Budget. All Commonwealth agencies purchasing supplies or services in response to this emergency are authorized to utilize the emergency procurement procedures set forth in Section 516 of the Commonwealth Procurement Code, Act of May 15, 1998, P. L. 358, No. 57, § 516. This Proclamation shall serve as the written determination of the basis for the emergency under Section 516.

Further, I hereby waive any laws or regulations that would restrict the application and use of the Departments' and Agencies' resources and personnel to assist local jurisdictions in meeting the express requirements of Section 7302. This assistance to local jurisdictions may be provided solely at the discretion of the respective Secretaries and Agency Directors.

Further, I direct that the emergency response of all the Commonwealth departments and agencies and all applicable county, municipal, and other disaster emergency response and recovery plans be activated and that all state, county, and municipal actions taken to implement those plans be coordinated through the Pennsylvania Emergency Management Agency.

Still Further, I hereby continue to urge the governing bodies and executive officers of all political subdivisions affected by this emergency to act as necessary to meet the current exigencies as legally authorized under this Proclamation, namely: by the employment of temporary workers; by the rental of equipment; and by entering into such contracts and agreements as may be required to meet the emergency, all without regard to those time-consuming procedures and formalities normally prescribed by law, mandatory constitutional requirements excepted.

Given under my hand and the Seal of the Governor, at the City of Harrisburg, this sixth day of September in the year of our Lord two thousand and five, and of the Commonwealth the two hundred and thirtieth.



Governor

[Pa.B. Doc. No. 05-1702. Filed for public inspection September 16, 2005, 9:00 a.m.]

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 274 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And now, this 29th day of August, 2005 it is *Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulations. The fees outlined in the Financial Regulations are effective as of January 1, 2006.

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No. 103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. No. 103(b) and is effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

PART IV. FINANCIAL MATTERS

CHAPTER 17. GOVERNANCE OF THE SYSTEM

CHAPTER 35. BUDGET AND FINANCE

Subchapter A. GENERAL PROVISIONS

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including magisterial district judges, Philadelphia Municipal Court and Philadelphia Traffic Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), the following regulations are adopted to implement Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571-(c)(4)(as amended).

42 Pa.C.S. § 1725.1. Costs.

(a) *Civil cases.*—In calendar year 2006, the costs to be charged by magisterial district judges in every civil case, except as otherwise provided in this section, shall be as follows:

- (1) Actions involving \$500 or less \$41.50
- (2) Actions involving more than \$500 but not more than \$2,000 \$55.50
- (3) Actions involving more than \$2,000 but not more than \$4,000 \$69.00
- (4) Actions involving more than \$4,000 but not more than \$8,000 \$103.50
- (5) Landlord-tenant actions involving less than \$2,000 \$62.50
- (6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000 \$76.00
- (7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000 \$103.50
- (8) Order of execution \$31.50
- (9) Objection to levy \$14.00
- (10) Reinstatement of complaint \$7.00
- (11) Entering Transcript on Appeal or Certiorari \$3.50

Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(a.1) *Custody cases.*—In calendar year 2006, the cost (in addition to the cost provided by general rule) to be charged by the court of common pleas shall be as follows:

- (1) Custody cases, except as provided in section 1725(c)(2)(v) \$6.50

(b) *Criminal cases.*—In calendar year 2006, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

- (1) Summary conviction, except motor vehicle cases \$39.50
- (2) Summary conviction, motor vehicle cases, other than paragraph (3) \$31.50
- (3) Summary conviction, motor vehicle cases, hearing demanded \$37.50
- (4) Misdemeanor \$45.00
- (5) Felony \$52.00

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) *Unclassified costs or charges.*—In calendar year 2006, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

- (1) Entering transcript of judgment from another member of the minor judiciary \$7.00
- (2) Marrying each couple, making record thereof, and certificate to the parties \$34.50

(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) \$14.00

(4) Issuing a search warrant (except as provided in subsection (d))..... \$14.00

(5) Any other issuance not otherwise provided in this subsection \$14.00

42 Pa.C.S. § 3571.

In calendar year 2006, Commonwealth portion of fines, etc.

* * * * *

(2) Amounts payable to the Commonwealth:

(i) Summary conviction, except motor vehicle cases..... \$14.00

(ii) Summary conviction, motor vehicle cases other than subparagraph (iii) \$14.00

(iii) Summary conviction, motor vehicle cases, hearing demanded \$14.00

(iv) Misdemeanor \$18.00

(v) Felony..... \$27.73

(vi) Assumpsit or trespass involving:

(A) \$500 or less \$17.35

(B) More than \$500 but not more than \$2,000 \$27.60

(C) More than \$2,000 but not more than \$4,000 \$41.40

(D) More than \$4,000 but not more than \$8,000 \$69.00

(vii) Landlord-tenant proceeding involving:

(A) \$2,000 or less \$27.60

(B) More than \$2,000 but not more than \$4,000 \$34.55

(C) More than \$4,000 but not more than \$8,000 \$48.30

(viii) Objection to levy \$7.00

(ix) Order of execution \$21.00

(x) Issuing a search warrant (except as provided in section 1725.1(d) (relating to costs))..... \$9.70

(xi) Order of possession \$15.00

(xii) Custody cases (except as provided in section 1725(c)(2)(v)) \$5.20

[Pa.B. Doc. No. 05-1703. Filed for public inspection September 16, 2005. 9:00 a.m.]

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
[204 PA. CODE CH. 211]

Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 275 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And now, this 29th day of August, 2005, it is *Ordered* pursuant to Article V, Section 10(c) of the Constitution of

Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for calendar year 2004 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

§ 211.1. Consumer Price Index.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2004 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. 275 Judicial Administrative Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U. S. City Average, for calendar year 2004 was 3.3% percent. (See, U. S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, February 22, 2005.)

[Pa.B. Doc. No. 05-1704. Filed for public inspection September 16, 2005. 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES
[210 PA. CODE CH. 63]

Amendments to the Internal Operating Procedures of the Supreme Court; No. 376 Supreme Court Rules; Doc. No. 1

Order

Per Curiam

And Now, this 2nd day of September, 2005, it is ordered that the Internal Operating Procedures of the Supreme Court are amended in Section 3 as set forth as follows.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 63. INTERNAL OPERATING PROCEDURES OF THE SUPREME COURT

§ 63.3. Decisional Procedures.

A. *Argument Sessions.*

* * * * *

3. *Direct Appeals.*

[a. Because they would, under a differently structured judicial system, have gone to intermedi-

ate appellate courts for evaluation, direct appeals shall be submitted for screening rather than automatically accepted for oral argument. Therefore, as soon as briefs are received, all direct appeals other than death penalty cases will be assigned by the prothonotary to a justice on a rotating basis by seniority for preparation of a Disposition Memorandum, which will contain a short recitation of the facts, a brief discussion of the issues, and a recommendation of whether the case should be resolved by

1) a per curiam order;

(Court Note: A per curiam order may be used when the Court's decision:

- 1) does not establish a new rule of law;
 - 2) does not alter, modify, criticize or clarify an existing rule of law;
 - 3) does not apply an established rule of law to a novel fact situation;
 - 4) does not constitute the only, or only recent binding precedent on a particular point of law;
 - 5) does not involve a legal issue of continuing public interest; or
 - 6) whenever the Court decides such an order is appropriate.)
- 2) affirmation on the opinion of the court below, plus, where possible/necessary a brief statement of matters not covered by that opinion;
 - 3) submission on briefs; or
 - 4) should be listed for oral argument.

b. Each Disposition Memorandum shall be circulated to the Court within sixty (60) days of assignment, with contemporaneous notice to the prothonotary of the proposed disposition, and shall set a proposed action date of thirty (30) days from the date of circulation. If, after circulation, a majority of justices join the proposed disposition, the case shall be resolved in accordance with the Disposition Memorandum. If less than a majority of justices agree, the case will be listed for oral argument.]

Because they would, under a differently structured judicial system, have gone to intermediate appellate courts for evaluation, direct appeals shall be submitted for screening rather than automatically accepted for oral argument. Therefore, as soon as briefs are received, all direct appeals other than death penalty cases will be assigned by the prothonotary to a justice on a rotating basis by seniority for preparation of a Disposition Memorandum, which will contain a short recitation of the facts, a brief discussion of the issues, and a recommendation of whether the case should be resolved by 1) a per curiam order; 2) affirmation on the opinion of the court below, plus, where possible/necessary a brief statement of matters not covered by that opinion; 3) submission on briefs; or 4) should be listed for oral argument. Each Disposition Memorandum shall be circulated to the Court within sixty (60) days of assignment, with contemporaneous notice to the prothonotary. It shall then be placed on a supplemental list for consideration and vote at the same time as opinions. (See IV. Opinions. A. Circulation schedule 3. Voting). Dispo-

sition Memoranda must be circulated to the Court ten (10) days prior to the list date to be placed on the vote list. The case shall thereafter be disposed of or listed for oral argument in accordance with the vote of the majority. If no clear majority emerges, the case will be listed for oral argument.

* * * * *

B. Assignments.

* * * * *

3. *Civil and Criminal Appeals.* [a.] Cases shall be assigned by the senior member of the majority in such a manner as to achieve equal distribution of assignments, and to avoid delay in deciding cases. If it appears that due to illness of a justice or for some other reason this purpose is not being served, the Chief Justice may, as a matter of his or her discretion, alter the assignment order.

[b.] In the event a justice to whom a case has been assigned subsequently decides to change his or her vote on the decision of the case and ceases to be among the majority, he or she shall provide a draft opinion along with a cover letter explaining the reason for the change of position.

Where appeals other than direct appeals have been submitted, the prothonotary shall direct the case to the Court for disposition after completion of the briefing schedule. The Chief Justice will assign the case for preparation of a draft opinion to an individual justice in the rotation established by seniority.

4. *Direct Appeals.* [a.] An argued direct appeal will be assigned to the justice who prepared the Disposition Memorandum, unless after preliminary vote his or her position is not that of the majority. In such an instance, the assignment shall be made by the senior member of the majority.

[b. Where appeals have been submitted, the prothonotary shall direct the case to the Court for disposition after completion of the briefing schedule. The Chief Justice will assign the case for preparation of a draft opinion to an individual justice in the rotation established by seniority.]

A direct appeal which the Court has determined shall be decided by opinion on the submitted briefs shall be assigned to the justice who prepared the Disposition Memorandum.

5. *Per Curiam Orders*

1) A per curiam order may be used when the Court's decision:

- a) does not establish a new rule of law;
- b) does not alter, modify, criticize or clarify an existing rule of law;
- c) does not apply an established rule of law to a novel fact situation;
- d) does not constitute the only, or only recent binding precedent on a particular point of law;
- e) does not involve a legal issue of continuing public interest; or
- f) whenever the Court decides such an order is appropriate.

2) A per curiam order reversing an order of the lower court, must cite to controlling legal authority or give a full explanation as to the reasons for reversal.

[Pa.B. Doc. No. 05-1705. Filed for public inspection September 16, 2005, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BERKS COUNTY

Rules of Court; No. 98-8009 Prothonotary; No. 1-MD-2000 Clerk of Courts

Order

And Now, this 23rd day of August, 2005, it is hereby Ordered and Decreed that the following local rule for Papers Presented By Persons Unauthorized By State Rules in the 23rd Judicial District composed of Berks County be, and the same is promulgated herewith, to become effective thirty days after the publication of the rule in the *Pennsylvania Bulletin*:

Rule 401.1 Papers Presented By Persons Unauthorized By State Rules

Any papers or documents that are submitted on behalf of an individual party by someone other than the party's attorney of record as defined by Pa.R.C.P. 76 or by the party pro se shall be accepted by the prothonotary or clerk of courts as a communication only and no further action shall be taken. Such papers will not be forwarded to the assigned judge for further consideration. A copy of the papers accepted will be sent to the party's attorney of record or the party if no attorney has entered an appearance for the party. The following notice shall be attached to the returned copies:

NOTICE

The attached papers were accepted on (date). These papers were not forwarded to the assigned judge due to the failure to comply with B.R.J.A. 401.1.

The Law Librarian of Berks County is Ordered and Directed to do the following:

1. File ten (10) certified copies of this Order with the Administrative Office of Pennsylvania Courts for distribution in accordance with Pa.R.J.A. 103(c);
2. File two (2) certified copies of this Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
3. File one (1) certified copy of this Order with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania;
4. File one (1) certified copy of this Order with the Berks County Law Library; and
5. Have other, non-certified copies of this Order continually available for public inspection and copying.

By the Court

ARTHUR E. GRIM,
President Judge

[Pa.B. Doc. No. 05-1706. Filed for public inspection September 16, 2005, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 227.1 Motion for Post-Trial Relief; Civil Division No. 2134 of 2005 GD

Order

And Now, this 25th day of August, 2005, pursuant to Rule 239 of the Pennsylvania Rules of Civil Procedure, it is hereby ordered that Local Rule 227.1 is amended to read as follows.

The Prothonotary is directed as follows:

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

(2) Two certified copies and diskette 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 Civil Procedural Rules 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 Prothonotary. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary 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

CONRAD B. CAPUZZI,
President Judge

Rule 227.1 Motion for Post-Trial Relief

(a) A motion for post-trial relief shall be presented in Motions Court as a Routine Motion within ten (10) days after the date it is filed of record, accompanied by a transcript order or a statement that no transcript is necessary, and together with a proposed order for the Court's use in setting the date and time for argument, or in ordering that the matter be submitted on briefs.

(1) Unless otherwise ordered, the brief of the moving party shall be served on all parties and the assigned Judge within fifteen (15) days from the presentation of the motion pursuant to F.C.R. 208.3(a); and the briefs of all responding parties shall be served on all other parties and the assigned Judge within (15) days after service of the moving party's brief. A certificate of service shall be filed of record, but the brief itself need not be filed.

(2) Failure to comply with the briefing schedule may result in the denial of oral argument, a civil contempt fine of up to \$100 per day, deemed waiver of issues not fully developed, and/or such other sanctions as are appropriate. The briefing schedule shall not be stayed pending completion of the transcript unless specially ordered by the Court.

[Pa.B. Doc. No. 05-1707. Filed for public inspection September 16, 2005, 9:00 a.m.]

MONROE COUNTY

Promulgation of Local Rules of Civil Procedure;
No. 6513 CV 2005

Order

And Now, this 15th day of August, 2005, Monroe County Rules of Civil Procedure 206.8(a) and 206.8(b) are hereby promulgated effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.C.P. No. 239. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order and Local Rules shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies and diskette shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania. One (1) copy shall be forwarded to the *Monroe County Legal Reporter* for publication. Copies shall be kept continuously available for public inspection in the Office of the Monroe County Prothonotary, the Office of the Court Administrator and the Monroe County Law Library.

By the Court

RONALD E. VICAN,
President Judge

Rule 206.8(a)—Petition for Private Detective and/or Security Guard License

(1) *Definitions:*

(i) "Applicant"—includes any private detective, the business of detective agency, investigator, the business of investigator, security guard, or the business of watch, guard, or patrol agency.

(ii) "Private Detective"—includes any person, partnership, association or corporation, engaged in the private detective business, including individual private detectives, private detective agencies, investigators, or the business of investigator, or businesses providing watch, guard or patrol agency services. (Definition derived from The Private Detective Act of 1953, as amended, 22 P. S. § 12.)

(iii) The term "security guard" includes uniformed or nonuniformed security guards, any patrol agency and/or individuals who are employed full time or part time, on a temporary or permanent basis, to patrol, guard, protect, monitor, regulate, secure or watch over persons and/or property, either real or personal. (Definition derived from The Private Detective Act of 1953, as amended, 22 P. S. § 12(e).)

(2) *Application for Private Detective License:*

(i) An Applicant(s) (or Applicant's counsel, hereafter "Applicant/Attorney"), seeking a private detective or security guard license pursuant to The Private Detective Act of 1953, as amended (hereafter "The Act"), shall file an original and one copy of a Petition for Private Detective or Security Guard License with the Clerk of Courts.

(ii) Applicant must comply with all requirements set forth in the Act and the Petition shall be accompanied by all documentation required under § 14 of The Act.

(iii) The Clerk of Courts shall forward a copy of the Petition to the Court Administrator.

(3) Applicant/Attorney shall serve a copy of the Petition on the District Attorney of Monroe County and shall file a Certificate of Service with the Clerk of Courts evidencing such service.

(4) *Fingerprints of Applicant:*

(i) In accordance with the Act, Applicant/Attorney shall submit, along with the Petition, fingerprint order cards to the Clerk of Courts;

(ii) The Clerk of Courts shall copy or make note of the cards submitted and immediately forward the original fingerprint order cards to the District Attorney of Monroe County for a fingerprint comparison.

(5) The District Attorney shall:

(i) within five (5) days after the filing of Applicant's fingerprints with the Clerk of Courts, submit the fingerprints to the Pennsylvania State Police Central Repository for purposes of conducting a fingerprint comparison with the fingerprints of criminals now or hereafter filed in the Pennsylvania State Police data base.

(ii) review the Applicant's Petition;

(iii) conduct a background check on the Applicant; and

(iv) prepare a report and recommendation to the Court. The report and recommendation must be signed by the District Attorney and shall be filed with the Clerk of Courts.

(6) *Hearing on Petition:*

(i) The District Attorney shall notify Applicant/Attorney when it has completed its investigation, at which time, Applicant/Attorney shall submit to the Court a proposed order for hearing in the form set forth below in subparagraph (9).

(ii) The Court shall schedule a hearing to consider Applicant's Petition, at which time the District Attorney or designee shall appear and report his/her recommendation.

(7) *Notice of Hearing:*

(i) Applicant/Attorney shall ensure that notice of the hearing date is published once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing;

(ii) Applicant/Attorney shall file an Affidavit of Publication, together with proofs of advertising, with the Clerk of Courts.

(8) Failure to comply with any provision of this rule may constitute sufficient grounds for the Court to dismiss the Petition and deny Applicant's request for a private investigator's license.

(9) *Forms:* Order for Hearing

Form—Order for Hearing—Petition for Private Detective and/or Security Guard License

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

IN RE: : NO. ____ P.DET. 2 ____
:
PETITION OF :
:

ORDER

AND NOW, this ____ day of _____, 20____, upon consideration of the within Petition for [Private Detective or Security Guard] License and upon motion of _____, Attorney for Applicant, a hearing is fixed on the application for the ____ day of _____,

20 _____, at _____ m., in Courtroom No. _____, Monroe County Courthouse, Stroudsburg, Pennsylvania.

Applicant or Applicant's attorney shall publish Notice of the Hearing once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing; and shall file an Affidavit of Publication, together with proofs of advertising, with the Clerk of Courts.

BY THE COURT:

J.

cc: (Applicant/Applicant's Attorney)
District Attorney's Office

Rule 206.8(b)—Petition for Appointment of School Police

(1) *Definitions:*

(i) "Applicant"—means the Board of School Directors of the school district requesting appointment of school police officers.

(ii) "School Police Officers"—includes any person who is hired by the school district for the purpose of enforcing good order in school buildings, on school buses and on school grounds located within the school district; including protecting the students and controlling large crowds at extra curricular student activities and events. (Definition derived from The Public School Code of 1949, as amended, 24 P. S. § 7-778(c).)

(iii) "Solicitor"—legal counsel for the school district.

(iv) "Appointee"—the person or persons to be employed by the Applicant as a school police officer.

(2) *Application for School Police:*

(i) An Applicant or the Solicitor on behalf of Applicant (hereafter "Applicant/Solicitor"), seeking appointment of school police officers pursuant to the Public School Code of 1949, as amended, 24 P. S. § 7-778 (hereafter "The School Code"), shall file an original and one copy of a Petition for Appointment of School Police with the Prothonotary.

(ii) Applicant must comply with all requirements set forth in The School Code and the Petition shall contain the following information:

(a) The name, address, social security number, date of birth, and dates of Act 34 clearance and the FBI investigation clearance for the Appointee(s) to be employed as a school police officer.

(b) The fingerprints of the Appointee(s).

(c) A report issued by the Federal Bureau of Investigation, United States Department of Justice, Investigation Division ("FBI") indicating that the Appointee(s) has no arrest record.

(d) A copy of the Request for Criminal History Record Check issued by the Pennsylvania State Police (PSP) indicating that the Appointee(s) has no arrest record.

(e) A statement by the Applicant representing that Appointee(s) is of good character and repute.

(f) A statement by the Applicant that the Appointee(s) has not resided outside the Commonwealth of Pennsylvania in any other jurisdiction since the FBI and PSP issued the reports verifying that the Appointee(s) does not have a criminal record.

(iii) The Prothonotary shall forward a copy of the Petition to the Court Administrator.

(3) *Hearing on Petition:*

(i) Applicant/Solicitor shall submit to the Court a proposed order for hearing in the form set forth below in subparagraph (F).

(ii) The Court shall schedule a hearing to consider Applicant's Petition, at which time the Solicitor shall appear and report his/her recommendation.

(4) *Notice of Hearing:*

(i) Applicant/Solicitor shall ensure that notice of the hearing date is published once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing;

(ii) Applicant/Solicitor shall file an Affidavit of Publication, together with proofs of advertising, with the Clerk of Courts.

(5) Failure to comply with any provision of this rule may constitute sufficient grounds for the Court to dismiss the Petition and deny Applicant's request to appoint the Appointee(s) as school police officers.

(6) *Forms: Order for Hearing*

Form—Order for Hearing—Petition for Appointment of School Police Officer

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

IN RE: _____ : NO. _____ MISC. 2
:
PETITION FOR APPOINTMENT :
OF SCHOOL POLICE OFFICER(S) :
FOR THE {Insert Name of School :
District} :

ORDER

AND NOW, this _____ day of _____, 20 _____, upon consideration of the within Petition for Appointment of School Police Officer(s) for the [Name of School District] and upon motion of _____, Solicitor for Applicant, a hearing is fixed on the application for the _____ day of _____, 20 _____, at _____ m., in Courtroom No. _____, Monroe County Courthouse, Stroudsburg, Pennsylvania.

Applicant or Solicitor attorney shall publish Notice of the Hearing once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing; and shall file an Affidavit of Publication, together with proofs of advertising, with the Clerk of Courts.

BY THE COURT:

J.

cc: (Applicant/Solicitor)
District Attorney's Office

By the Court

President Judge

[Pa.B. Doc. No. 05-1708. Filed for public inspection September 16, 2005, 9:00 a.m.]

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Notice of Proposed Public Access Policy Concerning Electronic Case Records of the Unified Judicial System

The Administrative Office of Pennsylvania Courts is planning to recommend that the Supreme Court of Pennsylvania adopt this proposed public access policy concerning electronic case records of the Unified Judicial System. At my direction, an ad hoc committee of Administrative Office of Pennsylvania Courts staff crafted this proposed policy that is being published for public comment.

The proposed policy covers electronic case record information that would be accessible by the public, how public requests for access are to be handled, public access request fees, and other pertinent recommendations. The explanatory Report highlights the Committee's considerations in formulating this proposed policy. I request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through

David S. Price

Chair, Public Access Ad Hoc Committee
Administrative Office of Pennsylvania Courts
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
Fax: (717) 795-2177

e-mail: publicaccesscomments@pacourts.us

no later than Thursday, November 17th, 2005.

ZYGMONT A. PINES,
Court Administrator of Pennsylvania

Proposed Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania

Section 1.00 Definitions

A. "CPCMS" means the Common Pleas Criminal Court Case Management System.

B. "Custodian" is the person, or designee, responsible for the safekeeping of electronic case records held by any court or office and for processing public requests for access to electronic case records.

C. "Electronic Case Record" means information or data created, collected, received, produced or maintained by a court or office in connection with a particular case that exists in the PACMS, CPCMS, or MDJS. Documents produced from the PACMS, CPCMS, and/or MDJS that concern a single case, except for web docket sheets, do not fall within this definition.

D. "MDJS" means the Magisterial District Judge Automated System.

E. "Office" is any entity that is using one of the following automated systems: Pennsylvania Appellate Court Case Management System (PACMS); Common Pleas Criminal Court Case Management System (CPCMS); or Magisterial District Judge Automated System (MDJS).

F. "PACMS" means the Pennsylvania Appellate Court Case Management System.

G. "Public" includes any person, business, non-profit entity, organization or association.

"Public" does not include:

1. Unified Judicial System officials or employees, including employees of the office of the clerk of courts, prothonotary, and any other office performing similar functions;

2. people or entities, private or governmental, who assist the Unified Judicial System or related offices in providing court services; and

3. any federal, state, or local governmental agency or an employee or official of such an agency when acting in his/her official capacity.

H. "Public Access" means that the public may inspect and obtain electronic case record(s), except as provided by law or as set forth in this policy.

I. "Public Terminal" means a computer terminal that may be located within the courthouse to provide the public with access to electronic case record information.

J. "Request for Bulk Distribution of Electronic Case Records" means any request, regardless of the format the information is requested to be received in, for all or a significant subset of electronic case records, as is and without modification or compilation.

K. "Request for Compiled Information From Electronic Case Records" means any request, regardless of the format the information is requested to be received in, for information that is derived from the selection, aggregation, and/or manipulation by the court, office or record custodian of information from more than one individual electronic case record, which is not already available in an existing report.

L. "UJS" means the Unified Judicial System of Pennsylvania.

Section 2.00 Statement of General Policy

A. This Policy covers all electronic case records.

B. The public may inspect and obtain electronic case records except as provided by law or as set forth in this policy.

C. A court or office may not adopt for electronic case records a more restrictive access policy or provide greater access than that provided for in this policy.

Section 3.00 Electronic Case Record Information Excluded from Public Access

A. The following information in an electronic case record is not accessible by the public:

1. social security numbers;
2. operator license numbers;
3. victim information;
4. informant information;
5. juror information;
6. a party's street address, except the city, state, and ZIP code may be released;
7. dates of birth, except the year of birth and age may be released;
8. witness information;
9. SID (state identification) numbers;
10. financial institution account numbers and credit card numbers;

11. notes, drafts, and work products related to court administration or any office that is the primary custodian of an electronic case record;

12. arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until execution of the warrant;

13. information sealed or protected pursuant to court order; and

14. information to which access is otherwise restricted by federal law, state law, or state court rule.

B. Notwithstanding subsection A, electronic case records concerning a single case that are accessible at the courthouse via a public terminal may include a party's full date of birth and full address in addition to all other information that is deemed accessible under this policy.

Section 3.10 Requests for Bulk Distribution of Electronic Case Records and Compiled Information from Electronic Case Records

A. A request for bulk distribution of electronic case records and/or compiled information from electronic case records shall be permitted for data that is not excluded from public access as set forth in this Policy.

B. A request for bulk distribution of electronic case records and/or compiled information from electronic case records not publicly accessible under Section 3.00 of this Policy, may be fulfilled where: the release of the information will not permit the identification of specific individuals; the release of the information will not present a risk to personal security or privacy; and the information is being requested for a scholarly, journalistic, governmental-related, research or case preparation purpose.

1. Requests of this type will be reviewed on a case-by-case basis.

2. In addition to the request form, the requestor shall submit in writing:

- (a) the purpose/reason for the request;
- (b) identify what information is sought; and
- (c) explain provisions for the secure protection of all data that is considered not accessible to the public.

3. If this type of request is granted, the requestor must sign a declaration that:

(a) the information/data will not be sold or otherwise distributed, directly or indirectly, to third parties except for the stated purposes;

(b) the information/data will not be used, directly or indirectly, to sell a product or service to an individual or the general public, except for the stated purposes; and

(c) no copying or duplication of the information/data provided will occur other than for the stated purposes.

Section 3.20 Requests for Electronic Case Record Information from Another Court or Office

Any request for electronic case record information from another court should be referred to the proper record custodian in the court or office where the electronic case record information originated. Any request for electronic case record information concerning multiple magisterial district judge courts or multiple judicial districts should be referred to the Administrative Office of the Pennsylvania Courts.

Section 4.00 Responding to a Request for Access to Electronic Case Records

A. Within ten (10) business days of receipt of a written request for electronic case record access, the respective court or office shall respond in one of the following manners:

1. fulfill the request, or if there are applicable fees and costs that must be paid by the requestor, notify requestor that the information is available upon payment of the same;

2. notify the requestor in writing that the requestor has not complied with the provisions of this Policy;

3. notify the requestor in writing that the information cannot be provided; or

4. notify the requestor in writing that the request has been received and the expected date that the information will be available. If the information will not be available within thirty (30) business days, the court or office shall notify the Administrative Office of Pennsylvania Courts and the requestor simultaneously.

B. If the court or office cannot respond to the request as set forth in subsection A, the court or office shall concurrently give written notice of the same to the requestor and the Administrative Office of the Pennsylvania Courts.

Section 5.00 Fees

A. Reasonable fees may be imposed for providing public access to electronic case records pursuant to this policy.

B. A fee schedule shall be in writing and publicly posted.

C. A fee schedule in any judicial district, including any changes thereto, shall not become effective and enforceable until:

1. a copy of the proposed fee schedule is submitted by the president judge to the Administrative Office of Pennsylvania Courts; and

2. the Administrative Office of the Pennsylvania Courts has approved the proposed fee schedule.

Section 6.00 Correcting Data Errors

Any party to a case or his/her attorney seeking to correct a data error or omission in an electronic case record should contact the court or office in which the original record was filed.

Section 7.00 Continuous Availability of Policy

A copy of this policy shall be continuously available for public access in every court or office that is using the PACMS, CPCMS, and/or MDJS.

EXPLANATORY REPORT

Proposed Electronic Case record Public Access Policy of the Unified Judicial System of Pennsylvania

Introduction

With the statewide implementation of the Common Pleas Criminal Court Case Management System (CPCMS) in process, the Administrative Office of the Pennsylvania Courts (AOPC) faced the complicated task of developing a uniform public access policy to criminal case records for Pennsylvania's Unified Judicial System (UJS). Public access to case records is a subject well known to the AOPC. Specifically, the AOPC has been providing information to the public from the judiciary's Magisterial District Judge Automated System (MDJS)

pursuant to a public access policy covering MDJS records since 1994.¹ For over a decade now, the AOPC has endeavored to provide accurate and timely MDJS information to requestors without fail.

Like many other state court systems as well as the federal courts, Pennsylvania is confronted with the complex issues associated with public access to case records. Should information found in court files be completely open to public inspection? Or do privacy and/or personal security concerns dictate that some of this information be protected from public view? How is the balance struck between the benefits associated with publicly accessible court data and the threat of harm to privacy and personal security? Should paper case records and electronic case records be treated identically for public access purposes? Does aggregation of data present any special concerns or issues? The above mentioned issues are a mere sampling of the many serious, and often competing, factors that were weighed in the development of this policy.

Through an ad hoc committee ("Committee") appointed by the Court Administrator of Pennsylvania, the AOPC crafted a public access policy covering case records. A summary of the administrative, legal, and public policy considerations that guided the design of the policy provisions follows herewith.

Administrative Scope of the Public Access Policy Governing Case Records

First and foremost, the Committee was charged with determining the scope of this public access policy. After extensive discussions, the Committee reached agreement that at present the public access policy should cover electronic case records as defined in the policy.²

Concerning paper case record information, the Committee first noted that if this policy was applicable to all paper case records then each document that is contained in the court's paper file would have to be carefully scrutinized and possibly redacted pursuant to the policy provisions before it could be released to the public. Depending on individual court resources, such a policy may have caused delays in fulfilling public access requests to case records, resulted in the inadvertent release of non-public information, or impeded the business of a filing office or court responsible for the task of review and redaction.³

The Committee is hopeful, however, that the information contained in paper case records concerning a single case will continue to enjoy an acceptable level of protection provided by "practical obscurity," a concept that the U.S. Supreme Court spoke of in *United States Department of Justice v. Reporters Committee for Freedom of the Press*.⁴ This notion of practical obscurity centers on the

¹ The *Public Access Policy of the Unified Judicial System of Pennsylvania: District Justice Records* was originally adopted in 1994, but was later revised in 1997.

² Electronic Case Records mean information or data created, collected, received, produced or maintained by a court or office in connection with a particular case that exists in the PACMS, CPCMS, or MDJS. Except as provided elsewhere in this policy, documents produced from the PACMS, CPCMS, or MDJS concerning a single case, except web docket sheets, are excluded from this definition.

³ The Committee's research revealed that some jurisdictions have proposed or enacted rules/procedures to provide for the redaction of paper records without requiring court staff to redact the information. For example, a number of state court systems are proposing the use of sensitive data sheets to be filed by litigants (e.g., Washington and Arizona). These data sheets contain the personal identifiers (e.g., social security number, etc.) that are normally found throughout a complaint or petition. The data sheets appear to obviate the need for redaction on the part of the filing office or court and protect sensitive data. Another approach taken by the federal court system is the redaction, fully or partially, of sensitive data in the pleadings or complaint by litigants or their attorneys prior to filing (e.g., U.S. District Court for the Eastern District of Pennsylvania Local Rule of Civil Procedure Rule 5.1.3.). It is the opinion of the Committee that the UJS should move in the direction of creating sensitive data sheets (like Washington and Arizona), especially as electronic filing becomes more the norm.

⁴ 489 U.S. 749, 780 (1989).

effort required to peruse the paper case file for detailed information at the courthouse in person, as opposed to obtaining it instantaneously by a click of the computer mouse.

At the heart of this issue is the question of whether access to paper records and electronic records should be the same. The Committee researched how other state court systems are addressing this issue. It appears that two distinct schools of thought have emerged. One school (represented by the New York⁵ and Vermont⁶ court systems) believes records should be treated the same and the goal is to protect certain information regardless of what form (paper or electronic) that information is in. The other school of thought (represented by the Massachusetts⁷ and Minnesota⁸ court systems) believes there is a difference between maintaining "public" records for viewing/copying at the courthouse and "publishing" records on the Internet.

The Committee further narrowed the scope of the public access policy concerning electronic case records by covering only those records that are created and maintained by one of the UJS' automated case management systems, as opposed to any and all electronic case records created and maintained by courts within the UJS. The Committee is aware that some judicial districts currently have civil automated case management systems in place, but the scope and design of those systems is as different as the number of judicial districts employing them. Crafting a single policy that would take into account the wide differences among those systems led to the decision to limit the scope to the PACMS, CPCMS and MDJS.

Legal Authority Pertinent to the Proposed Public Access Policy Governing Electronic Case Records

Article V, Section 10(c) of the Pennsylvania Constitution vests the Supreme Court with the authority to, inter alia, prescribe rules governing practice, procedure and the conduct of all courts. Section 10(c) extends these powers to the administration of all courts and supervision of all officers of the Judicial Branch. Rule of Judicial Administration 505(11) charges the AOPC with the supervision of "all administrative matters relating to the offices of the prothonotaries and clerks of court and other system and related personnel engaged in clerical functions, including the institution of such uniform procedures, indexes and dockets as may be approved by the Supreme Court." Rule of Judicial Administration 501(a) provides in part that "[t]he Court Administrator [of Pennsylvania] shall be responsible for the prompt and proper disposition of the business of all courts . . ." Rule of Judicial Administration 504(b) sets forth that "the Court Administrator shall . . . exercise the powers necessary for the administration of the system and related personnel and the administration of the Judicial Branch and the unified judicial system." In addition, Rule of Judicial Administration 506(a) provides that "[a]ll system and related personnel shall comply with all standing and special requests or directives made by the [AOPC] for information and statistical data relative to the work of the system and of the offices related to and serving the system and relative to the expenditure of public monies for their maintenance and operation."

Moreover, 42 Pa.C.S. § 4301(b) provides in part that "Supervision by Administrative Office—all system and

⁵ *Report to the Chief Judge of the State of New York* by the Commission on Public Access to Court Records (February, 2004).

⁶ VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS § 1-8 (2004).

⁷ *Policy Statement by the Justices of the Supreme Judicial Court Concerning Publications of Court Case Information on the Web* (May 2003).

⁸ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004).

related personnel engaged in clerical functions shall establish and maintain all dockets, indices and other records and make and file such entries and reports, at such times, in such manner and pursuant to such procedures and standards as may be prescribed by the Administrative Office of Pennsylvania Courts with the approval of the governing authority." 42 Pa.C.S. § 102 provides that system and related personnel of our Unified Judicial System is defined as including but not limited to clerks of courts and prothonotaries. Under the auspices of the aforementioned legal authority, this proposed policy was created.

As part of its preparations to devise provisions governing access to electronic case records, the Committee researched and reviewed the applicable body of law concerning the public's right to access case records and countervailing interests in personal privacy and security.

Common Law Right to Access

A general common law right to inspect and copy public judicial records and documents exists. And while this common law right to access has been broadly construed, the right is not absolute. In determining whether this common law right to access is applicable to a specific document, a court must consider two questions.⁹

The threshold question is whether the document sought to be disclosed constitutes a public judicial document.¹⁰ Not all documents connected with judicial proceedings are public judicial documents.¹¹ If a court determines that a document is a public judicial document, the document is presumed open to public inspection and copying. This presumption of openness may be overcome by circumstances warranting closure of the document. Therefore, the second question a court must address is whether such circumstances exist and outweigh the presumption of openness.¹²

Circumstances that courts have considered as outweighing the presumption of openness and warranting the closure of documents include: (a) the protection of trade secrets;¹³ (b) the protection of the privacy and reputations of innocent parties;¹⁴ (c) guarding against risks to national security interests;¹⁵ (d) minimizing the danger of unfair trial by adverse publicity;¹⁶ (e) the need of the prosecution to protect the safety of informants;¹⁷ (f) the necessity of preserving the integrity of ongoing criminal investigations;¹⁸ and (g) the availability of reasonable alternative means to protect the interests threatened by disclosure.¹⁹

These type of considerations have been found to outweigh the common law right to access with respect to the following records: transcript of bench conferences held in camera;²⁰ working notes maintained by the prosecutor and defense counsel at trial;²¹ a brief written by the district attorney and presented only to the court and the defense attorney but not filed with the court nor made

part of the certified record of appeal;²² and private documents collected during discovery as well as pretrial dispositions and interrogatories.²³

On the other hand, examples of records wherein the common law right to access has prevailed include arrest warrant affidavits;²⁴ written bids submitted to the federal district court for the purpose of selecting lead counsel to represent plaintiffs in securities litigation class action;²⁵ search warrants and supporting affidavits;²⁶ a transcript of jury voir dire;²⁷ pleadings and settlement agreements.²⁸

Federal Constitutional Right to Access

The United States Supreme Court has recognized a First Amendment right of access to most, but not all, court proceedings and documents.²⁹ To determine if a First Amendment right attaches to a particular proceeding or document, a two prong inquiry known as the "experience and logic test" must guide the decision to allow access or prohibit it. The "experience" prong involves consideration of whether the place and process have historically been open to the press and general public.³⁰ The "logic" prong involves consideration of "whether public access plays a significant positive role in the functioning of the particular process in question."³¹

With respect to the "logic" test, courts have looked to the following societal interests advanced by open court proceedings:

- (1) promotion of informed discussion of governmental affairs by providing the public with a more complete understanding of the judicial system;
- (2) promotion of the public perception of fairness which can be achieved only by permitting full public view of the proceedings;
- (3) providing a significant community therapeutic value as an outlet for community concern, hostility, and emotion;
- (4) serving as a check on corrupt practices by exposing the judicial process to public scrutiny;
- (5) enhancement of the performance of all involved; and
- (6) discouragement of perjury.³²

If the court finds that a First Amendment right does attach to a proceeding or document, *there is not an absolute right to access*. Rather, the court may close a proceeding or document if closure is justified by overriding principles. For instance, in criminal cases, closure can occur if it serves a compelling government interest and, absent limited restrictions upon the right to access to the

²² *Commonwealth v. Crawford*, 789 A.2d 266, 271 (Pa. Super. Ct. 2001).

²³ *Stenger v. Lehigh Valley Hosp. Ctr.*, 554 A.2d 954, 960-61 (Pa. Super. Ct. 1989), citing *Seattle Times v. Rhinehart*, 467 U.S. 20, 33 (1984).

²⁴ *Fenstermaker*, 530 A.2d at 420.

²⁵ *In re Cendant*, 260 F.3d at 193.

²⁶ *PG Publ'g Co. v. Copenhaver*, 614 A.2d 1106, 1108 (Pa. 1992).

²⁷ *U.S. v. Antar*, 38 F.3d 1348, 1358 (3d Cir. 1994).

²⁸ *Stenger*, 554 A.2d at 960, citing *Fenstermaker*, 530 A.2d 414; *Bank of Am. Nat'l Trust v. Hotel Rittenhouse Associates*, 800 F.2d 339 (3d Cir. 1987); *In re Alexander Grant and Co. Litigation*, 820 F.2d 352 (11th Cir. 1987).

²⁹ *In re Newark Morning Ledger Co.*, 260 F.3d 217, 220-21 (3d Cir. 2001), citing *Richmond Newspapers v. Va.*, 448 U.S. 555, 578 (1980); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978); *Antar*, 38 F.3d at 1359-60; *Press-Enterprise v. Super. Ct. of Cal.*, 478 U.S. 1, 11-12 (1986) [hereinafter *Press-Enterprise II*]; *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 (3d Cir. 1993); *U.S. v. Criden*, 675 F.2d 550, 554 (3d Cir. 1982); *U.S. v. Smith*, 787 F.2d 111, 114 (3d Cir. 1986); *Douglas Oil Co. of Cal. v. Petrol Stops*, 441 U.S. 211, 218 (1979). *But see U.S. v. McVeigh*, 119 F.3d 806 (10th Cir. 1997) (declining to decide whether there is a First Amendment right to judicial document, noting the lack of explicit Supreme Court holdings on the issue since *Press Enterprise II*, 478 U.S. 1, 11-12 (1986)).

³⁰ *In re Newark Morning Ledger*, 260 F.3d at 221 n.6., citing *Press-Enterprise II*, 478 U.S. at 8-9.

³¹ *Id.*, citing *Press-Enterprise II*, 478 U.S. at 8-9.

³² *Id.*, citing *Smith*, 787 F.2d at 114 (summarizing *Criden*, 675 F.2d at 556).

⁹ See *Commonwealth v. Fenstermaker*, 530 A.2d 414, 418-20 (Pa. 1987).

¹⁰ *Id.* at 418.

¹¹ *In re Cendant*, 260 F.3d 183, 192 (3d Cir. 2001) (stating that documents that have been considered public judicial documents have one or more of the following characteristics: (a) filed with the court, (b) somehow incorporated or integrated into the court's adjudicatory proceedings, (c) interpreted or the terms of it were enforced by the court, or (d) required to be submitted to the court under seal).

¹² See *Fenstermaker*, 530 A.2d at 420.

¹³ *In re Buchanan*, 823 A.2d 147, 151 (Pa. Super. Ct. 2003), citing *Katz v. Katz*, 514 A.2d 1374, 1377-78 (Pa. Super. Ct. 1986).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Fenstermaker*, 530 A.2d at 420.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 418.

²¹ *Id.*

proceeding or document, other interests would be substantially and demonstrably impaired.³³ For example, a court may be able to withhold the release of the transcript of the jury voir dire until after the verdict is announced if in the court's opinion it was necessary to protect the jury from outside influences during its deliberations.³⁴

Examples of proceedings or documents in which the courts have found a First Amendment right to access include: the voir dire examination of potential jurors,³⁵ preliminary hearings,³⁶ and post trial examination of jurors for potential misconduct.³⁷

Examples of proceedings or documents wherein the courts have not found a First Amendment right to access include: a motion for contempt against a United States Attorney for leaking secret grand jury information,³⁸ sentencing memorandum and briefs filed that contained grand jury information,³⁹ and pretrial discovery materials.⁴⁰

The defendant's Sixth Amendment right to a public trial may also warrant closure of judicial documents and proceedings; however, this right is implicated when the defendant objects to a proceeding being closed to the public. Courts have held that a proceeding can be closed even if the defendant does object, for the presumption of openness may be overcome by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.⁴¹

Pennsylvania Constitutional Right to Access

The Pennsylvania Supreme Court has established that courts shall be open by virtue of provisions in the Pennsylvania Constitution. Specifically, this constitutional mandate is found in Article I, § 9 which provides in part that "[i]n all criminal prosecutions the accused hath a right to . . . a speedy public trial by an impartial jury of the vicinage[.]" and Article I, § 11 which provides in part that "[a]ll courts shall be open . . ."⁴² Specifically, in *Fenstermaker*, the Court held that

[t]he historical basis for public trials and the interests which are protected by provisions such as Pennsylvania's open trial mandate have been well researched and discussed in two recent opinions of the United States Supreme Court, *Gannett Co. v. DePasquale*, [citation omitted] and *Richmond Newspapers, Inc. v. Virginia*, [citation omitted] and can be briefly summarized as follows: generally, to assure the public that justice is done even-handedly and fairly; to discourage perjury and the misconduct of participants; to prevent decisions based on secret bias or partiality; to prevent individuals from feeling that the law should be taken into the hands of private citizens; to satisfy the natural desire to see justice done; to provide for community catharsis; to promote public confidence in government and assurance that the system of judicial remedy does in fact work; to promote the stability of government by allowing access to its workings, thus assuring citizens that

government and the courts are worthy of their continued loyalty and support; to promote an understanding of our system of government and courts.

These considerations, which were applied by the United States Supreme Court in its analysis of the First and Sixth Amendments [of the United States Constitution] in *Gannett* and *Richmond Newspapers* apply equally to our analysis of Pennsylvania's constitutional mandate that courts shall be open and that an accused shall have the right to a public trial.⁴³

With regard to the right to a public trial, the Court has held that in determining whether a court's action has violated a defendant's right to a public trial, a court must keep in mind that such a right serves two general purposes: "(1) to prevent an accused from being subject to a star chamber proceeding;⁴⁴ and (2) to assure the public that standards of fairness are being observed."⁴⁵ Moreover, the right to a public trial is not absolute; rather, "it must be considered in relationship to other important interests . . . [such as] the orderly administration of justice, the protection of youthful spectators and the protection of a witness from embarrassment or emotional disturbance."⁴⁶ If a court determines that the public should be excluded from a proceeding, the exclusion order "must be fashioned to effectuate protection of the important interest without unduly infringing upon the accused's right to a public trial either through its scope or duration."⁴⁷

With regard to the constitutional mandate that courts shall be open, "[p]ublic trials, so deeply ingrained in our jurisprudence, are mandated by Article I, Section 11 of the Constitution of this Commonwealth [and further that] *public trials include public records* [emphasis added]."⁴⁸ Courts in analyzing Section 11 issues have held that there is a presumption of openness which may be rebutted by a claim that the denial of public access serves an important government interest and there is no less restrictive way to serve that government interest. Under this analysis, "it must be established that the material is the kind of information that the courts will protect and that there is good cause for the order to issue."⁴⁹ For example, a violation of Section 11 was found when a court closed an inmate/defendant's preliminary hearing to the public under the pretense of "vague" security concerns.⁵⁰

In at least one case, the Court set forth in a footnote that Article 1, § 7 is a basis for public access to court records.⁵¹ Section 7 provides in part that "[t]he printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or *any branch of government* and no law shall ever be made to restrain the right thereof."

⁴³ *Id.*, citing *Commonwealth v. Contankos*, 453 A.2d 578, 579-80 (Pa. 1982). 44 During the reign of Henry VIII and his successors, the jurisdiction of the

⁴⁴ During the reign of Henry VIII and his successors, the jurisdiction of the star chamber court was illegally extended to such a degree (by punishing disobedience to the king's arbitrary proclamations) that it was eventually abolished. Black's Law Dictionary (1990).

⁴⁵ *Commonwealth v. Harris*, 703 A.2d 441, 445 (Pa. 1997), citing *Commonwealth v. Berrigan*, 501 A.2d 226 (Pa. 1985).

⁴⁶ *Commonwealth v. Conde*, 822 A.2d 45, 49 (Pa. Super. Ct. 2003), citing *Commonwealth v. Knight*, 364 A.2d 902, 906-07 (Pa. 1976).

⁴⁷ *Id.*, citing *Knight*, 364 A.2d at 906-07.

⁴⁸ *Commonwealth v. French*, 611 A.2d 175, 180 n.12 (Pa. 1992).

⁴⁹ *R.W. v. Hampe*, 626 A.2d 1218, 1221 (Pa. Super. Ct. 1993), citing *Hutchinson v. Luddy*, 581 A.2d 578, 582 (Pa. Super. Ct. 1990) (citing *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1983)).

⁵⁰ *Commonwealth v. Murray*, 502 A.2d 624, 629 (Pa. Super. Ct. 1985) appeal denied, 523 A.2d 1131 (Pa. 1987).

⁵¹ *French*, 611 A.2d at 180 n.12.

³³ *In re Newark Morning Ledger*, 260 F.3d at 221, citing *U.S. v. Smith*, 123 F.3d 140, 147 (3d Cir. 1997) (quoting *Antar*, 38 F.3d at 1359).

³⁴ *Antar*, 38 F.3d at 1362.

³⁵ *Richmond Newspapers*, 448 U.S. 555 (1980).

³⁶ *Press-Enterprise II*, 478 U.S. 1 (1982).

³⁷ *U.S. v. DiSalvo*, 14 F.3d 833, 840 (3d Cir. 1994).

³⁸ *In re Newark Morning Ledger*, 260 F.3d 217.

³⁹ *Smith*, 123 F.3d at 143-44.

⁴⁰ *Stenger*, 554 A.2d at 960, citing *Seattle Times*, 467 U.S. at 33.

⁴¹ E.g., *Waller v. Georgia*, 467 U.S. 39, 45 (1984), citing *Press-Enterprise Co. v. Super. Ct. of Cal.*, 464 U.S. 501, 510 (1984) [hereinafter *Press-Enterprise I*].

⁴² *Fenstermaker*, 530 A.2d at 417 (citing PA. CONST. art. I, § 9, 11).

Legislation Addressing Public Access to Government Records

The Freedom of Information Act (FOIA), codified in Title 5 § 552 of the United States Code, was enacted in 1966 and generally provides that any person has the right to request access to federal agency records or information. All agencies of the executive branch of the United States government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court. The FOIA does not, however, provide access to records held by state or local government agencies, or by private businesses or individuals.⁵²

The Privacy Act of 1974⁵³ is a companion to the FOIA. The Privacy Act regulates federal government agency record-keeping and disclosure practices and allows most individuals to seek access to federal agency records about themselves. The Act requires that personal information in agency files be accurate, complete, relevant, and timely. The subject of a record may challenge the accuracy of information. The Act requires that agencies obtain information directly from the subject of the record and that information gathered for one purpose is not to be used for another purpose. Similar to the FOIA, the Act provides civil remedies for individuals whose rights may have been violated. Moreover, the Act restricts the collection, use and disclosure of personally identifiable information (e.g., social security numbers) by federal agencies.⁵⁴

Pennsylvania's Right to Know Act⁵⁵ (RTKA) gives Pennsylvanians the right to inspect and copy certain executive branch records. The RTKA was originally enacted in 1957 but was substantially amended by Act 100 of 2002. Records that are available under the RTKA include "any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons."⁵⁶ However, records that are not available under the RTKA include:

any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, except the record of any conviction for any criminal act [emphasis added].⁵⁷

⁵² United States Department of Justice Freedom of Information Act Reference Guide (November 2003), available at <http://www.usdoj.gov/04foia/referenceguidemay99.htm>.

⁵³ 5 U.S.C. § 552a (2004).

⁵⁴ United States House of Representatives *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records* (First Report 2003).

⁵⁵ PA. STAT. ANN. tit. 65, §§ 66.1—66.9 (West 2004).

⁵⁶ 56 PA. STAT. ANN. tit. 65, § 66.1 (West 2004).

⁵⁷ *Id.*

While these federal and state laws are not applicable to court records, the Committee consulted these statutory provisions in drafting the policy.

Other Court Systems' Approaches Concerning Public Access to Electronic Case Records

The Committee looked to the policies, whether adopted or proposed by rule or statute or otherwise, of other court systems (federal and state) for guidance and in doing so found a wide variety of practices and approaches to public access. Not surprisingly, the process of putting court records online has produced remarkably disparate results. Courts have made records available in many forms ranging from statewide access systems to individual jurisdictions providing access to their records. Some court systems provide access to both criminal and civil records, while others make distinctions between the treatment of those types of records or restrict users' access to records that may contain sensitive personal information. As noted previously, some states distinguish between electronic and paper records, while others do not.

In particular, the Committee reviewed the policies (whether proposed or fully adopted) of: the Judicial Conference Committee on Court Administration and Case Management (including the Report of the Federal Judicial Center entitled *Remote Public Access to Electronic Criminal Case Records: A Report on a Pilot Project in Eleven Federal Courts*), the U.S. District Court for the Eastern District of Pennsylvania and the Southern District of California, Alaska, Arizona, California, Colorado, Florida, Georgia, Indiana, Idaho, Maryland, Massachusetts, Minnesota, Missouri, New York, North Carolina, Washington, Utah, and Vermont.

Additionally, the Committee closely reviewed the materials disseminated by the National Center for State Courts (NCSC) project titled "Developing a Model Written Policy Governing Access to Court Records." Perhaps as an indication of the difficulties inherent in drafting policy provisions to govern public access to court records in a single jurisdiction (let alone nationwide), the NCSC project shifted its focus from developing a model policy to guidelines for local policymaking.⁵⁸ The final report of this NCSC project was entitled "Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts" (CCJ/COSCA Guidelines). As noted in the title, the CCJ/COSCA Guidelines were adopted by the Conference of Chief Justices and the Conference of State Court Administrators.

As it wrestled with and attempted to appropriately balance the thorny issues and significant challenges associated with the development and implementation of a statewide access policy, the Committee was grateful for the insight and thought-provoking discussions these policies engendered.

Policy Perspectives Weighed in Devising the Public Access Policy Governing Electronic Case Records

Increasingly in today's society, the courts are witness to the tension between the importance of fully accessible electronic case records and the protection of an individual's privacy and personal security. The two important, but at times seemingly incompatible, interests are perhaps better categorized as the interest in *transparency* (i.e., opening judicial branch processes to public scrutiny) and the competing interests of *personal privacy and personal security*.

⁵⁸ The Committee notes that, in its opinion, there was a shift in the treatment of paper and electronic records and the balance between open records versus privacy protections between the various draft versions of the CCJ/COSCA Guidelines submitted for review and comment.

Case records capture a great deal of sensitive, personal information about litigants and third parties (e.g., witness, jurors) who come in contact with the courts. The tension between transparency and personal privacy/security of case records has been heightened by the rapidly increasing use of the Internet as a source of data, enhanced automated court case management systems, and other technological realities of the Information Age.

Prior to the widespread use of computers and search engines, case record information was accessible by traveling to the local courthouse and perusing the paper files, presumably one at a time. Thus, most information contained in the court records enjoyed "practical obscurity." In the latter part of the twentieth century, the proliferation of computerized case records was realized. As a result, entire record systems are swept by private organizations within seconds and data from millions of records are compiled into enormous record databases, accessible by government agencies and the public.⁵⁹

Cognizant of today's technological realities, the Committee explored the inherent tension between the transparency of case records and the interest in personal privacy and security to more clearly understand the values associated with each.

The Values of Transparency

The values of transparency can be described as serving four essential functions: 1) shedding light on judicial activities and proceedings; 2) uncovering information about public officials and candidates for public office; 3) facilitating certain social transactions; and 4) revealing information about individuals for a variety of purposes.⁶⁰

With regard to access to electronic case records, the Committee focused primarily on the first function of transparency, which aids the public in understanding how the judicial system works and promotes public confidence in its operations. Open electronic case records "allows the citizenry to monitor the functioning of our courts, thereby insuring quality, honesty, and respect for our legal system."⁶¹ Transparent electronic case records allow the public to assess the competency of the courts in resolving cases and controversies that affect society at large, such as product liability, medical malpractice or domestic violence litigation.⁶² Information that alerts the public to danger or might help prove responsibility for injuries should be available, as should that which enables the public to evaluate the performance of courts and government officials, the electoral process and powerful private organizations.⁶³

The key to assessing the complete release of electronic case record data appears to hinge upon whether there is a legitimate public interest at stake or whether release is sought for "mere curiosity."⁶⁴ While this measure has been applied to analysis of the propriety of sealing individual court records, it should apply by extension to the broader subject of public access to electronic case record information. Analysis of whether release of elec-

tronic case record information satisfies a legitimate public interest should center on whether the effect would be to serve one of the four essential functions of transparency. Any other basis for release might serve to undermine the public's trust and confidence in the judiciary.

The values inherent in the transparency of electronic case records are the root of the "presumption of openness" jurisprudence. The Committee gave that presumption due consideration throughout its undertaking.

Privacy and Personal Security Concerns Regarding the Release of Electronic Case Records

The Committee debated at length as to where the line is drawn between transparency and privacy/personal security. Unfortunately, no legal authority exists that provides a "bright line" rule. Moreover, given that our society continues to witness and adopt new technology at a fast pace, the Committee worked to identify the privacy and personal security concerns that the release of electronic case record information triggers.

According to a national survey conducted a decade ago, nearly 80% of those polled were concerned or very concerned about the threat to their privacy due to the increasing use of computerized records.⁶⁵ Concerns about advances in information technology have resulted in greater public support for legislative protection of confidential information.⁶⁶ The Committee noted that the last two legislative sessions of the Pennsylvania General Assembly have resulted in the introduction of more than forty bills that seek to restrict access to private and/or personal information.

Case records contain considerable amounts of sensitive personal information, such as social security numbers, financial information, home addresses, and the like. This information is collected not only with respect to the litigants but others involved in cases, such as witnesses and jurors. The threat to privacy is realized in the assembling of individual "dossiers" which can track the private details of one's life, including spending habits, credit history, and purchases.⁶⁷

Personal security issues arise from the ease with which sensitive data can usually be obtained. The threat of harm can either be physical or financial. By accessing home address information, individuals may be the subject of stalking or harassment that threatens their physical person.⁶⁸ Financial harm is documented by the fastest growing consumer fraud crime in the United States—identity theft. "According to CBS News, approximately every 79 seconds an identity thief steals someone's identity, opens an account in the victim's name and goes on a buying spree."⁶⁹ The United States Federal Trade Commission reports that 10.1 million consumers have been victims of identity theft in 2003.⁷⁰ In addition, a recent study by the financial industry reveals that 9.3 million people were victims of the crime of identity theft in 2004.⁷¹ The U.S. Department of Justice estimates that identity bandits may victimize up to 700,000 Americans per year.⁷² In Eastern Pennsylvania, a regional identity

⁵⁹ Daniel J. Solove, *Access and Aggregation: Public Records, Privacy and the Constitution*, 86 Minn. L. Rev. 1137 (2002) (noting that more than 165 companies compile "digital biographies" on individuals that by a click of a mouse can be scoured for data on individual persons).

⁶⁰ *Id.* at 1173.

⁶¹ *Id.* at 1174 (citing *In re Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984)).

⁶² *Id.* at 1174-75.

⁶³ Stephen Gillers, *Why Judges Should Make Court Documents Public*, N.Y. Times, November 30, 2002, p 17.

⁶⁴ George F. Carpinello, *Public Access to Court Records in New York: The Experience Under Uniform Rule 216.1 and the Rule's Future in a World of Electronic Filing*, 66 ALB. L. REV. 1089, 1094 (2003) (citing *Dawson v. White & Case*, 584 N.Y.S.2d 814, 815 (N.Y. App. Div. 1992), wherein financial information concerning defendant's partners and clients was sealed as disclosure would not benefit a relevant and legitimate public interest).

⁶⁵ Barbara A. Petersen and Charlie Roberts, *Access to Electronic Public Records*, 22 FLA. ST. U.L. REV. 443, n. 247 (1994).

⁶⁶ *Id.* at 486.

⁶⁷ Solove, *supra* note 59, at 1140.

⁶⁸ Robert C. Lind and Natalie B. Eckart, *The Constitutionality of Driver's Privacy Protection Act*, 17 Communication Lawyer 18 (1999). See also, Solove, *supra* note 59, at 1173.

⁶⁹ David Narkiewicz, *Identity Theft: A Rapidly Growing Technology Problem*, The Pennsylvania Lawyer, May-June 2004, at 58.

⁷⁰ Bob Sullivan, *Study: 9.3 Million ID Theft Victims Last Year*, MSNBC.com, January 28, 2005.

⁷¹ *Id.*

⁷² *ID Theft Is No. 1 Fraud Complaint*, CBSNEWS.com, January 22, 2003.

theft task force was established to aid federal, state and local authorities to curb the growing incidence of identity theft.⁷³

Recent newspaper accounts have recorded that the personal information of hundreds of thousands of individuals has been accessed by unauthorized individuals—raising the realistic concern of the possibility of widespread identity theft. Commercial entities—specifically Choicepoint and LexisNexis—have collectively released the personal information of 445,000 people to unauthorized individuals.⁷⁴ The University of California-Berkeley reported the theft of a laptop computer that contained the dates of birth, addresses, and social security numbers of 98,369 individuals who applied to or attended the school.⁷⁵ Boston College alerted 120,000 alumni that computers containing their addresses and social security numbers were hacked by an unknown intruder.⁷⁶ A medical group in San Jose California reported the theft of computers that contained the information of 185,000 current and past patients.⁷⁷

Conclusion

After a thorough evaluation of the legal authority and public policy issues attendant to public access of electronic case record information, the Committee devised a balancing test for evaluating the release of electronic case record information. And while a perfect balance cannot be struck between transparency and personal privacy/security, the Committee attempted to reach a reasonable accommodation protective of both interests.

In determining whether electronic case record information should be accessible by the public, the Committee evaluated first whether there was a legitimate public interest in release of the information. If such an interest was not found, the inquiry ended and the information was not released.

If such an interest was found, the Committee next assessed whether the release of this information would cause an unjustified invasion of personal privacy or presented a risk to personal security.

If the answer to this inquiry was no, the information was released. If the answer was yes, the Committee weighed the unjustified invasion of personal privacy or risk to personal security against the public benefit in releasing the information.

Section 1.00 Definitions

A. “CPCMS” means the Common Pleas Criminal Court Case Management System.

B. “Custodian” is the person, or designee, responsible for the safekeeping of electronic case records held by any court or office and for processing public requests for access to case records.

C. “Electronic Case Record” means information or data created, collected, received, produced or maintained by a court or office in connection with a particular case that exists in the PACMS, CPCMS, or MDJS. Documents produced from the PACMS, CPCMS, and/or MDJS that concern a single case, except for web docket sheets, do not fall within this definition.

⁷³ Jim Smith, *Regional Task Force to Tackle ID-Theft Crimes*, phillynews.com, November 13, 2002.

⁷⁴ John Waggoner, *Id theft scam spreads across USA*, USATODAY.com, February 22, 2005; *LexisNexis Id theft much worse than thought*, MSNBC.com, April 12, 2005.

⁷⁵ *Thief steals UC-Berkeley laptop*, CNN.com, March 31, 2005.

⁷⁶ Hiawatha Bray, *BC warns its alumni of possible Id theft after computer is hacked*, Boston Globe, March 17, 2005.

⁷⁷ Jonathon Krim, *States Scramble to Protect Data*, Washington Post, April 9, 2005.

D. “MDJS” means the Magisterial District Judge Automated System.

E. “Office” is any entity that is using one of the following automated systems: Pennsylvania Appellate Court Case Management System (PACMS); Common Pleas Criminal Court Case Management System (CPCMS); or Magisterial District Judge Automated System (MDJS).

F. “PACMS” means the Pennsylvania Appellate Court Case Management System.

G. “Public” includes any person, business, non-profit entity, organization or association.

“Public” does not include:

1. Unified Judicial System officials or employees, including employees of the office of the clerk of courts, prothonotary, and any other office performing similar functions;

2. people or entities, private or governmental, who assist the Unified Judicial System or related offices in providing court services; and

3. any federal, state, or local governmental agency or an employee or official of such an agency when acting in his/her official capacity.

H. “Public Access” means that the public may inspect and obtain electronic case record(s), except as provided by law or as set forth in this policy.

I. “Public Terminal” means a computer terminal that may be located within the courthouse to provide the public with access to electronic case record information.

J. “Request for Bulk Distribution of Electronic Case Records” means any request, regardless of the format the information is requested to be received in, for all or a significant subset of electronic case records, as is and without modification or compilation.

K. “Request for Compiled Information From Electronic Case Records” means any request, regardless of the format the information is requested to be received in, for information that is derived from the selection, aggregation, and/or manipulation by the court, office or record custodian of information from more than one individual electronic case record, which is not already available in an existing report.

L. “UJS” means the Unified Judicial System of Pennsylvania.

Commentary

In adopting the definitions to the above terms, the Committee considered Pennsylvania law, other states’ laws and public access policies, and the CCJ/COSCA Guidelines. In most cases, the definitions that the Committee chose to adopt are found in one of the above-mentioned sources. The following list sets forth the source for each of the above definitions.

Subsection B, Custodian, is derived from Arizona’s definition of custodian which is the “person responsible for the safekeeping of any records held by any court, administrative office, clerk of court’s office or that person’s designee who also shall be responsible for processing public requests for access to records.”⁷⁸ To ensure that this definition would encompass any court or office that is the primary custodian of electronic case records the

⁷⁸ ARIZ. SUP. CT. R. 123(b)(6).

Committee chose to replace the phrase “any court, administrative office, clerk of court’s office” with “any court or office.”

Subsection C, Electronic Case Record, the Committee opines it is necessary to set forth a term for those records that exist within one of the UJS’ automated case management systems (PACMS, CPCMS, or MDJS). This definition is derived from Minnesota’s definition of “case record.”⁷⁹ Nonetheless, this definition includes paper documents produced from the UJS’ automated case management systems in response to requests for compiled information from electronic case records and requests for bulk distribution of electronic case records.

Subsection E, Office, is a Committee-created term. The Committee wanted to ensure that the Policy applies only to the office that is the primary custodian of an electronic case record, regardless of the title of the office. The Committee also wanted to avoid creating an obligation on the part of an office that possessed only a copy of a record to provide access to a requestor.

Subsection G, Public, is a variation of a provision in the CCJ/COSCA Guidelines.⁸⁰ The most significant difference is that the CCJ/COSCA Guidelines provide for two additional classes of individuals and/or entities that are included in the definition of “public.” The first class is “any governmental agency for which there is no existing policy defining the agency’s access to court records.”⁸¹ In the Committee’s judgment, all government requestors should be treated differently than non-government requestors. Thus, the Committee chose not to adopt this statement, as further explained below.

The second class is “entities that gather and disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to nature or extent of access.”⁸² The Committee opines that any person or entity that falls within this category would also fall within our definition of the public. Therefore, this statement was thought to be redundant.

In the judgment of the Committee every member of the public should be treated equally when requesting access to electronic case records. The Policy creates three categories of individuals and entities that do not fall within the definition of the “public;” thus, the Policy’s provisions are not applicable to them. Specifically, these three categories are (1) court employees, (2) those who assist the courts in providing court services (e.g., contractors), and (3) governmental agencies.

With regard to court employees and those who assist the courts in providing court services (e.g., contractors), the Committee asserts that they should also have as much access to electronic case records as needed to perform their assigned duties and tasks.

With regard to requests from governmental agencies, the Committee noted that AOPC’s practice when responding to government requests for MDJS information has been to place few restrictions on fulfilling said requests. AOPC has provided to governmental agencies the following information: social security numbers, driver license numbers, dates of birth, and many other pieces of sensi-

tive information that MDJS Policy prohibits access to by public (non-government) requestors. The Committee considers this to be consistent with the approach taken by other branches of Pennsylvania’s government. Specifically, the RTKA provides that a requestor is defined as “a person who is a resident of the Commonwealth and requests a record pursuant to this act.”⁸³ Thus, it appears that the intent of the RTKA is for it to be only applicable to public (non-governmental) requestors.

Although the Committee is aware that the RTKA does exclude non-residents of Pennsylvania,⁸⁴ it sees no reason to limit the definition of public to exclude non-residents of the Commonwealth (for example, an executor in New York asking for court records concerning a Pennsylvania resident in order to settle an estate).

The Committee also noted that the CCJ/COSCA Guidelines provide that the policy “applies to governmental agencies and their staff where there is no existing law specifying access to court records for that agency, for example a health department If there are applicable access rules, those rules apply.”⁸⁵ Thus, the CCJ/COSCA Guidelines provide that unless there is specific legal authority governing the release of court records to a particular governmental agency, the governmental agency should be considered a member of the public for the purposes of access to information.

The Committee maintains that limitations upon the information provided to public requestors is a result of a balance struck between providing access to public information, and protecting the privacy and safety of the individuals whose information the courts and related offices possess. With regard to governmental entities, no such balance needs to be struck in that providing access to restricted information to another governmental agency does not presumably endanger individuals’ safety or privacy. To ensure that the requests are for legitimate governmental reasons, all government requestors should be required to complete a government request form, a separate form from that used by public requestors. This government request form should require the requestor to state the reason for request, in contrast to the public request form, which should not. The justification for requiring more information about governmental requests lies with the much greater access afforded to governmental entities. However, information pertaining to these requests and the court’s response to the same should not be accessible to the public.

However, while in the Committee’s judgment government requestors should be provided with greater access to information, there are some pieces of information that absolutely should not be released—for example, information sealed or protected pursuant to court order. Therefore, the Committee recommends that government requestors continue to be provided with greater access to information than public requestors, but such access should not be completely unrestricted.

Lastly, the Committee decided with regard to foreign government requestors that if a foreign government is permitted access pursuant to law, then access will be provided.

When the Committee was considering whether to include or exclude litigants and their attorneys in the definition of the “public,” the Committee noted that the current MDJS practice is to treat litigants and their

⁷⁹ Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch (January 12, 2004), p. 4.

⁸⁰ Steketee, Martha Wade and Carlson, Alan, *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*, October 18, 2002, available at www.courtaccess.org/modelpolicy [hereinafter *CCJ/COSCA Guidelines*], p. 10.

⁸¹ *Id.*

⁸² *Id.*

⁸³ PA. STAT. ANN. tit. 65, § 66.1 (West 2004).

⁸⁴ *Id.*

⁸⁵ *CCJ/COSCA Guidelines*, p. 11.

attorneys the same as non-litigants or non-attorneys. However, it is noted that the CCJ/COSCA Guidelines provides that the parties to a case and their attorneys do not fall within the definition of the term "public."⁸⁶ Therefore, in the CCJ/COSCA Guidelines, they will have nearly unrestricted access to the electronic case records, whereas the public's access will be restricted.

Subsection H, Public Access, is a Committee created term because the Committee was unable to find an existing definition that was deemed adequate.

Subsection I, Public Terminal, is a Committee-created term.

Subsection J, Request for Bulk Distribution of Electronic Case Records, is derived from the CCJ/COSCA Guidelines.⁸⁷ This definition includes all requests regardless of the format the requestors want to receive the information in (i.e., paper, electronic, etc.). It appears that this is a term of art that is commonly used nationwide.⁸⁸

Subsection K, Request for Compiled Information From Electronic Case Records, is loosely derived from the definition that appears in the CCJ/COSCA Guidelines.⁸⁹ In addition to other changes, the Committee replaced the word "reformulation" with "manipulation" which it considers to be more encompassing. This definition includes all requests regardless of the format the requestors want to receive the information in (i.e., paper, electronic, etc.). The Committee notes that this term is used by Indiana.⁹⁰

Section 2.00 Statement of General Policy

A. This Policy covers all electronic case records.

B. The public may inspect and obtain electronic case record except as provided by law or as set forth in this policy.

C. A court or office may not adopt for electronic case records a more restrictive access policy or provide greater access than that provided for in this policy.

Commentary

For the reasons stated in the Introduction, paragraph A sets forth that this policy covers electronic case records as defined in Section 1.00.

The language of subsection C is suggested in the CCJ/COSCA Guidelines, which provide "[i]f a state adopts a policy, in the interest of statewide uniformity the state should consider adding a subsection . . . to prevent local courts from adopting different policies . . . This not only promotes consistency and predictability across courts, it also furthers equal access to courts and court records."⁹¹ The Committee opines it is essential for the Unified Judicial System to have this provision in the policy to prevent various courts and offices from enacting individual policies governing electronic case records.

The Committee also notes that subsection C applies to fees in that the level of fees may be a means of restricting access. Therefore, a court or office charged with fulfilling public access requests must comply with the fee schedule provisions contained in Section 5.00 of this policy.

⁸⁶ CCJ/COSCA Guidelines, p. 10.

⁸⁷ CCJ/COSCA Guidelines, p. 29.

⁸⁸ For example this term is used by Indiana (Proposed Revision of Ind. Admin. R.9(C)(9)), Minnesota (*Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch*, p. 39), California (Cal. CT. R. 2073(f)), and Colorado (Public Access Committee Cost Recovery Formula Concerning the Release of Electronic Data, Section II.C.1.).

⁸⁹ CCJ/COSCA Guidelines, p. 34.

⁹⁰ Proposed Revision of Ind. Adm. R. 9(C)(10).

⁹¹ CCJ/COSCA Guidelines, pp. 24-25.

Section 3.00 Electronic Case Record Information Excluded from Public Access

A. The following information in an electronic case record is not accessible by the public:

1. social security numbers;
2. operator license numbers;
3. victim information;
4. informant information;
5. juror information;
6. a party's street address, except the city, state, and ZIP code may be released;
7. dates of birth, except the year of birth and age may be released;
8. witness information;
9. SID (state identification) numbers;
10. financial institution account numbers and credit card numbers;
11. notes, drafts, and work products related to court administration or any office that is the primary custodian of an electronic case record;
12. arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until execution of the warrant;
13. information sealed or protected pursuant to court order; and
14. information to which access is otherwise restricted by federal law, state law, or state court rule.

B. Notwithstanding subsection A, electronic case records concerning a single case that are accessible at the courthouse via a public terminal may include a party's full date of birth and full address in addition to all other information that is deemed accessible under this policy.

Commentary

The Committee's reasoning for not releasing each category of sensitive information is set forth below.

Social Security Numbers

At the outset, the Committee noted that the MDJS Policy provides that the AOPC will not release social security numbers.⁹² In addition, the Committee could not locate any controlling legal authority that required the courts and/or offices to either release or redact social security numbers from an electronic case record before permitting access to the same.⁹³ While such controlling authority is non-existent, the Committee's review of the RTKA, federal law, federal and other states court's policies (either enacted or proposed) yielded much information on this subject.

First, case law interpreting the RTKA consistently maintains that social security numbers fall within the personal security exception of the RTKA and thus should not be released.⁹⁴

⁹² See MDJS policy, Section II.B.2.a.

⁹³ The Committee notes the introduction of Pennsylvania Senate Bill 703 in the 2003 Legislative Session concerning the confidentiality of social security numbers. This bill is identical to Senate Bill 1407 introduced the previous year which would prohibit the posting or public display of such numbers.

⁹⁴ See, e.g., *Tribune-Review Publ'g Co. v. Allegheny County Hous. Auth.*, 662 A.2d 677 (Pa. Commw. Ct. 1995), *appeal denied*, 686 A.2d 1315 (Pa. 1996); *Cypress Media, Inc. v. Hazleton Area Sch. Dist.*, 708 A.2d 866, Pa. Commw. Ct. 1998), *appeal dismissed*, 724 A.2d 347 (Pa. 1999); and *Times Publ'g Co., Inc. v. Michel*, 633 A.2d 1233 (Pa. Commw. Ct. 1993), *petition for allowance of appeal denied*, 645 A.2d 1321 (Pa. 1994).

Second, the Freedom of Information Act (FOIA)⁹⁵ and the Privacy Act⁹⁶ apply only to records of "each authority of the Government of the United States,"⁹⁷ and they do not apply to state case records.⁹⁸ However, even if these laws did apply to state case records, social security numbers are exempted from public disclosure under the FOIA personal privacy exemption,⁹⁹ while the Privacy Act does not appear to restrict the dissemination of social security numbers (only the collection of them).

In addition, Section 405 of the Social Security Act provides that "social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number."¹⁰⁰ Although, it is unclear as to whether this law is applicable to state courts, some courts such as Vermont¹⁰¹ and Minnesota¹⁰² appear to have used this statute as a basis for formulating a recommendation on the release of social security numbers.

With regard to the federal courts, the Judicial Conference Committee on Court Administration and Case Management ("Judicial Conference") in September 2001 recommended that the courts should only release the last four digits of any social security number in electronic civil case files available to the public.¹⁰³ The Judicial Conference also recommended that the public should not have electronic access to criminal case files. However, in March 2002, the Judicial Conference established a pilot program wherein eleven federal courts provide public access to criminal case files electronically. In this pilot program, the Judicial Conference set forth that the courts shall only release the last four digits of any social security number.¹⁰⁴

The Committee's review of other states' policies, whether enacted or proposed, found that the redaction of all or part of social security numbers is common. For instance, the policies of the following states provide that only the last four digits of a social security number shall be released: New York,¹⁰⁵ Indiana,¹⁰⁶ and Maryland.¹⁰⁷ In addition, the policies of the following states provide

that the entire social security number is protected and no part of it is released: Arizona,¹⁰⁸ California (in criminal cases records),¹⁰⁹ Florida,¹¹⁰ Vermont,¹¹¹ Washington (in family court case records),¹¹² Minnesota,¹¹³ Massachusetts,¹¹⁴ and Kentucky.¹¹⁵

The CCJ/COSACCJ/COSCA Guidelines suggest that the release of social security numbers should be considered on a case by case basis to determine if access should be allowed only at the court facility (whether in electronic or paper form) under Section 4.50(a)¹¹⁶ or to prohibit access altogether under Section 4.60.¹¹⁷

The Committee concluded when it balanced all the factors outlined above that there may be a legitimate public interest in releasing social security numbers in full or part. Specifically, the release of full or partial social security numbers generally permits the users of court information to link a specific party with specific case information. That is, a social security number is used for "matching" purposes. However, the Committee maintains that the other identifiers that are releasable under this policy, such as year of birth and partial address, will ensure that accurate matches of parties and case information can be made. In addition, the Committee is convinced that the release of any part of a social security number would cause an unjustified invasion of personal privacy as well as present a risk to personal security. Thus, the Committee recommends that the MDJS policy of restricting the release of any part of a social security number should be continued.

Operator License Numbers

The Committee notes that the MDJS policy provides that the AOPC will not release operator license numbers.¹¹⁸ The Committee found no controlling legal authority that would prohibit a court and/or office from redacting operator license numbers from an electronic case record prior to its release to the public. However, several statutes were of interest to the Committee in analyzing this issue.

custodian shall deny inspection of a case record or a part of a case record that would reveal . . . [a]ny part of the social security number . . . of an individual, other than the last four digits."

¹⁰⁸ ARIZ. R. 123 Public Access to the Judicial Records of the State of Arizona, Subsection (c)(3) provides in part that "documents containing social security [numbers] . . . when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order." See also *Report and Recommendation of the Ad Hoc Committee to Study Public Access to Electronic Records* dated March 2001 Sections (IV)(B), (IV)(D), (V)(1) and (VI)(6).

¹⁰⁹ CAL. CT. R 2073.5(c) which provides that "[t]he court should, to the extent feasible, redact the following information from records to which it allows remote access [to]: . . . social security numbers." Please note that this subsection of the rule provides in part that it "does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access." See also CAL. CT. R 2077(c)(1).

¹¹⁰ Order of Supreme Court of Florida, No. AOSO04-4 (February 12, 2004). Specifically, the Order lists information that shall be accessible in electronic format to the public. Social security numbers are not listed in the Order.

¹¹¹ VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS RULE 6(b)(29). This subsection provides that "the public shall not have access to the following judicial branch records . . . records containing a social security number of any person, but only until the social security number has been redacted from the copy of the record provided to the public."

¹¹² WASH. CT. R. 22. In this Rule, a social security number is considered to be a "restricted personal identifier" under section (b)(5). Furthermore, under section (g), restricted personal identifiers are generally not accessible to the public.

¹¹³ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), pp. 14, 36, and 48. Specifically, proposed Rule 8(2)(b)(1) provides that remote access to social security numbers of parties, their family members, jurors, witnesses, or victims in electronic records will not be allowed.

¹¹⁴ *Policy Statement by the Justices of the Supreme Court Judicial Court Concerning Publications of Court Case Information on the Web*, (May 2003), p. 3, subsection (A)(6) which provides in part that no information regarding an individual's social security number should appear on the Court Web site.

¹¹⁵ *Kentucky Court of Justice Access to Electronic Court Records* (December 2003) provides in part that "we decided to remove the individual's . . . social security number . . . from public remote access."

¹¹⁶ CCJ/COSCA Guidelines, p. 40.

¹¹⁷ CCJ/COSCA Guidelines, p. 45.

¹¹⁸ See MDJS policy, Section I.B.2.a.

⁹⁵ 5 U.S.C. § 552 (2004).

⁹⁶ 5 U.S.C. § 552(a) (2004).

⁹⁷ 5 U.S.C. § 551 (2004), see also, 5 U.S.C. § 552(f) (2004).

⁹⁸ Please note that the *CCJ/COSCA Guidelines* provide that "[a]lthough there may be restrictions on the federal agencies disclosing Social Security Numbers; they do not apply to state or local agencies such as courts." See *CCJ/COSCA Guidelines*, p. 9.

⁹⁹ E.g., *Sheet Metal Worker Int'l Ass'n, Local Union No. 19 v. U.S. Dep't of Veterans Affairs*, 135 F.3d 891 (3d Cir. 1998).

¹⁰⁰ 42 U.S.C. § 405(c)(2)(C)(viii) (2004).

¹⁰¹ See Reporter's Notes following VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS RULE 6(b)(29) which provides that "[u]nder federal law social security numbers are confidential." The Reporter specifically cites to Section 405(c)(2)(C)(viii)(1) of the Social Security Act.

¹⁰² *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), p. 15, n.30 (citing the Social Security Act's provision that provides "[f]ederal law imposes the confidentiality of SSN whenever submission of the SSN is 'required' by state or federal law enacted on or after October 1, 1990.")

¹⁰³ *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files*, p. 3. As a result of this report, the U.S. District Court for the Eastern District of Pennsylvania promulgated Local Rule 5.1.3 which provides that personal identifiers such as social security numbers should be modified or partially redacted in all documents filed with the court before public access is permitted. See also Local Rules of Practice for the Southern District of California Order 514(2) which provides in part that "social security numbers shall be excluded from electronic public access except for judiciary employees, the United States Attorney or their representatives and litigants."

¹⁰⁴ *Remote Public Access to Electronic Case Records: A Report on a Pilot Project in Eleven Federal Courts*, prepared by the Court Administration and Case Management Committee of the Judicial Conference, p. 12.

¹⁰⁵ *Report to the Chief Judge of the State of New York* by the Commission on Public Access to Court Records (February, 2004), p. 8. The Report provides that social security numbers should be shortened to their last four digits.

¹⁰⁶ Proposed Revision of IND. ADMIN. R. 9(F)(4)(d) provides that when a request for bulk or compiled information include release of social security numbers, that only the last four digits of the social security number should be released. However, Rule 9(C)(1)(d) provides that "[t]he following information in case records is excluded from public access and is confidential: . . . Social Security Numbers."

¹⁰⁷ *Recommendations to the Court of Appeals Court Committee Designated to Develop Rules Regarding Public Access to Court Records*, p. 44 which provides that ". . . a

First, the Driver's Privacy Protection Act¹¹⁹ (DPPA) provides that a state department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.¹²⁰ The DPPA defines personal information as "information that identifies an individual, including an individual's photograph, social security number, driver identification number. . . ."¹²¹ The AOPC has reviewed the DPPA previously and determined that it is inapplicable to the judiciary and its electronic case records.

Second, the Pennsylvania Vehicle Code provides that "it is unlawful for [a]ny police officer, or any officer, employee or agent of any Commonwealth agency or local authority which makes or receives records or reports required to be filed under [title 75] to sell, publish or disclose or offer to sell, publish or disclose records or reports which relate to the driving record of any person."¹²² In addition, this statute provides "it is unlawful for [a]ny person to purchase, secure or procure or offer to purchase, secure or procure records or reports described [above]."¹²³ It appears that in order for this statute to be applicable to case records, the judiciary would have to be considered a "Commonwealth Agency." There is no definition in Title 75 for a "Commonwealth Agency." However, the Committee reviewed many other statutes that do define Commonwealth Agency and in its opinion the judiciary would not be considered a Commonwealth Agency under any of these definitions. Therefore, this statute is inapplicable to the courts and related offices. However, the spirit of this statute, as well as the DPPA, clearly conveys that in Pennsylvania the government should not be releasing operator license numbers to the public.

Moreover, the Committee's research revealed that the states of California (in criminal case records),¹²⁴ Florida,¹²⁵ and Washington (in family law case records),¹²⁶ do not permit the release of operator license numbers.

Security issues may be raised if a person's operator license number is used in conjunction with other personal identifiers. Specifically, if one knows some basic personal information about another such as his/her name, date of birth, and operator license number, he/she could alter the other's driver and vehicle information maintained by PennDOT.

In addition to identity theft, personal safety is also an issue. Threats to personal safety were documented in numerous incidents that lead to the enactment of the DPPA. Specifically:

[i]n 1989 actress Rebecca Schaeffer was killed by an obsessed fan. The fan was able to locate Schaeffer's home after he hired a private investigator who obtained the actress's address by accessing her California motor vehicle record, which was open to public

inspection. As a result, the State of California restricted the dissemination of such information to specified recipients. In addition to the Schaeffer murder, public access to personal information contained in motor vehicle records allowed antiabortion groups to contact abortion clinic patients and criminals to obtain addresses of owners of expensive automobiles.¹²⁷

The Committee concluded when it balanced all the factors outlined above that there may be a legitimate public interest in releasing operator license numbers, specifically ensuring that the "right" party is matched with the "right" case information. However, the Committee maintains that the other identifiers that are releasable under this policy, such as year of birth and partial address, will ensure that accurate matches of parties and case information can be made. In addition, the Committee is convinced that the release of operator license numbers would cause unjustified invasions of personal privacy as well as present risks to personal security. Thus, the Committee recommends that the MDJS policy provisions restricting the release of operator license numbers should be continued.

Victim Information

The Committee notes that the MDJS policy provides that "names of juvenile victims of abuse" shall not be released.¹²⁸ Additionally, it is noted that the CCJ/COSCA Guidelines state that "parts of the court record, or pieces of information (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access [include] name, address, telephone number, e-mail, or places of employment of a victim, particularly in a sexual assault case, stalking or domestic violence case . . ."¹²⁹

Additionally, the Committee notes that several states, such as California (in criminal case records),¹³⁰ Florida,¹³¹ Indiana,¹³² Minnesota,¹³³ and Massachusetts¹³⁴ have enacted or proposed public access policies or court rules that would prohibit the release of victim information.

The Committee concluded that although there may be a legitimate public interest in releasing victim information, such as alerting the community as to whom crimes are being committed against and where crimes are being committed, it is outweighed by the interest of protecting the victim. The Committee, therefore, opines that the release of victim information may result in intimidation or harassment of those individuals who are victims of a

¹¹⁹ Robert C. Lind, Natalie B. Eckart, *The Constitutionality of the Driver's Privacy Protection Act*, 17 Communication Lawyer 18 (1999).

¹²⁰ See MDJS policy, Section II.B.2.b. This prohibition is pursuant to 42 PA. CONS. STAT. § 5988(a) which provides that "[i]n a prosecution involving a child victim of sexual or physical abuse, unless the court otherwise orders, the name of the child victim shall not be disclosed by officers or employees of the court to the public, and any records revealing the name of the child victim will not be open to public inspection."

¹²¹ See *CCJ/COSCA Guidelines*, p. 48.
¹²² CAL. CT. R. 2073.5(c). The Rule specifically provides that remote electronic access will not be allowed to addresses and phone numbers of victims. Please note that this subsection of the rule provides in part that it "does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access."

¹²³ Order of Supreme Court of Florida, No. AOSO04-4 (February 12, 2004). Specifically, the Order lists information that shall be accessible in electronic format to the public. Victim information is not listed in the Order.

¹²⁴ Proposed Revision of IND. ADMIN. R. 9(G)(4)(e). Specifically, the Rule provides that case records excluded from public access include addresses, phone numbers, dates of birth and other information which tends to explicitly identify victims.

¹²⁵ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), p. 36. Remote access in electronic records to a victim's social security number, street address, telephone number, financial account numbers or information that specifically identifies the individual or from which the identity of the individual could be ascertained is prohibited.

¹²⁶ *Policy Statement by the Justices of the Supreme Judicial Court Concerning Publications of Court Case Information on the Web* (May 2003), p. 2. The policy provides that the trial court web site should not list any information that is likely to identify victims.

¹¹⁹ 18 U.S.C. §§ 2721—2725 (2004).

¹²⁰ 18 U.S.C. § 2721(a)(1) (2004).

¹²¹ 18 U.S.C. § 2725(3) (2004).

¹²² 75 PA. CONS. STAT. § 6114(a)(1) (2004).

¹²³ 75 PA. CONS. STAT. § 6114(a)(2) (2004).

¹²⁴ CAL. CT. R. 2073.5(c) which provides "[i]f the court should, to the extent feasible, redact the following information from records to which it allows remote access [to]: . . . driver license numbers." Please note that this subsection of the rule provides in part that it "does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access."

¹²⁵ Order of Supreme Court of Florida, No. AOSO04-4 (February 12, 2004). Specifically, the Order lists information that shall be accessible in electronic format to the public. Operator license numbers are not listed in the Order.

¹²⁶ WASH. CT. R. 22. In this Rule, a driver license number is considered to be a "restricted personal identifier" under section (b)(5). Furthermore, under section (g), restricted personal identifiers are generally not accessible to the public.

crime and would cause unjustified invasions of personal privacy as well as present risks to personal security. Thus, the Committee recommends that the MDJS policy provisions restricting the release of victim information should be continued.

Informant Information

The Committee asserts that information about an informant should not be released in that doing so could put the informant and/or law enforcement personnel who may be working with an informant at risk of harm, as well as possibly impede ongoing criminal investigations. Although the Committee could not find any court policies or rules that would specifically prohibit the release of informant information, the Committee notes that several states, such as Florida,¹³⁵ Indiana,¹³⁶ Minnesota,¹³⁷ and Massachusetts¹³⁸ have enacted or proposed public access policies or court rules that would prohibit the release of informant information, if the informant is a witness on the case. Additionally, the CCJ/COSCA Guidelines provide that parts of the court record, or pieces of information (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access “[include] name, address, or telephone number of informants in criminal cases.”¹³⁹

The Committee concluded when it balanced all the information outlined above that it was hard pressed to find a legitimate public interest in releasing informant information. In addition, the Committee maintains that releasing information about an informant could put the informant and/or law enforcement personnel who may be working with an informant at risk of harm, as well as possibly impede ongoing criminal investigations. Thus, the release of this information would be an unjustified invasion of personal privacy as well as present risks to personal security. Thus, the Committee recommends informant information should not be released.

Juror Information

The Committee notes that the CCJ/COSCA Guidelines state that “parts of the court record, or pieces of information (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access [include] names, addresses, or telephone numbers of potential or sworn jurors in a criminal case . . . [and] juror questionnaire information.”¹⁴⁰ In addition, the Committee notes Rule 630 of the Pennsylvania Rules of Criminal Procedure sets forth that “[t]he information provided on the juror qualification form shall be confidential” and further provides that “[t]he original and any copies of the juror qualification form shall not constitute a public record.”¹⁴¹

Rule 632 of the Pennsylvania Rules of Criminal Procedure provides that “[t]he information provided by the jurors on the questionnaires shall be confidential and limited to use for the purpose of jury selection

only . . .”¹⁴² Rule 632 also sets forth that “the original and any copies of the juror information questionnaire shall not constitute a public record.”¹⁴³ Further, it states “[t]he original questionnaire of all impaneled jurors shall be retained in a sealed file and shall be destroyed upon completion of the juror’s service, unless otherwise ordered by the trial judge.”¹⁴⁴ The Rule also provides that “[t]he original and any copies of questionnaires of all prospective jurors not impaneled or not selected for any trial shall be destroyed upon completion of the jurors’ service.”¹⁴⁵

In addition, in the case of *Commonwealth v. Karl Long*,¹⁴⁶ the Superior Court held that there is no constitutional or common law right of access to the names and addresses of jurors. Further, the Court noted that:

“a number of states have enacted legislation with the intent to protect jurors’ privacy. New York has adopted legislation to protect the privacy of jurors by keeping empanelled jurors’ names and addresses confidential. *N.Y. Judiciary Law C § 509(a)(2003)*; see also *Newsday, Inc. v. Sise*, 524 N.Y.S.2d 35, 38-89 (N.Y. 1987). Delaware has also enacted juror privacy legislation. *Del. Code Ann. Tit. 10 § 4513*; also *Gannett*, 571 A.2d 735 (holding that the media did not have the right to require announcement of juror’s names during the highly publicized trial, even though the parties have full access to such information and the proceedings are otherwise open to the public). Indiana legislation provides that the release of names and identifying information of potential jurors is within the discretion of the trial judge. *Ind. Code § 2-210(5)*.”¹⁴⁷

Moreover, the Committee notes that several states, such as Vermont,¹⁴⁸ Idaho,¹⁴⁹ Maryland,¹⁵⁰ Arizona,¹⁵¹ Minnesota,¹⁵² and Utah¹⁵³ have enacted or proposed public access policies or court rules that would prohibit the release of some or all juror information.

In February 2005, the American Bar Association’s House of Delegates approved a series of model jury

¹⁴² P.A.R.CRIM.P. 632(B).

¹⁴³ P.A.R.CRIM.P. 632(C).

¹⁴⁴ P.A.R.CRIM.P. 632(F).

¹⁴⁵ P.A.R.CRIM.P. 632(G).

¹⁴⁶ —A2d—, 2005 WL 729656 (March 31, 2005).

¹⁴⁷ *Id.* At p. 7.

¹⁴⁸ VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS RULE 6(b)(30). This subsection provides that “the public shall not have access to the following judicial branch records . . . records with respect to jurors or prospective jurors as provided in Rules Governing Qualification, List, Selection and Summoning of All Jurors.”

¹⁴⁹ IDAHO RULES GOVERNING THE ADMINISTRATION AND SUPERVISING OF THE UNIFIED AND INTEGRATED IDAHO JUDICIAL SYSTEM, RULE 32(d)(5) & (6) records exempt from disclosure include “records of . . . the identity of jurors of grand juries” and “the names of jurors placed in a panel for a trial of an action and the contents of jury qualification forms and jury questionnaires for these jurors, unless ordered to be released by the presiding judge.”

¹⁵⁰ *Recommendations to the Court of Appeals Court Committee Designated to Develop Rules Regarding Public Access to Court Records*, p. 18. Rule 16-1004(B)(2) provides that “. . . a custodian shall deny inspection of a court record used by the jury commissioner or clerk in connection with the jury selection process. Except as otherwise provided by court order, a custodian may not deny inspection of a jury list sent to the court pursuant to Maryland Rules 2-512 or 4-312 after the jury has been empanelled and sworn.”

¹⁵¹ ARIZ. R. 123 Public Access to the Judicial Records of the State of Arizona, Subsection (e)(9) provides that “the home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.”

¹⁵² *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), p. 36. Remote access in electronic records to a juror’s social security number, street address, telephone number, financial account numbers or information that specifically identifies the individual or from which the identity of the individual could be ascertained will not be allowed.

¹⁵³ UTAH J. ADMIN. R. 4-202.02(4)(d) which provides that the following records are private “records containing the name, address or telephone number of a juror or prospective juror or other information from which a juror or prospective juror could be identified or located.”

¹³⁵ Order of Supreme Court of Florida, No. AOSO04-4 (February 12, 2004). Specifically, the Order lists information that shall be accessible in electronic format to the public. Informant information is not listed in the Order.

¹³⁶ Proposed Revision of IND. ADMIN. R. 9(F)(4)(e). Specifically, the Rule provides that case records excluded from public access include addresses, phone numbers, dates of birth and other information which tends to explicitly identify a witness.

¹³⁷ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), p. 36. Remote access in electronic records to a witness’ social security number, street address, telephone number, financial account numbers or information that specifically identifies the individual or from which the identity of the individual could be ascertained will not be allowed.

¹³⁸ *Policy Statement by the Justices of the Supreme Judicial Court Concerning Publications of Court Case Information on the Web*, (May 2003), p. 32. The policy provides that the trial court web site should not list any information that is likely to identify witnesses (except for expert witnesses).

¹³⁹ *CCJ/COSCA Guidelines*, p. 48.

¹⁴⁰ *Id.*

¹⁴¹ P.A.R.CRIM.P. 630(A)(2),(3)

principles.¹⁵⁴ Principle 7 addresses the need for juror privacy when consistent with the requirements of justice and the public interest. More specifically, principle 7 recommends that juror addresses and phone numbers be kept under seal.¹⁵⁵

In Pennsylvania, section 4524 of the Judicial Code provides with respect to the jury selection commission that “[a] separate list of names and addresses of persons assigned to each jury array shall be prepared and made available for public inspection at the offices of the commission no later than 30 days prior to the first date on which the array is to serve.”

Therefore, the Committee concluded that existing Pennsylvania legal authority as cited above requires that juror information contained in electronic case records shall not be released to the public. Moreover, the Committee notes that such a result appears to be consistent with the approach taken by other states.

Party's Address

The Committee notes that the MDJS policy provides that AOPC will not release the addresses of parties.¹⁵⁶ The Committee notes that the CCJ/COSCA Guidelines state that “additional categories of information to which a state or individual court might also consider restricting general public access include: addresses of litigants in cases”¹⁵⁷

In addition, several states and the federal courts¹⁵⁸ have enacted or proposed public access policies or court rules that would prohibit the release of a party address or permit the release of only a partial address. Those states include: California (in criminal case records),¹⁵⁹ Indiana,¹⁶⁰ Minnesota,¹⁶¹ Massachusetts,¹⁶² and Kentucky.¹⁶³ In addition, some federal courts have begun releasing only a partial address as well.¹⁶⁴ Furthermore, the Committee notes that in *Sapp Roofing Co. v. Sheet Metal Workers' Int'l*¹⁶⁵ and *Barger v. Dep't of Labor and Indus.*,¹⁶⁶ Pennsylvania courts held that a home address

falls under the personal security provision of the RTKA and thus should not be released pursuant to a request under the RTKA.

The Committee was faced with three choices: to release a full address, to release a partial address, or to restrict access to addresses. The Committee asserts that there is a legitimate public interest in releasing a party's address, specifically ensuring that the “right” party is matched with the “right” case information. However, the Committee is concerned that releasing the entire address would cause an unjustified invasion of personal privacy as well as present a risk to personal security.

Therefore, when coupled with other identifiers accessible under this Policy, the Committee opines that the release of a partial address (city, state, and zip code only) will facilitate a requestor's need to match the “right” party with the “right” case while at the same time not raise any significant issues of personal privacy or security. However, at the public terminals located at the courthouse, full addresses for parties will be accessible (see Section 3.00(B)). Thus, the Committee recommends the same.

Dates of Birth

The Committee notes that the MDJS policy provides that “the following information will not be released . . . identifiers which would present a risk to personal security or privacy.”¹⁶⁷ AOPC considers date of birth an identifier that, if released, would present a risk to an individual's personal security or privacy. Therefore, current practice has been not to release any dates of birth. Upon request, the AOPC has released the age of an individual.

Further, the Committee notes that in *Moak v. Phila. Newspaper, Inc.*,¹⁶⁸ the court held that date of birth information could be released under the RTKA. However, it is unclear based on more recent cases such as *Tribune-Review Publ'g Co. v. Allegheny County Hous. Auth.*¹⁶⁹ and *Times Publ'g Co., Inc. v. Michel*,¹⁷⁰ if the same result would be reached today. In *Moak*, the court analyzed whether date of birth information falls under the personal security exception of the RTKA. The Court held that in order for this information to fall under the personal security exception it must be intrinsically harmful and not merely capable of being used for a harmful purpose.¹⁷¹ However, in the *Tribune-Review* and *Times* cases, the courts held that the appropriate test is weighing privacy interests of the individual and the extent to which those interests may be invaded *against* the public benefit that would result from disclosure.¹⁷² Therefore, being that the courts in more recent cases are using a different analysis than the *Moak* court, it is unclear as to how much guidance the *Moak* decision provides.

In addition, a review of how other states address this issue reveals that a variety of approaches have been taken. Some states such as New York¹⁷³ and Indiana,¹⁷⁴

¹⁵⁴ <http://abanet.org/juryprojectstandards/principles.pdf>.

¹⁵⁵ Stellwag, Ted. “The Verdict on Juries.” *The Pennsylvania Lawyer*, pp. 15, 20. May-June 2005 (quoting the chairperson of the American Jury Project to say “jurors should not have to give up their privacy . . . to do their public service.”).

¹⁵⁶ See MDJS policy, Section II.B.2.a.

¹⁵⁷ See CCJ/COSCA Guidelines, p. 49.

¹⁵⁸ *Remote Public Access to Electronic Case Records: A Report on a Pilot Project in Eleven Federal Courts*, prepared by the Court Administration and Case Management Committee of the Judicial Conference, p. 12. Although there is no restriction on the release of a party's address in civil cases, the pilot program in the eleven federal courts to provide public access to criminal case files electronically requires the redaction of all home addresses including those of parties.

¹⁵⁹ CAL. CT. R. 2073.5(c). The Rule specifically provides that remote electronic access will not be allowed to addresses of parties. Note that this subsection of the rule provides in part that it “does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access.”

¹⁶⁰ Proposed Revision of IND. ADMIN. R. 9(F)(4)(d) provides that a request for bulk distribution and compiled information of case records that includes a request for addresses will be complied with by only providing the zip code of the addresses. However, Rule 9(G)(1)(e) provides that “[t]he following information in case records is excluded from public access and is confidential . . . addresses . . . [of] witnesses or victims in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings”

¹⁶¹ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), p. 36. Remote access in electronic records to a party's street address will not be allowed.

¹⁶² *Policy Statement by the Justices of the Supreme Judicial Court Concerning Publications of Court Case Information on the Web* (May 2003), p. 3. The policy provides that the trial court web site should not list an individual's address.

¹⁶³ *Kentucky Court of Justice Access to Electronic Court Records* (December 2003) provides in part that “we decided to remove the individual's address . . . from public remote access.”

¹⁶⁴ See also Local Rules of Practice for the Southern District of California Order 514(1)(e) and (3)(B)(3) which provides that “in criminal cases, the home address of any individual (i.e. victim)” is required to be removed or redacted from all pleadings filed with the court. Eastern District of Pennsylvania Local Rule 5.1.2 (electronic case file privacy) which provides in a part that in criminal cases parties should refrain from including or partially redact from all documents filed with the court home addresses. (“If a home address must be included, only the city and state should be listed”).

¹⁶⁵ 713 A.2d 627, 630 (Pa. 1998).

¹⁶⁶ 720 A.2d 500, 502 (Pa. Commw. Ct. 1998).

¹⁶⁷ See MDJS Policy, Section II.B.2.a.

¹⁶⁸ 336 A.2d 920, 924 (Pa. Commw. Ct. 1975).

¹⁶⁹ 662 A.2d 677 (Pa. Commw. Ct. 1995), *appeal denied*, 686 A.2d 1315 (Pa. 1996).

¹⁷⁰ 633 A.2d 1233 (Pa. Commw. Ct. 1993) *appeal denied*, 645 A.2d 1321 (Pa. 1994).

¹⁷¹ *Moak*, 336 A.2d at 924.

¹⁷² *Tribune-Review*, 662 A.2d at 682-84; *Times*, 633 A.2d at 1239.

¹⁷³ *Report to the Chief Judge of the State of New York by the Commission on Public Access to Court Records* (February, 2004), p. 8.

¹⁷⁴ Proposed Revision of IND. ADMIN. R. 9(F)(4)(d) provides that a request for bulk distribution and compiled information of case records that includes a request for dates of birth will be complied with by only providing the year of birth. However, Rule 9(G)(1)(e) provides that “[t]he following information in case records is excluded from public access and is confidential . . . dates of birth . . . [of] witnesses or victims in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings”

as well as the Federal Courts,¹⁷⁵ will only release the year of birth rather than an entire date of birth. Other states release the entire date of birth such as Arizona,¹⁷⁶ Florida,¹⁷⁷ and Missouri.¹⁷⁸ However, in California (in criminal case records),¹⁷⁹ Massachusetts,¹⁸⁰ and Kentucky¹⁸¹ court case information available on the Web does not have any date of birth information.

The Committee was faced with three choices: to release a full date of birth, to release a partial date of birth, or to restrict access to dates of birth. The Committee opines there is a legitimate public interest in releasing a party's date of birth, specifically ensuring that the "right" party is matched with the "right" case information. However, the Committee is concerned that releasing the entire date of birth would cause an unjustified invasion of personal privacy as well as present a risk to personal security.

Therefore, the Committee opines that the release of a partial date of birth (year of birth only) will facilitate a requestor's need to match the "right" party with the "right" case while at the same time not raise any significant issues of personal privacy or security. However, at the public terminals located at the courthouse, full dates of birth will be accessible (see Section 3.00(B)). Thus, the Committee recommends the same.

Witness Information

The Committee notes that the MDJS Policy provides that AOPC will not release the following information about a witness: address, social security number, telephone number, fax number, pager number, driver's license number, SID number or other identifier that would present a risk to the witness' personal security or privacy.¹⁸² In addition, the Committee notes that the CCJ/COSCA Guidelines state that "parts of the court record, or pieces of information (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access" include addresses of witnesses (other than law enforcement personnel) in criminal or domestic violence protective order cases.¹⁸³ The Committee also notes that several states have enacted or proposed public access policies or court rules that would prohibit the release of witness information. Those states include: California,¹⁸⁴

Florida,¹⁸⁵ Indiana,¹⁸⁶ Minnesota,¹⁸⁷ and Massachusetts.¹⁸⁸

The Committee concluded when it balanced all the information outlined above that there may be a legitimate public interest in releasing witness information, specifically that the public's ability to ascertain who testified at a public trial. However, the Committee is convinced that the release of witness information may result in intimidation or harassment of the witnesses and thus would be an unjustified invasion of personal privacy as well as present a risk to personal security. Thus, the Committee recommends that the MDJS policy provisions restricting the release of victim information should be extended to witnesses.

SID Numbers

A SID number (or a state identification number) is a unique identifying number that is assigned by the Pennsylvania State Police (PSP) providing for specific identification of an individual through analysis of his/her fingerprints. The PSP does not release SID numbers to the public on the basis that SID numbers are criminal history record information, the release of which is controlled by the Criminal History Record Information Act (CHRIA).¹⁸⁹ Moreover, the MDJS policy provides in part that "[t]he following information will not be released: . . . state fingerprint identification number (SID)."¹⁹⁰

It appears that California has a similar prohibition. Specifically, California (in criminal cases) will not allow remote electronic access to "National Crime Information numbers" which the Committee suspects are a national counterpart to the SIDs.¹⁹¹

The Committee found it very instructive that the PSP does not release SID numbers to the public on the basis that SID numbers are criminal history record information, the release of which is controlled by CHRIA. Therefore, the Committee is not convinced that there is a legitimate public interest in releasing SID numbers. Therefore, the Committee recommends that the MDJS Policy of not releasing SID numbers be continued.

Financial Institution Account Numbers and Credit Card Numbers

The Committee maintains when an individual provides the court or office with a financial institution account number (e.g., banking account number) and/or a credit card number that they should not be released to the public because of the financial harm that can result. The CCJ/COSCA Guidelines provide in part that examples of "documents, parts of the court record, or pieces of infor-

subsection of the rule provides in part that it "does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access."

¹⁸⁵ Order of Supreme Court of Florida, No. AOSO04-4 (February 12, 2004). Specifically, the Order lists information that shall be accessible in electronic format to the public. Witness information is not listed in the Order.

¹⁸⁶ Proposed Revision of IND. ADMIN. R. 9(G)(1)(e). Specifically, the Rule provides that case records excluded from public access include addresses, phone numbers, dates of birth and other information which tends to explicitly identify witnesses.

¹⁸⁷ Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch (January 12, 2004), p. 36. Remote access in electronic records to a witness' social security number, street address, telephone number, financial account numbers or information that specifically identifies the individual or from which the identity of the individual could be ascertained is prohibited.

¹⁸⁸ Policy Statement by the Justices of the Supreme Judicial Court Concerning Publications of Court Case Information on the Web (May 2003), p. 2. The policy provides that the trial court web site should not list any information that is likely to identify witnesses except for expert witnesses.

¹⁸⁹ 18 PA. CONS. STAT. § 9101 et. seq.

¹⁹⁰ See MDJS Policy, Section II.B.2.a.

¹⁹¹ CAL. CT. R. 2073.5(c) which provides that there will be no remote electronic access in individual criminal cases to any part of the criminal identification and information and National Crime Information numbers. Note that this subsection of the rule provides in part that it "does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access."

¹⁷⁵ Only year of birth accessible in electronic case records, whether civil and criminal. See Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files, p. 3 which provides for civil cases "if an individual's date of birth is necessary, only the year should be used. . . ." and Remote Public Access to Electronic Case Records: A Report on a Pilot Project in Eleven Federal Courts, prepared by the Court Administration and Case Management Committee of the Judicial Conference, p. 28 which provides in criminal cases "date of birth to the year only" shall be redacted. See also Local Rules of Practice for the Southern District of California Order 514(1)(c) and Eastern District of Pennsylvania promulgated Local Rule 5.1.3.

¹⁷⁶ See Report and Recommendations of the Ad Hoc Committee to Study Public Access to Electronic Court Records, (March 2001) p. 9 which provides that "personal addresses, phone numbers and dates of birth will still be available to distinguish one John Smith from another. . . ."

¹⁷⁷ Order of Supreme Court of Florida, No. AOSO04-4 (February 12, 2004), p. 8. Specifically, the Order lists information that shall be accessible to the public. A party's date of birth is listed in the Order; therefore, this information is accessible.

¹⁷⁸ MO. COURT OPERATING RULE 2.04 which provides that "[e]lectronic records that are public and from which a person can be identified will include only the following data elements, if not confidential by statute or rule: Civil cases . . . (f) date of birth . . . Criminal cases . . . (j) date of birth. . . ."

¹⁷⁹ CAL. CT. R. 2073.5(c) which provides that there will be no remote electronic access in individual criminal cases to any part of the date of birth. Please note that this subsection of the rule provides in part that it "does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access." In addition, CAL. CT. R. 2077(c)(12) which provides that "the following information must be excluded from a court's electronic calendar, index, and register of actions: . . . date of birth."

¹⁸⁰ Policy Statement by the Justices of the Supreme Judicial Court Concerning Publications of Court Case Information on the Web, (May 2003), Subsection (a)(6) p. 3. The policy provides that the trial court web site should not list an individual's date of birth.

¹⁸¹ Kentucky Court of Justice Access to Electronic Court Records (December 2003) provides in part that "we decided to remove the individual's . . . date of birth . . . from public remote access."

¹⁸² See MDJS policy, Section II.B.2.a.

¹⁸³ See CCJ/COSCA Guidelines, p. 48.

¹⁸⁴ CAL. CT. R. 2073.5(c). The Rule specifically provides that remote electronic access will not be allowed to addresses and phone numbers of witnesses. Note that this

mation (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access [include financial information that provide identifying account numbers on specific assets, liabilities, accounts, credit cards, or personal identification numbers (PINs) of individuals or business entities."¹⁹² In addition, the Committee notes that the federal courts¹⁹³ and several states, such as Arizona,¹⁹⁴ California,¹⁹⁵ Colorado,¹⁹⁶ Florida,¹⁹⁷ Indiana,¹⁹⁸ Minnesota,¹⁹⁹ New York,²⁰⁰ and Vermont²⁰¹ either prohibit the release of this information entirely or only permit the partial release of this information (i.e., the last four digits).

The Committee opines that there is no legitimate public interest in obtaining financial account and credit card information. Using the balancing test, the analysis would be concluded. In addition, the Committee stresses that releasing this information will further the threat of identity theft. The Committee, therefore, recommends that financial account and credit card information shall not be released.

Notes, Drafts, and Work Products Related to Court Administration or any Office that is the Primary Custodian of an Electronic Case Record

The Committee notes that several states including: Arizona,²⁰² Idaho,²⁰³ Indiana,²⁰⁴ Minnesota,²⁰⁵ Ver-

¹⁹² See *CCJ/COSCA Guidelines*, p. 48.

¹⁹³ *Remote Public Access to Electronic Case Records: A Report on a Pilot Project in Eleven Federal Courts*, prepared by the Court Administration and Case Management Committee of the Judicial Conference, p. 12 and the *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files*, p. 3. With regard to Judicial Conference's recommendation for public access to civil case files electronically and the pilot program in the eleven federal courts to provide public access to criminal case files electronically, both require that only the last four digits of the financial account number are releasable. See also Local Rules of Practice for the Southern District of California Order 514(1)(e) and (3)(B)(3) and Eastern District of Pennsylvania Local Rule of Civil Procedure 5.1.3.

¹⁹⁴ ARIZ. SUP. CT. R. 123(c)(3). The Rule provides that "documents containing . . . credit card, debit card, or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order." Arizona Rule 123 Public Access to the judicial records of the state, and *Report and Recommendation of the Ad Hoc Committee to Study Public Access to Electronic Records* dated March 2001 Sections (IV)(B), (IV)(D), (V)(1) and (VI)(6).

¹⁹⁵ CAL. CT. R. 2073.5(c). The Rule specifically provides that remote electronic access will not include financial information and account numbers. Note that this subsection of the rule provides in part that it "does not apply to any document in the original court file, it applies only to documents that are available by remote electronic access." In addition, CAL. CT. R. 2077(c)(2) which provides that "the following information must be excluded from a court's electronic calendar, index, and register of actions: . . . any financial information."

¹⁹⁶ Colorado excludes from release to the public electronic data concerning financial files, except for the financial summary screen. As part of its case management system for criminal, traffic, and civil cases, Colorado includes a financial summary screen which displays a summary of assessed and paid fines, costs, filing fees, etc. . . . See COLO. CJD 98-05 IILB. In addition, Colorado permits a court by blanket order to exclude from public view financial affidavits of parties. See COLO. CJD 98-05 I.A.2.

¹⁹⁷ Order of Supreme Court of Florida, No. AOSO04-4 (February 12, 2004). Specifically, the Order lists information that shall be accessible in electronic format to the public. Financial account numbers and credit card numbers are not listed in the Order.

¹⁹⁸ Proposed Revision of IND. ADMIN. R. 9(G)(1)(f). Specifically, the Rule provides that account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINS) shall not be released.

¹⁹⁹ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), p. 12, 36, & 48. Remote access in electronic records to financial account numbers will not be allowed.

²⁰⁰ *Report to the Chief Judge of the State of New York* by the Commission on Public Access to Court Records (February, 2004), p. 8. The Report provides that financial account numbers should be shortened to their last four digits.

²⁰¹ VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS RULE 6(b)(10) & (11). These Rules provide that the public shall not have access to records containing financial information furnished to the court in connection with an application to proceed in forma pauperis (not including the affidavit submitted in support of the application) and records containing financial information furnished to the court in connection with an application for an attorney at public expense (not including the affidavit submitted in support of the application).

²⁰² PUBLIC ACCESS TO THE JUDICIAL RECORDS OF THE STATE OF ARIZONA, Rule (d)(3) provides that "notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed."

²⁰³ IDAHO ADMIN. R. 32(d)(15). This Rule provides that judicial work product or drafts, including all notes, memoranda or drafts prepared by a judge or a court-employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order except the official minutes prepared pursuant to law are not accessible by the public.

mont,²⁰⁶ and Utah²⁰⁷ have a similar provision regarding notes, drafts, and work products related to court administration or any office that is the primary custodian of an electronic case record. In addition, the CCJ/COSCA Guidelines provide in part that examples of "documents, parts of the court record, or pieces of information (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access [include] judicial, court administration and clerk of court work product."²⁰⁸

The CCJ/COSCA Guidelines define judicial work product as:

work product involved in the court decisional process, as opposed to the decision itself. This would include such things as notes and bench memos prepared by staff attorneys, draft opinions and orders, opinions being circulated between judges, etc. Any specification about this should include independent contractors working for a judge or the court, externs, students, and others assisting the judge who are not employees of the court or the clerk of court's office.²⁰⁹

Court administration and clerk of court work product is defined by the CCJ/COSCA Guidelines as "information . . . generated during the process of developing policy relating to the court's administration of justice and its operations."²¹⁰ The Guidelines indicate that court administration information that other states have excluded from public access include: communication logs of court personnel, meeting minutes, and correspondence of court personnel.²¹¹

Although the Committee will not attempt to list every piece of information that will not be released pursuant to this provision, the Committee would note the following. This provision would prohibit the release of information pertaining to the internal operations of a court, such as data recorded in the case notes or judicial notes portions of the automated systems wherein the court and court staff can record various work product and confidential information and help desk records.

The Committee when it balanced all the factors outlined above concluded that there is no legitimate public

²⁰⁴ Proposed Revision of IND. ADMIN. R. 9(G)(1)(h). Specifically, the Rule provides that case records excluded from public access include all personal notes and email, and deliberative material, of judges, court staff and judicial agencies.

²⁰⁵ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), Rule 4(1)(c). Case records that are not accessible by the public include "all notes, memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order . . ."

²⁰⁶ VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS RULE 6(b)(12). These Rules provide that "records representing judicial work product, including notes, memoranda, research results, or drafts prepared by a judge or prepared by other court personnel on behalf of a judge, and used in the process of preparing a decision or order" are not available for public access.

²⁰⁷ UTAH J. ADMIN. R. 4-202.02(8)(a)-(c) which provides that "[t]he following judicial records are protected: (A) personal notes or memoranda prepared by a judge or any person charged by law with performing a judicial function and used in the decision-making process; (B) drafts of opinions or orders; (C) memoranda prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process."

²⁰⁸ See *CCJ/COSCA Guidelines*, p. 48-49.

²⁰⁹ See *CCJ/COSCA Guidelines*, p. 50.

²¹⁰ See *CCJ/COSCA Guidelines*, p. 50.

²¹¹ See *CCJ/COSCA Guidelines*, p. 51. See also ARIZ. SUP. CT. R. 123(e) (restricting access to *inter alia* judicial case assignments, pre-decisional documents, and library records); CAL. CT. R. 2072(a) (excluding personal notes or preliminary memoranda of court personnel from definition of court record); FLA. J. ADMIN. R. 2.051(c) (keeping confidential *inter alia* materials prepared as part of the court's judicial decision-making process utilized in disposing of case and controversies unless filed as a part of the court record); *Report to the Chief Judge of the State of New York* by the Commission on Public Access to Court Records (February 2004), p. 1, fn. 1 which indicates that information captured by a case tracking system that is for internal use only is not deemed to be public case record data; VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS RULE 5(b)(14) (restricting access to *inter alia* "communications between judicial branch personnel with regard to internal operations of the court, such as scheduling of cases, and substantive or procedural issues.").

interest in releasing this type of information. Therefore, the Committee asserts that the same should not be released.

Arrest and Search Warrants and Supporting Affidavits Retained by Judges, Clerks, or other Court Personnel Until Execution of the Warrant

The Committee notes that the federal courts²¹² and several states including: California,²¹³ Florida,²¹⁴ Idaho,²¹⁵ Indiana,²¹⁶ Maryland,²¹⁷ and Vermont²¹⁸ have a similar provision regarding arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until the execution of the warrant.

The Committee recognizes that there may be a legitimate public interest in releasing this information, specifically for the community to know who is subject to arrest by law enforcement. Nonetheless, the Committee is convinced that to permit the release of search or arrest warrant information prior to the same being executed by law enforcement officers could impede the execution of these warrants as well as endanger law enforcement personnel in performing their duties, thus causing an unjustified invasion of personal privacy as well as presenting a risk to personal security. Therefore, the Committee opines that this information should not be released until the warrant is executed.

Information Sealed or Protected Pursuant to Court Order

If there is a court order that seals a case record or information contained within that case record, the same shall not be released to the public. The Committee notes that the proposed policies of New York²¹⁹ and Maryland²²⁰ have a similar prohibition.

Information to which Access is Restricted by Federal Law, State Law or State Court Rule

This Policy cannot supplant federal law, state law, or state court rule. Thus, if information is not releasable to

²¹² *Remote Public Access to Electronic Case Records: A Report on a Pilot Project in Eleven Federal Courts*, prepared by the Court Administration and Case Management Committee of the Judicial Conference, p. 28. The pilot program in the eleven federal courts to provide public access to criminal case files electronically requires that courts should not provide remote public access to unexecuted warrants of any kind (e.g., search warrants, arrest warrants).

²¹³ CAL. CT. R. 2077(c)(2) and (3) which provides that "the following information must be excluded from a court's electronic calendar, index, and register of actions: . . . arrest warrant information [and] search warrant information."

²¹⁴ FLA. J. ADMIN. R. 2.051(c)(6). This Rule provides that "copies of arrest and search warrants and supporting affidavits retained by judges, clerks or other court personnel until execution of said warrant or until a determination is made by law enforcement authorities that execution cannot be made" shall not be released.

²¹⁵ IDAHO ADMIN. R. 32(d)(3) & (4). This Rule provides that "unreturned search warrants, arrest warrants or summonses in a criminal case" and "affidavits or sworn testimony and records of proceedings in support of the issuance of search or arrest warrant pending the return of the warrant" are not releasable to the public.

²¹⁶ Proposed Revision of IND. ADMIN. R. 9(G)(1)(b)(x). Specifically, the Rule provides that case records excluded from public access include those arrest warrants and search warrants ordered confidential by the judge, prior to the return of duly executed service.

²¹⁷ *Recommendations to the Court of Appeals Court Committee Designated to Develop Rules Regarding Public Access to Court Records* Rule 16-1006(5)(b) and (C). This rule provides that access shall be denied to the following case records: "court records pertaining to search warrants; the warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk [and] executed search warrants and all papers attached thereto filed pursuant to MD. R. 4-601." Moreover, "the following court records pertaining to an arrest warrant: a court record pertaining to an arrest warrant issued under MD. R. 4-212(d) and the charging document upon which the warrant was issued until the conditions set forth in MD. R. 4-212(d)(3) are satisfied [and except as otherwise provided by law] a court record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued."

²¹⁸ VERMONT RULES FOR PUBLIC ACCESS TO COURT RECORDS RULE 6(b)(15) & (16). These Rules provide "the public shall not have access to the following judicial branch records: . . . (15) Records of the issuance of a search warrant, until the date of the return of the warrant, unless sealed by order of the court; (16) Records of the denial of a search warrant by a judicial officer, unless opened by order of the court."

²¹⁹ *Report to the Chief Judge of the State of New York* by the Commission on Public Access to Court Records (February, 2004), p. 22 which provides that "sealed records may not be viewed by the public."

²²⁰ *Recommendations to the Court of Appeals Court Committee Designated to Develop Rules Regarding Public Access to Court Records*, p. 41-42, Rule 16-1006(1)(10) which provides that "the custodian shall deny inspection of . . . a case record that: a court has ordered sealed or not subject to inspection. . . ."

the public pursuant to such authorities, the information cannot be released. The Committee did not specifically set forth in the Policy each federal law, state law, or state court rule that prohibits the release of information to the public in that it suspects that to do so would require an amendment to the policy every time a law or rule was changed.²²¹

Access to Electronic Case Records at a Public Terminal

The Committee asserts that those individuals who travel to the courthouse to review electronic case records on a public terminal should be permitted to see additional information that is not available remotely. This additional information consists of a party's full date of birth and full address. Being that these two pieces of information are accessible in the paper case records to which access is unrestricted under this policy, the Committee is satisfied that providing this additional information to the public terminal users will not greatly increase the risk of harm to individuals. Specifically, these two pieces of information will still be afforded some of the protection afforded by the notion of "practical obscurity" by requiring a requestor to travel to the courthouse to view case records individually. In addition, AOPC has learned through the implementation of the CPCMS in the initial twenty counties that providing this information to public terminal users would greatly assist public access requestors in distinguishing one John Doe from another. In addition, if public access requestors are able to gain all the information they need via the public terminal, there should be less requests made to court staff to review the paper files, thus presumably conserving scarce court resources.

Section 3.10 Requests for Bulk Distribution of Electronic Case Records and Compiled

Information from Electronic Case Records

A. A request for bulk distribution of electronic case records and/or compiled information from electronic case records shall be permitted for data that is not excluded from access as set forth in this Policy.

B. A request for bulk distribution of electronic case records and/or compiled information under Section 3.00 of this Policy, may be fulfilled where: the release of the information will not permit the identification of specific individuals; the release of the information will not present a risk to personal security or privacy; and the information is being requested for a scholarly, journalistic, governmental-related, research or case preparation purpose.

1. Requests of this type will be reviewed on a case-by-case basis.

2. In addition to the request form, the requestor shall submit in writing:

(a) the purpose/reason for the request;

(b) identify what information is sought; and

(c) explain provisions for the secure protection of all data that is considered not accessible to the public.

3. If this type of request is granted, the requestor must sign a declaration that:

(a) the information/data will not be sold or otherwise distributed, directly or indirectly, to third parties except for the stated purposes;

(b) the information/data will not be used, directly or indirectly, to sell a product or service to an individual or the general public, except for the stated purposes; and

²²¹ See, e.g., 42 Pa.C.S. §§ 6307, 6352.1 and Pa.R.J.C.P. 160 (providing limitations on the release of juvenile case record information).

(c) no copying or duplication of the information/data provided will occur other than for the stated purposes.

Commentary

In the judgment of the Committee, the number of electronic case records that may be requested by the public should not be limited. AOPC's practice has been to fulfill requests for bulk distribution of electronic MDJS case records and compiled information from electronic MDJS case records regardless of the number of records involved. In addition, the Committee's recommendation and analysis on this issue closely mirrors the CCJ/COSCA Guidelines, which permit the release of bulk distribution of court records and compiled information from court records.²²² In addition, the Committee notes that several states, including California,²²³ Colorado,²²⁴ Indiana,²²⁵ and Minnesota²²⁶ permit the release of bulk and/or compiled data. Moreover, the RTKA provides that "[a] policy or regulation may not include any of the following: a limitation on the number of public records which may be requested or made available for inspection or duplication."²²⁷ Therefore, the Committee recommends that requests for bulk distribution of electronic case records and compiled information from electronic case records continue to be fulfilled.

With regard to both types of requests, the Court's automated systems (PACMS, CPCMS, and MDJS) provide system users with various "canned" reports which a user can produce for requestors in response to a request. However, if a request cannot be fulfilled with one of these "canned" reports, the requestor should be referred to AOPC.

Upon referral to the AOPC, it will be determined whether the request involves a bulk distribution of electronic case records or compiled information from electronic case records.

Bulk Distribution of Electronic Case Records

A request for bulk distribution of electronic case records is defined as a request for all, or a significant subset, of electronic case records, as is and without modification or compilation. Bulk distribution of electronic case record information shall be permitted for data that are publicly accessible as specified in the policy (e.g., year of birth, a party's address limited to city, state and ZIP code).

In addition, a request for bulk distribution of information/data not publicly accessible may be permitted where: the release of the information will not permit the identification of specific individuals; the release of the information will not present a risk to personal security or privacy; and the information is being requested for a scholarly, journalistic, governmental-related, research or case preparation purpose.

The court, office or record custodian will review requests for this type of information/data on a case-by-case basis. For example, a requestor may want to know the offense location of all rapes for a given year in Pennsylva-

nia, but he does not want any personal information about the victims (such as name, date of birth, etc) because he is conducting a study to see if most rapes occur in apartment buildings, single-family structures, or in public areas (such as malls or parking lots). This request could be fulfilled if the information provided would not enable the requestor to establish the identity of any of the victims; there is no risk to the personal security or privacy of the victims involved; and the information is being requested for a scholarly, journalistic, governmental-related, research or case preparation purpose.

For requests of non-releasable information, the requestor shall in addition to the request form, submit in writing:

- the purpose/reason for the request;
- identify what information is sought; and
- explain provisions for the secure protection of any data that is considered not accessible to the public.

Further, if the request for non-releasable information is granted, the requestor must sign a declaration that:

- the information/data will not be sold or otherwise distributed, directly or indirectly, to third parties except for the stated purposes;
- the information/data will not be used, directly or indirectly, to sell a product or service to an individual or the general public, except for the stated purposes; and
- no copying or duplication of the information or data provided will occur other than for the stated purposes.

This section addresses requests for large volumes of data available from the statewide automation case management systems (PACMS, CPCMS, and MDJS) including incremental data files used to update previously received bulk distributions.²²⁸ Information distributed may include data that, when coupled with other data, could specifically identify an individual. Requests for data that could be used for this purpose may be denied.

Compiled Information from Electronic Case Records

A request for compiled information from electronic case records is defined as a request for information that is derived from the selection, aggregation, and/or manipulation by the court, office or record custodian of information from more than one individual case record and such information is not already available in an existing report. Generally speaking, compiled information is a set of data that have undergone a specific transformation, using programming or querying techniques, to make it separate and distinct from that of a bulk distribution. Examples of compiled information would include limiting the entire database to a specific charge or section, specific geographic area, and/or specific age or race to limit record selection. Compiled data would also include the compilation of statistics based on case information. Therefore, requests for compiled information from electronic case records should be permitted so long as the information has been previously set forth in this Policy as releasable.

In addition, a request for compiled distribution of information/data not publicly accessible may be permitted where the release of the information will not permit the identification of specific individuals or present a risk to personal security or privacy, and the information is being requested for a scholarly, journalistic, governmental-related, research or case preparation purpose. For further

²²² See CCJ/COSCA Guidelines, pp. 34, 35, and 39.

²²³ See CAL. CT. R. 2073(f) which provides that "a court may provide bulk distribution of only its electronic calendar, register of actions and index. 'Bulk distribution' means distribution of all, or a significant subset, of the court's electronic records."

²²⁴ See Chief Justice Directive, Order 98-05 Subsection (D)(c)(1), p. 3, which permits the release of bulk data, the court's electronic records."

²²⁵ Proposed Revision of IND. ADMIN. R. 9(F) permits the release of bulk or compiled data.

²²⁶ Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch (January 12, 2004), p. 10 & 36 which provides that "a court administration office shall provide bulk distribution of only its electronic case records that are remotely accessible to the public pursuant [to this policy]. 'Bulk distribution' means distribution of all, or a significant subset, of the court's electronic case records."

²²⁷ PA. STAT. ANN. tit. 65, § 66.8(c)(1) (West 2004).

²²⁸ After receipt of the initial bulk data transfer, requestors receive additional data sets (increments) periodically that allow them to update their current file.

explanation of this type of request, please refer to the bulk distribution of electronic case records information section.

For requests of non-releasable information, the requestor shall in addition to the request form, submit in writing:

- the purpose/reason for the request;
- identify what information is sought; and
- explain provisions for the secure protection of any data that is considered not accessible to the public.

Further, if the request for non-releasable information is granted, the requestor must sign a declaration that:

- the information/data will not be sold or otherwise distributed, directly or indirectly, to third parties except for the stated purposes;
- the information/data will not be used, directly or indirectly, to sell a product or service to an individual or the general public, except for the stated purposes; and
- no copying or duplication of the information or data provided will occur other than for the stated purposes.

Requests for compiled information may be denied if the data could be used to identify individuals.

Section 3.20 Requests for Electronic Case Record Information from Another Court Or Office

Any request for electronic case record information from another court should be referred to the proper record custodian in the court or office where the electronic case record information originated. Any request for electronic case record information concerning multiple magisterial district judge courts or multiple judicial districts should be referred to the Administrative Office of the Pennsylvania Courts.

Commentary

The Committee asserts that for electronic case record information “filed” within a specific court or office the requestor should contact the court or office for information. However, requests for information about multiple magisterial district judge courts or multiple judicial districts should be directed to and processed by AOPC.

In light of the fact that the CPCMS provides the capability for a clerk of courts in one county to produce information about a case in another county, the Committee is concerned that this policy might be used by a requestor to attempt to compel court and office personnel to produce information about a case in another county. The Committee assumes that most personnel would be averse to producing information about a case from another county in that the courts and offices currently have “control” over the release of their own case records. Therefore, it is preferable that situations in which court or office X is releasing court or office Y’s case records be avoided. Therefore this section makes it clear that requests for electronic case record information should be made to the record custodian in the court or office where the electronic case record information originated.

Generally, requests for information regarding a specific court or office should continue to be handled at the local level, but consistent with a statewide public access policy, thus ensuring that a requestor will get the same kinds of information from any court or office statewide. If a requestor is unable to obtain the information, the AOPC should work with the record custodian or appropriate administrative authority (e.g., district court administrator) to facilitate the fulfillment of the request consistent

with the policy, as currently is done for MDJS requests. As a last resort, the AOPC may handle these requests directly, if possible.

With regard to the issue of the request for information regarding multiple magisterial district judge courts or multiple judicial districts, the Committee recommends that such requests should be referred to the AOPC, which alone should respond to the same. The Committee opines that AOPC will be in the best position to more efficiently handle these requests, considering the AOPC will be capable of identifying the precise technological queries needed to “run” the request.

Section 4.00 Responding to a Request for Access to Electronic Case Records

A. Within ten (10) business days of receipt of a written request for electronic case record access, the respective court or office shall respond in one of the following manners:

1. fulfill the request, or if there are applicable fees and costs that must be paid by the requestor, notify requestor that the information is available upon payment of the same;
2. notify the requestor in writing that the requestor has not complied with the provisions of this Policy;
3. notify the requestor in writing that the information cannot be provided; or
4. notify the requestor in writing that the request has been received and the expected date that the information will be available. If the information will not be available within thirty (30) business days, the court or office shall notify the Administrative Office of Pennsylvania Courts and the requestor simultaneously.

B. If the court or office cannot respond to the request as set forth in subsection A, the court or office shall concurrently give written notice of the same to the requestor and the Administrative Office of the Pennsylvania Courts.

Commentary

Implementing the provisions of this policy should not unduly burden the courts and offices, nor should implementation impinge upon the judiciary’s primary service—the delivery of justice. The question raised by this section is not whether there is to be access, but rather *how and when access should be afforded*.

In drafting this section, the Committee was faced with two competing interests. First, any requirements imposed upon courts and offices regarding how and when they should respond to these requests must not interfere with the courts’ and offices’ ability to conduct their day-to-day operations, often with limited resources. Second, all requests should be handled by courts and offices in a predictable, consistent, and timely manner statewide. It is the Committee’s opinion that the provisions of this section strike the appropriate balance between these two competing interests.

As noted earlier in this Report, FOIA and RTKA are not applicable to the judiciary. However, the Committee when drafting this section of the policy paid particularly close attention as to how both Acts address this issue. In fact, the Committee incorporated elements of those Acts into this section of the policy.²²⁹

Under subsection A(4), the court or office shall specifically state in its written notification to the requestor the

²²⁹ 5 U.S.C. § 552(a)(6) (2004) and PA. STAT. ANN. tit. 65, §§ 66.3-3 (West 2004).

expected date that the information will be available. If the information will not be available within 30 business days, the court or office shall provide written notification to the requestor and the Administrative Office of Pennsylvania Courts at the same time. Possible reasons a court or office may need the additional period of time include:

—the request, particularly if for bulk distribution of electronic case records and/or compiled information from electronic case records, involves such voluminous amounts of information that the court or office may not be able to fulfill the same within the initial ten (10) business day period without substantially impeding the orderly conduct of the court or office; or

—the court or office is not able to determine if this policy permits the release of the requested information within the initial ten (10) business day period. Therefore, the court or office may require an additional period of time to conduct an administrative review of the request to make this determination. However, upon the expiration of the additional thirty (30) business day period, the court or office must either fulfill the request or notify the requestor that the request cannot be fulfilled. The court or office may not use the entire thirty day period to merely determine that the information is releasable and then require the requestor to wait an additional period of time to receive the information.

If the court or office believes that the requestor has failed to comply with this policy, written notification to the requestor should set forth the specific areas of non-compliance. For example, a requestor may have failed to pay the appropriate fees associated with the request.

Any written notification to the requestor stating that the information requested cannot be provided shall set forth the reason(s) for this determination.

If the court or office is unable to respond to the request as set forth above, the AOPC should work with the record custodian or appropriate administrative authority (e.g., district court administrator) to facilitate the fulfillment of the request consistent with the policy, as currently is done for MDJS requests. As a last resort, the AOPC may handle these requests directly.

The phrase “in writing” includes but is not limited to electronic communications such as email and fax.

The Committee also discussed when a request is partially fulfilled (e.g., if the requestor asked for a defendant’s name, address, and social security number, pursuant to Section 3.00 of this policy a court or office could not release the defendant’s social security number or street address) whether the court or office should specifically set forth that it has the restricted information on record although it did not release the same. In the judgment of the Committee it is important that requestors are apprised that all requests for information are fulfilled pursuant to a statewide policy without necessarily pointing out each piece of information that is in the court’s or office’s possession but not released under the policy. Therefore, when responding to any request, a court or office should provide a general statement to the requestor that “your request for information is being fulfilled consistent with the provisions of the Unified Judicial System Public Access Policy.”

Section 5.00 Fees

A. Reasonable fees may be imposed for providing public access to electronic case records pursuant to this policy.

B. A fee schedule shall be in writing and publicly posted.

C. A fee schedule in any judicial district, including any changes thereto, shall not become effective and enforceable until:

1. a copy of the proposed fee schedule is submitted by the president judge to the Administrative Office of Pennsylvania Courts; and

2. the Administrative Office of the Pennsylvania Courts has approved the proposed fee schedule.

Commentary

The Committee first considered whether to charge a fee for fulfilling public access requests. It was noted that public access requests are often for information that is not readily available and require staff and equipment time to fulfill the same. The Committee asserts that these costs incurred by courts and offices in fulfilling a request should be passed on to the requestor. Clearly, absent the request, the court or office would not incur these costs.

The Committee noted that the MDJS policy provides that “[c]osts shall be assessed based on the actual costs of the report medium, a pro-rata share of computer and staff time, plus shipping and handling.”²³⁰ The RTKA also provides that fees may be charged by agencies in fulfilling RTKA requests.²³¹ The Committee reviewed the RTKA fee schedules of the Governor’s Office, Lieutenant Governor’s Office, and the Executive Offices²³² and the Department of Environmental Protection.²³³ Outside of Pennsylvania, the Committee also noted that several states charge a fee to a requestor when responding to a public access request (which will be discussed in greater detail below). Therefore, the Committee opines that the current practice of charging public access requestors a fee for fulfilling their requests should continue.

The Committee reviewed the costs charged by various state courts in responding to public access requests. In general, it appears that most court systems charge a fee that is intended to recoup from the requestor the costs incurred by the court in responding to the request. These court systems include New York,²³⁴ Vermont,²³⁵ Maryland,²³⁶ Idaho,²³⁷ California,²³⁸ Colorado,²³⁹ and Florida.²⁴⁰ However, some court systems, such as Minne-

²³⁰ See MDJS Policy, Section II.B.5.

²³¹ See PA. STAT. ANN. tit. 65, § 66.7 (West 2004).

²³² See *Commonwealth of Pennsylvania Governor’s Office, Lieutenant Governor’s Office, and Executive Offices—Right-To-Know Request Policy*.

²³³ See *DEP and the Pennsylvania Right-To-Know Law Schedule of Charges for Public Access*.

²³⁴ *Report to the Chief Judge of the State of New York by the Commission on Public Access to Court Records* (February, 2004), p. 7-8. The Report provides that “records over the Internet [should] be free of charges; if the [court] determines that a charge is advisable we recommend that the charge be nominal and that it in no event should exceed the actual cost to provide such record.”

²³⁵ 1 VT. STAT. ANN. § 316(b)-(d) and (f) provides that if any cost is assessed it is based upon the actual cost of copying, mailing, transmitting, or providing the document.

²³⁶ *Recommendations to the Court of Appeals Court Committee Designated to Develop Rules Regarding Public Access to Court Records*, p. 11 which provides the following. “(1) Unless otherwise expressly permitted by these Rules, a custodian may not charge a fee for providing access to a court record that can be made available for inspection, in paper form or by electronic access, with the expenditure of less than two hours of effort by the custodian or other judicial employee. (2) A custodian may charge a reasonable fee if two hours or more of effort is required to provide the requested access. (3) The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a court record.” The Report further provides on p. 15 that “. . . a court may charge a reasonable fee for access to the record in order to recover its costs.” [emphasis added].

²³⁷ IDAHO ADMIN. R. 32(m). This Rule provides the clerk should charge \$1.00 a page for making a copy of any record filed in a case (per Idaho Stat. § 31-3201) and for any other record the clerk shall charge the actual cost of copying the record, including personnel costs.

²³⁸ CAL. CT. R. 2076 provides that the court may impose fees for the cost of providing public access to its electronic records as provided by Government Code section 68150(h) (which sets forth that access shall be provided at cost).

²³⁹ *Public Access Committee Cost Recovery Formula Concerning the Release of Electronic Data*. In reviewing this documentation, the Committee is of the opinion that Colorado is merely attempting to recover its costs in providing the information.

²⁴⁰ See FLA. J. ADMIN. R. 2.051(e)(3) and FLA. STAT. ANN. § 119.07 which appears to permit the charging for cost of duplication, labor and administrative overhead.

sota,²⁴¹ Arizona,²⁴² and Utah²⁴³ appear to permit a cost/fee that is in excess of the costs incurred in responding to the request. The Committee also noted that the RTKA and FOIA differ on this issue as well. Specifically, the RTKA provides that fees must be reasonable and based on the prevailing fees for comparable services provided by local business entities, except for postage fees which must be the actual cost of postage.²⁴⁴ However, FOIA provides that only the direct costs incurred by the agency can be charged to the requestor.²⁴⁵

If fees are based on the prevailing market rate, then fees will not only recoup the actual costs incurred by the particular court of office but also result in a profit. The objective of courts or offices in responding to public access requests is not to make a profit; rather it is to foster the values of open court records without unduly burdening court resources. Put simply, fees should not be financial barriers to accessing case record information. Fees assessed by courts or offices in satisfying public access requests must be reasonable, fair and affordable. To aid in defining the parameters of reasonable, fair and affordable fees, the Committee finds the definition for charges in the Vermont²⁴⁶ and New York²⁴⁷ policies instructive. Generally, the public access request fees should not exceed the actual costs associated with producing the requested information for copying, mailing or other methods of transmission, materials used and staff time.

In the judgment of the Committee, it would be beneficial to both the public and AOPC if all courts or offices were required to promulgate their fee schedules. Therefore, the Committee recommends that a court's or office's fee schedule be in writing and publicly posted (preferably so as to permit viewing both in person and remotely via the Internet). This method is similar to the procedures adopted for the promulgation of local rules.²⁴⁸

Subsection C provides that the Administrative Office of Pennsylvania Courts must approve all judicial district fee schedules—to include adoption of any new fees or fee increases—before the same are effective and enforceable.²⁴⁹ The purpose of this provision is to further a unified approach to fees associated with case record access in the Pennsylvania Judiciary with an eye toward the avoidance of inconsistent and unfair charges amongst

²⁴¹ Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch (January 12, 2004), p. 36. "When copies are requested, the custodian may charge the copy fee established pursuant to statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person's receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies."

²⁴² Arizona Rule 123 Public Access to the Judicial Records of the State of Arizona, Subsection (f)(3) provides different levels of fees for requestors for non-commercial purposes and commercial purposes. For non-commercial requestors "[i]f no fee is prescribed by statute, the custodian shall collect a per page fee based upon the reasonable cost of reproduction." See Rule 123(f)(3)(A). For commercial requestors, "the custodian shall collect a fee for the cost of: (i) obtaining the original or copies of the records and all redaction costs; and (ii) the time, equipment and staff used in producing such reproduction." See Rule 123(f)(3)(B)(i) and (ii).

²⁴³ UTAH J. ADMIN. R. 4-202.08 establishes a uniform fee schedule for requests for records, information, and services.

²⁴⁴ See PA. STAT. ANN. tit. 65, § 66.7 (West 2004).

²⁴⁵ 5 U.S.C. § 552(a)(4)(a)(iv) (2004). In addition, the Committee noted that FOIA provides that the first two hours of search time or the first 100 pages of duplication can be provided by the agency without charging a fee. 5 U.S.C. § 552(a)(4)(a)(iv)(II) (2004).

²⁴⁶ 1 VT. STAT. ANN. § 316(b)-(d) and (f) provides that if any cost is assessed it is based upon the actual cost of copying, mailing, transmitting, or providing the document.

²⁴⁷ Report to the Chief Judge of the State of New York by the Commission on Public Access to Court Records (February, 2004), p. 7-8. The Report provides that "records over the Internet [should] be free of charges; if the [court] determines that a charge is advisable we recommend that the charge be nominal and that it in no event should exceed the actual cost to provide such record."

²⁴⁸ See PA.R.J.A.103(c), PA. R. CRIM. P. 105(c) and PA. R. C. P. No. 239(c).

²⁴⁹ See Pa. Const. Art. V, § 10(c); Pa.R.J.A. 501(a), 504(b), 505(11), 506(a); 42 Pa.C.S. § 4301.

the various jurisdictions. This type of approach is not novel, as it is quite similar to the procedure set forth in Rule of Judicial Administration 5000.7(f) pertaining to the approval of court transcripts.

Section 6.00 Correcting Data Errors

Any party to a case or his/her attorney seeking to correct a data error or omission in an electronic case record should contact the court or office in which the original record was filed.

Commentary

Electronic case records are as susceptible to errors and omissions as any other public record. If a party to a case or his/her attorney believes that an electronic case record contains information that is inaccurate, he/she should contact the court or office in which the record originated to amend the same. For example, if the electronic case record originated in the court of common pleas, the court of common pleas should be contacted. The Committee notes that other states, including Arizona²⁵⁰ and Minnesota²⁵¹ cover this subject matter in their policies and/or court rules (enacted or proposed).

Section 7.00 Continuous Availability of Policy

A copy of this policy shall be continuously available for public access in every court or office that is using the PACMS, CPCMS, and/or MDJS.

Commentary

The Committee opines that it is essential that the public has access to the provisions of this policy on a continuing basis. In drafting this language, the Committee found that the statewide Rules of Criminal Procedure and Civil Procedure have similar provisions regarding the continuing availability of local rules in each judicial district.²⁵² The Committee used that language as a guide in drafting this provision. The Committee recommends that this policy be publicly posted (preferably so as to permit viewing both in person and remotely via the Internet).

Additional Recommendations Concerning Paper Case Records

As noted in the Introduction to the Report, the practical difficulties associated with covering paper case records concerning a single case counseled against inclusion in this policy. Even so, the Committee recommends that the UJS take steps in the future to avoid the personal privacy and security issues that may arise with respect to these records.

The Committee proposes the creation of a sensitive information data form. When filing a document with a court or office, litigants and their attorneys would be required to refrain from inserting any sensitive information (such as social security numbers, dates of birth, etc) in the filed document. Rather, all sensitive information should be inserted on the sensitive information data form, which would not be accessible to the public. Thus, the use of this form should over time help prevent sensitive information from appearing in the paper records that are accessible to the public. The Committee notes that Wash-

²⁵⁰ Report and Recommendation of the Ad Hoc Committee to Study Public Access to Electronic Records dated March 2001 Sections (V)(8) and (VI)(8).

²⁵¹ Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch (January 12, 2004), p. 11 & 33.

²⁵² PA.R.CRIM.P. 105(c)(5) and PA.R.C.P. No. 239(c)(5) provide that the local rules shall be kept continuously available for public inspection and copying in the office of the prothonotary or clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary or clerk shall furnish to any person a copy of any local rule.

ington²⁵³ already uses a sensitive information data form, and Arizona²⁵⁴ and Minnesota²⁵⁵ are considering enacting

²⁵³ RULES OF GENERAL APPLICATION 22(c)(2). Please note that this rule only applies to family law cases.

²⁵⁴ Proposed Amendment to ARIZ. SUP. CT. R. 123 Relating to the use of a sensitive data form.

²⁵⁵ *Preliminary Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (January 12, 2004), p. 48.

rules/policies to provide for the same. The Committee recommends that this sensitive information data form be available at the courthouse and via the Internet.

[Pa.B. Doc. No. 05-1709. Filed for public inspection September 16, 2005, 9:00 a.m.]

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE REAL ESTATE COMMISSION [49 PA. CODE CH. 35]

Corrective Amendment to 49 Pa. Code § 35.271(b)(6)

The State Real Estate Commission has discovered a discrepancy between the agency text of 49 Pa. Code § 35.271(b)(6) (relating to examination for broker's license), as deposited with the Legislative Reference Bureau, and the official text published at 35 Pa.B. 4711 (August 20, 2005) and scheduled to be codified in the October 2005 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 371). The text of subsection (b)(6) was inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The State Real Estate Commission has deposited with the Legislative Reference Bureau a corrective amendment to 49 Pa. Code § 35.271(b)(6). The corrective amendment to 49 Pa. Code § 35.271(b)(6) is effective as of August 20, 2005, the date the defective text was printed in the *Pennsylvania Bulletin*.

The correct version of 49 Pa. Code § 35.271 appears in Annex A.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

(a) An individual who wants to take the broker's examination for a standard broker's license shall:

- (1) Be 21 years of age or older.
- (2) Be a high school graduate or have passed a high school general education equivalency examination.
- (3) Have worked at least 3 years as a licensed salesperson, with experience qualifications that the Commission considers adequate for practice as a broker, or possess at least 3 years of other experience, education, or both, that the Commission considers the equivalent of 3 years' experience as a licensed salesperson.
- (4) Have acquired 16 credits, or 240 hours of instruction, in professional real estate education as determined by the Commission under subsection (b).
- (5) Submit a completed examination application to the Commission or its designee with:
 - (i) Official transcripts evidencing the acquisition of course credits.
 - (ii) A detailed resume of real estate activities performed by the candidate while working as a salesperson and a sworn statement from the candidate's employing broker confirming that these activities were performed if the candidate is a licensed salesperson.

(iii) A complete description of work experience and education that the candidate considers relevant to the requirements of paragraph (3) if the candidate is not a licensed salesperson.

(iv) A certification from the real estate licensing authority of the jurisdiction in which the candidate is licensed stating that the candidate had an active license for each year that credits are claimed if the candidate is applying brokerage experience to satisfy the professional education requirement.

(v) The fee for review of the candidate's qualifications to take the examination prescribed in § 35.203 (relating to fees) and the fees for administration of the examination.

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

(1) A candidate who has obtained one of the following degrees will be deemed to have met the education requirement and will not be required to show completion of coursework in specific areas of study:

(i) A bachelor's degree with a major in real estate from an accredited college, university or institute of higher learning.

(ii) A bachelor's degree from an accredited college, university or institute of higher learning, having completed coursework equivalent to a major in real estate.

(iii) A juris doctor degree from an accredited law school.

(2) Two of the required 16 credits shall be in a Commission-developed or approved real estate office management course and 2 of the required 16 credits shall be in Commission-developed or approved law course. At least 6 of the remaining 12 credits shall be in 3 or more of the Commission-developed courses listed in this paragraph. The remaining 6 credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.

(3) To be counted toward the education requirement, a real estate course shall have been offered by:

(i) An accredited college, university or institute of higher learning, whether in this Commonwealth or outside this Commonwealth.

(ii) A real estate education provider in this Commonwealth approved by the Commission.

(iii) A real estate education provider outside this Commonwealth, that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider is located. The course transcript or certificate of completion shall state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider is located.

(iv) A real estate industry organization outside this Commonwealth, if the course is approved by the licensing jurisdiction of another state. The course transcript or certificate of completion shall state that the course is approved by the licensing jurisdiction which has approved it.

(4) A maximum of four credits will be allowed for each real estate course. A maximum of four credits will be allowed for each area of real estate study listed in paragraph (2).

(5) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

(6) Two credits will be allowed for each year of active practice the candidate has had a licensed broker in another state during the 10-year period immediately preceding the submission of the examination application.

(c) A reciprocal licensee who is converting that license to a standard broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

[Pa.B. Doc. No. 05-1710. Filed for public inspection September 16, 2005, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

MA Day of Care Definition

The Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b), 443.1(5) and 454 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 206(2), 403(b), 443.1(5) and 454), as amended by the act of July 7, 2005 (P. L. 177, No. 42) (Act 42), amends Chapter 1187 (relating to nursing facility services) to read as set forth in Annex A.

Act 42 amended, among other things, provisions of the code regarding payment for nursing facility services under the Medical Assistance (MA) Program. More specifically, Act 42 added a subsection (5) to section 443.1 of the code. This new subsection provides that on or after July 1, 2004, and until regulations are otherwise adopted by July 1, 2006, payments to MA nursing facility providers shall be calculated and made as specified in the Department's regulations in effect on July 1, 2003, except as may be otherwise required by the Commonwealth's approved Title XIX plan for nursing facility services and regulations promulgated by the Department under section 454 of the code.

Section 454, which was also added to the code by Act 42, authorizes the Department to promulgate regulations to establish provider payment rates. Section 454 of the code specifies that, until December 31, 2005, notwithstanding any other provision of law including section 814-A of the code (62 P. S. § 814-A), provider payment rate regulations must be promulgated under section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), which permits an agency to omit or modify notice of proposed rulemaking when the regulation pertains to Commonwealth grants or benefits. In addition, section 454 of the code expressly exempts these provider payment rate regulations from review under the Regulatory Review Act (71 P. S. §§ 745.1—745.15), and from review by the Attorney General under section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

Justification for Adoption of Final-Omitted Rulemaking

In accordance with sections 443.1(5) and 454 of the code, the Department is adopting this final-omitted rulemaking because:

- As recognized by section 454(b) of the code, the final-omitted rulemaking pertains to MA provider payments, which are Commonwealth grants or benefits.

- The final-omitted rulemaking pertains to payments for MA nursing facility services made on or after July 1, 2004.

- The final-form rulemaking is necessary to conform the Department's regulations to the Commonwealth's approved State Plan for nursing facility services.

Purpose

The Department is amending the definition of "MA day of care" in § 1187.2 (relating to definitions) to include additional categories of days of care provided to MA nursing facility residents. This amendment conforms the regulatory definition to the Commonwealth's approved State Plan for nursing facility services.

Background

Current § 1187.2 defines "MA day of care" as "a day of care for which the Department pays 100% of the MA rate for an MA resident or a day of care for which the Department and the resident pay 100% of the MA rate for the MA resident's care." Under the case-mix payment system in Chapter 1187, the Department uses the definition of "MA day of care" for two purposes. First, the Department uses the definition to determine which residents are included in the calculation of every nursing facility's quarterly MA Case-Mix Index (CMI) under § 1187.93 (relating to CMI calculations). A nursing facility's MA CMI is "the arithmetic mean of the individual CMIs for residents for whom the Department paid an MA day of care on the [quarterly] picture date." See § 1187.93(2). Each quarter during the rate year, the Department adjusts a nursing facility's case-mix per diem rate by multiplying the resident care component of the rate by the facility's MA CMI. See § 1187.95(b)(1) (relating to general principles for rate and price setting).

Second, the Department uses the definition of "MA day of care" to determine which nursing facilities are eligible to receive a disproportionate share incentive (DSH) payment under § 1187.111 (relating to disproportionate share incentive payments). To qualify for a DSH payment, a nursing facility must maintain an annual overall occupancy rate of at least 90% along with an annual MA occupancy rate of at least 80%. A nursing facility's MA occupancy rate is determined by dividing the MA days of care paid by the Department by the total actual days of care provided by the nursing facility. If the nursing facility meets the minimum occupancy requirements, the Department uses the same MA days of care to calculate the facility's DSH payment amount.

The current definition of "MA day of care" only recognizes those days for which payment is made under the Department's Fee-For-Service Program. While most MA nursing facility residents receive nursing facility services through the Department's Fee-For-Service Program, some MA recipients may receive nursing facility services through the HealthChoices Program, the Department's managed care program, and the Long Term Care Capitated Assistance Program (LTCCAP), the Department's community-based managed care program for the frail and elderly. When a HealthChoices managed care organization (MCO) under contract with the Department

(MA MCO) or an LTCCAP provider authorizes nursing facility services for an enrolled MA recipient, the MA MCO or LTCCAP provider, and not the Department, pays the nursing facility for the days of care which the nursing facility provides to the MA recipient. Since these days of care do not meet the current definition of "MA day of care" in § 1187.2, they are not counted in calculating the nursing facility's MA CMI or in determining whether the nursing facility qualifies for a DSH payment.

During the past several years the number of MA recipients receiving services under the HealthChoices Program and the LTCCAP has grown. As these managed care programs continue to enroll new members, more MA recipients who are admitted to nursing facilities will likely be enrolled in either an MA MCO or the LTCCAP and more days of care provided in nursing facilities will be paid for by MA MCOs and LTCCAP providers. In anticipation of this change in circumstance, MA nursing facility providers asked the Department to modify its policies to recognize these days as MA days of care. Upon consideration of this request, the Department agreed that the definition of "MA day of care" should be expanded and undertook the necessary steps to amend both the Commonwealth's approved State Plan and the language of § 1187.2 in a manner that would more fully recognize the services nursing facilities are providing to MA recipients.

The Department published an advance public notice at 33 Pa.B. 6468 (December 27, 2003) announcing its intent to amend its State Plan to expand the definition of "MA day of care" to include two new categories of days: (1) days of care for which an MA MCO or an LTCCAP provider pays 100% of its negotiated rate or fee for the MA resident's care in a nursing facility and days of care for which the resident and an MA MCO or an LTCCAP provider pays 100% of its negotiated rate or fee for the MA resident's care in a nursing facility; and (2) days of care provided to an MA resident receiving hospice services in a nursing facility which are paid for by the Department. The Department invited the public to comment on this proposed change.

Following the public comment period, the Department submitted a proposed State Plan Amendment to the Federal Centers for Medicare and Medicaid Services (CMS) on March 24, 2004, to incorporate the revised "MA day of care" definition into the Commonwealth's State Plan. Subsequently, while the proposed State Plan Amendment was pending with the CMS, the Department published a notice of proposed rulemaking at 34 Pa.B. 4462 (August 14, 2004) to make a corresponding change to the definition of "MA day of care" in § 1187.2 and again invited interested parties to comment.

On January 27, 2005, the CMS notified the Department that the State Plan Amendment incorporating the revised "MA day of care" definition into the Commonwealth's State Plan was approved effective January 1, 2004. This final-omitted rulemaking now conforms the text of § 1187.2 to the approved State Plan.

Although this regulation changes the definition of "MA day of care" retroactive to January 1, 2004, it only affects payments made to nursing facilities on or after July 1, 2004. More specifically, the expanded definition is applicable to DSH payments for fiscal periods ending on and after December 31, 2003, and to the MA CMI for picture dates beginning February 1, 2004. Under the Department's case-mix regulations, the first DSH payments using the expanded definition could not be (and were not) made prior to July 28, 2004, or 210 days from the close of the December 31, 2003, fiscal year. See § 1187.11(d).

Similarly, under the Department's case-mix regulations, the first MA CMI using the expanded definition (the February 1, 2004, MA CMI) could only be used to adjust the nursing facilities' July 1, 2004, rates. See § 1187.96(a)(4) (relating to price and rate setting computations).

Affected Individuals and Organizations

This final-omitted rulemaking will affect nursing facilities enrolled in the MA Program.

Accomplishments and Benefits

This final-omitted rulemaking revises the current definition of "MA day of care" consistent with the recommendation of nursing facility providers. This final-omitted rulemaking may result in increased reimbursement to nursing facility providers through increased DSH payments and case-mix per diem rates, and may encourage nursing facilities to admit more MA residents who are enrolled in MA MCOs and enrolled in the LTCCAP.

Fiscal Impact

By expanding the definition of "MA day of care," more nursing facilities may qualify for DSH payments and nursing facilities that currently receive DSH payments may experience an increase in those payments. Nursing facilities may also experience a change in their case-mix per diem rates as a result of an increase or decrease in the MA CMI used to establish the nursing facilities' case-mix per diem rate. The Department estimates that MA nursing facilities could receive an additional \$500,000 in payments in Fiscal Year 2004-2005 as a result of this final-omitted rulemaking.

Although the Commonwealth may have increased costs due to the expanded definition, any increased costs will be defrayed in part by Federal matching funds which will cover approximately half of the payment increases attributable to this amendment. Further, because the effect of the final-omitted rulemaking is to more fully recognize the services nursing facilities are providing to MA recipients, it should help ensure that MA recipients have continued access to medically necessary nursing facility services. Therefore, the Department finds that the benefit of the regulation outweighs the increased costs which may be associated with the final-omitted rulemaking.

Paperwork Requirements

The MA-11 Cost Report currently used by nursing facilities to report financial and statistical data will be modified to accommodate the changes to the definition of "MA day of care." This final-omitted rulemaking will not change the manner in which MA days of care are reported. However, the final-omitted rulemaking will increase the number of MA days of care being reported.

Public Comment

On November 26, 2003, and December 23, 2003, the Department met with members of the four nursing home associations—Pennsylvania Association of Non-Profit Homes for the Aging, Pennsylvania Health Care Association, Hospital and Healthsystem Association of Pennsylvania and Pennsylvania Association of County Affiliated Homes—to discuss the implications of the Department's intent to change the definition of "MA day of care." The Department also discussed and solicited comments on the proposed changes at the Long-Term Care Subcommittee of the Medical Assistance Advisory Committee (MAAC) on February 11, 2004, April 14, 2004, October 13, 2004, and December 1, 2004.

The Department published an advance public notice at 33 Pa.B. 6468 in which it announced its intent to change the definition of "MA day of care" in the State Plan, and invited interested persons to comment on the proposed amendment. The Department received one comment letter in response to the notice. The Department subsequently published a notice of proposed rulemaking and received a total of three public comment letters regarding the proposed rulemaking. In addition, comments were received from the Independent Regulatory Review Commission (IRRC).

Subsequent to the publication of the proposed rulemaking, the General Assembly enacted Act 42 directing the Department to promulgate provider payment rate regulations in accordance with Act 42. Although not required by Act 42, the Department considered all public comments received in response to its advance public notice and notice of proposed rulemaking.

Discussion of Comments and Major Changes

Following is a summary of the comments received by the Department following publication of the advance public notice and the proposed rulemaking, and the Department's response to those comments.

Comment

Two nursing facility associations sent comments endorsing the proposed rulemaking. One association observed that the failure to recognize LTCCAP and MA MCO paid days as MA days of care may have created a disincentive for nursing facilities to admit HealthChoices enrollees. Both associations commented that expanding the definition of "MA day of care" to include these days would allow nursing facilities to receive more accurate reimbursement for providing services. Both associations also supported the proposed amendment to the definition clarifying that days of care provided to MA nursing facility residents receiving hospice services paid by the Department are also to be considered as MA days of care.

Response

The Department agrees with the association that the expanded definition of "MA day of care" more fully recognizes the services nursing facilities are providing to MA recipients.

Comment

IRRC and a nursing facility representative questioned whether the Department has authority to retroactively change the definition of "MA day of care."

Response

Although not determinative of the Department's authority to make the retroactive change, the Department notes that this final-omitted rulemaking is being adopted in response to the request of the nursing facility industry and its effect is most likely an increase in payments to nursing facility providers. Even if the final-omitted rulemaking reduced payments to providers, however, both Federal and State law would allow the Department to adopt the amendment retroactive to January 1, 2004.

Consistent with Federal law, the Department announced its intent to make the amendment in advance of the proposed effective date, solicited public comment and input from the MAAC and submitted the State Plan Amendment to the CMS on March 24, 2004. Applicable Federal regulations specifically permit a State Plan amendment to be "retroactively" effective to the first day of the calendar quarter in which an approvable amendment is submitted. See 42 CFR 447.256(c) (relating to

procedures for CMS action on assurances and State plan amendments). On January 27, 2005, the CMS approved this State Plan Amendment, retroactive to January 1, 2004.

State statute and common law also recognized that administrative agencies, including the Department, may promulgate retroactive regulations. See, for example, section 203 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1203); *Ashbourne School v. Department of Education*, 403 A.2d 161, 165 (Pa. Cmwlth 1979) (en banc); *Wesbury United Methodist Community v. Department of Public Welfare*, 597 A.2d 271 (Pa. Cmwlth 1992); *Carbon County Home v. Department of Public Welfare*, 535 A.2d 1243 (Pa. Cmwlth 1988).

The General Assembly has not enacted legislation to remove that authority from the Department. To the contrary, Act 42 not only requires the Department to calculate and make payments to MA nursing facility providers in accordance with the Commonwealth's approved State Plan, it specifically authorizes the Department to publish regulations relating to provider payments on or after July 1, 2004. See section 443.1(5) of the code. Consistent with section 443.1(5) of the code, this final-omitted rulemaking conforms the text of the Department's regulations to the approved State Plan and ensures that payments to nursing facilities effective July 1, 2004, are calculated and made as required by the State Plan.

Comment

A commentator recommended that the Department allow nursing facility providers to correct Picture Date CMI Report transmittals to make them consistent with the new definitions for a period of at least 30 days from the date that the final rulemaking is published in the *Pennsylvania Bulletin*. The commentator suggested that the extension would be appropriate because there was confusion as to the effective date of the change in the notices that the Department sent to providers. Although the commentator was aware that the Department announced that providers would be granted an extension by way of the March 12, 2004, website posting, the commentator contended that an Internet posting is not an accepted replacement for publication in the *Pennsylvania Bulletin*.

Response

The Department disagrees with the commentator's suggestions that providers are confused about the effective date of the final-omitted rulemaking and that providers should be afforded additional time to correct CMI submissions. Providers have been given repeated and individual notice of the amendment to the definition of "MA day of care," and provided ample opportunity to adjust their CMI submissions and cost reports in accordance with the definition.

As previously noted, the Department published an advance notice at 33 Pa.B. 6468 announcing its intent to make the amendment and identifying a proposed effective date of January 1, 2004. Three weeks later, the Department sent a "Dear Administrator" letter to all nursing facilities whose cost report fiscal year ended December 31, 2003. This letter provided individual notice to the facilities of the amendment to the definition of "MA day of care" well in advance of the April 30, 2004, deadline for the submission of their cost reports. The letter enclosed a new cost reporting schedule for facilities to complete to report the additional categories of MA days recognized

under the expanded definition. On June 16, 2004, more than 3 months prior to their cost report filing deadline, the Department sent a substantially identical "Dear Administrator" letter to nursing facilities whose cost report fiscal year ended June 30, 2004, to likewise notify them of the amendment to the definition of "MA day of care" and allow them the opportunity to report the additional MA days of care.

In addition, as the commentator acknowledged, on March 12, 2004, the Department posted notification of the amendment to the definition on the Nursing Facility Minimum Data Set (MDS) submission site. This notification included instructions for correcting a nursing facility's CMI Report in instances when a facility may have had residents affected by the amendment to the definition of "MA day of care." On the same day it posted the notification online, the Department sent copies of the notification to the four nursing home associations for circulation to their respective members. Further, to allow time for any questions nursing facility providers might have concerning the new definition and submission of reports, the March 12, 2004, notification extended the February 2004 Picture Date submission period from March 15, 2004, to March 30, 2004.

Any provider that submitted its CMI data on or after March 12, 2004, would have accessed the MDS submission site to do so, and therefore, should have been aware of the notification announcing the amendment to the definition and extending the deadline for submission. Approximately 270 nursing facility providers had submitted a signed CMI Report for the February 1 Picture Date with a print date prior to the online posting of the March 12, 2004, notification extending the submission deadline. Each provider was contacted by phone by the Myers and Stauffer Helpdesk staff and alerted to the notification and amendment to the definition. Approximately 30% of the providers that were contacted by the Helpdesk and a total of 148 providers (23.2% of all providers) subsequently mailed a corrected CMI Report to replace their original report for the February 1, 2004, picture date.

The Department notes that as a general matter, approximately 5% of providers send multiple reports or corrections for a picture date submission. The significant increase in submissions for the February 1, 2004, picture date illustrates that providers received more than adequate advance notice of the amendment to the definition of "MA day of care" and were given ample opportunity to and did adjust their February 2004 CMI Reports as they determined necessary.

Under these circumstances, the Department finds that additional time for corrections is unwarranted.

Sunset Date

There is no sunset date. However, the Department will review the effectiveness of this regulation on an ongoing basis and evaluate the need for further amendments.

Regulatory Review Act

Under sections 443.1(5)(ii) and 454 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv) because this final-omitted rulemaking pertains to Commonwealth grants and benefits.

(2) The adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

(3) Any delay in the effective date of this rulemaking beyond January 1, 2004, would be impracticable and contrary to the public interest since: (i) it would be inconsistent with the Commonwealth's approved State Plan and, thereby, jeopardize the receipt of Federal matching funds; and (ii) it would violate the requirement of section 443.1(5) of the code that the Department calculate and make payments to nursing facility providers consistent with the Commonwealth's approved State Plan.

Order

The Department, acting under sections 201(2), 206(2), 403(b), 443.1(5) and 454 of the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1187, are amended by amending § 1187.2 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

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

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

(d) This order amends the definition of "MA day of care" effective January 1, 2004, and applies to DSH payments for fiscal periods ending on and after December 31, 2003, and to the MA CMI for picture dates beginning February 1, 2004.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-498. (1) General Fund; (2) Implementing Year 2003-04 is \$212,000; (3) 1st Succeeding Year 2004-05 is \$237,000; 2nd Succeeding Year 2005-06 is \$245,000; 3rd Succeeding Year 2006-07 is \$252,000; 4th Succeeding Year 2007-08 is \$260,000; 5th Succeeding Year 2008-09 is \$268,000; (4) 2002-03 Program—\$777.084 million; 2001-02 Program—\$761.878 million; 2000-01 Program—\$722.565 million; (7) MA Long-Term Care; (8) recommends adoption. Funds have been included in the Department's budget to cover this increase.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1187.2. Definitions.

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

* * * * *

LTCCAP—Long-Term Care Capitated Assistance Program—The Department's community-based managed care program for the frail elderly based on the Federal Program of All-inclusive Care for the Elderly (PACE) (see section 1894 of the Social Security Act (42 U.S.C.A. § 1395eee)).

* * * * *

MA MCO—Medical Assistance Managed Care Organization—An entity under contract with the Department that

manages the purchase and provision of health services, including nursing facility services, for MA recipients who are enrolled as members in the entity's health service plan.

* * * * *

MA day of care—A day of care for which one of the following applies:

(i) The Department pays 100% of the MA rate for an MA resident.

(ii) The Department and the resident pay 100% of the MA rate for an MA resident.

(iii) An MA MCO or an LTCCAP provider that provides managed care to MA residents, pays 100% of the negotiated rate or fee for an MA resident's care.

(iv) The resident and either an MA MCO or LTCCAP provider that provides managed care to an MA resident, pays 100% of the negotiated rate or fee for an MA resident's care.

(v) The Department pays for care provided to an MA resident receiving hospice services in a nursing facility.

* * * * *

[Pa.B. Doc. No. 05-1711. Filed for public inspection September 16, 2005, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Miscellaneous Special Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking relates to permits for the use of cast nets or throw nets for the taking of gizzard shad and alewife on Lake Arthur in Butler County.

A. *Effective Date*

The final-form rulemaking will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Chief Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

The final-form rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of change.

E. *Summary of Change*

Several years ago, the Commission promulgated a regulation pertaining to the issuance of permits for the use of cast nets for taking live gizzard shad and alewife at Raystown Lake, Huntingdon County. Live gizzard shad and alewife are a popular bait for striped bass but are difficult to capture by means of conventional seines and nets less than or equal to 4 feet in diameter. Subsequently, the Commission amended its regulation for Raystown Lake to increase the maximum size from 12 to 20 feet in diameter.

A recent application was submitted for use of larger cast nets at Lake Arthur to capture alewife for striped bass angling. This application was denied as the cast net permit applies only to Raystown Lake. The use of a net such as this at Lake Arthur warranted consideration given the presence of surface schooling alewife for much of the year and the wish to enhance striped bass angling there. The Commission has determined that using larger cast nets on Lake Arthur is feasible and can be done without adverse impacts. This regulation will enhance striped bass fishing in the region. The Commission therefore amended § 65.24 to read as set forth in the notice of proposed rulemaking.

F. *Paperwork*

The final-form rulemaking will increase paperwork in that individuals who wish to use cast nets or throw nets to take gizzard shad and alewife on Lake Arthur will be required to complete an application, and if approved, the Commission will issue a permit. The Commission estimates that it will issue less than 100 permits each year for the use of cast nets or throw nets on Lake Arthur. No new paperwork requirements will be created because the Commission already issues net permits under section 2902 of the code (relating to net permits).

G. *Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public. Under section 2902 of the code, the Commission has the authority to issue net permits for a fee of \$10.

H. *Public Involvement*

Notice of proposed rulemaking was published at 35 Pa.B. 2633 (April 30, 2005). The Commission received seven written public comments concerning the proposed rulemaking, all of which supported it. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.24 to read as set forth at 35 Pa.B. 2633.

(b) The Executive Director will submit this order and 35 Pa.B. 2633 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 35 Pa.B. 2633 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-169 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-1712. Filed for public inspection September 16, 2005, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) amends Chapter 111 (relating to special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking corrects a minor discrepancy in the description of the slow, no wake zone on the Beaver River in Beaver County and removes a 10 horsepower restriction at the former Connequenessing Creek Dam in Beaver County. The final-form rulemaking also establishes a 45-mile per hour speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day on Harveys Lake in Luzerne County.

A. Effective Date

The final-form rulemaking will go into effect on January 1, 2006.

B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Chief Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The amendments to §§ 111.4 and 111.40 (relating to Beaver County; and Luzerne County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The final-form rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

E. Summary of Changes

(1) *Section 111.4.* A review of the Commission's regulations uncovered a minor discrepancy in the description of the special regulation for the Beaver River. The regulation establishes a slow no wake zone for a length of 2 miles, but the regulation also references River Mile 0.0

and River Mile 2.3, a distance of 2.3 miles. The Commission has corrected this discrepancy as set forth in the notice of proposed rulemaking.

The Connequenessing Creek Dam was a wicket dam near Ellwood City. In its early life, the pool behind the dam was used by locals for waterskiing under very strict regulations. These regulations were removed in the mid-1980s, and a 10 horsepower restriction was applied to allow limited use. The dam no longer exists as an operational structure. Without the dam creating an impoundment, there is no reason to retain the current 10 horsepower restriction. Therefore, the Commission has deleted this regulation as set forth in the notice of proposed rulemaking. With the deletion of this regulation, the creek will revert to general unlimited horsepower. However, since the unimpounded depth of the creek is insufficient to support power boats, the change will have no impact on current or potential motor boating activities.

(2) *Section 111.40.* The Commission received a petition from the Harveys Lake Protective Association to amend the regulations to establish a 45-mile per hour speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day. As part of staff's review of the petition, they polled other states and found that relatively few states use radar extensively. The states that do, Maryland, Florida and Missouri, primarily use radar on waters with narrow channels or rivers where the boat traffic is relatively constrained. All have indicated that there are limitations on the use of radar on open waters with heavy boat traffic. Nonetheless, speed limits act as a social and psychological deterrent and have some value. Accordingly, the Commission has adopted the 45-mile per hour speed limit on Harveys Lake as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 35 Pa.B. 2394 (April 23, 2005). The Commission did not receive any public comments regarding the proposed amendments to § 111.4. The Commission received two public comments regarding the proposed speed limit on Harveys Lake, both supporting the proposed rulemaking. After the formal comment period, the Commission received two additional public comments, one supporting and one opposing the speed limit. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 111, are amended by amending §§ 111.4 and 111.40 to read as set forth at 35 Pa.B. 2394.

(b) The Executive Director will submit this order and 35 Pa.B. 2394 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 35 Pa.B. 2394 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2006.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-165 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-1713. Filed for public inspection September 16, 2005, 9:00 a.m.]

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendment to § 63.11 (relating to eel chutes) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to eliminate a Commission permitting program that is not being utilized. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Under section 2901 of the code, a person may apply to the Commission for a special license to catch eels by the use and operation of eel chutes and the payment of a \$25 fee. The special eel chute license gives the license holder the right to use and operate an eel chute: (1) in the Susquehanna River below the boundary line of the city of Pittston and Duryea Borough line on the north branch and below the bridge at the Northumberland-Lycoming County line on the west branch; (2) below Mount Union in the Juniata River; and (3) in the Delaware River. Section 63.11 contains provisions regarding the operation of eel chutes.

According to the Commission's records, the Commission has not issued an eel chute license in the last 13 years. The Commission therefore proposes to delete § 63.11 as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-177. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.11. [Eel chutes] (Reserved).

[It is unlawful to operate an eel chute except in compliance with the following terms and conditions:

(1) Each eel chute shall be licensed under section 2901 of the code (relating to eel chute licenses), and used exclusively in the waters therein specified.

(2) Eel chutes may be operated only during the hours from 4 p.m. to 8 a.m. and only from August 1—November 30.

(3) Eel chute operators shall, in addition to the eel chute license required by section 2901 of the code, possess a valid Pennsylvania fishing license.

(4) Eel chutes may not have wings or netting of any kind or any cloth or wire netting but shall be constructed of wooden slates or lath which may not be closer than 1/2 inch in the bottom. Eel chutes may not be more than 5 feet long; the width of the entrance to an eel chute may not be more than 10 feet.

(5) Eel chute wing walls may not span more than 3/4 of the width of any water upon which the eel chute is constructed. When two or more wing walls are constructed side-by-side, the heads of the wing walls may be no more than 20 feet apart.

(6) Eel chutes shall be kept free from rubbish.

(7) Game fish found in an eel chute shall be immediately returned unharmed to the waters from which it entered the eel chute.

(8) During the hours of 8 a.m. to 4 p.m. when the operation of an eel chute is unlawful, a portion of the bottom of the chutes shall be removed to facilitate the unobstructed passage of fishes.

(9) Eel chutes shall be clearly marked with the name and address of the licensee.

(10) A person maintaining an eel chute shall post a sign with letters at least 3 inches in height not less than 25 nor more than 100 yards upstream of the eel chute to warn boaters of the location of this possible hazard to navigation.

(11) Eel chute operators are required to remove them from the water during the period December 1—July 31. It is unlawful for an eel chute to be placed or maintained in Commonwealth waters during the period December 1—July 31.

(12) Licensees under section 2901 of the code shall file a report to the Commission, Bureau of Fisheries, Robinson Lane, Bellefonte, Pennsylvania

16823, no later than December 31 of each year. The report shall indicate the total catch of licensee for the preceding year.

(13) The Commission hereby determines under section 2507 of the code (relating to sale of certain fish, reptiles and amphibians prohibited) that eels caught lawfully under this section may not be sold or offered for sale.

(14) Eels taken with eel chutes shall be subject to the same size and creel limits as eels taken with hook and line.]

[Pa.B. Doc. No. 05-1714. Filed for public inspection September 16, 2005, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

[4 PA. CODE CHS. 58 AND 68]

Internal Guidelines for MBE/WBE Certification

The Department of General Services (Department), under the authority of Executive Order No. 2004-6 (§§ 1.451—1.455 (relating to minority and women business enterprises)), adds a statement of policy in Chapter 58 (relating to contract compliance) regarding internal guidelines for certification of Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) and deletes the prior statement of policy in Chapter 68, Subchapter C to read as set forth in Annex A.

Purpose

Executive Order 2004-6 rescinded and replaced Executive Order 1996-8. The Department is deleting and replacing its statement of policy to reflect current Executive Order 2004-6 and to revise the Internal Guidelines for MBE/WBE Certification.

Overview of Changes in Statement of Policy

The statement of policy states the criteria for determination of applications for certification as an MBE or WBE and describes the procedures for businesses to follow in applying for certification. In response to Executive Order 1996-8, the Department amended the statement of policy in 2002. See 32 Pa.B. 615 (February 2, 2002). The statement of policy in Chapter 58 retains much of the language of the statement of policy published in 2002. The Department considered amending the 2002 statement of policy but decided to rescind the policy, issue a new statement and relocate the statement of policy to Chapter 58.

The businesses certified under the statement of policy participate in construction and procurement as regulated by Part III, Subpart C (relating to construction and procurement). Subpart C contains a general article, an article regarding construction and an article regarding procurement. The deleted statement of policy was in Chapter 68 (relating to contract compliance) under Article III (relating to procurement). The Department proposes to update and relocate the regulations remaining in Chapter 68 in the near future.

The new statement of policy will be in Chapter 58 under Subpart C, Article I (relating to general). The decision to place the new statement of policy in Article I signifies that the Department has one unified policy for construction and procurement. The statement of policy will:

- a. Reflect the change in the name of the Department's Bureau of Contract Administration and Business Development to the Bureau of Minority and Women Business Opportunities (BMWBO).
- b. Recognize the BMWBO's authority to accept certifications by third parties to include private certification entities in addition to public certification bodies.
- c. Expressly limit certification to "for-profit" businesses.
- d. Identify the evidence required to establish "minority" origin.
- e. Ensure that licensing as an indicia of operational control will be required only when State or Federal law

mandates that the minority or woman business owner possess the license.

f. Permit certification under defined circumstances when the securities constituting ownership of the business are held by a corporation or trust.

g. Explicitly permit certification denial if an applicant refuses to answer questions relevant to certification.

h. Enable businesses to continue to participate in the program beyond the current 8-year limitation period.

Affected Individuals and Organizations

The Department is committed to ensuring nondiscrimination in contracting and increasing the opportunities for participation by disadvantaged businesses in Commonwealth contracts. Approximately 1,700 businesses are certified by the Department as an MBE or WBE. The Department received input from the Governor's Advisory Committee on Minority and Women Business Opportunities. The statement of policy will benefit currently certified and potential MBEs and WBEs by clarifying the requirements for certification and by eliminating the 8-year limitation on participation in the program.

Fiscal Impact

The Department will continue to incur personnel and other costs in administering the MBE/WBE certification program. During Fiscal Year 2003-2004, the Department spent \$338,000 to operate the Certification Division in the BMWBO.

Paperwork Requirements

The statement of policy will not increase the paperwork associated with the MBE/WBE certification process.

Effective Date

The statement of policy shall be effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

For information regarding this statement of policy, contact Mary Benefield Seiverling, Assistant Chief Counsel for Government Operations, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, PA 17125, (717) 787-5599.

JAMES P. CREEDON,
Secretary

(Editor's Note: The regulations of the Department, 4 Pa. Code, are amended by deleting a statement of policy in §§ 68.201—68.210 and by adding a statement of policy in §§ 58.201—58.210 to read as set forth in Annex A.)

Fiscal Note: 8-10. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart C. CONSTRUCTION AND PROCUREMENT

ARTICLE I. GENERAL

CHAPTER 58. CONTRACT COMPLIANCE

Subchapter C. INTERNAL GUIDELINES FOR MBE/WBE CERTIFICATION—STATEMENT OF POLICY

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- 58.208. Decertification.
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§ 58.201. Policy.

(a) Executive Order No. 2004-6, 4 Pa. Code Chapter 1, Subchapter LL (relating to minority and women business enterprise), established the Department as the central agency to manage and develop the participation of minority and women-owned businesses and other disadvantaged businesses in Commonwealth contracts. The Executive Order directed the Department to expand the pool of minority and women-owned businesses that are certified as MBEs and WBEs. The Department has assigned these responsibilities to its BMWBO.

(b) This subchapter establishes guidelines that the Department will follow in determining whether a business entity should be certified and which business entities, previously certified, shall be decertified. The Executive Order and 62 Pa.C.S. Part I (relating to Commonwealth Procurement Code) give the Department broad authority governing the management and development of the participation of MBEs and WBEs and governing the formulation of general procurement policy. This subchapter gives direction to BMWBO, executive agencies and others as to how that broad authority and agency discretion will be exercised. This subchapter constitutes guidelines to BMWBO, the executive agencies and others within this Commonwealth. This subchapter is not and does not purport to operate as a regulation and does not have or purport to have the force of law.

§ 58.202. Definitions.

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

BMWBO—The Bureau of Minority and Women Business Opportunities within the Department.

Certification—A determination made by the BMWBO that a for-profit business entity is an MBE or WBE. In the alternative, BMWBO may, by declaration, accept the certification program of other public or private bodies if the certification program conforms substantially to the program of BMWBO established in Chapter 1, Subchapter LL (relating to minority and women business enterprise). When the certification program of another public or private body has been declared to be accepted, MBE or WBE will be deemed certified under this program if the certification remains current and if the business entity has not been decertified.

Department—The Department of General Services of the Commonwealth.

MBE—Minority Business Enterprise—A small for-profit business concern that is one of the following:

- (i) A sole proprietorship, owned and controlled by a minority.
- (ii) A partnership or joint venture controlled by minorities in which at least 51% of the beneficial ownership interest is held by minorities.
- (iii) A corporation or other business entity controlled by minorities in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by minorities.

Minority—

(i) A person who is a citizen of the United States who is a Black American, Hispanic American, Native American, Asian-Pacific American or Asian-Indian American.

(A) *African Americans*—

(I) Persons having origins from any of the Black groups of Africa.

(II) The term includes persons having origins in any of the original peoples of the Cape Verde Islands.

(B) *Hispanic Americans*—Persons having their origins from one or more of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South American or the Caribbean Islands.

(C) *Native Americans (Alaskans)*—Persons having origins from one or more of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.

(D) *Pacific Islanders*—Persons having origins from one or more of the original peoples of the Pacific Islands, including Samoa and the Philippine Islands.

(E) *Asian-Americans*—Persons having origins from one or more of the original peoples of the Far East, Southeast Asia including China, Japan, Korea, India, Pakistan and Bangladesh.

(ii) To establish origins of a particular “minority” group, the applicant shall provide a document issued by a Federal, state or local governmental entity establishing that either the applicant, the applicant’s biological parents or the applicant’s biological grandparents are members of the minority group.

Secretary—The Secretary of the Department or a designated deputy secretary of the Department.

Small business—A business in the United States which is independently owned, is not dominant in its field of operation and employs no more than the maximum number of employees established by 62 Pa.C.S. § 2102 (relating to definitions).

WBE—Women’s Business Enterprise—A small business that is one of the following:

- (i) A sole proprietorship, owned and controlled by a woman.
- (ii) A partnership or joint venture controlled by women in which at least 51% of the beneficial ownership is held by women.
- (iii) A corporation or other entity controlled by women in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by women.

Women—United States citizens who are of the female gender.

§ 58.203. Certification of eligible MBEs and WBEs.

(a) *Purpose.* The purpose of this subchapter is to ensure that only those for-profit businesses and businesses which are owned and controlled in both form and substance by one or more minorities or women are certified.

(b) *Application form.* BMWBO will provide applications for businesses that are sole proprietors, partnerships, corporations and for other business entities. The appropriate application will be distributed to the businesses for completion. In the ordinary instance, it will be a reasonable exercise of agency discretion for BMWBO to decline to certify a business that fails to complete the application form. A distortion, false statement or nondisclosure of

information that is a material misrepresentation will, in the ordinary instance, warrant denial of certification and may result in referral to other agencies for consideration of other civil or criminal actions.

(c) *Acceptance of other public jurisdictions' certification.* If the business has a current certification from a BMWBO-approved public or private body, evidence of that certification may be obtained and relied upon by BMWBO in lieu of completing a certification application. BMWBO may obtain, as part of the application process, information from out-of-State businesses on current MBE/WBE certification from the business' home state governmental certifying body and from other public jurisdictions. Out-of-State businesses must first be certified by their home state before applying for certification with the Department.

§ 58.204. Eligibility standards.

The following standards will be used by BMWBO in determining whether a business is owned and controlled by one or more minorities or women and therefore eligible to be certified as an MBE or WBE:

(1) *Business history.* The applicant shall have actually done business for 1 year before submission of the application, or if it has been in business for less than 1 year, the established operating business shall have a 2-year business plan reviewed by a Small Business Development Center or by a Pennsylvania enterprise center authorized by the Minority Business Development Agency of the United States Department of Commerce.

(2) *Ownership.*

(i) Bona fide minority and women group membership may be established on the basis of the individual's claim that he is a member of a minority group or she is of the female gender. Verification of group membership may be accepted through submission of birth certificates, military records, passports or tribal cards.

(ii) An eligible MBE or WBE under this subchapter shall be an independent business. The ownership and control by minorities or women shall be real, substantial and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The minority and women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interest as demonstrated both by an examination of the substance and form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE or WBE. In determining whether a potential MBE or WBE is an independent business, BMWBO will consider all relevant factors, including the date the business was established, its resources, and the nature of the financial and lease arrangements. The business relationship with non-MBE or WBE businesses, in areas such as personnel, facilities, equipment, financial or bonding support, or both, and other resources will also be considered. The business' relationship with prime contractors will be examined to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE or WBE business.

(iii) The contributions of capital and expertise by the minority or women owners to acquire their interests in the business shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the business or to an owner who is not a minority or woman or the mere participation as an employee rather than as a manager.

(iv) For purposes of determining ownership, BMWBO will presume as not being held by a minority or woman all interests in a business or other assets obtained as the result of a gift, or transfer without adequate consideration, if the donor is:

(A) Involved in the same business for which the individual is seeking certification, or an affiliate of that business.

(B) Involved in the same or a similar line of business.

(C) Engaged in an ongoing business relationship with the business, or an affiliate of the business, for which the individual is seeking certification.

(v) To overcome this presumption and permit the interests or assets to be counted, the minority or women owners must demonstrate that:

(A) The gift or transfer to the minority or women owners was made for reasons other than obtaining certification as an MBE/WBE.

(B) The minority or women owners actually control the management, policy, and operations of the business, notwithstanding the continuing participation of the donor who provided the gift or transfer.

(3) *Management control.* The minority or women owners shall possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy and operations. The minority or women owners shall hold the highest officer position in the company (for example—chief executive officer or president). In a corporation, the minority or women owners shall control the board of directors. The business may not be subject to formal or informal restrictions which limit the customary discretion of the minority or women owners. There may be no restrictions through, for example, by-law provisions, partnership agreements or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of an owner who is not a minority or woman, from making a business decision of the business. If the actual management of the business is contracted out to, or otherwise has been placed with individuals other than the minority or women owners, those persons who have the ultimate power to hire and fire the managers will ordinarily be considered as controlling the business.

(4) *Operational control.* The minority or women owners shall demonstrate through the application sufficient experience, knowledge and expertise to operate that particular business. The minority or women owners shall have an overall understanding of and technical competence directly related to the type of business in which the business is engaged. The minority and women owners are not required to have experience or expertise in every critical area of the business' operations, or to have greater experience or expertise in a given field than managers or key employees. The minority and women owners shall have the ability to intelligently and critically evaluate information presented by other participants in the business' activities and to use this information to make independent decisions concerning the business' daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control. If State or Federal law requires the business owner to have a particular license or other credentials, the minority or women business owner shall possess the

required license or other credentials. If State or local law requires the business to have a particular license or other credentials to own or control, or both, a certain type of business, the minority or women owned business shall possess the required license or other credentials. Additionally, if the owners of the business who are not minorities or women are disproportionately responsible for the operation of the business, the business will ordinarily be considered as not being controlled by minorities or women and not qualifying as an MBE or WBE. Notwithstanding anything in this subchapter to the contrary, BMWBO will not certify any business or individual that cannot produce a license or other authorization required by state or local law to operate the business.

(i) Securities, which constitute ownership or control, or both, of a corporation for business purposes of establishing it as an MBE or WBE shall be held directly by minorities, women, corporations or trusts. Corporations or trusts, holding the securities, must present proof that they are at least 51% controlled and owned by women or minorities.

(ii) Complete information regarding a change in ownership, control or financial condition must be provided to the BMWBO, which may consider a business' failure to provide promptly relevant information in decertification decisions.

(5) *Circumstances for special review.* In addition to the standards in paragraphs (1)—(4), BMWBO will ordinarily give special consideration to the following circumstances in determining eligibility under this subchapter:

(i) Newly formed businesses whose ownership or control, or both, has recently changed will be closely scrutinized to determine the reasons for the change in the business.

(ii) A previous or continuing, or both, employer-employee relationship between or among present owners will be carefully reviewed to ensure that the employee-owner has management responsibilities, requisite knowledge and expertise to direct and operate the business.

(iii) A relationship between an MBE or WBE and a business which is not an MBE or WBE, which has an interest financially or otherwise in the MBE or WBE, will be carefully reviewed to determine if the interest of the non-MBE or WBE conflicts with the ownership and control requirements of this subchapter.

(iv) The refusal of an applicant to answer questions that would assist the BMWBO staff in resolving issues or concerns regarding ownership, managerial control, or operational control, may result in the denial of the application.

§ 58.205. Joint venture.

(a) BMWBO will ordinarily find a joint venture eligible under this subchapter if the MBE or WBE partner of the joint venture meets the other certification criteria. The MBE or WBE partner shall be responsible for a clearly defined portion of the work to be performed, and the MBE or WBE shall maintain majority ownership and control in management responsibilities, risks and profits of the joint venture.

(b) BMWBO will ordinarily obtain from a business seeking certification as a joint venture MBE or WBE additional information needed to make a determination.

§ 58.206. Approved certification.

(a) If BMWBO determines that the applicant meets the criteria to be certified as an MBE or WBE, the applicant will be issued a certification number in recognition of its status.

(b) An MBE or WBE certification notice, unless revoked by decertification, will provide for automatic expiration 24 months from the date of issuance. If there is a change in ownership or control of the business, the MBE or WBE shall forward information within 2 weeks of the change to update the original application. Failure to comply may be cause for decertification.

(c) Applicants will be certified in the areas applied for, consistent with the field of expertise demonstrated through the application. Additional endeavors engaged in by the business shall be documented and submitted to BMWBO prior to approval of certification in those additional areas.

(d) A recertification of a previously certified MBE or WBE will ordinarily be treated as a new applicant for certification. The requirements of this subchapter will be applied to the recertification applicant, and no benefits or rights will be given to the recertification applicant because of its previous certification. Applicants may be recertified for an additional 24 months.

(e) An application which upon its face does not claim ownership or control by a minority or women as defined by this subchapter will ordinarily be denied.

§ 58.207. Certification denial.

(a) The denial of certification by BMWBO will not ordinarily be reconsidered, except under subsection (b). BMWBO may accept reapplications for certification, and information and documentation correcting technical deficiencies in the MBE/WBE certification application at any time. BMWBO will reject reapplications where the reason for the denial was substantive unless deficiencies in ownership and control have been corrected and unless a sufficient period of time, usually 1 year, has passed with the new provisions on ownership and control in place. BMWBO will exercise care to ensure that directors, officers and employees of businesses that have been denied certification are not reapplying under new business names in an attempt to frustrate BMWBO's review.

(b) BMWBO will permit reconsideration of the denial of certification if the submittal is made in writing within 30 days of the denial letter. BMWBO will forward to the Secretary or a designee the information submitted in support of reconsideration. A decision on reconsideration will be made by the Secretary or a designee.

(c) A person who knowingly makes or causes to be made, a false, deceptive or fraudulent statement on the application will be denied certification by BMWBO. BMWBO will ordinarily refer the statements to the appropriate authorities for possible further criminal or civil action.

§ 58.208. Decertification.

(a) BMWBO will ordinarily decertify businesses for reasons relating to the considerations in this subchapter including the following:

(1) The business is no longer owned or controlled by minority or women.

(2) The business received certification by knowingly submitting false and misleading information.

(3) The business knowingly allowed the misuse of its certification status.

(4) The business failed to respond, cooperate or otherwise comply with a request for information from BMWBO or another Commonwealth department, agency, commission, board, office, official or other representative.

(5) There are other causes affecting the business's status or responsibility, or both, as may be determined by BMWBO to warrant decertification.

(b) BMWBO will send a business a Notice of Proposal to Decertify (Notice) by certified mail. The Notice will:

(1) Specify the reasons for the proposed decertification in terms sufficient to put the business on notice of the conduct or transactions upon which the notice is based.

(2) State the causes relied upon under subsection (a) for proposing decertification.

(3) Advise that, within 20 days after receipt of the Notice, the business may submit, in person, in writing or through a representative, information in opposition to the proposed decertification, including information that raises a genuine dispute over the material facts.

(4) State the potential effect of the proposed decertification.

(5) Advise that the Director of BMWBO will make this decision.

(c) The decision letter informing the business that it has been decertified will also inform the decertified business of rights of review it has.

(d) If the actions of the business appear to be flagrant criminal conduct, BMWBO may, upon the filing of an indictment, information or other charge, temporarily suspend the certification until the determination is made to decertify or to reinstate. A review of this temporary suspension may be made by the Secretary.

§ 58.209. Review of decertifications.

(a) The Secretary or a designee will ordinarily require that requests for review of decertifications be made in writing and that the request recite the grounds upon which the request is based.

(b) The Secretary or a designee may reject requests that are untimely or insufficient. Ordinarily, requests made more than 30 days after the date of the decertification letter will be considered untimely. Further, requests that do not raise issues suggesting that the decertification in error will be denied as insufficient.

(c) In the exercise of discretion, the Secretary or a designee may direct that a hearing be conducted under § 58.210 (relating to hearing).

§ 58.210. Hearing.

(a) *Scope.* This hearing procedure applies only to requests for review of the decertification decision. The Secretary may delegate to a designee, usually a hearing officer, the responsibility for conducting a fact-finding hearing and for making a report and recommendation. Fact-finding hearings will only be held when the business requests a review under § 58.209 (relating to review of decertifications).

(b) *Purpose.* The fact-finding hearing will be held to determine the operative and relevant facts forming the basis for the decertification action as delineated in the written notice of decertification action provided to the business. The hearing will also determine the sufficiency of the grounds for the review as delineated in the writing.

The results of proceedings before BMWBO will also be considered. The fact-finding hearing affords the business which has been decertified an additional opportunity to demonstrate that the facts upon which the decertification is based are insufficient, incorrect, misleading or otherwise do not warrant the decertification. In addition to presenting material relevant to disputed facts, the business may present other information and arguments in accordance with the grounds stated in the request for review showing why it should not be decertified. Other information may be used by the designee in making a recommendation to the Secretary.

(c) *Conduct of hearing.* If a hearing is warranted, it will be conducted under 2 Pa.C.S. §§ 502—508 and 701—704 (relating to Administrative Agency Law). If the BMWBO takes the action, it has the burden of proof.

ARTICLE III. PROCUREMENT CHAPTER 68. CONTRACT COMPLIANCE Subchapter C. (Reserved)

§§ 68.201—68.210. (Reserved).

[Pa.B. Doc. No. 05-1715. Filed for public inspection September 16, 2005, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 57]

Allocation and Stocking of Trout

The Fish and Boat Commission (Commission) has adopted changes to a statement of policy in Chapter 57 (relating to statements of policy) that pertains to publicizing the stocking of fish. Although not required to publish a notice of proposed rulemaking to adopt revisions to a statement of policy, the Commission published the proposed statement of policy and sought public comments because of the heightened public interest in this issue. The Commission is publishing this revised statement of policy under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The statement of policy will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the revised statement of policy, contact Laurie E. Shepler, Chief Counsel, Chief Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This statement of policy is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The statement of policy is published under the statutory authority of section 321 of the code (relating to administration and enforcement) that provides that the Commission administer and enforce the code and other laws of the Commonwealth regarding the protection, propagation and distribution of fish.

D. *Purpose and Background*

At the November 8, 1985, meeting, the Commission formally adopted a statement of policy for the allocation and stocking of adult trout. That statement of policy provided that trout are allocated to individual waters on a classification basis without regard to county lines and

that the assignment of waters to stocking categories is based on biological and social factors. Eight stocking categories were identified, including "wild trout: no stocking," high yield, basic yield I, basic yield II, basic yield III, low yield, rivers and lakes. Although the statement of policy utilized the general term "wild trout," the term in practice included only Class A and wilderness trout streams. The names of the other categories were changed over the years.

The Commission's fisheries staff are committed to reengineering the Commission's trout management approach. Allocation of legal-size stocked trout is a major part of the Commission's trout management plans. Adjusting this statement of policy will allow staff initiative without the burden of the eight resource categories identified in the original statement of policy and will increase flexibility for consideration of public interests in the stocking of individual waters.

E. *Summary of Changes*

The Commission amended its statement of policy under which the Commission will allocate trout, except fingerlings, to individual waters with the rate and frequency to be determined by the assignment of each water to a resource category. Under the amended statement of policy, the Commission will assign waters areas to resource categories based on appropriately weighted biological and social factors.

F. *Paperwork*

The revised statement of policy will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The amended statement of policy will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amended statement of policy will impose no new costs on the private sector or the general public.

H. *Public Involvement*

Although not required to publish a notice of proposed rulemaking to adopt an amendment to a statement of policy, the Commission published the proposed amendment at 35 Pa.B. 2417 (April 23, 2005) and sought public

comments because of the heightened public interest in this issue. The Commission received two public comments opposing the policy. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment to the statement of policy adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendment to the statement of policy of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 57, are amended by amending § 57.2 to read as set forth at 35 Pa.B. 2417.

(b) The Executive Director will submit this order and 35 Pa.B. 2417 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 35 Pa.B. 2417 and deposit the same with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-168 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-1716. Filed for public inspection September 16, 2005, 9:00 a.m.]

NOTICES

DELAWARE RIVER BASIN COMMISSION

Meeting and Public Hearing

The Delaware River Basin Commission (Commission) will hold an informal conference followed by a public hearing on Monday, September 26, 2005. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's office building at 25 State Police Drive, West Trenton, NJ.

The conference among the Commissioners and staff will begin at 10:30 a.m. Topics of discussion will include presentations on Basin Plan implementation activities to date, sedimentology of the Delaware River Estuary, the water supply plan for the State of Delaware and coordinated response to a coal ash spill to the Delaware River from a settling basin at PPL's Martins Creek power plant.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Town of Middletown D-78-64 CP-2.* An application for approval of a groundwater withdrawal project to supply up to 24 million gallons per 30 days (mg/30 days) of water to the applicant's public water supply system from new Wells Nos. 4 and 6 and to increase the existing withdrawal from all wells to 51 mg/30 days. The project is located in the Magothy Aquifer in the Town of Middletown, New Castle County, DE.

2. *Hercules Incorporated Research Center D-84-28-3.* An application for the renewal of a groundwater withdrawal project to reduce withdrawal from 10 mg/30 days to 5 mg/30 days to supply the applicant's research facility from existing Wells Nos. 8—10, 13—15, 18—21 and 23. The project is located in the Red Clay Creek Watershed in the City of Wilmington, New Castle County, DE.

3. *Town of Middletown D-2003-30 CP.* An application for approval of a groundwater withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's golf course irrigation system from new Well No. FH 1 in the Magothy Formation. The project is located in the Appoquinimink River Watershed in the Town of Middletown, New Castle County, DE.

4. *Ralph Franceschini D-81-49-3.* An application for the renewal of a groundwater withdrawal project to increase withdrawal from 5.83 mg/30 days to 21.3 mg/30 days to supply the applicant's field crops from existing Wells Nos. 1 and 3. The project is located in the Manantico Creek Watershed in the City of Vineland, Cumberland County, NJ.

5. *Mount Laurel Municipal Utilities Authority D-85-9 CP-3.* An application for the renewal of a groundwater withdrawal project to continue withdrawal of 120 mg/30 days to supply the applicant's public supply distribution system from existing Wells Nos. 3, 4 and 6 and to convert existing Well No. 7 to an Aquifer Storage and Recovery Well. The project is located in the North Branch Pennsauken Creek Watershed in Mount Laurel Township, Burlington County, NJ.

6. *Alcan Packaging D-92-14-2.* An application for the renewal of two of the applicant's existing Wells Nos. 5A

and 11; Wells Nos. 13—16 have been transferred to The Glass Group, Inc. and Wells Nos. 1 and 12 have been abandoned and sealed. The total combined allocation of 65.3 mg/30 days for the existing wells has been reduced to 30.0 mg/30 days. The wells will continue to supply the applicant's manufacturing facility in the Maurice River Watershed. The project is located in the City of Millville, Cumberland County, NJ. (This was NAR'd as Lawson Mardon Wheaton, Inc. D-92-14 Renewal.)

7. *Newton Country Club D-92-25-2.* An application for renewal of a groundwater and surface water withdrawal project to continue to supply up to 6.167 mg/30 days of water for supplemental irrigation of the applicant's golf course from existing Wells Nos. 1 and 2 in the Martinsburg Shale Formation and existing surface water Intakes Nos. 1 and 2. The project is located in the Paulins Kill Watershed in Andover Township, Sussex County, NJ.

8. *Upper Deerfield Township D-93-16 CP-2.* An application for renewal of a groundwater withdrawal project to continue to supply up to 19.8 mg/30 days to the applicant's public water supply distribution system from existing Wells Nos. 3 and 4, located in the Cohansey Formation within the Cohansey River Watershed in Upper Deerfield Township, Cumberland County, NJ.

9. *Magnesium Elektron, Inc. D-94-73.* An application for approval of a groundwater withdrawal project to supply up to 9.8 mg/30 days of water as part of the applicant's groundwater remediation system and industrial supply from Wells Nos. 1—6, 8 and S2. The project is located in the Wickecheoke Creek Watershed in Kingwood Township, Hunterdon County, NJ.

10. *Township of Medford D-95-55 CP-2.* An application to replace the withdrawal of water from Well No. 4 in the applicant's water supply system that has become an unreliable source of supply and to retain the withdrawal limit of 77 mg/30 days from all wells combined. The project is located in the South Branch Rancocas Creek Watershed in Medford Township, Burlington County, NJ.

11. *Six Flags Great Adventure D-96-6.* A revised application for a surface water withdrawal for irrigation of the applicant's Safari Park. The proposed project withdrawal is from two existing intakes on Lahaway Creek, a tributary of Crosswicks Creek and to be operated in conjunction with water imported from Well No. IR-1 located in the Atlantic Basin as well as 18 existing wells for washing animals and structures. The total combined withdrawal from all sources is limited to 11.59 mg/30 days. The project is located in Jackson Township, Ocean County, NJ.

12. *New Jersey-American Water Company D-2001-3 CP.* An application for approval of a groundwater withdrawal project to supply up to 4.1 mg/30 days of water to the applicant's public water distribution system from recently acquired Well No. 1. The project well is located in the Mt. Laurel-Wenonah Aquifer in the North Branch Rancocas Creek Watershed in Pemberton Township, Burlington County, NJ and will continue to serve Sunbury Village.

13. *Citgo Asphalt Refining Company D-2001-27.* An application for an increase in surface water withdrawal from 4.69 mg/30 days to 7.79 mg/30 days for the applicant's asphalt manufacturing process. The water is used as industrial noncontact process water for the purpose of steam production to heat storage tanks and pipelines in the petroleum refining process. The increase in surface

water is intended to offset the previous use of groundwater from the Potomac-Raritan-Magothy Aquifer from two wells which are now abandoned. Following 10% consumptive loss in the asphalt refining process, wastewater generated from the facility is routed to the Gloucester County Utility Authority Sewage Treatment Plant for treatment and discharge to the Delaware River. The applicant will continue to withdraw water from the tidal portion of Mantua Creek adjacent to the facility, approximately 3,000 feet from the Delaware River in West Deptford Township, Gloucester County, NJ.

14. *Narrowsburg Water District D-92-81 CP-2*. An application for the renewal of a groundwater withdrawal project to continue withdrawal of 4.11 mg/30 days to supply the applicant's public water supply system. The renewal continues the use of Well Nos. 2 and 3 as sources and includes a request to approve the use of replacement Well No. 1, TTW-1R, which replaces old Well No. 1, TTW-1. Old Well No. 1, TTW-1, was taken out of service in 1994 due to potential contamination. The project is located in the Glacial Outwash and Honesdale Formations in the Town of Tusten, Sullivan County, NY.

15. *Borough of Kutztown D-83-23 CP-3*. An application for the renewal of a groundwater withdrawal project to continue withdrawal of 60 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 1, 2, 3A, 4 and 5 in the Epler and Ontelaunee Formations. The project is located in the Sacony Creek Watershed in Maxatawny Township, Berks County.

16. *Reliant Energy Mid Atlantic Power Holdings, LLC D-87-26-2*. An application to modify an industrial wastewater and stormwater discharge to the Schuylkill River from the Titus Generating Station. The coal-fired 225 megawatt electric generating station is located in Cumru Township, Berks County. The docket holder is currently permitted to discharge an average monthly total dissolved solids (TDS) concentration of 2,500 milligrams per liter (mg/l) from Outfall 004, which is used only on an intermittent basis. The Department of Environmental Protection has based its NPDES permit limits for this outfall on a flow of 1.007 million gallons per day (mgd). The docket holder has requested modification of its docket to allow an increase in its average monthly discharge concentration of TDS to 3,500 mg/l, which equals the existing daily maximum limit. In support of its requested modification, the docket holder has completed an environmental study that indicates the proposed change would result in no significant adverse impact on the Schuylkill River. No increase in industrial waste treatment plant capacity or modification of the facilities is proposed. No increase in cooling water supply or approved discharge amounts from the docket holder's other outfalls is proposed. The project discharges to the Schuylkill River in an area that is conditionally designated "Modified Recreational" in the Commission's *Comprehensive Plan*.

17. *Alpine Mountain Ski Area D-90-8-2*. An application for the renewal of a surface water withdrawal project to continue withdrawal of 15 mg/30 days to supply the applicant's snow making operations from two surface water intakes in the Brodhead Creek. The project is located in Price Township, Monroe County.

18. *Upper Gwynedd Township D-91-88 CP-2*. An application to modify a 4.5 mgd sewage treatment plant (STP) to process up to 7 mgd during wet weather periods, without increasing the annual average flow. The proposed modifications will enable the STP to continue to provide advanced treatment and meet NPDES permit limitations.

STP effluent will continue to be discharged to Wisahickon Creek in the Schuylkill River Watershed. The STP is located just north of Township Line Road and east of North Wales Road in Upper Gwynedd Township, Montgomery County, and will continue to serve portions of Whitpain and Upper Gwynedd Townships in Montgomery County.

19. *North Penn Water Authority D-92-44 CP-2*. An application for the renewal of a groundwater withdrawal project to continue withdrawal of 280 mg/30 days to supply the applicant's public water supply distribution system from 27 existing production wells, 11 emergency wells and 1 test well. The project is located in the East Branch Perkiomen, Perkiomen, Indian, Skippack, West Branch Skippack, Zacharias, Towamencin, Wissahickon, Three Mile Run, North Branch Neshaminy, West Branch Neshaminy and Pine Run watersheds in Franconia Township, Skippack Township, Lower Salford Township, Souderton Borough, Towamencin Township, Worcester Township, Lansdale Borough, Montgomery Township, Upper Gwynedd Township, East Rockhill Township, New Britain Township, Hatfield Township, Hilltown Township and New Britain Borough in Bucks and Montgomery Counties and is located in the Southeastern Pennsylvania Ground Water Protected Area.

20. *Pennsylvania American Water Company D-99-30 CP-3*. An application for approval of a groundwater withdrawal and water supply interconnection project to transfer up to 1.548 mgd from the applicant's Glen Alsace public water supply distribution system in Exeter Township, to the applicant's Douglasville public water supply distribution system in Amity Township. The applicant intends to transfer water derived from existing groundwater sources in the Glen Alsace distribution system and supplement demand in the Glen Alsace distribution system from existing interconnections with the Reading Area Water Authority (45 mg/30 days) and the Mount Penn Water Authority (6 mg/30 days). The applicant requests to retain its existing withdrawal of 50 mg/30 days from all wells in the Glen Alsace distribution system. The project is located in the Antietam Creek Watershed in Exeter Township, Berks County.

21. *Buckingham Township D-2003-13 CP-2*. An application for approval of a groundwater withdrawal project to supply up to 3.5 mg/30 days of water to the applicant's public water supply distribution system from new Wells Nos. F-6 and F-7 in the Lockatong Formation. The requested allocation represents an increase from 37.5 mg/30 days to 41 mg/30 days. The project is located in the Neshaminy and Pine Creek watersheds in Buckingham Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

22. *Upper Hanover Authority D-2004-17 CP*. An application to expand a 0.06 mgd STP to process 0.098 mgd while improving upon secondary treatment by means of chemical addition for phosphorus removal. The plant is located on North State Street just outside the northwest border of East Greenville Borough in Upper Hanover Township, Montgomery County. The Perkiomen STP was formerly owned by TTT Realty, Inc. and Pillsbury, Inc. The plant will continue to treat wastewater from the processing of pierogies, but the additional capacity is needed to serve proposed residential development in Upper Hanover Township. Treatment plant effluent will continue to be discharged to Perkiomen Creek in the Schuylkill River Watershed by means of the existing outfall.

23. *Bucks County Water and Sewer Authority D-2004-39 CP-1*. An application for approval of a ground-water withdrawal project to supply up to 0.9 mg/30 days from Well No. 2C, 2.4 mg/30 days from Well No. 3B, 3.4 mg/30 days from the Morrissey B Well, 0.9 mg/30 days from the Morrissey C Well, 5.2 mg/30 days from the New Hope Manor C Well and 1.5 mg/30 days from the Delaware River intake at the Waterworks Treatment Plant to the applicant's public supply distribution system and to limit the existing withdrawal from all sources to 14.3 mg/30 days. The project is located in the Rabbit Run and Delaware River Watersheds in New Hope Borough, Bucks County.

In addition to the public hearing on the dockets, the Commission's 1:30 p.m. business meeting will include public hearings on a resolution extending temporary designation of the Lower Delaware River as Special Protection Waters and a resolution to approve the Water Resources Program for 2006-2011, as well as consideration of a resolution renaming the Flow Management Technical Advisory Committee and modifying its membership and a resolution authorizing the executive director to enter into memoranda of agreement with partners in accordance with a United States Environmental Protection Agency's grant for the development of tools for sustainable watershed management based upon hydrologic relationships in the Pocono Creek Watershed.

The meeting will also include: adoption of the Minutes of the July 20, 2005, business meeting; announcements; a report on basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; and an opportunity for public dialogue. Draft dockets and the resolutions scheduled for public hearing on September 26, 2005, will be posted on the Commission's website, www.drbc.net (select "Next DRBC meeting"). Additional documents relating to the dockets and other items may be examined at the Commission's offices. Contact William Muszynski at (609) 883-9500, Ext. 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at (609) 883-9500, Ext. 203 or through the Telecommunications Relay Services (TRS) at 711 to discuss how the Commission may accommodate their needs.

PAMELA M. BUSH,
Secretary

[Pa.B. Doc. No. 05-1717. Filed for public inspection September 16, 2005, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE

Application Period for Farm Safety and Occupational Health Grant Program

The Department of Agriculture (Department) announces the opening of the application period for funding from the Farm Safety and Occupational Health (FSOH) Grant Program for Fiscal Year 2006. Grant applications will be accepted at the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Room G-13, Harrisburg, PA 17110-9408, from August 30, 2005, to October 30, 2005. Applications must be postmarked by October 30, 2005, to be considered for funding.

The FSOH Grant Program was created by the General Assembly through the passage of the Farm Safety and Occupational Health Act (act) (3 P.S. §§ 1901—1915), effective February 10, 1995. The FSOH Grant Program is funded through a specific appropriation provided for in the act. For guidelines, see the FSOH Grant Program Guidelines.

The FSOH Grant Program will award financial assistance of up to \$2,500 to Statewide farm organizations, volunteer fire companies, ambulance services and rescue squads within this Commonwealth that wish to develop and deliver farm safety, occupational health and emergency response programs. The applications will be evaluated using criteria set forth in the Statement of Policy.

Obtaining Applications

Applications are available on the Department's website: www.agriculture.state.pa.us. Click on "Funding Opportunities" located in the listing on the left side of the home page. The FSOH Grant application and guidelines are the ninth and tenth listings. Applications also are available upon request by contacting Shiree Hunter, Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5202, fax (717) 783-3275.

For further assistance, contact Phillip Pitzer Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5206.

DENNIS C WOLFF,
Secretary

[Pa.B. Doc. No. 05-1718. Filed for public inspection September 16, 2005, 9:00 a.m.]

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending September 6, 2005.

BANKING INSTITUTIONS**Holding Company Acquisitions**

<i>Date</i>	<i>Name of corporation</i>	<i>Location</i>	<i>Action</i>
8-31-05	Willow Grove Bancorp, Inc., Maple Glen, to acquire 100% of the voting shares of Chester Valley Bancorp, Inc., Downingtown, and thereby indirectly acquire First Financial Bank, Downingtown, wholly owned subsidiary of Chester Valley Bancorp, Inc.	Maple Glen	Effective

New Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-2-05	Graystone Bank Lancaster Lancaster County	100 Granite Run Road Lancaster Lancaster County	Approved

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-31-05	Willow Grove Bank, Maple Glen, and First Financial Bank, Downingtown Surviving Institution—Willow Grove Bank, Maple Glen	Maple Glen	Effective
9-2-05	Clearfield Bank & Trust Company Clearfield Clearfield County Purchase of assets/assumption of liabilities of six offices of First Commonwealth Bank, IN Located at: Ames Plaza Route 22 Huntingdon Huntingdon County 501 Penn Street Huntingdon Huntingdon County 16 West Shirley Street Mount Union Huntingdon County	Clearfield 729 Main Street Saxton Bedford County Ashman Street Three Springs Huntingdon County 101 High Street Williamsburg Blair County	Filed

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-22-05	Citizens & Northern Bank Wellsboro Tioga County	230-232 Railroad Street Jersey Shore Lycoming County	Opened
8-29-05	First Savings Bank of Perkasie Perkasie Bucks County	219 South Ninth Street Perkasie Bucks County	Approved
8-30-05	East Penn Bank Emmaus Lehigh County	4510 Bath Pike Hanover Township Northampton County	Approved
8-30-05	Community Banks Millersburg Dauphin County	Village at Sprenkle Drive 1802 Folkemer Circle Manchester Township York County (Limited Service Facility)	Filed
9-2-05	Keystone Nazareth Bank and Trust Co. Bethlehem Northampton County	211 Best Avenue Walnutport Lehigh County	Filed

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-29-05	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	<i>To:</i> 1139 Chestnut Street Philadelphia Philadelphia County <i>From:</i> 1200 Chestnut Street Philadelphia Philadelphia County	Approved
9-1-05	ESB Bank Ellwood City Lawrence County	<i>To:</i> 1552 Beechview Avenue Pittsburgh Allegheny County <i>From:</i> 1609 Broadway Avenue Pittsburgh Allegheny County	Approved

Articles of Amendment

<i>Date</i>	<i>Name of Bank</i>	<i>Purpose</i>	<i>Action</i>
9-1-05	Community Banks Millersburg Dauphin County	Amendment to Article I of the Articles of Incorporation provides for a change in name from "Community Banks" to "CommunityBanks."	Approved and Effective

SAVINGS INSTITUTIONS**Branch Applications**

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
9-1-05	Slovenian Savings and Loan Association of Franklin-Conemaugh Conemaugh Cambria County	585 Goucher Street Upper Yoder Township Cambria County	Approved

CREDIT UNIONS

No activity.

A. WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 05-1719. Filed for public inspection September 16, 2005, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources (Department) will hold a meeting on Wednesday, September 28, 2005, at 10 a.m. in Room 105, Lobby Level, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items should be directed to Kurt Leitholf at (717) 705-0031.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Joan Dupes directly at (717) 705-0031 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL F. DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 05-1720. Filed for public inspection September 16, 2005, 9:00 a.m.]

DEPARTMENT OF EDUCATION

Application of Cabrini College for Approval of Amendment of its Articles of Incorporation

Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6504(a) (relating to fundamental changes), the Department of Education (Department) will consider the application of Cabrini College for a Certificate of Authority approving the amendment and restatement of its Articles of Incorporation.

In accordance with 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department will act upon the application without hearing, unless within 30 days after the publication of this notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protests) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protest and request for hearing shall be filed by 4 p.m. on the due date prescribed by this notice with Carol Gisselquist, Higher Education Specialist, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-4448. Persons wishing to review the application should phone or write to the aforementioned office to

schedule a time for an in-office review. Duplicate copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate should contact Carol

Gisselquist, (717) 787-4448 to discuss how the Department may best accommodate their needs.

GERALD L. ZAHORCHAK,
Acting Secretary

[Pa.B. Doc. No. 05-1721. Filed for public inspection September 16, 2005, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

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

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

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

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

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

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

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

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

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

I. NPDES Renewal Applications

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0046353	Waymart Area Authority P. O. Box 3300 Waymart, PA 18472-0224	Waymart Borough and Canaan Township Wayne County	Van Auken Creek HQ-CWF	Y
PAS222202	Bestway Enterprises, Inc. 3877 Luker Road Cortland, NY 13047	Monroe County Barrett Township	Cranberry Creek (1E)	Y
PA0060950	Lackawanna Trail School District P. O. Box 85 Factoryville, PA 18419	Wyoming County Clinton Township	UNT to South Branch Tunkhannock Creek (4F)	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0024457 (Sewage)	Halifax Municipal Authority P. O. Box 443 Halifax, PA 17032-0443	Dauphin County Halifax Borough	Susquehanna River/6C	Y
PA0082201 (Sewage)	Letterkenny Township Municipal Authority 4924 Orrstown Road Orrstown, PA 17244-9503	Franklin County Letterkenny Township	Conodoguinet Creek/7-B	Y
PAS10H091R	Spring Meadows Park South Middleton Township 520 Park Drive Boiling Springs, PA 17007	Cumberland South Middleton Township Recreation Park	Yellow Breeches Creek/HQ/CWF	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0024392	Rouseville Borough P. O. Box 317 Rouseville, PA 16344-0317	Cornplanter Township Venango County	Oil Creek 16-E	Y
PA0101907	Emlenton Area Municipal Authority P. O. Box 408 Emlenton, PA 16373-0448	Salem Township Clarion County	Richey Run 16-G	Y
PA0221317	Allegheny-Clarion Valley Industrial Park P. O. Box 311 Foxburg, PA 16036	Allegheny Township Butler County	UNT to Little Scrubgrass Creek 16-G	Y
PA0034959	Pinebloom Corp. d/b/a Wolf's Camping Resort 308 Timberwolf Run Knox, PA 16232	Beaver Township Clarion County	UNT to Canoe Creek 17-B	Y
PA0103519	Western Pennsylvania Church of God—Whitehall Camp R. D. 1, Box 31 Emlenton, PA 16373	Richland Township Venango County	UNT to Richey Run 16-G	Y

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

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

PA0057916, Industrial Waste, **Schlumberger Technology Corporation**, 225 Schlumberger Drive, Sugar Land, TX 77478. This proposed facility is located in Worcester Township, **Montgomery County**.

Description of Proposed Activity: An application for the renewal of an NPDES permit to discharge treated groundwater from the North Penn Area 12 Superfund Site.

The receiving stream, a UNT to Stony Creek, is in the State Water Plan watershed 3F and is classified for TSF. The nearest downstream public water supply intake for City of Norristown is located on the Schuylkill River.

The proposed effluent limits for Outfall 001 are based on a design flow of 50,000 gpd.

Parameters	Mass (lb/day)		Concentration (mg/l)		Instantaneous Maximum mg/l
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	
1,1,1- Trichloroethylene			0.002	0.004	0.005
1,1-Dichloroethane			0.0004	0.0008	0.001
1,1-Dichloroethylene			0.0004	0.0008	0.001
Chloroform			0.0002	0.0004	0.0005
Tetrachloroethylene			0.002	0.004	0.005
Trichloroethylene			0.005	0.010	0.012
pH			not less than 6.0 nor greater than 9.0		

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

1. Remedial Measures.
2. Acquire Necessary Property Rights.
3. Dry Stream Discharge.
4. BAT/BCT Reopener.
5. EPA Test Methods.
6. Change of Ownership.
7. Proper Sludge Disposal.
8. Stripping Tower Wastewaters.
9. Groundwater Monitoring and Reporting.

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

Application No. PA 0247685, Concentrated Animal Feeding Operation (CAFO), **Rohrer Dairy Farms, LLC (Rohrer Farm)**, 124 Charlestown Road, Washington Borough, PA 17582.

Rohrer Dairy Farms, LLC has submitted an application for an Individual NPDES permit for an expanding CAFO known as Rohrer Farm, located at 124 Charlestown Road in Manor Township, **Lancaster County**.

The CAFO is situated near Stamans Run and UNT to Stamans Run in Watershed 7-G, which is classified for WWF. The CAFO is designed to maintain an animal population of approximately 2,002.9 animal equivalent units (AEUs) consisting of 3,225 dairy cows, heifers, calves and swine. The animals will be housed in four free stall barns and three other barns. Manure is collected in under barn pits, bedding pack, storage tanks and an earthen pond. The total capacity of the manure storage facilities is 6,511,000 gallons. A release or discharge to waters of this Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department of Environmental Protection (Department) has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to issue an NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit. In addition, the permit contains schedules to reduce stormwater runoff at main farm and monitor groundwater, line or replace earthen pond at the Charles Farm.

The permit application and draft permit are on file at the Southcentral Regional Office of the Department. Persons make an appointment to review the files by calling the file review coordinator at (717) 705-4732.

Persons wishing to comment on the proposed permit are invited to submit written comments to the previous address within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in formulating the Department's final determination regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the basis of the comment and the relevant facts upon which it is based.

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

The Environmental Protection Agency permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

Application No. PA 0247782, Industrial Waste, SIC Code 5015, **Value Auto Salvage**, R. R. 2, Box 168, Huntingdon, PA 16652. This facility is located in Jackson Township, **Huntingdon County**.

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

The receiving stream, Standing Stone Creek, is in Watershed 11-B and classified for HQ-CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is Newport Borough Water Authority located on the Juniata River, approximately 103 miles downstream. The discharge is not expected to affect the water supply.

The permittee must monitor and report results for the water quality parameters listed as follows:

<i>Discharge Parameter</i>	<i>Units</i>	<i>Sample Type</i>	<i>Measurement Frequency</i>
CBOD ₅	mg/l	1 grab	1/year
Chemical Oxygen Demand	mg/l	1 grab	1/year
Oil and Grease	mg/l	1 grab	1/year
pH	SU	1 grab	1/year
Total Suspended Solids	mg/l	1 grab	1/year
Total Kjeldahl Nitrogen	mg/l	1 grab	1/year
Total Phosphorus	mg/l	1 grab	1/year
Iron (Total)	mg/l	1 grab	1/year

The permittee may conduct an annual inspection in lieu of annual monitoring for the parameters listed.

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

The EPA waiver is in effect.

Application No. PA 0247774, Industrial Waste, SIC Code 5015, **Mueller's Auto Recycling & Sales**, R. D. 6, Box 355, Altoona, PA 16601. This facility is located in Logan Township, **Blair County**.

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

The receiving stream, a UNT to Mill Run, is in Watershed 11-A and classified for HQ-CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is Newport Borough Water Authority located on the Juniata River, approximately 141 miles downstream. The discharge is not expected to affect the water supply.

The permittee must monitor and report results for the water quality parameters as follows.

<i>Discharge Parameter</i>	<i>Units</i>	<i>Sample Type</i>	<i>Measurement Frequency</i>
CBOD ₅	mg/l	1 grab	1/year
Chemical Oxygen Demand	mg/l	1 grab	1/year
Oil and Grease	mg/l	1 grab	1/year
pH	s.u.	1 grab	1/year
Total Suspended Solids	mg/l	1 grab	1/year
Total Kjeldahl Nitrogen	mg/l	1 grab	1/year
Total Phosphorous	mg/l	1 grab	1/year
Effluent Guideline Pollutants ⁽⁸⁾	mg/l	1 grab	1/year
Iron (Total)	mg/l	1 grab	1/year

The permittee may conduct an annual inspection in lieu of annual monitoring for the parameters listed.

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

The EPA waiver is in effect.

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

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

WQM Permit No. 2205403, Sewerage, **Mountainview Thoroughbred Racing Association—PennNational of Grantville**, P. O. Box 32, Grantville, PA 17028. This proposed facility is located in East Hanover Township, **Dauphin County**.

Description of Proposed Action/Activity: Construction of a 0.23 mgd wastewater treatment plant to replace an existing 0.23 mgd wastewater treatment plant.

WQM Permit No. 0605412, Sewerage, **Hamburg Municipal Authority**, 61 North Third Street, Hamburg, PA 19526. This proposed facility is located in Hamburg Borough, **Berks County**.

Description of Proposed Action/Activity: Construction/Operation of the wastewater treatment plant expansion and Pine Street Pumping Station Upgrade.

WQM Permit No. 4473401 Amendment 05-1, Sewerage, **Brown Township Municipal Authority**, 7748 State Route 655, Reedsville, PA 17084-9148. This proposed facility is located in Brown Township, **Mifflin County**.

Description of Proposed Action/Activity: Proposed project involves the addition of new biosolids digestion, thickening and holding tanks.

WQM Permit No. 0705201, CAFO, **Kulp Family Farms**, R. R. 2, Box 142B, Martinsburg, PA 16662. This proposed facility is located in Tyrone Township, **Blair County**.

Description of Proposed Action/Activity: Construction of a manure storage structure.

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

WQM Permit No. 0205201, Industrial Waste, **Pittsburgh Allegheny County Thermal, LTD**, 120 Cecil Way, Pittsburgh, PA 15222. This proposed facility is located in the City of Pittsburgh, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a new boiler water pretreatment system.

WQM Permit No. 2605402, Sewerage, **Albert Palmer**, P. O. Box 622, Perryopolis, PA 15473. This proposed facility is located in Perryopolis Borough, **Fayette County**.

Description of Proposed Action/Activity: Application for the construction and operation of a pump station to serve Phase II of the Perry Hills Residential Subdivision.

WQG Permit No. 016113, Sewerage, **Laura Ellek**, P. O. Box 158, Colliers, WV 26035. This proposed facility is located in Jefferson Township, **Washington County**.

Description of Proposed Action/Activity: Application for the construction and operation of a single residence, small flow, sewage treatment facility.

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

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

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

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

NPDES

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10G410RA1	Pulte Homes of PA, LLC 1100 Northbrook Drive Suite 200 Trevose, PA 19053	Chester	East Goshen Township	Ridley Creek (HQ-TSF)
PAS10G527A1	Toll PA II, LP Orleans @ Upper Uwchlan, LP K. Hovnanian @ Upper Uwchlan 325 Fellowship Road Chester Springs, PA 19425	Chester	Upper Uwchlan Township	Pickering Creek (HQ-TSF)
PAI011505060	Willow creek, LLC c/o Keystone Custom Homes 214A Willow Valley Lakes Drive Willow Street, PA 17584	Chester	Lower Oxford Township	UNT West Branch Big Elk Creek (HQ-TSF-MF)
PAI011505061	New London Presbyterian Church P. O. Box 269 New London, PA 19360	Chester	New London Township	Hodgson Run (HQ-TSF-MF)
PAI011505062	Supervisors of West Nantmeal Township 455 North Manor Road Elverson, PA 19520	Chester	West Nantmeal Township	UNT East Branch Brandywine Creek (HQ-TSF-MF)
PAI011505063	Richard J. Procopio, Sr., LLC Specialty Resources 112 Oscar Way Chester Springs, PA 19425	Chester	Upper Uwchlan Township	UNT Pickering Creek (HQ-TSF)
PAI011505064	Gorski Engineering, Inc. 1 Iron Bridge Drive Collegetown, PA 19426	Chester	East Whiteland Township	UNT Valley Creek (EV)

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

Monroe County Conservation District: 8050 Running Valley Rd., Stroudsburg, PA 18360, (570) 629-3060.

NPDES

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024505018	Matzel Development, LLC 1411 State Hwy. 35 North Ocean, NJ 07712	Monroe	Tobyhanna Township	Twomile Run HQ-CWF

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

NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI032105011	Robert D. Henry, III 35 Irish Gap Road Newville, PA 17241	Cumberland	Penn Township	Yellow Breeches Creek/HQ-CWF
PAI032105008	South Middleton School District 4 Forge Rd. Boiling Springs, PA 17007	Cumberland	South Middleton Township	Yellow Breeches Creek/ HQ-CWF
PAI035005008	Lawrence S. Hardy 24 South Front Street Newport, PA 17074	Perry	Juniata Township	Little Buffalo Creek/ HQ-CWF
PAI032805009	Brandale, LLC 3357 Scotland Road Chambersburg, PA 17201	Franklin	Guilford Township	Falling Spring Branch/ HQ/CWF

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

Armstrong County Conservation District: Armsdale Administration Building, 124 Armsdale Road, Suite B-2, Kittanning, PA 16201 (724) 548-3425.

NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI050305003	West Penn Power Company d/b/a Allegheny Power 800 Cabin Hill Drive Greensburg, PA 15601-1689	Armstrong	South Buffalo Township	Buffalo Creek (HQ-TSF)

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

Jefferson Conservation District, 1514 Route 28, Brookville, PA 15825, (814) 849-7463.

NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI063305001	Rose Township Municipal Authority	Jefferson	Rose Township Knox Township Brookville Borough	Sandy Lick Creek (TSF) UNT Campbell Run (CSF) Swamp Run (CWF) Five Mile Run (CWF) Clement Run (CWF) UNT North Fork (HQ-CWF)

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

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

PUBLIC WATER SUPPLY (PWS) PERMIT

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

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

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published

in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

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

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

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

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

Permit No. 4605505., Public Water Supply
 Applicant **Pottstown Borough Authority**
 Township Upper Pottsgrove
 County **Montgomery**
 Responsible Official Jack P. Layne, Jr.
 Type of Facility PWS
 Consulting Engineer BCM Engineers
 Application Received August 17, 2005
 Date
 Description of Action Construction of a transmission
 main and a booster pump
 station.

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

Permit No. 3605501, Public Water Supply.
 Applicant **Stoltzfus Meats, Inc.**
 Municipality Leacock Township
 County **Lancaster**
 Responsible Official J. M. Stoltzfus, Owner
 P. O. Box 375
 Intercourse, PA 17534
 Type of Facility Public Water Supply
 Consulting Engineer David T. Lewis, P. E.
 ARRO Consulting, Inc.
 270 Granite Run Drive
 Lancaster, PA 17601
 Application Received 1/31/2005
 Date
 Description of Action Installation of a new facility to
 serve a retirement center.
 Treatment to consists of
 disinfection, aeration and
 softening. The system will be
 supplied by 2 wells.

Permit No. 3605502, Public Water Supply.
 Applicant **Manheim Borough Authority**
 Municipality Manheim Borough
 County **Lancaster**
 Responsible Official Robert D. Stoner, Manger
 15 East High Street
 Manheim, PA 17545
 Type of Facility Public Water Supply
 Consulting Engineer George H. Wagner, Jr.
 Rettew Assoc., Inc.
 3020 Columbia Ave.
 Lancaster, PA 17603
 Application Received 2/11/2005
 Date
 Description of Action The addition of Well No. 6 to
 augment the existiing sources of
 supply.

Permit No. 0505501, Public Water Supply.
 Applicant **Snake Spring Township
 Municipal Authority**
 Municipality Snake Spring Township

County **Bedford**
 Responsible Official Gregg S. Grace, Chairperson
 624 Pennknoll Road
 Everett, PA 15537
 Type of Facility Public Water Supply
 Consulting Engineer Timothy A Cooper, P. E.
 Stiffler McGraw & Associates
 Inc.
 19 N. Juniata Street
 Hollidaysburg, PA 16648
 Application Received 1/12/2005
 Date
 Description of Action Application for a new system to
 serve residence on Snake Spring
 Township. System will consists of
 two wells and related treatment.

Permit No. 2805502, Public Water Supply.
 Applicant **Washington Township
 Municipal Authority**
 Municipality Washington Township
 County **Franklin**
 Responsible Official Eugene A. Barnhart, Manager
 11102 Buchanan Trail East
 Waynesboro, PA 17268-9424
 Type of Facility Public Water Supply
 Consulting Engineer Harry E Bingaman, P. E.
 Glace Assoc., Inc.
 3705 Trindle Rd.
 Camp Hill, PA 17011
 Application Received 3/17/2005
 Date
 Description of Action Addition of the Hess Well to
 augment the existing sources of
 supply

Permit No. 3605507, Public Water Supply.
 Applicant **Lancaster Estates Condo
 Association**
 Municipality Rapho Township
 County **Lancaster**
 Responsible Official Robert A. Sowers, Condo
 Manager
 2961 Spangler Road
 Manheim, PA 17545
 Type of Facility Public Water Supply
 Consulting Engineer Edmond G. McCorkle, P. E.
 Lake Roeder Hilllard &
 Associates
 313 West Liberty Street
 Lancaster, PA 17603
 Application Received 3/31/2005
 Date
 Description of Action Addition of a new well to
 augment the existing sources of
 supply.

Permit No. 2805504, Public Water Supply.
 Applicant **Heritage Hills Retirement
 Home**
 Municipality Antrim Township

County **Franklin**
 Responsible Official Kim Robinson, President/Owner
 2256 Shanks Church Road
 Greencastle, PA 17225H
 Type of Facility Public Water Supply
 Consulting Engineer Robert Schemmerling
 Civil Design & Management, Inc.
 41 S. Antrim Way
 Greencastle, PA 17225
 Application Received Date 5/24/2005
 Description of Action Application for a well and
 treatment to serve the existing
 retirement home.

Permit No. 3605508, Public Water Supply.

Applicant **Ephrata Area Joint Authority**
 Municipality Ephrata Borough
 County **Lancaster**
 Responsible Official Gary A Nace, Secretary
 114 East Main Street
 Ephrata, PA 17522-2792
 Type of Facility Public Water Supply
 Consulting Engineer James C Elliot, P. E.
 Gannett Fleming, Inc.
 P. O. Box 67100
 Harrisburg, PA 17106-7100
 Application Received Date 5/31/2005
 Description of Action Installation of a nano-membrane
 (RO) system to treat existing
 Well No. 4.

Permit No. 0105508, Public Water Supply.

Applicant **Bonneauville Borough
 Municipal Authority**
 Municipality Bonneauville Borough
 County **Adams**
 Responsible Official Bernard Shanbrook
 86 W. Hanover St.
 Gettysburg, PA 17325
 Type of Facility Public Water Supply
 Consulting Engineer Mark S Snyder, P. E.
 Buchart-Horn, Inc.
 445 West Philadelphia Street
 York, PA 17405-7040
 Application Received Date 8/1/2005
 Description of Action The construction of the Meadows
 Wells A and B.

Permit No. 2205505, Public Water Supply.

Applicant **Custer Homes, Inc.**
 Municipality Susquehanna Township
 County **Dauphin**
 Responsible Official Stanford Custer, Sr.
 4421 Fargreen Rd.
 Harrisburg, PA 17110
 Type of Facility Public Water Supply

Consulting Engineer Charles A Kehew, II, P. E.
 James R. Holley & Assoc., Inc.
 18 South George St.
 York, PA 17401
 Application Received Date 8/19/2005
 Description of Action Addition of an existing well No.
 2 as a new source of supply.

WATER ALLOCATIONS**Applications received under the act of June 24,
 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641)
 relating to the Acquisition of Rights to Divert
 Waters of this Commonwealth**

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

WA 22-303I, Water Allocations. **United Water Pennsylvania, Dauphin County**. The applicant was granted the right to withdraw a maximum of 17.0 million gallon per day (mgd) from the Susquehanna River at an existing intake, a maximum of 12.0 mgd from Stony Creek at an existing intake with a combined maximum withdrawal of 17.0 mgd from both sources. Also, the right to withdraw a maximum of 4.5 mgd from Swatara Creek at an existing intake. Consulting Engineer: Jason D. Wert, P. E., Herbert Rowland & Grubic, Inc. Permit Issued: 8/30/2005.

**LAND RECYCLING AND
 ENVIRONMENTAL REMEDIATION****UNDER ACT 2, 1995****PREAMBLE 1****Acknowledgment of Notices of Intent to Remediate
 Submitted under the Land Recycling and Environmental
 Remediation Standards Act (35 P. S.
 §§ 6026.101—6026.908).**

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

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period

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

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

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

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

Greg's Automotive Repair, Gettysburg Borough, Adams County. Alliance Environmental, 1820 Linglestown Road, Harrisburg, PA 17103, on behalf of Donald J. McMaster, 656 Granite Station Road, Gettysburg, PA 17325, submitted a Notice of Intent to Remediate groundwater and site soils contaminated with gasoline constituents. Future use of the property will be occupied by a commercial pizza franchise. The applicant intends to document remediation to the Site-Specific Standard.

Honey Run Golf Club, Dover Township, York County. Apex Environmental, Inc., 15850 Crabbs Branch Way, Suite 200, Rockville, MD 20855, on behalf of Honey Run Golf Course, c/o James Poff, IBG Partners, LLC, 1717 Pennsylvania Avenue, Suite 630, NW, Washington, DC 20006, submitted a Notice of Intent to Remediate site soils contaminated with No. 2 fuel oil. Future use of the property will continue as a golf course. The applicant intends to document remediation of the site to a State-wide Health Standard.

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

Loyalsock Home Depot, 1700 East Third Street, Williamsport, PA 17701, Loyalsock Township, Lycoming County, RT Environmental Services, Inc., 215 West Church Road, King of Prussia, PA 19406 has submitted a Notice of Intent to Remediate soil contaminated with residual waste and petroleum. This site is being remediated to meet a Site-Specific Standard.

Rothermel Property, Routes 11 and 15, Selinsgrove, PA, Monroe Township, Snyder County, Pennsylvania Tectonics, Inc., 826 Main Street, Peckville, PA 18452 has submitted a Notice of Intent to Remediate soil contaminated with gasoline. This site is being remediated to meet a Statewide Health Standard.

INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSES

Applications received or withdrawn under the Solid Waste Management (35 P. S. §§ 6018.101—

6018.1003) and act of June 28, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6) and regulations to transport infectious and chemotherapeutic waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Renewal Applications Received

Onyx Waste Services, Inc., R. R. 2, P. O. Box 0, Route 219N, Brockway, PA 15824. License No. PA-HC 0199. Received on August 2, 2005.

Weavertown Transport Leasing, Inc., 2 Dorrington Road, Carnegie, PA 15106. License No. PA-HC 0020. Received on August 2, 2005.

S. H. Bio-Waste, Ltd., P. O. Box 2117, Norristown, PA 19401. License No. PA-HC 0096. Received on August 24, 2005.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS NEW SOURCES AND MODIFICATIONS

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

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

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

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

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

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is con-

structed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

PLAN APPROVALS

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

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

28-05030A: Industrial Power Generating Corp. (2250 Dabney Road, Richmond, VA 17011) for increased substitution rate for landfill gas as a fuel in their existing engine generator sets in Peters Township, **Franklin County**. This plan approval would allow for up to a 96% substitution of landfill gas for liquid fuel.

36-03157: Fertrell Co. (P. O. Box 265, Bainbridge, PA 17502) for installation of a new 7 mmBtu/hr rotary dryer at their Bainbridge plant in Conoy Township, **Lancaster County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.

08-313-020A: OSRAM SYLVANIA Products, Inc. (Hawes Street, Towanda, PA 18848) for construction of a new rotary calciner and fabric collector in North Towanda Township, **Bradford County**.

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

10-281H: II-VI, Inc. (375 Saxonburg Boulevard, Saxonburg, PA 16056), for construction of a new methylene chloride degreaser at their eV Products Building in Saxonburg, **Butler County**. This is a State-only V facility.

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

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.

PA No. 66-315-035C: The Procter and Gamble Paper Products Co. (P. O. Box 32, Mehoopany, PA 18629-0032) for modification of two paper machines in Washington Township, **Wyoming County**.

The Procter and Gamble Paper Products Company submitted to the Department of Environmental Protection (Department) an application for approval for a modification to an existing plan approval issued for the construction and operation of two paper machines. The proposed change would occur at their sources in Washington Township, Wyoming County. The application was submitted pursuant to 25 Pa. Code § 127.11 and has been reviewed in accordance with all applicable air quality regulations.

The company proposes to rebuild both paper machines by removing the two CPD dryers and installing one LFSR (Low Flow Suction Roll—vacuum drying) and two 7-foot diameter predryers (through-air drying). There are no changes planned for the burners and firing rates will remain well below the currently permitted levels. There are no emission increases anticipated with this hot air delivery systems change. Proposed modification and changes are not subject to the requirement of PSD regulations. A preliminary review of the information submitted by The Procter & Gamble Paper Products Company indicates that the construction and operation of the proposed two paper machines will meet all applicable air quality requirements. Based upon these findings, the Department plans to approve the application and issue a permit for the modification of two paper machines.

The information provided by the applicant and Department's own analysis indicates that after modification of paper machine, emissions from these paper machines will remain the same as previously approved. Particulate emissions will be 54.9 tpy; CO emissions will be 306 tpy; VOCs will be 380.2 tpy; and NOx emissions will be 206.9 tpy. The emissions of these pollutants are within all applicable emissions limitations and will not cause an exceedance of the National Ambient Air Quality Standards. No net increase will occur from this project, therefore, the modification is not subject to the NSR requirement.

To assure compliance with the applicable standards, the Department will place the following conditions on the plan approval.

1. Stack test shall be performed in accordance with the provisions of 25 Pa. Code Chapter 139 of the Rules and Regulations of the Department to show compliance with the applicable standards.

2. NOx emissions from boilers Nos. 1, 2 and 4 shall be recorded continuously.

Persons wishing to provide the Department with additional information they believe should be considered prior to the issuance of the Plan Approval may submit the information to the address that follows. Each written comment shall include the following:

1. Name, address and telephone number of the person submitting the comment.

2. Identification of the proposed Plan Approval No. 66-315-035C.

3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

Request for a public fact finding conference or hearing may also be made by writing the Department at the address shown as follows. A public conference may be held if the Department in its discretion decides that a conference is warranted on the basis of the information received. Persons who have submitted comments or have requested a conference will be notified of the decision to hold a conference by publication in a newspaper or in the *Pennsylvania Bulletin*, or by telephone, when the Department determines notification by telephone is sufficient. Comments and requests must be received by the Department no later than 30 days after final publication date.

Mark J. Wejkszner, P. E.
Chief of Engineering Services
Air Quality Program
Department of Environmental Protection
2 Public Square, Wilkes-Barre, PA 18711
(570) 826-2511

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

06-03063B: East Penn Manufacturing Co., Inc. (P. O. Box 147, Lyon Station, PA 19536-0147) for construction of a small lead parts casting machine and associated lead pot controlled by an existing fabric collector and HEPA filter in the Kutztown Borough, **Berks County**. The facility is a non-Title V State-only facility. The approval will have emission limits for lead and particulate. The approval will also include monitoring, work practices, recordkeeping and reporting requirements designed to keep the facility operating within applicable air quality requirements.

06-05007C: Carpenter Technology Corp. (P. O. Box 14662, Reading, PA 19612-4662) for modification of melt shop at their facility in the City of Reading, **Berks County**. The modification involves the construction of a new electric arc furnace G, the removal of three electric arc furnaces A—C and the conversion of an electric arc furnace D to a back-up unit. The new furnace is subject to 40 CFR Part 60, Subpart AA, Standards of Performance for New Stationary Sources. The modification will result in minor increases in the annual emissions from the facility. The approval will include restrictions, work practices, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. The facility is presently covered by the Title Operating Permit No. 06-05007. The plan approval will be incorporated into this permit in accordance with 25 Pa. Code § 127.450 (Administrative Amendment).

36-05001C: Armstrong World Industries, Inc. (1507 River Road, Marietta, PA 17547) for replacement of the PIF finish paint booth dry filter with a wet filter in their East Donegal Township, **Lancaster County**, facility. The replacement will not increase particulate matter emissions.

38-05019C: AES Ironwood, LLC (305 Prescott Road, Lebanon, PA 17042) to add a definition for load change periods to the existing approval for the combustion turbine generating plant in South Lebanon Township, **Lebanon County**. The turbines are subject to 40 CFR Part 60, Subpart GG—Standards of Performance for Stationary Gas Turbines and the Title IV Acid Rain Program of the 1990 Clean Air Act Amendments. This action will not significantly impact emissions from the facility. The plan approval and operating permit will include emission limits along with provisions for monitoring, recordkeeping, reporting and work practice standards to ensure the plant complies with the applicable air quality requirements.

67-05047A: Modern Landfill (4400 Mt. Pisgah Road, York, PA 17402-8240) for installation of a second enclosed flare in Windsor and Lower Windsor Townships, **York County**. The plan approval will include stack testing, monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within all applicable air quality requirements.

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

61-004C: Electralloy (175 Main Street, Oil City, PA 16301) for the addition of a Praxair CoJet™ gas injection system on the EAF in the Borough of Oil City, **Venango County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department of Environmental Protection (Department) intends to issue a plan approval for their plant in the Borough of Oil City, Venango County. The facility currently has a Title V permit which was issued October 31, 2002. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V operating permit through an administrative amendment at a later date.

This application is for the addition of a Praxair CoJet™ gas injection system on the EAF. This system utilizes burners that will add natural gas, oxygen and an inert gas such as nitrogen or argon into the EAF. It is projected that the addition of gases into the furnace will increase the potential exhaust by upwards of 3,000 scfm. There will also be potential temperature increases caused by the addition of oxygen and natural gas. The maximum rated capacity of the furnace will not increase. The Plan Approval will require three valid emission tests with and without the Co-Jet burner. If the stack testing indicates that emissions have not increased with the addition of the Co-Jet burner, the Department will let the Plan Approval expire and the Co-Jet burner will be considered an exempted source. If the results of the stack testing show that the emission rates of pollutants with the Co-Jet burner on are significantly higher than with the Co-Jet burner off, emission limits will be established for those pollutants.

25-337A: Custom Engineering, Inc. (2800 McClelland Avenue, Erie, PA 16510) for construction of a coating booth in the City of Erie, **Erie County**.

Under 25 Pa. Code §§ 127.44(a) and 127.424(b), the Department of Environmental Protection (Department) intends to issue a Plan Approval for their plant located in the City of Erie, Erie County. This plan approval will authorize the construction of a coating booth. The facility has a current State-only Operating Permit. This plan approval will be incorporated into the State-only Operating Permit at a later date.

Based on the information provided by the applicant and Department's own analysis the VOCs emissions from the coating booth will be 4.8 tons/yr. Conditions of the plan approval include the following:

- The source shall use coatings that are compliant with 25 Pa. Code § 129.52, Table 1 (10)(e) for the category "air dried," miscellaneous metal parts and products only.
- Emissions of VOC are limited to 4.8 tons per year, described as any 12-month rolling period, for coating line 109 at this plant.
- The facility shall calculate VOC emissions from Source 109 on a monthly basis. This total shall be added to the previous 11-month total of VOC emissions to assure compliance with the 4.8 tpy limitation.
- Proposed changes in coatings and formulations shall be indicated to the Department for review at least 2 weeks prior to implementation.
- Records of coating usage shall be maintained in accordance with 25 Pa. Code § 129.52(c). Daily records shall be maintained of coating usage, gallons of diluents used and density of diluents used. The records shall be maintained for a period of 5 years and shall be made available to the Department upon request.
- A magnehelic gauge (or equivalent) shall be permanently installed and maintained at a conveniently readable location to indicate the pressure drop across the

panel collector. The gauge employed shall have a scale such that the expected normal reading shall be no less than 20% of full scale and be accurate within plus or minus 2% of full scale reading.

- The Permittee shall notify the Department, within 60 days of initial startup of the pressure drop range developed across the collector during shakedown.
- Daily reading of the magnehelic gauge shall be taken and entered into a facility log. The log shall be kept onsite and be retained for a period of 5 years.

Anyone wishing to provide the Department with additional information they believe should be considered may submit the information to the address shown. Comments must be received, by the Department, within 30 days of the last day of publication. Written comments should include the following:

1. Name, address and telephone number of the person submitting comments.
2. Identification of the proposed Plan Approval; No. PA-43-339A.
3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

A public hearing may be held, if the Department, in its discretion, decides that a hearing is warranted on the comments received during the public comment period. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation or the *Pennsylvania Bulletin* or by telephone, when the Department determines notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to John F. Guth, Regional Air Quality Manager, Department of Environmental Protection, Northeast Regional Office, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6940.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-7584.

AMS 03022: Advance Technologies (2915 East Ontario Street, Philadelphia, PA 19134) for installation of two reactors for manufacturing esters, five condensers, two scrubbers, one 6.7 mmBtu/hr boiler and 16 less than 75 cubic meter storage tanks. The allowable VOC, NOx and HAP emissions from the facility are limited to less than 25 tons per rolling 12-month period. The plan approval will contain operating and recordkeeping requirements to ensure operation within all applicable requirements.

N04-002: Fox Chase Cancer Center (7701 Burhome Avenue, Philadelphia PA 19111) for operation of a hospital and research facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three 5.5 mmBtu/hr boilers, one 8.5 mmBtu/hr boiler and eight emergency generators.

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

Persons wishing to file protest or comments on the operating permit must submit the protest or comments within 30 days from the date of this notice. Protests or

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

N05-004: Innovation Printing and Communications (2051 Byberry Road Philadelphia, PA 19116) for operation of a printing and lithography facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three Sheetfed, Offset, Lithographic Printing Presses and a 405,000 Btu/hr natural gas fired boiler.

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

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

S05-005: Pioneer Leathertouch, Inc. (2250 East Ontario Street, Philadelphia, PA 19134) for operation of a coated fabrics manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one 150 hp boiler, one Rotogravure printing press and one gluer.

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

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

AMS 05081: Sunoco Chemicals—Frankford Plant (Margaret and Bermuda Streets, Philadelphia, PA 19137) for installation of piping and a new sump lids for four sumps and installation of a carbon canister system on each new sump lid. The carbon canister systems shall reduce total organic compound and total organic hazardous air pollutant emissions by 95% or greater or to a maximum concentration of 20 ppmv. The plan approval will contain operating and recordkeeping requirements to ensure operation within all applicable requirements.

OPERATING PERMITS

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

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

Permit No. 15-00105: Buckeye Pipe Line Transportation LLC (5002 Buckeye Road, Emmaus, PA 18049) for renewal of Title V Operating Permit No. 15-00105 in East Whiteland Township, **Chester County**.

Buckeye Pipe Line Transportation LLC—Malvern Station (8 South Malin Road, Frazer, PA 19355) is a major facility subject to the operating permit requirements of Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F and G (relating to operating permit requirements; and Title V operating permit requirements). The Malvern Station is a refined petroleum transportation pipeline breakout station. The facility's major sources of emissions are gasoline and petroleum storage tanks, which primarily emit VOCs and HAPs.

Copies of the Title V renewal application, proposed permit and other relevant information are available for public review at the Department of Environmental Protection's Southeast Regional Office, 2 East Main Street, Norristown, PA 19401. An appointment to review the documents may be scheduled by contacting the Records Management Section at (484) 250-5910 between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

Interested persons may submit written comments, suggestions or objections to Edward Brown, Chief, Facilities Permitting Section, 2 East Main Street, Norristown, PA 19401, within 30 days of this notice. Written comments should include the name, address and telephone number of the persons submitting the comments along with the reference number of the proposed permit.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the comment period. The Department will give notice of any scheduled public hearing at least 30 days in advance of the hearing as per 25 Pa. Code § 127.521. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

10-00037: Sonneborn, Inc. (Route 268, Petrolia, PA 16050) for reissuance of the Title V Operating Permit for this petroleum products processing facility in the Borough of Petrolia, **Butler County**.

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

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

23-00075: Rhodia, Inc. (2nd Street and Blueball Avenue, P. O. Box 429, Marcus Hook, PA 19061) for operation of a surfactants manufacturing facility in Marcus Hook Borough, **Delaware County**. The permit is for a non-Title V State-only facility. The major sources of air emissions are two reaction vessels and organic liquid

storage tanks. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within applicable air quality requirements.

15-00041: Eastern Shore Natural Gas Co. (305 South Queen Street, Dover, DE 19904-3552) for operation of a natural gas transmission facility in Londonderry Township, **Chester County**. The facility's major emission points include five natural gas-fired internal combustion compressor engines and one natural gas-fired internal combustion emergency generator. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within applicable air quality requirements.

15-00101: Kendal-Crosslands Communities (4109 East Baltimore Pike, East Marlborough, PA 19348) for operation of emergency generators and boilers at an assisted living facility in East Marlborough Township, **Bucks County**. The permit is for a non-Title V State-only facility. The major sources of air emissions are the 1,500 kW emergency generators. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

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

34-03005: Energex American, Inc. (R. R. 5, Box 343, Mifflintown, PA 17059) for operation of a wood pellet manufacturing plant in Walker Township, **Juniata County**. The State-only operating permit will include emission limits along with provisions for monitoring, recordkeeping, reporting and work practice standards to ensure the plant complies with the applicable air quality requirements.

36-05126: McMinn's Asphalt Co., Inc. (Box 4688, Lancaster, PA 17604-4688) for a batch asphalt plant controlled by a fabric filter at Donegal Quarry, Heisey Quarry Road in West Donegal Township, **Lancaster County**. This batch mix hot asphalt plant is a non-Title V facility. McMinn's Asphalt Co., Inc. will restrict their hours of operation to be 1,388 hours per year and maintain an annual production capacity with a maximum of 500,000 tons. This operating permit will include monitoring, recordkeeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements.

67-03052: BIMAX, Inc. (158 Industrial Road, Glen Rock, PA 17327) for production of specialty chemicals at their facility in Springfield Township, **York County**. The State-only operating permit shall contain testing, monitoring, recordkeeping and reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Eric Gustafson Facilities Permitting Chief, (814) 332-6940.

10-00330: Butler Veterinary Associates, Inc. (1761 North Main Street, Butler, PA 16001) for reissuance of a Natural Minor Permit for operation of an animal crematory located in Center Township, **Butler County**.

42-175: Federal Corrections Institute—Bradford (Route 59 and Big Shanty Road, Bradford, PA 16701) Natural Minor operating permit for the corrections facility in Lewis Run, **McKean County**.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to 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 an application is available for inspection at the district mining office indicated before an 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 certification.

Written comments, 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 district mining office indicated before an application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, 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 who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the 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; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Received

Effluent Limits—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas, active areas disturbed by coal refuse disposal activities and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

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

11841603 and NPDES Permit No. PA0235377, AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650), to revise the permit for the Portage Plant (known as the Sonman Preparation Facility) in Portage Township, **Cambria County** to change the operation name and add acreage to construct a new plant and thickener, ponds, refuse belt extensions and mine injections boreholes. Surface acres proposed 7.6. No additional discharges. Application received July 19, 2005.

5673705 and NPDES Permit No. NA, Rosebud Mining Company (301 Market Street, Kittanning, PA 16201), to transfer the permit for the Windber Mine No. 78 CRDA in Paint Township, **Somerset County** from Pristine Resources, Inc. No additional discharges. Application received August 5, 2005.

56841328 and NPDES Permit No. PA0033677, Rosebud Mining Company (301 Market Street, Kittanning, PA 16201), to transfer the permit for the Windber Mine No. 78 in Paint Township, **Somerset County** and Adams Township, **Cambria County** and related NPDES permit from Pristine Resources, Inc. and to revise the permit to perform mine rehabilitation activity. No additional discharges. Application received August 5, 2005.

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

56050107 and NPDES No. PA0249866, Future Industries, Inc., P. O. Box 157, Meyersdale, PA 15552, commencement, operation and restoration of a bituminous surface mine in Brothersvalley Township, **Somerset**

County, affecting 124.4 acres. Receiving streams: Buffalo Creek and UNTs to Buffalo Creek classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Meyersdale Municipal Authority. Application received August 29, 2005.

Greensburg District Mining Office: R. R. 2, Box 603C, Greensburg, PA 15601, (724) 925-5500.

03880122 and NPDES Permit No. PA0591742. Thomas J. Smith, Inc. (R. D. 1, Box 260D, Shelocta, PA 15774). Renewal application to a bituminous surface mine for continued operation and reclamation, located in Cowanshannock and South Mahoning Townships, **Armstrong and Indiana Counties**, affecting 488 acres. Receiving streams UNTs to the North Branch of Plum Creek, classified for the following use CWF. The potable water supply intake within 10 miles downstream from the point of discharge: Cowanshannock Township Municipal Authority, Sagamore Plant. Renewal application received: August 25, 2005.

03930122 and NPDES Permit No. PA0200816. Mears Enterprises, Inc. (P. O. Box 157, Clymer, PA 15728-0157). Renewal application to a bituminous surface mine for reclamation only, location in Cowanshannock Township, **Armstrong County**, affecting 281.7 acres. Receiving streams: UNTs to South Branch South Fork Pine Creek, classified for the following use: CWF. The potable water supply intake within 10 miles downstream from the point of discharge: Cowanshannock Township Municipal Authority, Sagamore Plant. Renewal application received: August 25, 2005.

26050110 and NPDES Permit No. PA0250783. Albert F. Stiffler (141 Locust Road, Box 42-C, Normalville, PA 15469). Application for commencement, operation and restoration of a bituminous surface mine, located in Saltlick Township, **Fayette County**, affecting 156.9 acres. Receiving stream: UNT to Little Champion Creek, classified for the following use: CWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received: August 24, 2005.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

33960108 and NPDES Permit No. PA0227315. Opal Industries, Inc. (P. O. Box 980, Latrobe, PA 15650). Renewal of an existing bituminous surface strip operation in Ringgold Township, **Jefferson County** affecting 54.1 acres. Receiving streams: UNTs to Painter Run, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: August 29, 2005.

37050903. Grove City Materials, LP (R. R. 6, Box 344, New Castle, PA 16101). Commencement, operation and restoration of an incidental coal extraction operation in Wayne Township, **Lawrence County** affecting 10.0 acres. Receiving streams: Duck Run and UNT to Connoquenessing Creek, classified for the following use: WWF. The first downstream potable water supply intake from the point of discharge is Beaver Falls Municipal Authority. Application received: August 25, 2005.

16850116 and NPDES Permit No. PA0106577. Terry Coal Sales, Inc. (P. O. Box 58, Distant, PA 16223) Renewal of an existing bituminous surface strip, auger and coal ash disposal operation in Porter Township, **Clarion County** affecting 648.5 acres. Receiving streams: UNT to Leisure Run and Leisure Run and Long Run, classified for the following: CWF. The first down-

stream potable water supply intake from the point of discharge is the Redbank Valley Municipal Authority. Application for reclamation only. Application received July 28, 2005.

24743008 and NPDES Permit No. PA0127566. Fairview Coal Company (P. O. Box R, Ridgway, PA 15853). Renewal of an existing bituminous surface strip and auger operation in Fox Township, **Elk County** affecting 66.0 acres. Receiving streams: UNT to Benninger Creek and Benninger Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received: July 29, 2005.

16990104 and NPDES Permit No. PA0241563. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767). Revision to an existing bituminous surface strip operation in Porter Township, **Clarion County** affecting 208.5 acres. Receiving streams: two UNTs of Leatherwood Creek; one UNT to West Fork Leatherwood Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Revision to include a post mining landuse change from forestland to unmanaged natural habitat on the Clair G. Gourley now David Osikowicz property. Application received: August 1, 2005.

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

17050107 and NPDES No. PA0256269. AMFIRE Mining Co., LLC (One Energy Place, Latrobe, PA 15650). Commencement, operation and restoration of a bituminous surface mine located in Girard Township, **Clearfield County** affecting 210.2 acres. Receiving stream: UNTs to Little Surveyor Run and UNTs to Surveyor Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received: August 24, 2005.

17950105 and NPDES Permit No. PA0220051. Hepburnia Coal Company (P. O. Box I, Grampian, PA 16838). Permit renewal of an existing bituminous surface and auger mine in New Washington and Newburg Boroughs, Chest Township, **Clearfield County** affecting 185.3 acres. Receiving streams: UNTs to Chest Creek. Application received: May 25, 2005.

Coal Applications Returned

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

17050102 and NPDES Permit No. PA0256188. Whitetail Contracting (P. O. Box 220, Woodland, PA 16881). Commencement, operation and restoration of a bituminous surface mine permit in Decatur Township, **Clearfield County** affecting 18.5 acres. Receiving stream: Shimel Run classified for the following use: CWF. Application received: February 12, 2005. Application returned: May 17, 2005.

179101024 and NPDES Permit No. PA0206725. TDK Coal Sales, Inc. (P. O. Box 259, Brockway, PA 15824), major permit revision to temporarily relocate T-356 from a starting point approximately 3,484 feet south of the intersection of T-356 and SR 3011 to a point 2,870 feet south of the starting point. The permit is located in Brady Township, **Clearfield County** and affects 393 acres. Receiving streams: Beech Run and UNT to Laurel Branch. Application received: March 24, 2005. Application withdrawn: August 29, 2005.

17900143 and NPDES Permit No. PA0206458. TDK Coal Sales, Inc. (P. O. Box 259, Brockway, PA 15824),

major permit revisions to temporarily relocate Township Road 356 from a starting point approximately 3,484 feet south of the intersection of T-356 and SR-3011 to a point 2,870 feet south of the starting point. The application also includes a revision for a change in permit acreage from 342.5 to 344.7 acres. The permit is located in Penn Township, **Clearfield County**. Receiving streams: Irish Run and UNTs to Irish Run. Application received: March 24, 2005. Application withdrawn: August 29, 2005.

17814000 and NPDES Permit No. PA0608769. TDK Coal Sales, Inc. (P. O. Box 259, Brockway, PA 15824), major permit revision to temporarily relocate Township Road 356 from a starting point approximately 3,484 feet

south of the intersection of T-356 and SR-3011 to a point 2,870 feet south of the starting point. The permit is located in Penn Township, **Clearfield County** and affects 204.2 acres. Receiving streams: Irish Run and UNTs to Irish Run. Application received: March 24, 2005. Application withdrawn: August 29, 2005.

Noncoal Applications Received

Effluent Limits

The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity ¹			
pH ¹		greater than 6.0; less than 9.0	

¹ The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

33050304 and NPDES Permit No. PA0258008. Glen Gery Corporation (P. O. Box 7001, 1166 Spring Street, Wyomissing, PA 19610). Commencement, operation and restoration of a shale operation in Oliver Township, **Jefferson County** affecting 51.5 acres. Receiving streams: one UNT to Beaver Run and Beaver Run, classified for the following uses: HQ-CWF and one UNT to Little Sandy Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: August 26, 2005.

25970306. Raymond D. Showman & Sons, Inc. (12851 Sharp Road, Edinboro, PA 16412). Revision to add 2.0 acres to the surface mining permit in LeBoeuf Township, **Erie County**. New surface mine acreage will be 22.2 acres. Receiving streams: French Creek, classified for the following: WWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: July 25, 2005.

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

09050302. Waste Management Disposal Services of PA, Inc., (1121 Bordentown Road, Morrisville, PA 19067), commencement, operation and restoration of a quarry operation in Falls Township, **Bucks County** affecting 264.0 acres, receiving stream: Delaware River, classified for the following uses: WWF and MF. Application received August 24, 2005.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section

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

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

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

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the FWPCA (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E48-364. Wagner Enterprises, Ltd., P. O. Box 3154, Easton, PA 18043, in City of Bethlehem, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To remove an existing 30-inch diameter stormwater outfall structure and to construct and maintain the following water obstructions and encroachments in and along Saucon Creek (CWF): 1) an 8-inch diameter sanitary sewer line in Saucon Creek; 2) a 48-inch diameter stormwater outfall structure and associated energy dissipator; and 3) a 6-inch diameter stormwater outfall pipe and a 14-inch by 23-inch elliptical stormwater outfall pipe in Saucon Creek. This work is associated with a proposed 32-unit apartment complex known as Saucon Square. The project is located on Fire Lane adjacent to Saucon Park (Hellertown, PA Quadrangle N: 18.4 inches; W: 13.6 inches).

E40-652. EAM-Mosca Corporation, 675 Jaycee Drive, West Hazleton, PA 18202-1155, in Hazle Township, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

To place fill in 0.22 acre of PEM wetlands associated with the western expansion of an existing industrial building. Approximately 0.11 acre of wetlands within an existing stormwater swale will be impacted by site grading for the eastern building expansion. The project is located at 675 Jaycee Drive in the Valmont Industrial Park. (Conyngham, PA Quadrangle N: 16.0 inches; W: 3.5 inches).

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

E36-793: West Cocalico Township, 156B West Main Street, P. O. Box 244, Reinholds, PA 17569 in West Cocalico Township, **Lancaster County**, ACOE Baltimore District

To remove two deteriorating culverts in UNTs to Harnish Run (WWF) then construct and maintain: 1) a 24-inch by 31-foot smooth lined corrugated plastic pipe with type D-W endwalls which will have a permanent wetland impact of 0.002 acre and a temporary impact of 0.004 acre located at a point along Tannery Road (Womelsdorf, PA N: 4.8 inches; W: 2.4 inches); 2) a 3-foot by 5-foot by 30-foot reinforced concrete box culvert which will have a permanent wetland impact of 0.017 acre and a temporary impact of 0.057 acre located at a point along Blainsport Road (Womelsdorf, PA N: 5.0 inches; W: 2.0 inches) all in West Cocalico Township, Lancaster County.

E36-798: Aaron E. Fisher, 207 East Eby Road, Leola, PA 17540 in West Lampeter Township, **Lancaster County**, ACOE Baltimore District.

To construct and maintain a 24' by 20' bridge over a UNT of Big Spring Run (WWF) for farm equipment access (Leola Quadrangle, 22.3 inches N 1.2 inches W) in West Lampeter Township, Lancaster County.

E22-495: Spring Creek Golf Course, 450 East Chocolate Avenue, Hershey, PA 17033 in Derry Township, **Dauphin County**, ACOE Baltimore District

To grade in the floodway of Spring Creek (WWF) for the purpose of creating and relocating tee boxes and fairways on the property of Spring Creek Golf Course (Hershey, PA Quadrangle Latitude: 40° 17' 19", Longitude: 76° 38' 13") in Derry Township, Dauphin County.

E36-800: Department of Transportation, Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103

in Colerain Township, **Lancaster County** and Lower Oxford Township, **Chester County**, ACOE Baltimore and ACOE Philadelphia.

To remove the existing structures and then to construct and maintain: 1) a two span bridge with a total span of 124 feet with an average underclearance of 7.7 feet across the channel of East Branch Octoraro Creek (TSF), a 36-inch diameter concrete pipe culvert and a 24-inch diameter concrete pipe culvert at the floodway of the same creek on SR 2013 (Bell Road); 2) a 7-foot by 6-foot concrete box culvert at the channel of a UNT to East Branch Octoraro Creek on SR 3085 (Cream Road) and associated improvements to improve the safety condition of the road located about 0.5 mile west of the village of Cream (Kirkwood, PA Quadrangle N: 14.6 inches; W: 2.5 inches) in Colerain Township, Lancaster County and Lower Oxford Township Chester County.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.

E17-412. Bradford Township, P. O. Box 79, Woodland, PA 16881, Bridge Construction in Bradford Township, **Clearfield County**, ACOE Baltimore District (Wallaceton, PA Quadrangle N: 21.74 inches; W: 13.33 inches).

To: 1) remove the existing 54 inch by 78 inch corrugated metal pipe; 2) construct and maintain a CMP culvert measuring 85 inches by 112 inches; and 3) inlet and outlet concrete headwalls in Jake Run on Lake Street in Woodland about 0.2 mile south of SR 970. The project will not impact wetlands while impacting about 30 feet of waterway. Jake Run is a CWF Stream.

E41-551. Lycoming County Commissioners, 48 West Third Street, Williamsport, PA 17701. Small Projects Water Obstruction and Encroachment Joint Permit Application, in the City of Williamsport, **Lycoming County**, ACOE Susquehanna River Basin District (Williamsport, PA Quadrangle N: 22.3 inches; W: 13.9 inches).

To construct and maintain 4,200 linear feet of paved walkway measuring 14 feet wide along the Williamsport Levee system in floodway of the West Branch of the Susquehanna River, all of which is located along SR 0180 East, in the City of Williamsport, Lycoming County. The West Branch of the Susquehanna River is classified as a WWF.

E41-552. SEDA-COG Joint Rail Authority, 201 Furnace Road, Lewisburg, PA 17837. Water Obstruction and Encroachment Joint Permit Application, in City of Williamsport, **Lycoming County**, ACOE Susquehanna River Basin District (Williamsport, PA Quadrangle N: 20.0 inches; W: 10.3 inches).

To construct and maintain a 32-foot long by 27-foot wide rail line crossing consisting of four 33-inch by 44-inch aluminized squash pipes with concrete head and end walls within Reighards Run, located in the City of Williamsport, Lycoming County. This project proposes to have a minimal impact on Reighards Run, which is, designated a WWF. This project proposes to permanently impact 0.13 acre jurisdictional wetlands.

E55-203. John Fisher, P. O. Box 166, Beaver Springs, PA 17812. Fisher Crossing, in Spring Township, **Snyder County**, ACOE Baltimore District (McClure, PA Quadrangle N: 21.2 inches; W: 2.5 inches).

The applicant is proposing to remove an existing concrete ford crossing and construct, operate and maintain a

new private bridge crossing in the same location. The new structure will pass the 5-year storm event under the structure although the roadway approaches will be inundated during the same storm. Currently the ford structure poses potential fish passage issues and stability issues in the stream and the new structure will eliminate those impacts. This project will impact a total of 30 linear feet of the South branch of Middle Creek and will not impact any wetlands. The South Branch of Middle Creek is designated as a TSF.

E59-471. Keck's Food Service, R. R. 1, Box 70, Millerton, PA 16936. Wetland fill associated with access road constructed in Jackson Township, **Tioga County**, ACOE Baltimore District (Jackson Summit, PA Quadrangle N: 12.4; W: 2.25 inches).

To place and maintain fill in 0.037 acre wetland for the purpose of constructing a secondary access driveway required as an alternate route of entry for business location. The wetland is located at the headwaters of the Hammond Creek drainage which is classified as a CWF stream. The site is located approximately 5 miles west of Millerton on SR 0328.

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

E03-433. Equitable Gas Company, 225 North Shore Drive, Floor 2, Pittsburgh, PA 15212. To construct two new gas pipelines in Pine Township, **Armstrong County**, Pittsburgh ACOE District (Templeton, PA Quadrangle N: 8.58 inches; W: 11.63 inches and Latitude: 40° 55' 20"—Longitude: 79° 27' 33"). The applicant proposes to remove the existing gas pipelines and to construct and maintain two new gas pipelines across the channel of a UNT to the Allegheny River (WWF) for the purpose of replacing a leaking gas pipeline. The project is located approximately 400 feet upstream from the intersection of SR 1003 and SR 1030 and will impact 40 linear feet of stream channel.

E11-314. CDM Cambria Realty, LLC, 115 Union Avenue, Altoona, PA 16602. To place fill in wetlands in Stonycreek Township, **Cambria County**, Pittsburgh ACOE District (Johnstown, PA Quadrangle N: 8.95 inches; W: 1.4 inches and Latitude: 40° 17' 57"—Longitude: 78° 53' 06"). The applicant proposes to place and maintain fill in 0.09 acre of wetlands (PEM) for the purpose of developing a car dealership. The project is located off of Bedford Street.

E26-330. Turnpike Commission, P. O. Box 67676, Harrisburg, PA 17106. To construct section 51-A2 of the Mon Fayette Expressway in North Union and Menallen Townships, **Fayette County**, Pittsburgh ACOE District. The applicant proposes to construct:

1. An 85-foot long, 90-inch × 66-inch RC box culvert in a UNT to Jennings Run (WWF), Fan Hollow Road, Station 30+14 (Uniontown, PA Quadrangle N: 8.5 inches; W: 17.4 inches and Latitude: 39° 55' 19.32"—Longitude: 79° 44' 54.08").

2. A 145-foot long, 84-inch × 42-inch RC box culvert in a UNT to Jennings Run, Fan Hollow Road, Station 11+97 (New Salem, PA Quadrangle N: 8.0 inches; W: 0.45 inch and Latitude: 39° 55' 7.85"—Longitude: 79° 45' 11.36").

3. A 32-foot long, 48-inch diameter RC pipe culvert extension in a UNT to Jennings Run, SR 40, Station 570+18 (New Salem, PA Quadrangle N: 7.9 inches; W: 0.42 inch and Latitude: 39° 55' 3.69"—Longitude: 79° 45' 10.5").

4. A 272 foot long, 48-inch diameter RC pipe stream enclosure in a UNT to Redstone Creek (WWF), Ramp 119 S-N Station 55+55 (Uniontown, PA Quadrangle N: 7.7 inches; W: 14.4 inches and Latitude: 39° 55' 3.36"—Longitude: 79° 43' 42.43").

5. To place and maintain fill in 0.02 acre of wetlands (Uniontown, PA Quadrangle N: 7.7 inches; W: 14.4 inches and Latitude: 39° 55' 3.36"—Longitude: 79° 43' 42.43").

E32-472. Department of Transportation, 2550 Oakland Avenue, P. O. Box 429, Indiana, PA 15701. To construct a culvert in Montgomery Township, **Indiana County**, Pittsburgh ACOE District (Burnside, PA Quadrangle N: 2.0 inches; W: 16.0 inches and Latitude: 40° 45' 32"—Longitude: 78° 52' 02"). The applicant proposes to remove the existing structure and to construct and maintain a 45.0 foot wide single cell, 1.0-foot depressed 9.0-foot by 8.0-foot precast reinforced concrete box culvert in a UNT to Cush Creek (CWF) for the purpose of improving transportation safety and roadway standards. The project will impact 0.22 acre of wetlands (PEM). The applicant is also proposing the relocation and maintenance of approximately 250 feet of a UNT to Cush Creek (CWF). The project is located on SR 286, Segment 1010, Offset 1617, Section 402, Station 687+00.

E56-338. Gilmour Properties, 104 North Center Avenue, Somerset, PA 15501. To fill wetlands in Somerset Borough, **Somerset County**, Pittsburgh ACOE District (Somerset, PA Quadrangle N: 3.25 inches, W: 11.25 inches and Latitude: 40° 01' 03"—Longitude: 79° 04' 49"). The applicant proposes to place and maintain fill in 1.56 acre of wetlands (PSS/PEM) for the purpose of developing a retail facility and associated parking along a UNT to Coxes Creek (TSF), located off of the Turnpike Interchange 110.

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

E10-409. Center Township Supervisors, 419 Sunset Drive, Butler, PA 16001. T-831 Glenwood Way Bridge, Across Connoquenessing Creek, in Center Township, **Butler County**, ACOE Pittsburgh District (Mount Chestnut, PA Quadrangle N: 5.5 inches; W: 1.6 inches).

To remove the existing structure and to construct and maintain a Composite Prestressed Concrete Spread Box Beam bridge having a clear span of 74.0 feet and an underclearance of 9.6 feet on a 75° skew across Connoquenessing Creek on T-831, approximately 2.25 miles North of Butler.

This project includes placement of fill in 0.04 acre of palustrine/scrub/shrub wetland habitat. Connoquenessing Creek is classified as a WWF.

E61-275. Bacou-Dalloz Fall Protection, 1345 15th Street, Franklin, PA 16323. Warehouse Expansion, in the City of Franklin, **Venango County**, ACOE Pittsburgh District (Franklin, PA Quadrangle N: 0.2 inch; W: 14.1 inches).

The applicant proposes to realign a UNT (drainage area less than 100 acres) to the Allegheny River for a length of approximately 225 feet as part of the expansion of a manufacturing facility and associated service, delivery and parking areas around the facility in the City of Franklin, Venango County approximately 0.7 mile south of the intersection of SR 8 and SR 62. The UNT to the Allegheny River is classified as a WWF. The project proposes to directly impact 225 feet of stream.

ACTIONS

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

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

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

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

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

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0081957 (Industrial Waste)	Viacom, Inc. 11 Stanwix Street Pittsburgh, PA 15201	Adams County Cumberland Township	UNT to Rock Creek/13-D	Y
PA0081451 (Sewage)	Red Lion Area School District Clearview Elementary School	York County Chanceford Township	UNT to West Branch Toms Run/7-I	Y
PA0083691 (Industrial Waste)	West Earl Water Authority 157 West Metzler Road P. O. Box 202 Brownstown, PA 17508	Lancaster County West Earl Township	Conestoga River/7-J	Y
PA0086479 (Industrial Waste)	Dietrich's Milk Products, LLC 100 McKinley Avenue Reading, PA 19605-2199	Berks County Muhlenberg Township	Laurel Run/3-C	Y

NOTICES

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<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0053104 (Sewage)	Pleasant Hills Mobile Home Park P. O. Box 677 Morgantown, PA 19543-0677	Berks County Tilden Township	UNT Schuylkill River/3-B	Y
PA0086525 (Sewage)	Centre Township Municipal Authority 449 Bucks Hill Road Mohrsville, PA 19541	Berks County Centre Township	UNT Irish Creek/3-B	Y
PA0053007 (Sewage)	Director of Utilities ARC III, LLC One Mark Lane Honeybrook, PA 19344	Berks County Richmond Township	UNT Willow Creek/3-B	Y
PAR100137R	Conewago Resources 660 Edgegrove Road Hanover, PA 17331	Adams County Conewago Township	South Branch Conewago Creek/WWF	Y
PAR100144	The Links at Gettysburg-Garrison Falls Mason Dixon Road Gettysburg, PA 17325	Adams County Mount Joy Township	Rock Creek and Lousy Run/WWF	Y
PAR10I261R	Hershey Road Associates 2151 Linglestown Rd. Harrisburg, PA 17110	Dauphin County West Hanover Township	Manada Creek/Beaver Creek/WWF	Y
PAR10M259	Enclave Holdings Limited 819 Catherine St. Chambersburg PA 17201	Franklin County Chambersburg Boro	UNT to Conococheague Creek/WWF	Y
PAR10Y4312	Joseph Deerin Windsor Commons Apartments, LP 120 N. Pointe Blvd., Suite 301 Lancaster, PA 17601	York County Windsor Township	Kreutz Creek/WWF	Y
PAR10Y309R	Wellington Greens Phase 4 S & A Custom Built Homes 3039 N. George Street York, PA 17402	York County West Manchester Township	UNT to Little Conewago Creek/TSF	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0027537 Industrial Waste	Township of Shaler 300 Wetzel Road Glenshaw, PA 15116-3388	Allegheny County Shaler Township	Allegheny River	Y
PA0097624 Industrial Waste	Glassmere Fuel Service 1967 Saxonburg Blvd. Tarentum, PA 15084	Allegheny County West Deer Township	UNT to Little Deer Creek	Y
PA0203696 Sewage	South Side Area School District 4949 State Route 151 Hookstown, PA 15050	Beaver County Greene Township	UNT of Little Traverse Creek	Y
PA0203998 Sewage	Rostraver Preferred Properties, Inc. 566 Donner Avenue Monessen, PA 15062	Westmoreland County Rostraver Township	Cedar Creek	Y
PA0216879 Sewage	Calandrella's, Inc. R. D. 2, Box 320 Avonmore, PA 15618	Westmoreland County Bell Township	UNT of Wolford Run	Y
PA0218456 Sewage	Elaine and Dale Wright 432 Lakeview Drive New Brighton, PA 15066	Beaver County New Sewickley Township	Brush Creek	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0032701	Department of Transportation Rest Area 20 Bureau of Design P. O. Box 3060 Harrisburg, PA 17105-3060	Washington Township Erie County	UNT to Boles Run 16-A	Y
PA0035548	Department of Transportation Rest Area 15 Bureau of Design P. O. Box 3060 Harrisburg, PA 17105-3060	Plain Grove Township Lawrence County	UNT to Jamison Run 20-C	Y
PA0035556	Department of Transportation Rest Area 16 Bureau of Design P. O. Box 3060 Harrisburg, PA 17105-3060	Plain Grove Township Lawrence County	UNT to Jamison Run 20-C	Y
PA0004251	Advanced Cast Products, Inc. 18700 Mill Street Meadville, PA 16335-3644	Vernon Township Crawford County	French Creek 16-D	Y
PA0221481	Norfolk Southern Railway Co. Meadville Yard Diesel Shop 425 Holiday Drive Pittsburgh, PA 15220	City of Meadville Crawford County	French Creek 16-D	Y
PA0035521	Department of Transportation Rome Township Satellite Maintenance Facility Bureau of Design P. O. Box 3060 Harrisburg, PA 17105-3060	Rome Township Crawford County	UNT to Oil Creek 16-E	Y
PA0029238	Mohawk Area School District Mohawk School Road P. O. Box 25 Bessemer, PA 16112	North Beaver Township Lawrence County	UNT to Hickory Run 20-B	Y
PA0025445	Borough of Wampum 355 Main Street Extension P. O. Box 65 Wampum, PA 16157	Borough of Wampum Lawrence County	Beaver River 20-B	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

NPDES Permit No. PA0058921, Industrial Waste, **JDM Materials Company**, 851 County Line Road, Huntingdon Valley, PA 19006. This proposed facility is located in Upper Southampton Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for a new NPDES permit to discharge stormwater from their concrete batch plant into a UNT to Southampton Creek in Watershed 3J.

NPDES Permit No. PA0058939, Industrial Waste, **JDM Materials Company**, 851 County Line Road, Huntingdon Valley, PA 19006. This proposed facility is located in Schuylkill Township, **Chester County**.

Description of Proposed Action/Activity: Approval for a new NPDES permit to discharge stormwater from their concrete batch plant into a UNT to French Creek in Watershed 3D.

NPDES Permit No. PA0050521, Sewage, **Green Lane-Marlborough Joint Authority**, P. O. Box 45, Green Lane, PA 18054. This proposed facility is located in Green Lane Borough, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated sewage from the Green Lane-Marlborough Wastewater Treatment Plant into the Perkiomen Creek in Watershed 3E (Perkiomen).

NPDES Permit No. PA0011231, Industrial Waste, **Buckeye Pipe Line Company, LP**, P. O. Box 368, Emmans, PA 18049-0368. This proposed facility is located in Upper Chichester Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge stormwater run of from three different areas of the Chelsea Pipe Line Station and Tank Farm into Boozers Run a Tributary to Marcus Hook creek in Watershed 3G.

NPDES Permit No. PA0057380, Sewage, **Steve and Heidi Whitney**, 3815 Chatham Place, Media PA 19063. This proposed facility is located in Upper Providence Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated sewage from their residence into a UNT to Ridley Creek in Watershed 3G.

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

NPDES Permit No. PA000028142, Sewage and Stormwater, **Pennsylvania National Guard**, Fort Indiantown Gap, Building No. 1, Annville, PA 17003-4002. This proposed facility is located in East Hanover Township, **Lebanon County**.

Description of Activity: The application is for the renewal of an NPDES permit for the discharge of treated sewage from a sewage treatment facility to Swatara Creek in Watershed 7-D.

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

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

WQM Permit No. 1505405, Sewerage, **Borough of Kennett Square**, P. O. Box 5, 120 North Broad Street, Kennett Square, PA 17348. This proposed facility is located in Kennett Square Borough, **Chester County**.

Description of Action/Activity: Construction and operation of a new sanitary sewer pumping station.

WQM Permit No. 1505416, Sewerage, **West Bradford Township**, 1385 Campus Drive, Downingtown, PA 19335-3690. This proposed facility is located in West Bradford Township, **Chester County**.

Description of Action/Activity: Construction and operation of a sewage pump station for a 37 lot single family residence proposed on a tract totaling 75.211 acres.

WQM Permit No. 1500421-F, Sewerage, **Upper Uwchlan Township**, 140 Pottstown Pike, Chester Springs, PA 19425. This proposed facility is located in Upper Uwchlan Township, **Chester County**.

Description of Action/Action: Activation of the spray field bufler zone in fields 1A and 1B and increase of capacity by 22,385 gpd.

WQM Permit No. 0905405, Sewerage, **Upper Makefield Township**, 1076 Eagle Road, Newtown, PA 18940. This proposed facility is located in Upper Makefield Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a wastewater treatment plant to serve a proposed 67 lot residential development.

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

WQM Permit No. 0698407, Sewerage, **Borough of Bernville**, P. O. Box 40, Bernville, PA 19506. This proposed facility is located in Bernville Borough, **Berks County**.

Description of Proposed Action/Activity: Correction of the MoMax Hydraulic Capacity.

WQM Permit No. 2105402, Sewerage, **Shippensburg Sewer Authority**, 111 North Fayette Street, P. O. Box 129, Shippensburg, PA 17259. This proposed facility is located in Shippensburg Borough, **Cumberland County**.

Description of Proposed Action/Activity: Sewage Treatment Plant BNR Conversion.

WQM Permit No. 4473404, Amendment 05-1, Sewerage, **Lewistown Borough**, Two East Third Street, Lewistown, PA 17044-1799. This proposed facility is located in Lewistown Borough, **Mifflin County**.

Description of Proposed Action/Activity: Modifications/Upgrades to the existing anaerobic sludge digestion system.

WQM Permit No. 0605411, Sewerage, **Amity Township**, 2004 Weavertown Road, P. O. Box 215, Douglassville, PA 19518. This proposed facility is located in Amity Township, **Berks County**.

Description of Proposed Action/Activity: Amity Township Sewage Treatment Plant Rerating.

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

WQM Permit No. 0279292-A4, Industrial Waste, **Neville Chemical Company**. This proposed facility is located in Neville Township, **Allegheny County**.

Description of Proposed Action/Activity: Installation of a new pipeline.

WQM Permit No. 0273424-A4, Sewerage, **Plum Borough Municipal Authority**, 4555 New Texas Road, Pittsburgh, PA 15239-1197. This proposed facility is located in Plum Borough, **Allegheny County**.

Description of Proposed Action/Activity: Replacement and modifications of existing facilities.

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

WQM Permit No. WQG018402, Sewerage, **George Welka**, 8120 Footmill Road, Erie, PA 16509. This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: A single residence sewage treatment plant.

WQM Permit No. WQG018396, Sewerage, **Matthew Probst**, 60 Gibson Street, Apt. 2, North East, PA 16428. This proposed facility is located in North East Township, **Erie County**.

Description of Proposed Action/Activity: A single residence sewage treatment plant.

IV. NPDES Stormwater Discharges from MS4 Permit Actions**V. NPDES Waiver Stormwater Discharges from MS4 Actions****VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI010905020	Milford Acquisitions, Inc. Streamview Subdivision 1590 Canary Road Quakertown, PA 18951-3851	Bucks	Milford Township	Unami Creek (HQ-TSF)
PAI011505003	David Davis David Davis Proposed Res. 4 South Hawthorne Road Coatesville, PA 19320	Chester	West Pikeland Township	UNT Pickering Creek (HQ-TSF)
PAI011505008	Department of Transportation SR 202, Sec 300 7000 Geerdes Boulevard King of Prussia, PA 19406	Chester	Caln, East Whiteland and Tredyffrin Townships	Valley Creek (EV)
PAI011505029	William and Anita Shumaker Shumaker Land Development 103 Ivy Lane Pottstown, PA 19464	Chester	West Nantmeal Township	East Branch Brandywine Creek (HQ-TSF-MF)
PAI011505037	1645 Associates, LP 1645 West Chester Pk. Dev. 640 Freedom Business Drive King of Prussia, PA 19406	Chester	Westtown Township	Tributary Hunters Run/Ridley Creek (HQ-TSF)
PAI011505040	Matt Pressler Matador Restaurant 13 Green Gables Lane Newtown Square, PA 19073	Chester	East Whiteland Township	Valley Creek (EV)
PAI011505047	Jean V. Lawrie-Parker Jean Lawrie-Parker Development 1961 New Danville Pike Lancaster, PA 17603	Chester	East Nottingham Township	Little Elk Creek (HQ-TSF-MF)

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024505003	First National Community Bank 102 East Drinker St. Dunmore, PA 18512	Monroe	Middle Smithfield Township	Marshall Creek HQ

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

NPDES Permit No. PAS703501, Stormwater, **SemMaterials, LP**, Two Warren Place, Suite 700, 6120 South Yale Avenue, Tulsa, OK 74136. Project Location: Muhlenberg Township, **Berks County**.

Project Description: Transfer of Permit.

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041405003	Don Franson College Township 1481 E. College Ave. State College, PA 16801	Centre	College Township	Closed depression adjacent to Spring Creek HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041704002	Mosquito Creek Sportsmen Assoc. P. O. Box 218 Frenchville, PA 16836	Clearfield Elk	Girard Township Benezette Township	Lost Run CWF Deserter Run HQ-CWF Gifford Run HQ-CWF

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

Armstrong County Conservation District: Armsdale Administration Building, Suite B-2, 124 Armsdale Road, Kittanning, PA 16201, (724) 548-3425.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050305004	Armstrong County Industrial Development Authority 402 Marker Street Kittanning, PA 16201	Armstrong	North Buffalo and South Buffalo Townships	Pine Run (HQ-CWF) Nicholson Run (WWF)

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI064205002	Bradford Regional Airport 212 Airport Road Suite E Lewis Run, PA 16738	McKean	Lafayette Township	UNT Tunungwant Creek (HQ-CWF)

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

General Permit Type—PAG-2

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Warminster Township Bucks County	PAG2000905092	York/Street Associates, LP Rite Land Development 467 Pennsylvania Avenue Suite 104 Fort Washington, PA 19034	Pennypack Creek (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
East Rockhill Township Bucks County	PAG2000905100	Roderick Taylor 3398 Sterner Mill Road Quakertown, PA 18951	UNT Tohickon Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Bedminster Township Bucks County	PAG2000904051	Pennland Bedminster, LP Pennland Farm 2421 Bristol Road Warrington, PA 18976	Deep Run (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Hilltown Township Bucks County	PAG2000905090	Richard Miller Miller Tract Subdivision 466 Schultz Road Sellersville, PA 18960-2951	UNT Mill Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Plumstead Township Bucks County	PAG2000905082	Stephan and Loretta C. Rush Rush Tract 5000 Wismer Road Doylestown, PA 18901	Geddes Run (CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Hilltown Township Bucks County	PAG2000904170	Michael Murphy Hillside Estates 1 Box 117 Bedminster, PA 18910	UNT Neshaminy	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
London Britain Township Chester County	PAG2001505040	Wilkinson Allegiance, LLC 1020 Broadrun Road Landonberg, PA 19350	East Branch White Clay Creek (CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Tredyffrin Township Chester County	PAG2001505033	John Hanson 845 Radnor Street Road Wayne, PA 19087	Gulph Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Fallowfield Township Chester County	PAG2001505015	Dillon Real Estate Company 257 Centerville Road Lancaster, PA 17603	Doe Run (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Whiteland Township Chester County	PAG2001504091	Christopher Knauer 120 Arrandale Boulevard Exton, PA 19341	Colebrook Run Valley Creek (CWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Thornbury Township Delaware County	PAG2002305023	Elizabeth Gray 59 West Thornton Road West Chester, PA 19382	Chester Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Newtown Township Chester County	PAG2002304054	Campus Industries 25, LP 770 Township Line Road Yardley, PA 19067	Crum Creek (WF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015105014	Ernest Bock and Sons New Northeast Community Center 2800 Southampton Road Philadelphia, PA 19154	Delaware River (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015105017	Rite Aid of Pennsylvania, Ave. Broad and Spencer Rite Aid 1175 Bustleton Avenue Philadelphia, PA 19116	Delaware River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

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<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
City of Philadelphia Philadelphia County	PAG2015105027	Wawa, Inc. Proposed Wawa Development 260 Baltimore Pike Wawa, PA 19063	Pennypack Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015105030	CSX Transportation CSX Transportation Rhawn Street Clearance Project 200 West Cabot Boulevard Suite 130 Langhorne, PA 19047	Pennypack Creek (TSF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
E. Stroudsburg Borough Monroe County	PAG2004505004	E. Stroudsburg Area School District P. O. Box 298 E. Stroudsburg, PA 18301	Sambo Creek CWF, MF Brodhead Creek TSF, MF	Monroe Co. Cons. Dist. (570) 629-3060
Pine Grove Township Schuylkill County	PAG2005404031	P. Thomas and Marilyn Feeser Swatara Creek, LP Phase 1B Residential 1130 Schuylkill Mt. Rd. Schuylkill Haven, PA 17972	Swatara Creek CWF	Schuylkill Co. Cons. Dist. (570) 622-3742
Glenburn Township Lackawanna County	PAG2003505012	Robert Doble Department of Transportation District 4-0 55 Keystone Industrial Park Dunmore, PA 18512-0111	Ackerly Creek TSF	Lackawanna Co. Cons. Dist. (570) 281-9495
City of Bethlehem Northampton County	PAG2004805017	WaWa, Inc. 260 W. Baltimore Pike Wawa, PA 19063	Lehigh River WWF	Northampton Co. Cons. Dist. (610) 746-1971
Butler Township Luzerne County	PAG2004005030	Can-Do, Inc. One South Church St. Hazleton, PA 18201	Long Run CWF and Nescopeck Creek CWF	Luzerne Co. Cons. Dist. (570) 674-7991
Hazle Township Schuylkill County	PAG2024004001	Laurel Valley Phase 3—The Vistas 1031 Valley of Lakes Hazleton, PA 18202	Black Creek CWF	Schuylkill Co. Cons. Dist. (570) 622-3742
Wilkes-Barre Township Luzerne County	PAG2004005023	Logan's Roadhouse, Inc. 3011 Armory Drive Suite 300 Nashville, TN 37204	Mill Creek CWF	Luzerne Co. Cons. Dist. (570) 674-7991
Conewago Township Adams County	PAR100137R	Conewago Resources 660 Edgegrove Road Hanover, PA 17331	South Branch Conewago Creek WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 (717) 334-0636
Washington Twp Berks County	PAG2000605070	Al Lutz Barto Development P. O. Box J Newtown Square, PA 19073	UNT to Swamp Creek CWF-MF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Oley Township Berks County	PAG2000605074	Carter Reese 84 Grandview Blvd. Reading, PA 19609	UNT to Little Manatawny Creek CWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Sinking Spring Borough Berks County	PAG2000605046	Dwayne Schneck Montello Self Storage 1200 Columbia Ave. Sinking Spring, PA 19606	UNT to Tulpehocken Creek CWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Perry Township Berks County	PAG2000605073	Athian Wilson Houck Homes, Inc. 1365 Pottsville Pike Shoemakersville, PA 19555	Tributary to Schuylkill River WWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Richmond Township Berks County	PAG2000605072	Samuel Burkholder 1001 Frys Road Ephrata, PA 17522	UNT to Maiden Creek WWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Robeson Township Berks County	PAG2000605021	Mark Stewart Stewart and Conti Development Co., Inc. 3801 Germantown Pike Collegeville, PA 19426	UNT to Allegheny Creek CWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Upper Tulpehocken Township Berks County	PAG2000604114	Paul Zimmerman 435 Tully Drive Bernville, PA 19506	Mollhead Creek CWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
The Links at Gettysburg-Garrison Falls Mason Dixon Road Gettysburg, PA 17325 Mount Joy Township Adams County	PAR100144	Richard A. Klein The Links at Gettysburg 601 Mason Dixon Rd. Gettysburg, PA 17325	Rock Creek and Lousy Run WWF	Adams County Conservation District 670 Old Harrisburg Rd. Suite 201 Gettysburg, PA 17325 (717) 334-0636
South Hanover Township Dauphin County	PAG2002205028	Patricia A Miller 4458 S. Castlewood Ct. Auburn Hills, MI 48326	Manada Creek WWF Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
East Hanover Township Dauphin County	PAG2002205042	Louis Rossi 120 Lindbergh Dr. Palmyra, PA 17078	Bow Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100

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<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Swatara Township Dauphin County	PAG2002205046	Living Water Community Church 3868 Derry St. Harrisburg, PA 17111	Spring Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Lower Paxton and Swatara Townships Dauphin County	PAG2002205038	A. Richard Szeles 945 East Park Dr. Suite 201 Harrisburg, PA 17111	Beaver Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Susquehanna Township	PAG2002205039	OM Management, Inc. 412 Blue Ridge Circle Harrisburg, PA 17110	Paxton Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
West Hanover Township	PAR10I261R	Hershey Road Associates 2151 Linglestown Rd. Harrisburg, PA 17110	Manada Creek Beaver Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Palmyra Borough Lebanon County	PAG2003805025	Richard Helm 371 S. Center Street Palmyra, PA 17078	Spring Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042, Ext. 4
Millcreek Township Lebanon County	PAG2003805020	Brett and Kim Eberly 141 South Millbach Road Newmanstown, PA 17073	Mill Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042, Ext. 4
South Lebanon Township Lebanon County	PAG2003805017	Gary Marks 1718 Grace Avenue Lebanon, PA 17046	Quittapahilla Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042, Ext. 4
Myerstown Borough Lebanon County	PAG2003805026	Robert D. Mease Lebanon Valley Farmers Bank 555 Willow Street Lebanon, PA 17042	Tulpehocken Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042, Ext. 4
Lebanon City Lebanon County	PAG2003805019	Geoffrey Eddowes LUTHERCARE 600 East Main Street Lititz, PA 17543	Quittapahilla Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042, Ext. 4
South Londonderry Township Lebanon County	PAG2003805024	Jesse S. Ziegler Ziegler Excavating 1011 Beech Street Palmyra, PA 17078	Little Conewago Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042, Ext. 4
Swatara Township Lebanon County	PAG2003805022	Scott Monger Layla, LLC 57 North Maple Avenue Leola, PA 17540	Little Swatara Cr. WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042, Ext. 4

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Shippensburg Township Cumberland County	PAG2002105026	Tod G. Shedlosky 6346 North Powderhorn Road Mechanicsburg, PA 17050	Burd Run CWF	Cumberland County Conservation District 43 Brookwood Ave. Carlisle, PA 17013 (717) 240-7812
Chambersburg Borough Franklin County	PAR10M259	Enclave Holdings Limited 819 Catherine St Chambersburg PA 17201	UNT to Conococheague Creek WWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Dover Township York County	PAG2006705010	Carl Swiger Terra LLC 2200 Monroe Street York, PA 17404	Fox Run TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Windsor Township York County	PAR10Y431-2	Joseph Deerin Windsor Commons Apartments, LP 120 N. Pointe Blvd. Suite 301 Lancaster, PA 17601	Kreutz Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Warrington Township York County	PAG2006703125	Ray Hoffman 842 Dicks Dam Road New Oxford, PA 17350	NB Beaver Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
North Codorus Township York County	PAG2006704092	David Boyer North Codorus Township Sewer Authority 1986 Stoverstown Road Spring Grove, PA 17362	UNT to Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manchester Township York County	PAG2006705005	MAF Ventures, LP 411 W. Putnam Ave. Suite 111 Greenwich, CT 06830	Willis Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manheim Township York County	PAG2006705021	Paul Burkentine Stone Ridge Development 330 Dubs Church Road Hanover, PA 17331	UNT to West Branch Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manchester Township York County	PAR10Y309R	Wellington Greens Phase 4 S & A Custom Built Homes 3039 N. George Street York, PA 17402	UNT to Little Conewago Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
North Codorus Township York County	PAG2006704085	Lynwood F & S Partners 139 E. Market Street York, PA 17401	UNT to Codorus Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Bradford, Ulster and Sheshequin Township	PAG2000805008	Department of Transportation 715 Jordan Ave. Montoursville, PA 17754	Susquehanna River WWF	Bradford County Conservation District R. R. 5, Box 5030C Stoll Natural Resource Center Towanda, PA 18848 (570) 265-5539, Ext. 205

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Columbia County Town of Bloomsburg	PAG2001905015	Steve Shannon P. O. Box 803 Bloomsburg, PA 17815	Fishing Creek WWF	Columbia County Conservation District 702 Sawmill Road Suite 204 Bloomsburg, PA 17815 (570) 784-1310
Northumberland County Herndon Borough and Jackson Township	PAG2004905009	Herndon Borough Jackson Township Joint Muni. Auth. Herndon, PA 17830	W. Br. Susquehanna River WWF	Northumberland County Conservation District R. R. 3, Box 238C Sunbury, PA 17801 (570) 286-7114, Ext. 4
Allegheny County Plum Borough	PAR10A446R	Grasinger Homes, Inc. 8035 Saltsburg Road Pittsburgh, PA 15239	Plum Creek (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Harmar Township	PAG20002041151	UPMC Health System 200 Lothrop Street Pittsburgh, PA 15213-2582	Deer Creek (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Collier Township	PAG2000205047	Chartiers Valley School District 2020 Swallow Hill Road Pittsburgh, PA 15220	Chartiers Creek (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Franklin Park Borough	PAG2000205056	St. John Neumann Parish 2230 Rochester Road Pittsburgh, PA 15237-1515	Lowries Run (TSF)	Allegheny County CD (412) 241-7645
Allegheny County Heidelberg Borough	PAG2000205069	WIN-HI, Ltd. 2901 Rigsby Lane Safety Harbor, FL 34694	Chartiers Creek (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Collier Township	PAG2000205074	Coury Residence 2000 English Turn Drive Presto, PA 15142	Chartiers Creek (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Plum Borough	PAG2000205075	Plum Contracting 457 Davidson Road Pittsburgh, PA 15239	Thompson Run (WWF)	Allegheny County CD (412) 241-7645
Allegheny County City of Pittsburgh	PAG2000205082	Duquesne Light Holdings 411 Seventh Avenue Pittsburgh, PA 15219	Ohio River (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Indiana Township	PAG2000205083	Daniel Eichenlaub P. O. Box 111282 Pittsburgh, PA 15238	Deer Creek (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Plum Borough	PAG2000205084	Grasinger Homes, Inc. 8035 Saltsburg Road Pittsburgh, PA 15239	Plum Creek (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Monroeville Borough	PAG2000205085	Houston-Starr Company 300 Brushton Avenue Pittsburgh, PA 15221	Simpson Run (TSF)	Allegheny County CD (412) 241-7645
Allegheny County Collier Township	PAG2000205087	Woodville Associates 5020 Thoms Run Road Oakdale, PA 15071	Chartiers Creek (WWF)	Allegheny County CD (412) 241-7645
Beaver County Chippewa Township	PAG2000405014	Charles R. Fowler 146 Hickory Drive Beaver Falls, PA 15010	UNT to North Branch Brady's Run (TSF)	Beaver County CD (724) 378-1701
Somerset County Jenner Township	PAG2005605004	Department of Transportation Engineering District 9-0 1620 North Juniata Street Hollidaysburg, PA 16648	Quemahoning Creek (CWF)	Somerset County CD (814) 445-4652

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Somerset County Shade Township	PAG2005605005	Shade Creek Watershed Association 314 Central Avenue Suite 205 Central City, PA 15926	Laurel Run (CWF)	Somerset County CD (814) 445-4652
Somerset County Jenner Township	PAG2005605007	Somerset County Economic Development Council 125 North Center Avenue P. O. Box 48 Somerset, PA 15501	Quemahoning Creek (CWF)	Somerset County CD (814) 445-4652
Washington County South Strabane Township	PAR10W182	WCW, Inc. P. O. Box 10360 Pittsburgh, PA 15234	UNT to Chartiers Creek (WWF)	Washington County CD (724) 228-6774
Washington County Somerset Township	PAG2006305033	Hill Property, LLC 47866 Y and O Roads P. O. Box 2170 E. Liverpool, OH 43920	North Branch Pigeon Creek (WWF)	Washington County CD (724) 228-6774
Elk County Ridgway Township	PAG2002404002	Public Water Supply Extension to Village of Boot Jack Ridgway Township Municipal Authority P. O. Box 403 Ridgway, PA 15853	Clarion River Watershed (CWF)	Elk Conservation District (814) 776-5373

*General Permit Type—PAG-3**Facility Location:
Municipality & County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
South Abington Township Lackawanna County	PAR112225	Flowserve Corp. 942 Griffin Pond Road Clarks Summit, PA 18411	Ackerly Creek TSF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-2511 (570) 826-2511
Cumberland County Hampden Township	PAR803683	Sunoco Logistics Partners LLC 525 Fritztown Road Sinkling Spring, PA 19608	UNT to Cedar Run CWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Marshall Township Allegheny County	PAR806152	United States Postal Service P. O. Box 1000 Warrendale, PA 15086-9998	UNT of Brush Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

*General Permit Type—PAG-4**Facility Location:
Municipality & County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Buckingham Township Bucks County	PAG040035	Richard M. Vaccaro 1496 Sugar Bottom Road Furlong, PA 18925-140	UNT to Neshaminy Creek Watershed 2F	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Dorrance Township Luzerne County	PAG042204	Danny Wasielewski 8131 Blue Ridge Trail Wapwallopen, PA 18660-1854	Little Wapwallopen Creek CWF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511

*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Bedford County West Providence Township	PAG043530	Richard Koontz 9508 Black Valley Road Everett, PA 15537-9635	UNT to Clear Creek TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Summit Township Crawford County	PAG048341	Teresa R. and William Petronio, Jr. 7533 Agnew Road Linesville, PA 16424		DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Pine Grove Township Warren County	PAG048366	Robert V. Johnson 37 Peterson Hollow Road Russell, PA 16345-1207	Valentine Run	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Washington Township Erie County	PAG048686	Gayle S. Sheets 4089 Parkway Drive Edinboro, PA 16412	Darrows Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Summit Township Erie County	PAG049194	George Welka 8120 Footmill Road Erie, PA 16509	UNT to Walnut Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
North East Township Erie County	PAG049188	Matthew Probst 60 Gibson Street, Apt. 2 North East, PA 16428	UNT to Sixteen Mile Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Sparta Township, Crawford County	PAG049203	Elaine and Ronald Patterson 352 Marion Street Corry, PA 16407	UNT to East Branch Oil Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-5**Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Hilltown Township Bucks County	PAG050016	Sunoco Inc. (R & M) Automotive Laboratory P. O. Box 1135 Post Road and Blueball Avenue Marcus Hook, PA 19061	West Branch Neshaminy Creek 2F	Southeast Regional Office 2 East Main Street Norristown, PA 19401

*General Permit Type—PAG-7**Facility Location &
County/Municipality Permit No.*

<i>Facility Location & County/Municipality Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>	
West Cocalico Township Lancaster County	PAG073508	Ephrata Borough Authority 124 South State Street Ephrata, PA 17522	Eastern Industries Farm West Cocalico Township Lancaster County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

*General Permit Type—PAG-8**Facility Location &
County/Municipality Permit No.*

<i>Facility Location & County/Municipality Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>	
West Cocalico Township Lancaster County	PAG083565 PAG083566	Ephrata Borough Authority 124 South State Street Ephrata, PA 17522	Eastern Industries Farm West Cocalico Township Lancaster County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

<i>Facility Location & County/Municipality Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Monroe Township PAG083510 Cumberland County	Lower Allen Township Authority 120 Limekiln Road New Cumberland, PA 17070-2428	Ashcombe Farm Dairy Monroe Township Cumberland County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

General Permit Type—PAG-9 (SSN)

<i>Facility Location: Municipality & County</i>		<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Blair County Taylor Township	Permit No. PAG093535	Orchard Lane Excavating, Inc. R. D. 1, Box 62 Roaring Spring, PA 16673	Phillip Keith Farm	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

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

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

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

Permit No. 2904502, Public Water Supply.
Applicant **Leisure Living Retirement Home**

Municipality	Dublin Township
County	Fulton
Type of Facility	Permit is for existing un-permitted water system serving the retirement home.
Consulting Engineer	Lance S. Kegerreis, P. E. Dennis E. Black Engineering, Inc. 2400 Philadelphia Avenue Chambersburg, PA 17201
Permit to Construct Issued:	8/11/2005
Permit No. 0605512 MA, Minor Amendment , Public Water Supply.	
Applicant	Muhlenberg Township Authority
Municipality	Muhlenberg Township
County	Berks
Type of Facility	Project modifies the disinfection at Well Nos. 1, 2 and 6. Well Nos. 1 and 2 will switch from gas chlorine to sodium hypochlorite for disinfection. Well No. 6 will retain the gas chlorine disinfection and install a leak detection system for operator safety.
Consulting Engineer	James C. Elliot, P. E. Gannett Fleming, Inc. P. O. Box 67100 Harrisburg, PA 17106-7100
Permit to Construct Issued:	8/2/2005

Operations Permit issued to: **United Water Pennsylvania**, 7220015, Susquehanna Township, **Dauphin County** on 9/1/2005 for the operation of facilities approved under Construction Permit No. 2205501 MA.

Operations Permit issued to: **United Water Pennsylvania**, 7220015, Susquehanna Township, **Dauphin County** on 8/31/2005 for the operation of facilities approved under Construction Permit No. 2204509.

Operations Permit issued to: **Aqua Pennsylvania Inc.**, 7210048, Monroe Township, **Cumberland County**

on 9/2/2005 for the operation of facilities approved under Construction Permit No. 2104502.

Operations Permit issued to: **Knouse Foods Cooperative Inc.**, 7010400, Tyrone Township, **Adams County** on 7/18/2005 for the operation of facilities approved under Construction Permit No. 0103503.

Operations Permit issued to: **Fredericksburg Sewer and Water Authority**, 7380118, Bethel Township, **Lebanon County** on 8/29/2005 for the operation of facilities approved under Construction Permit No. 3805505 MA.

Operations Permit issued to: **DS Waters of America, LP**, 7366003, West Earl Township, **Lancaster County** on 8/29/2005 for the operation of facilities approved under Construction Permit No. 3605509 MA.

Operations Permit issued to: **Governor Mifflin School District**, 3060347, Brecknock Township, **Berks County** on 8/30/2005 for the operation of facilities approved under Construction Permit No. 3060347.

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

Permit No. 2404501, Public Water Supply

Applicant	Ridgway Township Municipal Authority
Borough or Township	Ridgway Township
County	Elk
Type of Facility	PWS
Permit to Construct Issued	09/01/2005

WATER ALLOCATIONS

Actions taken on applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth

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

WA 10-1008. Water Allocation Permit. The Department grants **Zelienople Borough, Butler County** a subsidiary application request for interconnection with Marion Township, Beaver County, for the purchase of up to 500,000 gallons per day, based on a 30 day average, as an emergency back-up source. Consulting Engineer: Thomas L. Thompson, P. E., Gannett Fleming Inc., 554 South Erie St., Mercer, PA 16137. Subsidiary Water Allocation Permit issued August 29, 2005.

STORMWATER MANAGEMENT

Action on plans submitted under the Storm Water Management Act (32 P. S. §§ 680.1—680.17)

Bureau of Watershed Management, P. O. Box 8555, Harrisburg, PA 17105-8555.

Plan No 064:36, Conestoga River Stormwater Management Plan, as submitted by **Lancaster County**, was approved on August 29, 2005.

Plan No 064:36, Conestoga River Stormwater Management Plan, as submitted by **Berks County**, was approved on August 29, 2005.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Cumberland Valley Township	1030 Dark Hollow Road Bedford, PA 15522	Bedford

Plan Description: The approved plan provides for the construction of a gravity sewer collection and conveyance system and a 22,000 gpd wastewater treatment facility to serve the Village of Centerville. The wastewater treatment facility will discharge to Evitts Creek, which is protected under 25 Pa. Code Chapter 93 as HQ-CWF. The Plan also provides for the adoption and implementation of an onlot sewage disposal system management program to address the area of the township outside the sewer service area. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Upper Mifflin Township	11 Roadway Drive Carlisle, PA 17013	Cumberland

Plan Description: The approved plan provides for the implementation of an onlot sewage disposal management program. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Belfast Township	121 Homestead Lane Needmore, PA 17238	Fulton

Plan Description: The approved plan provides for the construction of a 30,000 gpd wastewater treatment facility and sewage collection and conveyance facilities to serve the Village of Needmore. This treatment facility will discharge to Tonoloway Creek. The Plan provides for the adoption and implementation of an onlot sewage disposal system management program to serve the entire township. The Plan also provides for adoption of a holding tank ordinance. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location: on the north side of Knight Rd, one half mile east of Taneytown Rd.

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Cumberland Township	1370 Fairfield Rd. Gettysburg, PA 17325	Adams

Plan Description: The approved plan provides for the construction of a privately owned sewerage treatment system to serve a 49 lot single-family residential subdivi-

sion. The homes will generate an estimated 17,500 gpd of wastewater and the treatment plant will be tributary to Plum Run in Cumberland Township, Adams County. The name of the development is the Battlegrounds at Plum Run. The Department of Environmental Protection's review of the sewage facilities revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the responsible entity as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Strasburg Township	400 Bunker Hill Rd. Strasburg, PA 17579	Lancaster

Plan Description: The approved plan provides for expansion and relocation of a private wastewater treatment plant to serve combined existing and future sewage flows of 140,000 gpd from the Sight and Sound Theater Complex and the Hershey Farms Restaurant and Motel. The same discharge outfall location from the treatment plant to Pequea Creek will be used. Expansion to Sight and Sound will involve a second theater and hospitality center and expansion to Hershey Farms will involve 57 additional guest rooms, a conference center, increased banquet seats and additional employees. The site is located west of SR 896, Hartman Station Rd. approximately 0.5 mile south of the crossing of Pequea Creek. The Department of Environmental Protection (Department) code number is A3-36952-175-3 and the APS number is 558198. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
East Hanover Township	8848 Jonestown Road Grantville, PA 17028	Dauphin

Plan Description: Approval of a revision to the Official Sewage Plan of East Hanover Township, Dauphin County. The proposed Gerald Erskine subdivision consists of a Small Flow Treatment Facility serving a residential lot with a 400 gpd treated discharge to Manada Creek. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
East Hanover Township	222 Angle Road Grantville, PA 17028	Lebanon

Plan Description: Approval of a revision to the Official Sewage Plan of East Hanover Township, Lebanon County. The proposed Laborers District Council subdivision consists of a Small Flow Treatment Facility serving a commercial lot with a 600 gpd treated discharge to Indiantown Run. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Union Township	3111 State Route 72 Jonestown, PA 17038	Lebanon

Plan Description: Approval of a revision to the Official Sewage Plan of Union Township, Lebanon County. The proposed Twin Grove Park Campground development consists of a new Sewage Treatment Plant serving the existing campground and three future expansions with a 45,000 gpd treated discharge to a UNT of the Swatara Creek. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

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

Wyomissing Industrial Park (Western portion of the Former Goss Graphic Systems Site), Borough of Wyomissing, **Berks County**. American Analytical & Environmental Inc., 738 Front Street, Catasauqua, PA 18032, on behalf of Chip & Gary Real Estate Holdings, LLC, 500 Walnut Street, Birdsboro, PA 19508; Zenith Properties, LP, P. O. Box 5828, Wyomissing, PA 19610; and Chima, Inc., 126 North Second Street, Reading, PA 19601, submitted a revised combined Remedial Investigation and Final Report concerning remediation of VOCs groundwater contaminated with metals, chlorinated volatile and semi-volatile organic compounds. The report is intended to document remediation of the site to a combination of the Site-Specific and Nonresidential Statewide Health Standards.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

American Refinery Group, Foster Township, City of Bradford, **McKean County**. Raman Iyer, Chemtura Corp., 199 Benson Rd, Middlebury CT 06749 on behalf of Shephen Sherk, American Refinery Group, 77 N Kendall Ave., Bradford PA 16701 has submitted a Remedial Investigation Report and a Risk Assessment Report concerning the remediation of site soil and groundwater contaminated with volatile hydrocarbons and polycyclic aromatic hydrocarbons. The reports are intended to document remediation of the site to meet Site-Specific Standards.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is re-

quired by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

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

Armstrong World Industries—Building 800, City of Lancaster and Manheim Township, **Lancaster County**. Science Applications International Corporation, 6310 Allentown Boulevard, Harrisburg, PA 17112, on behalf of Armstrong World Industries, Inc., P. O. Box 3001, Lancaster, PA 17604-3001, submitted a Remedial Investigation Report and a Cleanup Plan concerning remediation of groundwater contaminated with solvents to a Site-Specific Standard. The Remedial Investigation Report and Cleanup Plan were approved by the Department of Environmental Protection on August 29, 2005.

Crompton Colors, Reading City, **Berks County**. Roux Associates, 1222 Forest Parkway, Suite 190, West Deptford, NJ 08066, on behalf of Crompton Manufacturing Company, Inc., 199 Benson Road, Middlebury, CT 06749, submitted a Final Report concerning remediation of site soils contaminated with fuel oil Nos. 2 and 6. The Final Report demonstrated attainment of a residential Statewide Health Standard, and was approved by the Department of Environmental Protection on August 31, 2005.

Sheetz, Inc., City of Altoona, **Blair County**. Geologic Services Corporation, 260 Executive Drive, Suite 500, Cranberry Township, PA 16066, on behalf of Sheetz, Inc., 5700 Sixth Avenue, Altoona, PA 16602, submitted a Final Report concerning the remediation of site soils contaminated with gasoline and diesel fuel. The Final Report demonstrated attainment of a Residential Statewide Health Standard, and was approved by the Department of Environmental Protection on August 31, 2005.

Second and Washington Streets Redevelopment Project, City of Reading, **Berks County**. Liberty Environmental, Inc., 10 North Fifth Street, Suite 800, Reading, PA 19601, on behalf of Greater Berks Development Fund, 19 North Sixth Street, Suite 200, Reading, PA 19603-8621, submitted a Remedial Investigation and Final Report concerning the remediation of site soils and groundwater contaminated with chlorinated solvents; fuel oil nos. 2, 4 and 6; leaded gasoline; MTBE and other organics. The Final Report demonstrated attainment of a nonresidential Statewide Health standard for the soil and a Site-Specific Standard for the groundwater. The Department on August 31, 2005 approved the combined Remedial Investigation and Final Report.

Tamarack Mobile Home Park, Providence Township, **Lancaster County**. Liberty Environmental, Inc., 10 North 5th Street, Suite 800, Reading, PA 19601 on behalf of Fred Steudler, 7335 River Road, Conestoga, PA 17516, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil. The report was submitted within 90 days of a release. The Final Report demonstrated attainment of a residential Statewide Health Standard, and was approved by the Department of Environmental Protection on September 1, 2005. Groundwater will be addressed in a separate report.

HAZARDOUS WASTE TRANSPORTER LICENSE

Actions on applications for Hazardous Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Hazardous Waste Transporter License Renewed

Philip Transportation and Remediation, P. O. Box 150, San Martin, CA 95046. License No. PA-AH0395. Effective August 4, 2005.

Clean Streams, Inc., P. O. Box 3059, Munster, IN 46321. License No. PA-AH0441. Effective August 10, 2005.

Philip Transportation and Remediation, Inc., P. O. Box 150, San Martin, CA 95046. License No. PA-AH0395. Effective August 11, 2005.

Midwest Environmental Transport, Inc., 10163 Cincinnati-Dayton Road, Cincinnati, OH 45241. License No. PA-AH0368. Effective August 12, 2005.

Auchter Industrial Vac Service, Inc., 4801 S. Wood Avenue, Linden, NJ 07036. License No. PA-AH0444. Effective August 15, 2005.

Emerald Environmental Services, Inc., 1621 St. Clair Avenue, Kent, OH 44240. License No. PA-AH0641. Effective August 15, 2005.

Chemtron Corporation, 33565 Pin Oak Pkwy, Avon Lake, OH 44012. License No. PA-AH0199. Effective August 22, 2005.

Clean Venture, Inc., 201 S. First Street, Elizabeth, NJ 07206. License No. PA-AH0299. Effective August 24, 2005.

SMP, Inc., 402 Route 519, Phillipsburg, NJ 08865. License No. PA-AHS221. Effective August 24, 2005.

Set Environmental, Inc., 450 Sumac Road, Wheeling, IL 60090. License No. PA-AHS226. Effective August 29, 2005.

Hazardous Waste Transporter License Voluntarily Terminated

Detrex Corporation, P. O. Box 5111, Southfield, MI 48086. License No. PA-AH0417. Effective August 24, 2005.

Hazardous Waste Transporter License Expired

Petroclean, Inc., 3 Dorrington Road, Carnegie, PA 15106. License No. PA-AH0109. Effective July 31, 2005.

Buckham Transport Limited, P. O. Box 601, Peterborough, ON K9J 6Z8. License No. PA-AH0336. Effective August 31, 2005.

Eco-Tron Transportation, Inc., 1906 Perry Dr. SW, Canton, OH 44706. License No. PA-AH0393. Effective August 31, 2005.

INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSE

Actions on applications for Infectious and Chemotherapeutic Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6) and regulations to transport infectious and chemotherapeutic waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Infectious and Chemotherapeutic Waste Transporter License Renewed

Onyx Waste Services, Inc., R. R. 2, P. O. Box 0, Route 219 N, Brockway, PA 15824. License No. PA-HC 0199. Effective August 12, 2005.

Weavertown Transport Leasing, Inc., 2 Dorrington Road, Carnegie, PA 15106. License No. PA-HC 0020. Effective August 19, 2005.

S. H. Biow-Waste, Ltd., P. O. Box 2117, Norristown, PA 19401. License No. PA-HC 0096. Effective August 26, 2005.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

AQ-SE-0014: Haines and Kibblehouse, Inc. (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on September 1, 2005, to operate a portable crushing plant in Lower Pottsgrove Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

GP3-06-03092D: Haines and Kibblehouse, Inc. (P. O. Box 196, Skippack, PA 19474) on September 1, 2005, for a Portable Nonmetallic Mineral Processing Plant under GP3 in Cumru Township, **Berks County**.

GP3-36-03076: New Enterprise Stone and Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) on September 2, 2005, for a Portable Nonmetallic Mineral Processing Plant under GP3 in East Earl Township, **Lancaster County**.

GP4-67-03095: Fox Pools, Corp. (3490 Board Road, York, PA 17402) on August 26, 2005, for One Natural Gas-fired Burn Off Oven under GP4 in Manchester Township, **York County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

GP4-19-194: Patriot Metal Products, Inc. (1005 North Vine Street, Berwick, PA 18603) on June 28, 2005,

to construct and operate a 398,000 Btu/hr natural gas fired Pollution Control Products Co. Controlled Pyrolysis model PTR-150 burn off oven in Berwick Borough, **Columbia County**.

GP5-18-01A: Linn Operating, LLC (395 Airport Road, Indiana, PA 15701) on August 26, 2005, to operate a 120 brake horsepower natural gas-fired reciprocating internal combustion compressor engine and associated air cleaning device (a catalytic converter) under the General Plan Approval and General Operating Permit for Natural Gas Production Facilities (BAQ-GPA/GP-5) at their Turner Station in Chapman Township, **Clinton County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

GP5-30-00106A: Equitable Production Co. (225 North Shore Drive, Pittsburgh, PA 15212) on August 29, 2005, to construct and operate a TEG dehydrator at their natural gas production facility in Franklin Township, **Greene County**.

GP5-30-00155: Energy Corp. of America (1380 Route 286 Highway East, Suite 221, Indiana PA 15701) on September 1, 2005, to install a natural gas compressor unit at the company's Henderson-King Compressor Station in Cumberland Township, **Greene County**, PA. A catalytic converter will reduce exhaust emissions to the atmosphere.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

23-0094A: CCL Label LLC (1515 Garnet Mine Rd., Boothwyn, PA 19061) on August 31, 2005, to operate a one part washer in Bethel Township, **Delaware County**.

09-0156B: Jolly Gardener Production, Inc. (500 East Pumping Station, Quakertown, PA 18951) on September 1, 2005, to operate a 630 hp diesel in Richland Township, **Bucks County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

41-305-009E: Keystone Filler and Manufacturing Co. (214 Railroad Street, Muncy, PA 17756) on August 16, 2005, to construct a rotary coal dryer (No. 5 dryer), associated conveying, processing and loadout systems and associated air cleaning devices (two fabric collectors) in Muncy Creek Township, **Lycoming County**.

57-310-001: Haines and Kibblehouse, Inc.—Dushore Construction Materials Division (2052 Lucon Road, Skippack, PA 19474) on August 29, 2005, to construct a stone crushing plant and associated air cleaning device (a water spray dust suppression system) in Cherry Township, **Sullivan County**.

47-00011A: Hanson Aggregate (PA) Inc. (2200 Springfield Pike, Connellsville, PA 15425) on June 14, 2005, to construct a 140 ton per hour Fisher Industries model 13-449 air separator and associated conveyors at their Milton quarry in Limestone Township, **Montour County**.

41-310-001I: Hanson Aggregate (PA) Inc. (2200 Springfield Pike, Connellsville, PA 15425) on June 14, 2005, to construction of a 200 ton per hour vertical shaft impactor crusher at their Pine Creek quarry in Limestone Township, **Lycoming County**.

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

10-281E: II-VI, Inc. (375 Saxonburg Blvd., Saxonburg, PA 16056) on May 23, 2005, to install a degreaser at Saxonburg, **Butler County**. This is a State-only V facility.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

46-322-007: Waste Management Disposal Services of PA, Inc. (1425 Sell Road, Pottstown, PA 19464) on September 2, 2005, to operate a municipal solid waste landfill in West Pottsgrove Township, **Montgomery County**.

09-0061: Donaldson Co., Inc.—Tetratex (85 Railroad Drive, Warminster, PA 18974) on August 30, 2005, to operate an extrusion line in Northampton Township, **Bucks County**.

15-0021: Glasgow, Inc. (P. O. Box 1089, Glenside, PA 19038) on August 30, 2005, to operate an asphalt plant and quarry in East Whiteland Township, **Chester County**.

46-0112: Palmer International, Inc. (P. O. Box 315, Skippack, PA 19474) on August 30, 2005, to operate a thermal oxidizer in Skippack Township, **Montgomery County**.

46-0232: Cemco Lift, Inc. (2801 Township Line Road, Hatfield, PA 19440) on August 30, 2005, to operate a spray paint booth in Hatfield Township, **Montgomery County**.

46-0232A: Cemco Lift, Inc. (2801 Township Line Road, Hatfield, PA 19440) on August 30, 2005, to operate two spray booths and a manual brush painting spray booth filters in Hatfield Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

36-05104A: Ephrata Manufacturing Co. (104 West Pine Street, Ephrata, PA 17522) on July 27, 2005, to construct a baghouse to control emissions from a sand muller and a sand conveying system in Ephrata Borough, **Lancaster County**. This plan approval was extended.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

49-303-006: Collier Materials Inc. (R. R. 2, Box 672, Shamokin, PA 17872) on August 25, 2005, to operate a batch asphalt concrete plant and associated air cleaning device (a fabric collector) on a temporary basis until December 23, 2005, in Ralpho Township, **Northumberland County**. The plan approval has been extended.

14-00014B: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on August 29, 2005, to revise an asphalt concrete production limitation for an asphalt plant to 980,000 tons in any 12-consecutive month period and to revise the annual facility-wide air contaminant emission limitations accordingly at the Pleasant Gap Plant in Spring Township, **Centre County**.

49-303-006: Collier Materials Inc. (R. R. 2, Box 672, Shamokin, PA 17872) on August 30, 2005, to extend the deadline to perform stack testing on a batch asphalt plant until November 25, 2005, in Ralpho Township, **Northumberland County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

30-00150A Wellington Development—WVDT, LLC (1620 Locust Avenue, Fairmont, WV 26554). on September 1, 2005, to modify two waste coal fired, circulating fluidized bed boilers with a net generating capacity of 525 megawatts at the Greene Energy Resource Recovery Project in Cumberland Township, **Greene County**.

This plan approval modification is to correct several errors contained in the plan approval and to include additional requirements for obtaining emission reduction credits (ERCs) as negotiated between Wellington Development and the Department of the Interior. The corrections are as follows:

- Revised Condition 4b. Corrected facility wide SO₂ emissions from 3,767.0 tpy to 3,767.1 tpy to include emissions from the emergency diesel engines. The 3,767.0 tpy reflects only SO₂ emissions from the CFB boilers.

- Revised Condition 4b. Corrected facility wide PM emissions from 289.7 tpy to 407.7 tpy and PM10 emissions from 289.7 tpy to 384.7 tpy to include particulate emissions from all other sources at the facility besides the CFB boilers. The 289.7 tpy reflects only PM/PM10 emissions from the CFB boilers.

- Revised Condition 3b to read "Limestone injection into the CFB and a dry polishing scrubber for SO₂ emission control."

The additional requirements for Class I Mitigation (ERCs) are as follows:

- New Condition 9b. Added requirement to secure an additional 411 tons of SO₂ ERCs.

- Added Condition 9i. Added requirement to provide 30-day advance notice to the Department of the Interior for the draft Title V Operating Permit.

The corrected conditions are as follows:

3. General Conditions

b) The Owner/Operator shall install the following air cleaning devices on the CFB boilers (Title 25 Pa. Code § 127.12b):

(i) Limestone injection into the CFB and a dry polishing scrubber for SO₂ emission control.

(ii) A fabric collector for particulate control.

(iii) Selective noncatalytic reduction (SNCR) for NOx control.

4. Stack Emissions Limitations

b) Emissions from the facility in any consecutive 12 month period shall be limited as follows (25 Pa. Code § 127.12b):

<i>Pollutant</i>	<i>Total (tpy)</i>
SO ₂	3,767.1
PM	407.7
PM ₁₀	384.7
NOx	1,949.4
CO	4,865
VOC	125
Lead	15.7
Beryllium	1.25
HF	33
HCl	161
H ₂ SO ₄	145
Mercury	22.05 lb/yr
Ammonia	157

9. Class I Mitigation (40 CFR Part 52)

The owner/operator shall secure Mitigation Offsets of SOx (as SO₂) in accordance with the following:

a. The Greene Energy sources herein authorized to be constructed, shall not operate unless and until Mitigation Offsets of 2,088 tons of SO₂ ERCs from the facilities specified in the mitigation plan presented on June 9, 2005, are secured or other SO₂ Mitigation Offsets are secured from other facilities not specified in the June 9, 2005, mitigation plan that result in equivalent or greater decreases in the sulfur deposition loadings at the Class 1 areas as the 2,088 tons of SO₂ ERCs specified in the June 9, 2005, mitigation plan based on appropriate Calpuff modeling.

b. The Greene Energy sources herein authorized to be constructed, shall not operate unless and until Mitigation Offsets of 411 tons of SO₂ ERCs, in addition to the ERCs required by Condition 9a, are secured from facilities included in the Pennsylvania ERC Registry.

c. The actual emission reductions that the Mitigation Offsets represent must have occurred and must be established in a Federally enforceable operating permit condition for the generating sources prior to operation of the Greene Energy sources.

d. For the purposes of this approval the Mitigation Offsets shall be surplus, permanent, quantified and Federally enforceable in accordance with 25 Pa. Code § 127.207(1).

e. For the purposes of this approval the Mitigation Offsets shall be calculated by establishing the baseline in accordance with 25 Pa. Code § 127.207(4).

f. For the purposes of this approval the Mitigation Offsets shall be generated by the techniques listed under 25 Pa. Code § 127.207(5).

g. Once the Mitigation Offsets are secured in accordance with this Plan Approval special condition they are no longer available for other uses (internal netting, sale, transfer or exchange for other purposes, ERCs, etc).

h. The Mitigation Offsets shall be certified by the Department. Upon certification by the Department and notice that all offsets have been secured, no further mitigation shall be necessary.

i. The Department of Environmental Protection shall provide the Department of the Interior a copy of the draft Title V Operating Permit (TVOP); operating data sufficient to determine the 24-hour, 30-day rolling, and annual average sulfur dioxide emissions and control efficiencies; and any Department staff analysis; a minimum of 30-days prior to publishing Notice of Intent to Issue the TVOP in the *Pennsylvania Bulletin*.

65-00280A: Kalumetals, Inc. (P. O. Box 455, Latrobe, PA 15650) on September 2, 2005, to complete preparation of the new thermal oxidizer equipment at their Car Bottom Furnace in Derry Township, **Westmoreland County**. This plan approval was extended.

56-00025F: New Enterprise Stone and Lime (P. O. Box 77, New Enterprise, PA 16664) on September 2, 2005, to complete the addition of new stone crushers, screens and conveyor systems to their Bakersville Quarry in Jefferson Township, **Somerset County**. This plan approval was extended.

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

24-083E: Carbone of America—Graphite Materials Division (215 Stackpole Street, St. Marys, PA 15857) to install car kilns in Benzinger Township, **Elk County**.

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

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

23-00011: Sunoco Partners Marketing and Terminal LP (1801 Market Street, 22nd Floor 10 Penn Center, Philadelphia, PA 19103) on September 1, 2005, to include 23 external floating roof tanks, one fixed roof tank and a wastewater separator to the existing facility in Darby Township, **Delaware County**.

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

63-00066: Wheeling Pittsburgh Steel Corp. (1134 Market Street, Wheeling, WV 26003) on August 29, 2005, for a renewal of their Title V operating permit to operate a steel manufacturing facility in Allenport Borough, **Washington County**. The facility includes a continuous strip pickling line with a hydrochloric acid (HCl) scrubber, two 60.5 mmBtu/hr boilers, 35 annealing furnaces, and other small sources. This permit incorporates the conditions from plan approval PA-63-066A for the replacement of the HCl scrubber. The facility is subject to Title V requirements because its potential to emit HCl is greater than 10 tons per year (tpy) and its potential to emit NOx is greater than 100 tpy.

65-00720: Carbidie Corp. (Arona Road, P. O. Box 509, Irwin, PA 15642) on September 1, 2005, to produce cemented tungsten carbide. This facility is a major facility for VOC emission. The main source of VOC emissions is the mixing and drying of powder located in Hempfield Township, **Westmoreland County**. This is a TV Renewal.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

42-00174: Rustick, LLC (19 Ness Lane, Kane, PA 16735) on August 30, 2005, to issue a Title V Amendment Operating Permit to operate their landfill in Sergeant Township, **McKean County**. As a result of potential emissions of NOx and VOC, the facility is not a major source, and is therefore not subject to Reasonable Available Control Technology. The issued amended Title V Operating Permit does not reflect any changes in air emission from the facility. The facility is subject to Title V permitting requirements adopted in 25 Pa. Code Chapter

127, Subchapter G. The facility is subject to Compliance Assurance Monitoring under 40 CFR Part 64.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

23-00103: Elwyn, Inc. (111 Elwyn Road, Elwyn, PA 19063) on September 1, 2005, to include three boilers and eight emergency generators to their existing facility Synthetic Minor Operating Permit in Middletown Township, **Delaware County**.

09-00175: Hanson Aggregates—BMC Inc. (P. O. Box 231, Easton, PA 18044) on September 2, 2005, to operate a stone crushing/quarry facility of a Synthetic Minor Operating Permit in Wrightstown Township, **Bucks County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

07-05027: Millennium Rail, Inc. (P. O. Box 349, Hollidaysburg, PA 16648-0349) on August 29, 2005, to operate their railcar reconditioning facility in Frankstown Township, **Blair County**.

67-03076: Oakworks, Inc. (923 East Wellspring Road, New Freedom, PA 17349) on August 31, 2005, to operate their massage therapy equipment manufacturing facility in Hopewell Township, **York County**. This is a renewal of their operating permit.

67-03126: Yorkshire Animal Hospital (3434 East Market Street, York, PA 17402-2621) on August 31, 2005, to operate an animal crematory at their facility in Springettsbury Township, **York County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

14-00034: Jostens, Inc. (401 Science Park Road, State College, PA 16803) on August 9, 2005, to operate a printing facility in Ferguson Township, **Centre County**.

18-00010: Glenn O. Hawbaker, Jr. (711 East College Avenue, Bellefonte, PA 16823) on August 23, 2005, to operate an asphalt pavement production facility in Mill Hall Borough, **Clinton County**.

59-00020: Carleton Funeral Home, Inc. (11470 Route 6, Wellsboro, PA 16901) on August 29, 2005, to operate a human remains crematory facility in Charleston Township, **Tioga County**.

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

03-00145: Praxair, Inc. (P. O. Box 509, Barberton, OH 44203) on August 22, 2005, to operate a hydrogen and nitrogen production facility at their facility near Kiski Avenue, Bagdad, PA in **Armstrong County**.

65-00361: Coen Oil Co. (P. O. Box 34, 1100 West Chestnut Street, Washington, PA, 15301-0034) on August 30, 2005, to operate a small gasoline bulk plant in South Greensburg Borough, **Westmoreland County**. The facility's major sources of emissions are two gasoline storage tanks.

30-00112: Equitable Production Co. (1710 Pennsylvania Avenue, Charleston, WV 25302) on August 31, 2005, for a State-only operating permit for two internal combustion engines at their Mt. Morris Compressor Station in Dunkard Township, **Greene County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

37-00266: Shenango Area School District (2501 Old Pittsburgh Road, New Castle, PA 16101) on August 31, 2005, to operate two coal/natural gas fired boilers, several small miscellaneous gas fired water heaters, and a back up emergency generator in Shenango Township, **Lawrence County** to continue

10-00168: Suburban Oil Services LLC (601 Hansen Avenue, Butler, PA 16001) on August 29, 2005, for a Natural Minor operating permit for their Butler Oil and Gas Distribution Plant in the City of Butler, **Butler County**.

16-00141: Kahles Kitchens, Inc. (7488 Route 36, Leeper, PA 16233) on August 30, 2005, to operate a wood cabinetry manufacturing processes and surface coating operations in Farmington Township, **Clarion County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

46-00227: Schmidt Structural Products, Inc. (38 Souderton Pike, Souderton, PA 18964) on September 1, 2005, for an Administrative Amendment to State-only (Synthetic Minor) Operating Permit No. SMOP-46-00227, in Franconia Township, **Montgomery County**. The Administrative Amendment incorporates the Change of Ownership of this facility. The following changes have been addressed in the amended State-only Operating Permit:

The owner and plant names have been changed to Schmidt Structural Products, Inc.

The responsible official and permit contact person have been changed to Eric Brown, Vice President and General Manager, (215) 721-8300.

Source ID 101, S01 and S02 have been renamed to provide clarification.

The reference to compliance certifications has been removed from Condition No. 018(d), Section B, of the permit.

The numbering format for Condition No. 002, Section C, of the permit, has been changed to be consistent with the rest of the permit.

The wording of Condition No. 010(b), Section C, of the permit has been revised to specify that any fugitive particulate emissions that originate onsite are required to comply with Condition No. 010(b)(1)—(3), Section C, of the permit, not only those that originate onsite and cross the property line.

The references to compliance certifications and semi-annual monitoring reports have been removed from Condition No. 010(e), Section C, of the permit.

The wording of Condition No. 011, Section C, of the permit has been revised to specify that the sources where any deviations are observed is required to be recorded.

Condition No. 012, Section C, of the original permit has been moved to Condition No. 011(b), Section C, of this permit.

An accidental release program/Risk Management Plan requirement has been added to Condition No. 014, Section C, of this permit.

The Department of Environmental Protection's (Department) telephone number at which to report any malfunctions, as specified in Condition No. 015(a), Section C, of this permit, has been changed to (484) 250-5920.

Additional authority citations to 25 Pa. Code § 127.443 have been added to Condition Nos. 001—002, 007—008, 010—017, and 019, Section D, of the permit. Administrative Amendment of State-only Operating Permit No. SMOP-46-00227 is issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450.

46-00244: Acme Corrugated Box Company, Inc. (2700 Turnpike Drive, Hatboro, PA 19040) on September 2, 2005, to amend to address comments of draft permit to the existing Natural Minor Operating Permit in Upper Moreland Township, **Montgomery County**.

46-00037 Cabot Supermetals (County Line Road, Boyertown, PA 19512) on August 31, 2005, in Douglass Township, **Montgomery County**. The following conditions of Title V Operating Permit were amended: (a) Source 102—Tantalum Salt process, Building 19—condition No. 005 pertaining to the production rate of Tantalum salts was removed; and (b) Source 124—Extraction Process, Building 74—the Hydrogen Fluoride emission limit was reduced from 1.1 tons per year to 0.9 ton per year and the VOCs emission limit was reduced from 180.3 tons per year to 160.8 tons per year. In addition, the monitoring and recordkeeping requirements for Methylisobutylketone recovery system were added.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

14-00014: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on August 29, 2005, via the minor operating permit modification requirements of 25 Pa. Code § 127.462, to revise an asphalt concrete production limitation for an asphalt plant to 980,000 tons in any 12-consecutive month period and to revise the annual facility-wide air contaminant emission limitations accordingly at their Pleasant Gap Plant in Spring Township, **Centre County**.

17-399-018: Metaltech, Inc. (Route 219 South, R. D. 1, Box 26, Dubois, PA 15801) on August 25, 2005, to allow the use of additional lubricants/lubricant blends in three powdered metal parts sintering furnaces in Sandy Township, **Clearfield County** by means of the minor operating permit modification requirements of 25 Pa. Code § 127.462,.

59-00018: Hanson Aggregate (PA) Inc. (2200 Springfield Pike, Connellsville, PA 15425) on August 3, 2005, issued a revised State-only operating permit to incorporate the terms and conditions to operate a Detroit Diesel Corporation diesel fired generator at their Blossburg Quarry in Liberty Township, **Tioga County**. This State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

19-00023: Impress USA Inc. (6670 Low Street, Bloomsburg, PA 17815) on August 22, 2005, issued a revised State-only operating permit to incorporate the terms and conditions for the operation of an end score coating repair operation at their can making facility in South Centre Township, **Columbia County**. This State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

33-00155: Trail King Industries, Inc. (147 Industrial Park Road, Brookville, PA 15825) on August 22, 2005, for an amendment of the Natural Minor operating permit to incorporate the requirements of plan approval 33-0155B. The facility is in Pine Creek Township, **Jefferson County**.

10-00148: Ervin Industries, Inc. (681 East Butler Road, Butler, PA) on August 30, 2005, for a natural minor operating permit amendment to incorporate the requirements of plan approval 10-0148B in Summit Township, **Butler County**.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

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

Coal Permits Actions

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

56733702 and NPDES Permit No. PA0110035, Robindale Energy Services, Inc. (224 Grange Hall Road, P. O. Box 228, Armagh, PA 15920), to renew the permit for the Marmon Refuse Site in Jenner Township, **Somerset County** and related NPDES permit. No additional discharges. Permit issued August 26, 2005.

56743705 and NPDES Permit No. NA, Pristine Resources, Inc. (3250 Interstate Drive, Richfield, OH 44286), to transfer the permit for the Windber Mine No. 78 CRDA in Paint Township, **Somerset County** from Beth Energy Mines, Inc. No additional discharges. Permit issued August 26, 2005.

56841328 and NPDES Permit No. PA0033677, Pristine Resources, Inc. (3250 Interstate Drive, Richfield, OH 44286), to transfer the permit for the Windber Mine No. 78 in Paint Township, **Somerset County** from Beth Energy Mines, Inc. No additional discharges. Permit issued August 26, 2005.

17941601 and NPDES Permit No. PA0215708, Forcey Coal, Inc. (P. O. Box 225, Madera, PA 16661), to renew the permit for the Tipple Operation in Bigler Township, **Clearfield County** and related NPDES permit. No additional discharges. Permit issued August 29, 2005.

11841301. NPDES Permit No. PA0001317, Pristine Resources, Inc. (3250 Interstate Drive, Richfield, OH 44286), to transfer the permit for the Cambria Slope Mine No. 33 in Cambria Township, **Cambria County** from Beth Energy Mines, Inc. No additional discharges. Permit issued September 1, 2005.

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

56040104 and NPDES Permit No. PA0249599. AMFIRE Mining Company, LLC, One Energy Place, Suite 7500, Latrobe, PA 15650, commencement, operation and restoration of a bituminous surface mine in Jenner Township, **Somerset County**, affecting 96.4 acres. Receiving streams: UNTs of Flat Run to Flat Run and UNTs to Gum Run to Gum Run to Roaring Run to Quemahoning Creek to Stonycreek River classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Quemahoning Reservoir. Application received July 1, 2004. Permit issued: August 30, 2005.

32030108 and NPDES Permit No. PA0249491. P & N Coal Company, Inc., P. O. Box 332, Punxsutawney, PA 15767, for commencement, operation and restoration of a bituminous surface mine in Grant Township, **Indiana County**, affecting 69.7 acres. Receiving streams: UNT to Rairigh Run and Rairigh Run classified for the following use: HQ-CWF. There are no potable water supply intakes within 10 miles downstream. Application received July 1, 2003. Permit issued August 30, 2005.

05773002 and NPDES No. PA0605964. Black Dog Mining, Inc., 4891 Lincoln Highway, Stoystown, PA 15563, transfer of an existing bituminous surface mine from Dash Coal Company Inc., P. O. Box 517, Stoystown, PA 15563, and permit renewal for the continued operation and restoration of a bituminous surface mine and sandstone removal operation located in Broad Top Township, **Bedford County**, affecting 258.5 acres. Receiving streams: UNT to Six Mile Run and Six Mile Run, and UNT to Shreves Run and Shreves Run classified for the following use: WWF. There are no potable water supply intakes within 10 miles downstream. Application received February 15, 2005. Permit issued August 30, 2005.

Permit No 11000101 and NPDES No. PA0235261. Bell Resources, Inc., permit renewal for reclamation only of a bituminous surface auger mine in Reade Township, **Cambria County**, affecting 44.4 acres. Receiving stream: UNTs to Muddy Run, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received July 1, 2005. Permit issued August 31, 2005.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

10000103 and NPDES Permit No. PA0241776. Seneca Landfill, Inc. (P. O. Box 1080, Mars, PA 16046). Renewal of an existing bituminous surface strip operation in Jackson and Lancaster Townships, **Butler County** affecting 281.1 acres. Receiving stream: UNT to Connoquenessing Creek. Application received: April 4, 2005. Permit issued August 31, 2005.

33040102 and NPDES Permit No. PA0242519. MSM Coal Company, Inc. (P. O. Box 243, DuBois, PA 15801).

Revision to an existing bituminous surface strip operation in Union Township, **Jefferson County** affecting 35.0 acres. Receiving stream: UNT 1 to Little Millcreek. Revision for an incidental boundary correction to add 4.5 acres to the permit area. Application received: June 1, 2005. Permit issued August 2, 2005.

1642-10010112-E-1. T. C. Mining (252 Lower Hayes Run Road, Kittanning, PA 16201). Application to revise a stream encroachment to remove and reestablish a portion of a UNT to the South Branch of Slippery Rock Creek in Clay and Concord Townships, **Butler County** affecting 186.7 acres. Receiving stream: UNT to South Branch Slippery Rock Creek, classified for the following use: CWF. Application received: May 31, 2005. Issued August 4, 2005.

1642-10010112-E-2. T. C. Mining (252 Lower Hayes Run Road, Kittanning, PA 16201). Application for a stream encroachment to construct erosion and sedimentation controls and conduct mining operations within the 100 foot stream barrier of a UNT in Clay and Concord Townships, **Butler County** affecting 186.7 acres. Receiving stream: UNT to South Branch Slippery Rock Creek, classified for the following use: CWF. Application received: May 31, 2005. Issued August 4, 2005.

Noncoal Permits Actions

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

37050302 and NPDES Permit No. PA0242632. Quality Aggregates, Inc. (200 Neville Road, Neville Island, PA 15225-0347). Commencement, operation and restoration of a limestone operation in Slippery Rock Township, **Lawrence County** affecting 100.0 acres. Receiving streams: Seven UNTs to Slippery Rock Creek. Application received: February 23, 2005. Permit issued August 29, 2005.

16052804. Hillside Stone (9397 Fauncetown Road, Titusville, PA 16354). Commencement, operation and restoration of a small noncoal shale operation in Troy Township, **Crawford County** affecting 5.0 acres. Receiving stream: East Branch Sugar Creek. Application received: March 3, 2005. Permit issued: August 30, 2005.

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

08050805. Kenneth Shedden (R. R. 1, Box 99F, Leraysville, PA 18829). Commencement, operation and restoration of a small industrial minerals (bluestone) permit in Monore Township, **Bradford County** affecting 5.0 acres. Receiving stream: Kent Run to South Branch. Application received June 16, 2005. Permit issued August 23, 2005.

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

58050822. Tammy Lynn Norton (R. R. 2 Box 135C, New Milford, PA 18834), commencement, operation and restoration of a quarry operation in Liberty Township, **Susquehanna County** affecting 5.0 acres. Receiving stream: DuBois Creek. Application received May 12, 2005. Permit issued August 31, 2005.

21052802. Danny G. Forrester (100 Fox Hill Road, Shippensburg PA 17257), commencement, operation and restoration of a quarry operation in Hopewell Township, **Cumberland County** affecting 4.5 acres. Receiving stream: Conodoguinet Creek. Application received June 3, 2005. Permit issued September 1, 2005.

21052801. Danny G. Forrester (100 Fox Hill Road, Shippensburg PA 17257), commencement, operation and restoration of a quarry operation in Hopewell Township, **Cumberland County** affecting 4.5 acres. Receiving stream: Conodoguinet Creek. Application received June 3, 2005. Permit issued September 2, 2005.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (73 P. S. §§ 151—182.4) and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

42054002. McKean County Solid Waste Authority (19 Ness Lane, Kane, PA 16735). Blasting activity permit to develop cells for solid waste in Sergeant Township, **McKean County**. This blasting activity permit will expire on August 29, 2006. Application received: August 29, 2005. Application issued: August 29, 2005.

33054003. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767) Blasting activity permit for the demolition of a coal tipple, three towers and three hoppers in Ringgold Township, **Jefferson County**. The blasting activity permit will expire on October 14, 2005. Application received: July 21, 2005. Permit Issued: July 25, 2005.

33054004. Francis J. Palo, Inc. (309 South 4th Avenue, P. O. Box 368, Clarion, PA 16214). Blasting activity permit for road construction in Henderson Township, **Jefferson County**. The blasting activity permit will expire on October 2, 2005. Application received: July 27, 2005. Permit Issued: August 2, 2005.

37054004. ESSROC Cement Corp. (P. O. Box 779, Bessemer, PA 16112). Blasting activity permit to improve drainage on a haul road in North Beaver Township, **Lawrence County**. The blasting activity permit will expire on October 14, 2005. Application received: July 27, 2005. Permit Issued: August 2, 2005.

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

15054122. Allan A. Myers, Inc. (P. O. Box 98, Worcester, PA 19490), construction blasting for Kimberton Meadows in East Pikeland Township, **Chester County** with an expiration date of December 31, 2006. Permit issued August 29, 2005.

28054149. David H. Martin Excavating, Inc. (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting for Highlands of Greenvillage West in Greene Township, **Franklin County** with an expiration date of August 23, 2005. Permit issued August 29, 2005.

40054118. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431), construction blasting for Oakmont Acres II in Hazle Township, **Luzerne County** with an expiration date of September 1, 2006. Permit issued August 29, 2005.

40054119. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for a home in Lake Township, **Luzerne County** with an expiration date of December 31, 2005. Permit issued August 29, 2005.

67054042. Rogele, Inc. (1025 South 21st Street, P. O. Box 1757, Harrisburg, PA 17105-1757), construction blasting for Pennsylvania American Water Company's West Shore Off-Site Transmission Mains in Fairview Township, **York County** with an expiration date of November 30, 2005. Permit issued August 31, 2005.

46054018. Explo-Craft, Inc. (P. O. Box 1332, West Chester, PA 19380), construction blasting for Glaxo Smith Kline in Upper Merion Township, **Montgomery County** with an expiration date of September 30, 2006. Permit issued August 31, 2005.

21054161. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for The Preserves in Hampden Township, **Cumberland County** with an expiration date of August 30, 2006. Permit issued August 31, 2005.

36054147. Keystone Blasting Service (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for Fisher Project in Upper Leacock Township, **Lancaster County** with an expiration date of December 30, 2005. Permit issued August 31, 2005.

67054131. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Wind-ing Brook Subdivision in Warrington Township, **York County** with an expiration date of August 30, 2006. Permit issued August 31, 2005.

38054122. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for a pool in North Cornwall Township, **Lebanon County** with an expiration date of November 30, 2005. Permit issued September 1, 2005.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

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

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

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

E54-321. Richard J. and Patricia A. Withelder, 88 West Donaldson Street, Zerbe, PA 17981. Branch Township, **Schuylkill County**, Army Corps of Engineers Philadelphia District.

To place fill in 0.3 acre of PEM wetlands for the purpose of constructing storage units and a carwash on an 11.3 acre commercial property. The permittee is required to provide 0.3 acre of replacement wetlands. The project is located on the south side of SR 0209, just east of Township Road T570 (Brickey Road) (Minersville, PA Quadrangle N: 8.4 inches; W: 4.6 inches). (Subbasin: 3A)

E45-465. Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E. Charleston, WV 25314. Smithfield and Middle Smithfield Townships, **Monroe County**. Army Corps of Engineers Philadelphia District.

To remove the existing 14-inch diameter natural gas transmission line and to construct and maintain 27 utility line wetland crossings, including the construction of temporary equipment crossings for access through wetlands, temporarily impacting approximately 4.0 acres of wetlands and 27 utility line stream crossings, including cathodic protection measures, associated with the installation of a 20-inch diameter natural gas transmission line along a 13.4 mile segment of existing Pipeline 1278 right-of-way (R.O.W.) as identified on the attached lists. The purpose of the project is to replace the aged and deteriorated existing 14-inch diameter transmission line with a 20-inch diameter transmission line and work will occur in the existing 50-foot R.O.W. with the possibility of an additional 25-foot R.O.W. for construction purposes. The project begins at the Northampton County/Monroe County boundary (Stroudsburg, PA-NJ Quadrangle N: 13.3 inches; W: 4.4 inches) and continues north to the Monroe County/Pike County boundary (Bushkill, PA-NJ Quadrangle N: 15.1 inches; W: 4.3 inches) in Middle Smithfield Township, Monroe County.

E48-344. Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E. Charleston, WV 25314. Lower Mount Bethel, Upper Mount Bethel and Washington Townships, **Northampton County**, Army Corps of Engineers Philadelphia District.

To remove the existing 14-inch diameter natural gas transmission line and to construct and maintain 45 utility line wetland crossings, including the construction of

temporary equipment crossings for access through wetlands, temporarily impacting approximately 10.6 acres of wetlands and 27 utility line stream crossings, including cathodic protection measures, associated with the installation of a 20-inch diameter natural gas transmission line along a 13.7 mile segment of existing Pipeline 1278 right-of-way (R.O.W.) as identified on the attached lists. The purpose of the project is to replace the aged and deteriorated existing 14-inch diameter transmission line with a 20-inch diameter transmission line and work will occur in the existing 50-foot R.O.W. with the possibility of an additional 25-foot R.O.W. for construction purposes. The project begins just south of an existing compressor station in Forks Township (Bangor, PA-NJ Quadrangle N: 2.9 inches; W: 13.7 inches) and continues north to the Northampton County/Monroe County boundary (Stroudsburg, PA-NJ Quadrangle N: 13.3 inches; W: 4.4 inches) in Upper Mount Bethel Township, Northampton County.

E35-367. Lackawanna County, County Administration Building, 200 Adams Avenue, Scranton, PA 18503. Covington Township, **Lackawanna County**, Army Corps of Engineers Baltimore District.

To remove the existing structure and to construct and maintain a 28-foot wide single span precast concrete arch bridge having a 32-foot span and a 7.2-foot underclearance across East Branch Roaring Brook (HQ-CWF) and to place fill in a de minimis area of PFO, PSS and PEM wetlands equal to 0.03 acre. The project is located on Freytown Road (T-347) approximately 0.8 mile southeast of Turnersville Road (Sterling, PA Quadrangle N: 9.9 inches; W: 12.7 inches). (Subbasin: 04A)

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

E22-486: Joan E. Bretz, 4081 Greystone Drive, Harrisburg, PA 17112 in West Hanover Township, **Dauphin County**, ACOE Baltimore District

To fill 0.15 acre of Palustrine Emergent Wetland and to construct and maintain outfall pipes and related improvements at the channel of a UNT to Manada Creek (WWF), to construct Clover Hill Business Park located on the southeast side of the SR 39 and US 22 intersection (Hershey, PA Quadrangle N: 16.3 inches; W: 11.68 inches) in West Hanover Township, Dauphin County. The applicant is required to provide 0.15 acre of replacement wetland. The issuance of this permit also constitutes approval of a Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

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

E08-422. Department of Transportation, Engineering District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. Bridge replacement, in Ulster and Sheshequin Township, **Bradford County**, ACOE Baltimore District (Towanda, PA Quadrangle N: 18 inches; W: 16.3 inches).

1) Replace the existing 2,011-foot long, 14 span through truss bridge which has a clear roadway width of 18 feet, 4 Pratt through-truss spans each 237 feet 4 inches long and 10 warren pony truss spans, each 103 feet 4 inches, on a 90° skew with substructures consisting of a 2 stone masonry abutments and 13 stone masonry piers. The maximum underclearance is about 30 feet while the minimum underclearance is about 7 feet.

2) Construct and maintain a 1,900-foot long prestressed concrete I-beam superstructure. The structure

consists of 12 spans of 158 feet 7 inches each and a composite deck support on reinforced concrete piers and abutments. The structure alignment will be shifted approximately 165 feet to the south at the east end to meet the section of SR 1022 which comes from North Rome, at its intersection with SR 1043 in Ulster Township, Bradford County and will tie into the existing roadway about 350 feet west of the west abutment. The proposed structure will be on a skew of 90° with a minimum and maximum underclearance of 12 and 32 feet respectively with a clear roadway width of 34 feet 0 inches. R-8 riprap lining is to be placed in front of both abutments and around piers 1 to 5 in the river channel and R-6 lining is to be placed around piers 6 to 11 on the east flood plain.

3) Construct, maintain and remove a 6"—8" deep rock temporary access road of to provide access to the bridge construction site and causeways A and B from SR1043 construct abutment No. 2 and piers 6—11.

4) Construct, maintain and remove temporary causeway A including three bridge openings to sustain river and aquatic movement across the North Branch Susquehanna River.

5) Construct, maintain and remove causeway B stage I to provide access for demolition and removal of span 1 and 2 trusses and pier 1 of the existing bridge.

6) Construct, maintain and remove causeway B Stage II to provide access for demolition and removal of spans 3 and 4 trusses and piers 2 and 3 of the existing bridge.

7) To replace the existing 84-inch diameter by 55 foot long CMP located at the intersection of SR 1022 and SR 1043.

8) Temporarily impact a UNT to the Susquehanna River by installing a 48-inch diameter RCP pipe to carry the stream under the temporary roadway beneath span 11 of the proposed bridge.

9) Replace existing pipe carrying a UNT to the Susquehanna River under SR 1043 with a new 30 inch diameter reinforced concrete pipe with a rock outlet north of the intersection of SR 1043 with Bridge Street at station 39+50.

10) Replace existing 84-inch diameter RCP pipe with an 84-inch diameter reinforced concrete pipe to carry an intermittent UNT with an internal energy dissipater and rock outlet under SR 1043 at station 35+00.

11) Relocation of about 200 linear feet of the intermittent tributary mentioned previously to avoid the construction road embankment and new bridge abutment.

The proposed bridge will cross the North Branch of the Susquehanna River on SR 1022, Section 003 in the village of Ulster in Ulster Township, Bradford County.

The project will temporarily impact about 0.09 acre of Palustrine Forested Wetlands and 350 feet of waterway and about 3 acres of earth disturbance. The North Branch of the Susquehanna River is a WWF Stream.

E12-155. Ronald R. Tusing, 445 Sizerville Road, Emporium, PA 15834. Tusing dwelling addition in floodway, in Shippen Township, **Cameron County**, Baltimore ACOE District, (Emporium, PA Quadrangle N: 2.5 inches; W: 12.75 inches).

To modify and maintain a single-family dwelling in the 100-year floodway of Sinnemahoning, Portage Creek. The

single-family dwelling shall be modified by constructing an 18 foot by 15 foot concrete floored patio. The Tusing project is located along the western right-of-way of SR 0155 approximately 2,254 feet north of SR 0120 and SR 0155 intersection.

E14-476. Nevin Pighetti, P. O. Box 256, Milesburg, PA 16853. Private Driveway Culvert, in Boggs Township, **Centre County**, ACOE Baltimore District (Bellefonte, PA Quadrangle N: 17.61 inches; W: 0.83 inch).

To: 1) construct and maintain an 81 inch by 59 inch by 40 foot arch culvert depressed 1 foot in the streambed; 2) place R-5 riprap on the inlet and outlet earthen head walls; and 3) place about 70 linear feet of R-4 riprap for a stormwater discharge swale and splash pad. The culvert will be located in a private driveway in a UNT to Bald Eagle Creek about 200 feet north of Neff Road and 1,200 feet northwest of the intersection of Neff Road with SR 150.

The project will not impact wetlands while impacting about 60 feet of waterway and less than 0.05 acre of earth disturbance. The UNT to Bald Eagle Creek is a CWF Stream.

E14-479. Kenneth Fiedler, Rugged Mountain Hunting Club, Inc., 1156 Centre Street, Bellefonte, PA 16823. Water Obstruction and Encroachment Joint Permit Issuance, in Haines Township, **Centre County**, ACOE Susquehanna River Basin District (Millheim, PA Quadrangle N: 9.8 inches; W: 1.6 inches).

To construct and maintain 20 linear feet of a 36-inch diameter culvert pipe in a UNT to Fox Gap Run, located 1.2 miles north of the Cemetery Road intersection with Fox Gap Road along Fox Gap Road in Haines Township, Centre County. This project proposes to have a minimal impact on the UNT to Fox Gap Run, which is designated an Exceptional Value waterway. The project does not propose to impact any jurisdictional wetlands. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E14-480. Michael J. Furl, 1453 Runville Road, Bellefonte, PA 16823. 2123 Runville Road Bridge, in Boggs Township, **Centre County**, ACOE Baltimore District (Bellefonte, PA Quadrangle N: 21.32 inches; W: 13.57 inches).

To: 1) remove two existing culvert pipes; 2) construct and maintain a stream crossing consisting of two 42-foot by 8-foot metal and wood plank flat bed trailers side-by-side and abutments that have a clear span of 12 feet and an underclearance of 6 feet across Wallace Run; and 3) install and maintain 100 linear feet of buried pipe and an in-stream perforated intake pipe to supplement a spring fed pond's water supply, located 1,100 feet north of Brenda's Tavern on SR 144. This project proposes to permanently impact 20 feet of Wallace Run that is classified an EV-CWF.

E17-407. Mosquito Creek Sportsmen Association, P. O. Box 218, Frenchville, PA 16836. Deserter Run/Lost Run Vertical Flow and Gifford Run High Flow Buffer Channel Project for Acid Precipitation Abatement in Girard Township, **Clearfield County**, ACOE Baltimore District (The Knobs, PA Quadrangle N: 10.38 inches; W: 5.9 inches).

To construct, operate and maintain vertical flow wetland systems along Deserter Run and Lost Run; and two high flow buffer channels along Gifford Run for

alkaline addition to abate acid precipitation in the Mosquito Creek Watershed. The vertical flow wetland systems require a nonjurisdictional 3-foot high concrete dam be constructed across both Deserter and Lost Run; a water intake structure be constructed in the channel of both waterways; and a 6-inch diameter plastic outlet pipe along the waterways. The high flow buffer channels require rock cross-vanes be constructed across Gifford Run at two locations and a step pool sequenced high flow channel be constructed in the floodway of the waterway. The western limit of the project is located along the Merrill Road 0.9 mile north of the Caledonia Pike and Merrill Road intersection. Construction of the vertical flow wetland treatment permanently impacts 0.01 acre of wetland, which is deemed a de minimis impact, and replacement of the wetland, shall not be required.

E17-408. Decatur Township, 575 Fairview Road, Osceola Mills, PA 16666, Cornell Correction Sanitary Sewer Project, Decatur Township, **Clearfield County**, ACOE Baltimore District (Philipsburg, PA Quadrangle N: 7.32 inches; W: 16.82 inches).

To construct, operate and maintain a 4-inch diameter high-density polyethylene pipe as a force main to convey municipal wastewater beneath Laurel Run and its associated wetlands. A maximum length of 900 feet of the 4-inch diameter force main shall be installed by directional drilling to avoid all direct stream and wetland impacts. The project is located along the northern right-of-way of SR 0322 at the intersection of T-676 and SR 0322 (Philipsburg, PA Quadrangle N: 7.32 inches; W: 16.82 inches) in Decatur Township, Clearfield County. This permit does not authorize any direct temporary or permanent wetland impacts, as such the permittee shall insure no permanent wetland impacts are incurred through construction, operation and maintenance of the 4-inch diameter sanitary sewer force main.

E17-411. PPL Gas Utilities Corporation, 555 Camargo Road, Quarryville, PA 17566, Cornell Correction Gas Pipeline Project, Decatur Township, **Clearfield County**, ACOE Baltimore District (Philipsburg, PA Quadrangle N: 7.32 inches; W: 16.82 inches).

To construct, operate and maintain a 6-inch diameter steel gas transmission pipeline to convey natural gas beneath Laurel Run and its associated wetlands. A maximum length of 900 feet of the 6-inch diameter steel shall be installed by directional drilling to avoid direct stream and wetland impacts. The project is located along the northern right-of-way of SR 0322 at the intersection of T-676 and SR 0322. This permit does not authorize any direct, temporary or permanent wetland impacts; as such the permittee shall ensure no permanent wetland impacts are incurred through construction, operation and maintenance of the 6-inch diameter steel gas pipeline.

E18-392. Porter Township Municipal Authority, 216 Spring Run Road, Mill Hall, PA 17751, Culvert Replacement, in Porter Township, **Clinton County**, ACOE Baltimore District (Mill Hall, PA Quadrangle N: 5.91 inches; W: 14.2 inches).

To maintain a 6 foot by 8 foot arch pipe culvert in Sink Run on Sink Run Road about 0.75 mile south of the intersection of Sink Run Road with SR 2004. The project will not impact wetlands while impacting about 40 feet of waterways. Young Womans Creek is a HQ-CWF fisheries stream. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E18-394. Clinton County Commissioners, 232 East Main Street, Lock Haven, PA 17745. Dry Hydrant Construction, in **Clinton County**, ACOE Baltimore District.

<i>Site Name</i>	<i>Township</i>	<i>Location</i>	<i>Stream</i>	<i>Chapter 93</i>	<i>Wild (W) or Stocked (S)</i>
Hyner Fish and Boat Access	Chapman	41° 19' 23" 77° 38' 9.65"	West Branch Susquehanna	WWF	No
Hyner Run SR 120 Bridge	Chapman	41° 19' 50.59" 77° 38' 49.47"	Hyner Run	HQ-CWF	W and S
Gleasantown Bridge	Chapman	41° 21' 15.09" 77° 42' 15.91"	Young Womans Creek	HQ-CWF	W and S
Red Row Access	Chapman	41° 21' 5.28" 77° 42' 4.69"	Young Womans Creek	HQ-CWF	W and S
Paddy Run Sportsman's Hotel	Renovo Boro	41° 19' 51.32" 77° 43' 43.03"	Paddy Run	EV	W
12th Street River Access	Renovo Boro	41° 19' 34.36" 77° 44' 47.77"	West Branch Susquehanna	WWF	No
Shintown Run	Noyes	41° 18' 25.76" 77° 48' 16.12"	Shintown Run	HQ-CWF	W
Road Hollow Bridge	Leidy	41° 20' 14.41" 77° 47' 9.78"	Drury Run	CWF	S
Macks Lane	Leidy	41° 27' 43.23" 77° 51' 47.64"	Kettle Creek	EV	S
Leidy Bridge	Leidy	41° 24' 18.69" 77° 55' 18.41"	Kettle Creek	EV	S
Farrandsville Bridge	Colebrook	41° 10' 22" 77° 30' 53.99"	Lick Run	HQ-CWF	W
Game Commission Bridge	Colebrook	41° 11' 7.19" 77° 30' 42.06"	Lick Run	HQ-CWF	W

The project will not impact wetlands while impacting about 100 feet of waterways and less than 0.02 acre of earth disturbance. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E60-174. Limestone Township Supervisors, 10655 SR 304 Highway, Mifflinburg, PA 17844. Water Obstruction and Encroachment Application for T-380 (Thomas Road) Bridge Replacement, in Limestone Township, **Union County**, ACOE Susquehanna River Basin District (Mifflinburg, PA Quadrangle N: 6.26 inches; W: 10.68 inches).

The applicant proposes to remove existing two 18-inch diameter culvert pipes, each 40 feet in length, one 15-inch diameter culvert pipe, 35 feet in length and construct and maintain two 36-inch HDPE and one 48-inch HDPE; all proposed culverts will be 40 feet in length. Proposed culvert replacements are in a UNT to Buffalo Creek. The proposed project will directly affect approximately 65 linear feet of the UNT to Buffalo Creek, which is classified as a CWF, with no wetland impacts proposed.

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

E02-1473. Tech 21 Partners, LP, 600 Grant Street, Suite 1400, Pittsburgh, PA 15219-2703. To construct a culvert and fill wetlands in Marshall Township, **Allegheny County**, Pittsburgh ACOE District (Mars, PA Quadrangle N: 5.5 inches; W: 14.3 inches and Latitude: 40° 39' 12"—Longitude: 80° 06' 09"). To construct and maintain a 6' 11" by 22' arch culvert with an open bottom

To construct and maintain dry hydrants in the West Branch Susquehanna River Watershed at the following locations:

approximately 120 feet long and realign the stream for approximately 50 feet at the upstream end in a tributary to Brush Creek (WWF), to place and maintain fill in eight wetlands: Wetland B—1.09 acres, Wetland E—0.01 acre, Wetland F—0.01 acre, Wetland G—0.05 acre, Wetland I—0.03 acre, Wetland L—0.002 acre, Wetland M—0.001 acres and Wetland N—0.07 acre for a total impact of 1.26 acres (PEM/PSS), to temporarily impact various tributaries to Brush Creek and 0.21 acre of wetlands for utility line crossings, to construct various outfalls to tributaries to Brush Creek, and to fill or culvert approximately 975 feet of tributaries to Brush Creek with drainage areas under 100 acres. To compensate for the stream impacts the applicant will construct and maintain 725 feet of stream enhancements within two tributaries to Brush Creek and to construct and maintain 190 feet of stream relocation/restoration within three tributaries to Brush Creek. To compensate for the wetland impact, the applicant will construct and maintain 1.48 acres of replacement wetlands. The proposed impacts are part of a proposed technology park to be known as Tech 21 Research Park located in the northwest corner of the Warrendale/Bayne Road and Brush Run Road intersection.

E11-309. Cambria County Commissioners, 200 South Center Street, Ebensburg, PA 15931. To construct a bridge and impact wetlands in Allegheny Township, **Cambria County**, Pittsburgh ACOE District (Ashville, PA Quadrangle N: 9.8 inches; W: 8.3 inches and Latitude: 40° 35' 15"—Longitude: 78° 33' 36"). To remove the existing structure and to construct and maintain a 33.0-foot wide single span bridge having a normal span of 38.3

feet and a minimum underclearance of 4.0 feet across Beaverdam Run (CWF) for the purpose of improving transportation safety and roadway standards. The project is located on Township Road T-488 at Station 12+72.33. The project will impact a de minimus area of wetlands equal to 0.01 acre.

E63-574. Blaine Township Supervisors, 40 Main Street, P. O. Box 128, Taylorstown, PA 15365. To construct two aerial stream crossings in Blaine Township, **Washington County**, Pittsburgh ACOE District (West Middleton, PA Quadrangle N: 6.5 inches; W: 0.3 inch and Latitude: 40° 09' 39"—Longitude: 80° 22' 38"). To construct and maintain two aerial pipeline stream crossings, one across the channel of Buffalo Creek (HQ-WWF) located approximately 285 feet downstream from Main Street (SR 221) and one across the channel of Wolf Run (HQ-WWF) located approximately 55.0 feet upstream from its mouth for the purpose of constructing a vacuum sanitary sewer system. The project will impact approximately 50.0 linear feet of stream channel.

E65-874. Dominion Transmission, Inc., Oakford Compressor Station, P. O. Box 66, Route 22, Delmont, PA 15626. To construct a bridge in Penn and Hempfield Townships, **Westmoreland County**, Pittsburgh ACOE District (Greensburg, PA Quadrangle N: 15.89 inches; W: 12.58 inches and Latitude: 40° 20' 15"—Longitude: 79° 35' 25"). To construct and maintain a 13.0 foot wide single span bridge having a normal span of 30.0 feet and an underclearance of 6.0 feet across Brush Creek (TSF) for the purpose of providing access to gas wells. The project is located off of Oxford Park Road.

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

E20-541. James W. and Ellen S. Klinginsmith, 11728 South Lake Road, Conneaut Lake, PA 16316. Klinginsmith Dock and Concrete Seawall, in Sadsbury Township, **Crawford County**, ACOE Pittsburgh District (Conneaut Lake, PA Quadrangle N: 18.2 inches; W: 6.6 inches).

The applicant proposes to remove the existing 55-foot long dock and to construct and maintain a 65-foot long dock on posts having a 20 foot by 10 foot platform at the lakeward end of the dock and to construct and maintain a 0.5 foot wide concrete seawall having a length of approximately 70 feet, anchored into the ground landward of the seawall and constructed directly in front of the existing steel seawall approximately 0.5 mile SW of the intersection of SR 322 and SR 18 on the south side of Conneaut Lake. Conneaut Lake is a perennial body of water classified as a high quality WWF.

E25-695. Western New York & Pennsylvania Railroad, LLC, P. O. Box 190-B, 5769 Sweeteners Boulevard, Lakeville, NY 14480. Hungry Run Bridge and Stream Stabilization, in Union Township, **Erie County**, ACOE Pittsburgh District (Union City, PA-NY Quadrangle N: 1.4 inches; W: 4.3 inches).

The applicant proposes to maintain an existing railroad bridge having a clear span of approximately 35.2 feet and an underclearance of approximately 9.5 feet and to conduct the following activities in Hungry Run on Mile Post SA 68.77 approximately 1.3 miles SE of the intersec-

tion of Mitchell Road and O'Neil Road: 1) channel realignment for a length of approximately 150 feet upstream of the structure; 2) riprap stabilization of the streambank for a length of approximately 150 feet upstream of the structure; and 3) riprap protection of the bridge wingwalls. An existing 2 foot by 2 foot by 6 foot concrete block wall has collapsed into Hungry Run resulting in erosion near the abutments/wing walls and threatening the structure. Hungry Run is a perennial stream classified as a CWF. The proposed project would impact approximately 190 feet of stream.

E37-167. Donald Dickinson, 705 Harlansburg-Eastbrook Road, New Castle, PA 16105. Dickinson Bridge Over Hottenbaugh Run, in Scott Township, **Lawrence County**, ACOE Pittsburgh District (Harlansburg, PA Quadrangle N: 7.4 inches; W: 15.9 inches).

To construct and maintain a 12 foot long concrete bridge having a clear span of 16 feet and underclearance of 6 feet across Hottenbaugh Run (TSF) on a private driveway extending south from SR 1010 at 705 Harlansburg-Eastbrook Road approximately 1,500 feet downstream of Grange Hall Road.

E61-274. Pennzoil-Quaker State d/b/a Shell Oil Products US, 260 Elm St., Oil City, PA 16301. Pennzoil Quaker State Plant 1 Sheet Pile Wall, in Cornplanter Township, **Venango County**, ACOE Pittsburgh District (Oil City, PA Quadrangle N: 3.9 inches; W: 3.2 inches).

The applicant proposes to install and maintain a Waterloo Barrier sheet pile wall having a length of approximately 300 feet and a height (above ground) of approximately 5 feet in the floodway of Oil Creek and in Oil Creek at the southern end of the former Pennzoil-Quaker State Rouseville refinery facility. Project includes debris removal, streambank slope/vegetative restoration and riprap protection. A pump and treat system is currently operating to remediate and control the migration of separate phase liquids at the site from the former refinery that operated at the site. A portion of the SPLs are not captured by the system was periodically seeping into Oil Creek on the southern portion of the site and required installation of the sheet pile wall to control seepage. This is an after-the-fact permit. Construction of this project was completed under EP6105601 issued by the Department on January 3, 2005. Oil Creek is a perennial stream classified as a WWF. This project proposes to impact approximately 300 feet of floodway and stream.

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D40-051A. Meadow Run/Mountain Lake Park Assn., P. O. Box 112, Bear Creek Township, PA 18602-0112. To modify, operate and maintain Meadow Run Dam across Meadow Run (HQ-CWF), impacting 0.07 acre of wetlands (Palustrine Scrub-shrub) and 300 feet of stream and providing 0.07 acre of wetland mitigation, for the purpose of rehabilitating the existing dam to address hydraulic, hydrologic, and structural deficiencies (Pleasant View Summit, PA Quadrangle N: 17.1 inches; W: 6.1 inches) in Bear Creek Township, **Luzerne County**.

SPECIAL NOTICES

Certification to Perform Radon-Related Activities in this Commonwealth

In the month of August 2005 the Department of Environmental Protection, under the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the following persons to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Richard Armstrong	965 Catfish Lane Pottstown, PA 19465	Testing
Diane Clerkin	1114 Bergan Road Oreland, PA 19075	Testing
Todd Crow	144 Church Lane Beaver Falls, PA 15010	Testing
Richard Delaney, Jr.	275 Pioneer Road Franklin, PA 19323	Testing
Joseph Hancaviz	406 Cherry Hill Road Nazareth, PA 18064	Testing
Anthony LaMastra A.B.E. Radiation Measurements Laboratory	1005 Old 22 Lenhartsville, PA 19534	Testing and Laboratory
Robert Lloyd	1698 Walnut Bottom Road Newville, PA 17241	Testing
Lawrence Nies	11021 May Road Wattsburg, PA 16442	Testing
Lynne Russell	6 Woodledge Village Hawley, PA 18428	Testing
David Scott	417 Pikeland Avenue Spring City, PA 19475	Testing
Daniel Tupek	3112 Colonial Avenue Erie, PA 16506	Testing
Deborah Urenovitch	75 South Hunter Highway Drums, PA 18222	Testing

[Pa.B. Doc. No. 05-1722. Filed for public inspection September 16, 2005, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us (DEP Keyword: Participate). The "Current Inventory" heading is the Governor's list of nonregulatory guidance documents. The "Final Documents" heading is the link to a menu of the various Department bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2005.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view guidance documents. When this option is not available, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Final Technical Guidance—New Guidance

DEP ID: 250-4000-001. Title: Citing Inspection Violations. Description: This guidance establishes uniform standards for all Department regions for citing violations within municipal, residual and hazardous waste programs. Notice of availability of the draft version of this document was published at 35 Pa.B. 2822 (May 7, 2005). Comments were accepted from May 7, 2005, through June 6, 2005. An overall comment/response document that reflects comments on all of Bureau of Waste Management's compliance and enforcement guidance documents is available. Contact: Ed Karmilovich, Bureau of Waste

Management, (717) 787-6239, ekarmilovi@state.pa.us. Effective Date: September 17, 2005

DEP ID: 250-4000-002. Title: Enforcement Actions. Description: This document provides guidelines for enforcement actions within municipal, residual and hazardous waste programs for Department staff to implement across all Department regions. Notice of availability of the draft version of this document was published at 35 Pa.B. 2822 (May 7, 2005). Comments were accepted from May 7, 2005, through June 6, 2005. An overall comment/response document that reflects comments on all of Bureau of Waste Management's compliance and enforcement guidance documents is available. Contact: Ed Karmilovich, Bureau of Waste Management, (717) 787-6239, ekarmilovi@state.pa.us. Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

DEP ID: 250-4000-003. Title: Violations Requiring and Extended Time Period to Correct. Description: This document provides consistent guidelines across all Department regions to ensure that violations within municipal, residual and hazardous waste programs are corrected with 180 days from the date that the Department determined that a violation occurred. Notice of availability of the draft version of this document was published at 35 Pa.B. 2822 (May 7, 2005). Comments were accepted from May 7, 2005, through June 6, 2005. An overall comment/response document that reflects comments on all of Bureau of Waste Management's compliance and enforcement guidance documents is available. Contact: Ed Karmilovich, Bureau of Waste Management, (717) 787-6239, ekarmilovi@state.pa.us. Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

DEP ID: 250-4000-004. Title: Program Implementation Guidance. Description: This document provides a formal methodology by which the Bureau of Waste Management will implement a compliance and enforcement program throughout this Commonwealth. Notice of availability of the draft version of this document was published at 35 Pa.B. 2822 (May 7, 2005). Comments were accepted from May 7, 2005, through June 6, 2005. An overall comment/response document that reflects comments on all of Bureau of Waste Management's compliance and enforcement guidance documents is available. Contact: Ed Karmilovich, Bureau of Waste Management, (717) 787-6239, ekarmilovi@state.pa.us. Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

DEP ID: 250-4110-001. Title: Notices of Violation (NOVs). Description: This document provides a formal methodology the Bureau of Waste Management will follow to process Notices of Violations. Notice of availability of the draft version of this document was published at 35 Pa.B. 2822 (May 7, 2005). Comments were accepted from May 7, 2005, through June 6, 2005. An overall comment/response document that reflects comments on all of Bureau of Waste Management's compliance and enforcement guidance documents is available. Contact: Ed Karmilovich, Bureau of Waste Management, (717) 787-6239, ekarmilovi@state.pa.us. Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

DEP ID: 251-3120-001. Title: Performing Hazardous Waste Facility Inspections. Description: This document establishes a formal methodology for conducting hazardous waste facility inspections in a similar fashion across all six regions of the Department. Notice of availability of the draft version of this document was published at 35 Pa.B. 2822 (May 7, 2005). Comments were accepted from May 7, 2005, through June 6, 2005. An overall comment/response document that reflects comments on all of Bureau of Waste Management's compliance and enforcement guidance documents is available. Contact: Ed Karmilovich, Bureau of Waste Management, (717) 787-6239, ekarmilovi@state.pa.us. Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

DEP ID: 254-3120-001. Title: Performing Municipal and Residual Waste Facility Inspections. Description: This document provides a formal methodology for conducting municipal and residual waste facility inspections in a similar fashion across all six regions of the Department. Notice of availability of the draft version of this document was published at 35 Pa.B. 2822 (May 7, 2005). Comments were accepted from May 7, 2005, through June 6, 2005. An overall comment/response document that reflects comments on all of Bureau of Waste Management's compliance and enforcement guidance documents is available. Contact: Ed Karmilovich, Bureau of Waste Management, (717) 787-6239, ekarmilovi@state.pa.us. Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-1723. Filed for public inspection September 16, 2005, 9:00 a.m.]

Cleanup Standards Scientific Advisory Board Attainment Subcommittee Meeting

On September 26, 2005, from 1 to 3 p.m., the Attainment Subcommittee (subcommittee) of the Cleanup Standards Scientific Advisory Board will hold a meeting by means of a teleconference to discuss the applicability of removing separate phase liquids from contaminated media, including a draft flowchart and checklist the Department of Environmental Protection (Department) and the subcommittee have worked on.

The meeting will be held in the 14th Floor Large Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA and will also be available by speakerphone in a conference room in each of the six regional Department field offices at the following locations:

- Southcentral Regional Office Susquehanna B Room, 909 Elmerton Avenue, Harrisburg
- Southeast Regional Office Schuylkill and Delaware Rooms, 2 East Main Street, Norristown
- Northeast Regional Office Susquehanna Room, 2 Public Square, Wilkes-Barre
- Northcentral Regional Office Lycoming Room, 208 West Third Street, Williamsport
- Southwest Regional Office Monongahela Room, 400 Waterfront Drive, Pittsburgh
- Northwest Regional Office Fourth Floor Conference Room, 230 Chestnut Street, Meadville

Questions concerning this meeting should be directed to Sam Fang at (717) 783-9481 or sfang@state.pa.us. The agenda and meeting materials for this meeting will be available through the Public Participation Center on the Department's website at www.dep.state.pa.us (DEP Keyword: Participate).

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Marilyn Wooding at (717) 783-7816 or through the AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-1724. Filed for public inspection September 16, 2005, 9:00 a.m.]

Pennsylvania's Energy Development Authority Board Meeting

A meeting of the Pennsylvania Energy Development Authority Board is scheduled to be held on Tuesday, October 4, 2005, at 10 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

The agenda will be available prior to the meeting on the Department of Environmental Protection's (Department) website at www.dep.state.pa.us (DEP Keyword PEDA). Questions concerning the agenda should be directed to Jeanne Dworetzky at (717) 783-8911 or jdworetzky@state.pa.us.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Amanda Richards directly at (717) 772-8911 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-1725. Filed for public inspection September 16, 2005, 9:00 a.m.]

State Water Plan Statewide Water Resources Committee Meeting Cancellation

The State Water Plan Statewide Water Resources Committee has cancelled the meeting scheduled for September 22, 2005, at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105. The next meeting is scheduled for December 1, 2005.

Questions concerning this meeting should be directed to Susan K. Weaver, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 783-8055, suweaver@state.pa.us. The agenda and meeting materials for this meeting will be available through the Public Participation Center on the Department of Environmental Protection's (Department) website at www.dep.state.pa.us (DEP Keyword: Participate).

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Karen Price at (717) 783-9499 or through the AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-1726. Filed for public inspection September 16, 2005, 9:00 a.m.]

DEPARTMENT OF HEALTH

Advisory Committee on Immunization Practices Recommendations Prescribing Child Immunization Practices; Immunizing Agents and Doses

In accordance with 31 Pa. Code §§ 89.806(a) and 89.807(b) (relating to coverage of child immunizations; and immunizing agents, doses and AWP's), the Department of Health (Department), Bureau of Communicable Diseases, Division of Immunization is updating 31 Pa. Code Chapter 89, Appendices G and H (relating to ACIP recommendations prescribing child immunization practices; and immunizing agents and doses). The Department has primary responsibility for the interpretation and the implementation of 31 Pa. Code §§ 89.806 and 89.807. See 31 Pa. Code § 89.801(b) (relating to authority and purpose; implementation).

Health insurance policies are required by the Childhood Immunization Insurance Act (act) (40 P. S. §§ 3501—3508) and 31 Pa. Code §§ 89.801—89.809 (relating to childhood immunization insurance) to include coverage for certain childhood immunizations, unless the policies are exempted by the act and 31 Pa. Code § 89.809 (relating to exempt policies). The childhood immunizations covered are those that meet Advisory Committee on Immunization Practices (ACIP) standards in effect on May 21, 1992. See 31 Pa. Code § 89.806(a). A list of the Morbidity and Mortality Weekly Report (MMWR) publications containing ACIP recommendations issued under the ACIP standards in effect on May 21, 1992, appears in 31 Pa. Code Chapter 89, Appendix G.

The Department is required to update the list of these MMWR publications appearing in 31 Pa. Code Chapter 89, Appendix G. See 31 Pa. Code § 89.806(a). The additions to the list are as follows; the remainder of the list at Appendix G remains in full force and effect:

August 5, 2005/Vol. 54/No. 30

Tiered Use of Inactivated Influenza Vaccine in the Event of a Vaccine Shortage

The United States has experienced disruptions in the manufacture or distribution of inactivated influenza vaccine during three of the last five influenza seasons. Delays in delivery of influenza vaccine or vaccine shortages remain possible, in part, because of inherent time constraints in manufacturing the vaccine, given the annual updating of influenza vaccine strains and uncertainties regarding vaccine supply (including licensure of new vaccine preparations).

July 29 2005/Vol. 54/No. 29

National, State and Urban Area Vaccination Coverage Among Children Aged 19-35 Months—United States, 2004

The National Immunization Survey (NIS) provides vaccination coverage estimates for children aged 19-35

months for each of the 50 states and 28 selected urban areas. This report summarizes results from the 2004 NIS, which indicated Nationwide increases in coverage with at least one dose of varicella vaccine (VAR), pneumococcal conjugate vaccine (PCV), and the 4:3:1, 4:3:1:3:3 and 4:3:1:3:3:1 vaccine series. These levels represent an important accomplishment by exceeding for the first time the Healthy People 2010 goal of greater than or equal to 80% coverage for the 4:3:1:3:3 vaccine series.

Immunization Information System Progress—United States, 2003

One of the National Health Objectives for 2010 is to increase to at least 95% the proportion of children aged less than 6 years who participate in fully operational, population-based immunization registries (objective 14-26). Immunization registries are confidential, computerized information systems that collect and consolidate vaccination data from multiple health-care providers, generate reminder and recall notifications and assess vaccination coverage. A registry with added capabilities, such as vaccine management, adverse event reporting, lifespan vaccination histories, and interoperability with electronic medical records (EMRs), is called an immunization information system (IIS). This report summarizes data from the Centers for Disease Control's (CDC) 2003 Immunization Registry Annual Report, a survey of IIS grantees in 50 states, five cities and the District of Columbia that receive funding under section 317b of the Public Health Service Act. The findings of the 2003 IRAR indicate that approximately 44% of United States children aged less than 6 years participated in an IIS. In addition, 76% of public vaccination provider sites and 36% of private vaccination provider sites submitted immunization data to an IIS during the last 6 months of 2003. Increasing health-care provider participation by linking EMRs to IISs is vital to meeting the National health objective.

July 1, 2005/Vol. 54/No. 25

Notice to Readers: Satellite Broadcast on Immunization Update 2005

The CDC's National Immunization Program and the Public Health Training Network will present a live satellite broadcast, "Immunization Update 2005," on July 28, 2005, from 9 to 11:30 a.m. EDT, and a rebroadcast of the same program that day from 12 to 2:30 p.m. EDT. Both broadcasts will include a live question-and-answer session, during which participants Nationwide can interact with course instructors via toll-free telephone lines.

July 30, 2005/Vol. 54/No. 21

Prevention and Control of Meningococcal Disease: Recommendations of the Advisory Committee on Immunization Practices (ACIP)

In January 2005, a tetravalent meningococcal polysaccharide-protein conjugate vaccine ([MCV4] Menactra,™ manufactured by Sanofi Pasteur, Inc., Swiftwater, Pennsylvania) was licensed for use among persons aged 11-55 years. CDC's ACIP recommends routine vaccination of young adolescents (defined in this report as persons aged 11-12 years) with MCV4 at the preadolescent health-care visit (at age 11-12 years). Introducing a recommendation for MCV4 vaccination among young adolescents might strengthen the role of the preadolescent visit and have a positive effect on vaccine coverage among adolescents. For those persons who have not previously received MCV4, ACIP recommends vaccination before high-school entry (at approximately age 15 years) as an effective strategy to reduce meningococcal

disease incidence among adolescents and young adults. By 2008, the goal will be routine vaccination with MCV4 of all adolescents beginning at age 11 years. Routine vaccination with meningococcal vaccine also is recommended for college freshmen living in dormitories and for other populations at increased risk (that is, military recruits, travelers to areas in which meningococcal disease is hyperendemic or epidemic, microbiologists who are routinely exposed to isolates of *Neisseria meningitidis*, patients with anatomic or functional asplenia and patients with terminal complement deficiency). Other adolescents, college students and persons infected with human immunodeficiency virus who wish to decrease their risk for meningococcal disease may elect to receive vaccine.

This report updates previous reports from ACIP concerning prevention and control of meningococcal disease. It also provides updated recommendations regarding use of the tetravalent meningococcal polysaccharide vaccine (MPSV4) and on antimicrobial chemoprophylaxis.

April 15, 2005/Vol. 54/No. 14

Notice to Readers: National Infant Immunization Week—April 24 through 30, 2005

National Infant Immunization Week is April 24 through 30, 2005. The theme this year is "Vaccination: an Act of Love. Love Them. Protect Them. Immunize Them." This annual event emphasizes the importance of timely infant and childhood vaccination, one of the most effective ways to protect infants and children from potentially serious diseases.

April 8, 2005/Vol. 54/No. 13

Update: Influenza Activity—United States, 2004-05 Season Notice to Readers

This report summarizes influenza activity in the United States during October 3, 2004, through March 26, 2005, updates the previous summary, and describes the composition of the 2005-06 influenza vaccine. Influenza activity was moderate in the United States overall, but varied by region. Preliminary data collected through the seven components of the CDC Influenza Surveillance System indicate that national influenza activity peaked in early-February.

50th Anniversary of the First Effective Polio Vaccine—April 12, 2005

April 12, 2005, marks the 50th anniversary of the announcement that the polio vaccine, developed by Jonas Salk and his team of scientists at the University of Pittsburgh, worked. "Safe, effective, and potent" were the words used to announce to the world that an effective vaccine had been found against a disease that once paralyzed 13,000–20,000 persons each year in the United States.

April 1, 2005/Vol. 54/No. 12

Estimated Influenza Vaccination Coverage Among Adults and Children—United States, September 1, 2004 through January 31, 2005

In response to the unexpected shortfall in the 2004-05 influenza vaccine supply, CDC recommended in October 2004 that vaccine be reserved for persons in certain priority groups, including persons aged 65 years or older and 6-23 months, persons aged 2-64 years with conditions that increased their risk for influenza complications, residents of chronic-care facilities, close contacts of infants aged less than 6 months, and health-care workers with direct patient contact. To monitor influenza vaccina-

tion coverage during the 2004-05 season, the Behavioral Risk Factor Surveillance System, an ongoing, state-based, telephone survey of civilian, noninstitutionalized persons, added new questions to collect information on priority status and the month and year of vaccination for adults and children. This report is based on analysis of data collected during February 1 through 27, 2005, regarding respondent-reported receipt of influenza vaccination during September 1, 2004, through January 31, 2005. The results of this analysis indicated that influenza vaccination coverage levels through January 2005 among adults in priority groups nearly reached those in recent years, whereas coverage levels among adults not in priority groups were approximately half of levels in 2003, in part because 9.3% of those unvaccinated persons in nonpriority groups declined vaccination this season. The results further suggested that designation of the priority groups successfully directed the Nation's influenza vaccine supply to those at highest risk. In addition, vaccination

coverage among children aged 6-23 months was notable (48.4%), given that 2004-05 was the first year this group was recommended for influenza vaccination.

February 18, 2005/Vol. 54/No. 6

Hepatitis A Vaccination Coverage Among Children Aged 24-35 Months—United States, 2003

This report is the first National analysis of hepatitis A vaccination coverage among children. The results indicate that, in 2003, vaccination coverage levels with at least 1 dose of hepatitis A vaccine for children aged 24-35 months varied from 6.4% to 72.7% in areas where routine vaccination is recommended. In addition, hepatitis A vaccination coverage rates for children aged 24-35 months are lower than overall rates for other vaccines recommended for children. Sustaining and improving vaccination coverage among young children is needed to ensure continued declines in hepatitis A incidence in the United States.

2005 List of Immunizing Agents and Average Wholesale Prices

Product Name, Company	Brand/Product Name	NDC Number	Unit	Dose	AWP/ Dose*
Diphtheria Tetanus acellular Pertussis Vaccine (DTaP):					
sanofi pasteur	Tripedia	49281-0298-10	10 × 1	0.5 ml	\$23.56
sanofi pasteur	Daptacel	49281-0286-10	10 × 1	0.5 ml	\$25.99
GlaxoSmithKline	Infanrix	58160-0840-11	10 × 1	0.5 ml	\$22.22
Diphtheria Tetanus pediatric Vaccine (DT pediatric):					
sanofi pasteur	DT Pediatric	49281-0275-10	5.0 ml	0.5 ml	\$21.82
Diphtheria Tetanus acellular Pertussis/Haemophilus Influenzae B (DTaP-HIB)					
sanofi pasteur	TriHIBit	49281-0597-05	5 × 1	0.5 ml	\$23.13
Tetanus Diphtheria adult Vaccine (Td adult):					
sanofi pasteur	(1) Td Adult	49281-0271-83	5.0 ml	0.5 ml	\$22.70
sanofi pasteur	(2) Decavac	49281-0291-10	10 × 1		\$37.80
Diphtheria, Tetanus, acellular Pertussis, Hepatitis B, Polio (DTaP, Hep B, OPV)					
GlaxoSmithKline	Pediarix	58160-0841-11	10 × 1	0.5 ml	\$75.70
GlaxoSmithKline	Pediarix	58160-0841-46	5 × 1	0.5 ml	\$75.70
Haemophilus Influenzae B Vaccine (HIB):					
Wyeth Pharmaceuticals	HibTITER	0005-0104-32	5 × 0.5	0.5 ml	\$25.54
sanofi pasteur	ActHIB	49281-0545-05	5 × 1	0.5 ml	\$24.33
Merck & Co.	Pedvax HIB	0006-4897-00	10 × 0.5	0.5 ml	\$25.44
Injectable Polio Vaccine Inactivated (Salk Enhanced IPV):					
sanofi pasteur	IPOL	49281-0860-10	5.0 ml	0.5 ml	\$24.35
Measles Mumps Rubella Vaccine (MMR):					
Merck & Co.	MMR II	0006-4749-00	0.5 ml	0.5 ml	\$44.72
Merck & Co.	MMR II	0006-4681-00	10 × 0.5	0.5 ml	\$43.19
Measles Vaccine (Rubeola):					
Merck & Co.	Atenuvax	0006-4709-00	0.5 ml	0.5 ml	\$17.73
Merck & Co.	Atenuvax	0006-4589-00	10 × 0.5	0.5 ml	\$15.95
Meningococcal Vaccine (MCV4):					
sanofi pasteur	Menactra	49281-0589-01			\$88.56
sanofi pasteur	Menactra	49281-0589-05			\$88.56
Mumps Vaccine (Mumps):					
Merck & Co.	Mumpsvac	0006-4753-00	0.5 ml	0.5 ml	\$20.45
Merck & Co.	Mumpsvac	0006-4584-00	10 × 0.5	0.5 ml	\$20.65
Rubella (German Measles):					
Merck & Co.	Meruvax II	0006-4747-00	0.5 ml	0.5 ml	\$18.57
Merck & Co.	Meruvax II	0006-4673-00	10 × 0.5	0.5 ml	\$17.78

Product Name, Company	Brand/Product Name	NDC Number	Unit	Dose	AWP/ Dose*
Hepatitis A Vaccine Pediatric (HEP-A):					
Merck & Co.	VAQTA	0006-4831-00	0.5 ml	0.5 ml	\$34.56
Merck & Co.	VAQTA	0006-4831-41	10 × 0.5	0.5 ml	\$32.66
Merck & Co.	VAQTA syringe	0006-4845-00	0.5 ml	0.5 ml	\$35.30
Merck & Co.	VAQTA syringe	0006-4845-38	5 × 0.5	0.5 ml	\$33.31
GlaxoSmithKline	Havrix	58160-0837-01	0.5 ml	0.5 ml	\$30.11
GlaxoSmithKline	Havrix	58160-0837-11	10 × 0.5	0.5 ml	\$28.79
GlaxoSmithKline	Havrix syringe	58160-0837-50	25 × 0.5	0.5 ml	\$28.79
GlaxoSmithKline	Havrix syringe	58160-0837-46	5 × 0.5	0.5 ml	\$28.79
Hepatitis A Vaccine Adult (HEP-A):					
Merck & Co.	VAQTA	0006-4841-00	1.0 ml	1.0 ml	\$68.35
Merck & Co.	VAQTA	0006-4841-38	5 × 1.0	1.0 ml	\$66.64
Merck & Co.	VAQTA	0006-4841-41	10 × 1.0	1.0 ml	\$64.73
Merck & Co.	VAQTA syringe	0006-4844-00	1.0 ml	1.0 ml	\$70.60
Merck & Co.	VAQTA syringe	0006-4844-38	5 × 1.0	1.0 ml	\$66.64
GlaxoSmithKline	Havrix	58160-0835-01	0.5 ml	0.5 ml	\$29.92
GlaxoSmithKline	Havrix syringe	58160-0835-41	1 × 0.5	0.5 ml	\$29.28
GlaxoSmithKline	Havrix syringe	58160-0835-46	5 × 0.5	0.5 ml	\$29.28
Hepatitis B Vaccine (HEP-B):					
Merck & Co.	(1) Recombivax HB	00006-4980-00	0.5 ml	0.5 ml	\$27.26
Merck & Co.	(1) Recombivax HB	00006-4981-00	10 × 0.5 ml	0.5 ml	\$25.93
Merck & Co.	(2) Recombivax HB	00006-4769-00	0.5 ml	0.5 ml	\$27.26
Merck & Co.	(2) Recombivax HB	00006-4876-00	10 × 0.5	0.5 ml	\$25.62
Merck & Co.	(2) Recombivax HB	00006-4849-00	5 × 0.5	0.5 ml	\$27.28
Merck & Co.	(2) Recombivax HB	00006-4969-00	5 × 0.5	0.5 ml	\$27.28
Merck & Co.	(3) Recombivax HB	00006-4773-00	3.0 ml	0.5 ml	\$33.46
Merck & Co.	(3) Recombivax HB	00006-4775-00	1.0 ml	1.0 ml	\$33.49
Merck & Co.	(3) Recombivax HB	00006-4872-00	10 × 1.0	1.0 ml	\$33.15
Merck & Co.	(3) Recombivax HB	00006-4873-00	10 × 3.0	0.5 ml	\$32.94
Merck & Co.	(3) Recombivax HB	00006-4848-00	5 × 1.0	1.0 ml	\$33.50
Merck & Co.	(3a,b) Recombivax HB	00006-4995-00	1.0 ml	1.0 ml	\$33.49
Merck & Co.	(3a,b) Recombivax HB	00006-4995-41	10 × 1.0	1.0 ml	\$33.15
Merck & Co.	(3c) Recombivax HB	00006-4992-00	1.0 ml	1.0 ml	\$93.31
GlaxoSmithKline	(4) Engerix-B	58160-0856-01	0.5 ml	0.5 ml	\$23.07
GlaxoSmithKline	(4) Engerix-B	58160-0856-11	10 × 0.5	0.5 ml	\$23.07
GlaxoSmithKline	(4) Engerix-B syringe	58160-0856-46	5 × 0.5	0.5 ml	\$23.07
GlaxoSmithKline	(4) Engerix-B syringe	58160-0856-50	25 × 0.5	0.5 ml	\$23.07
GlaxoSmithKline	(4) Engerix-B syringe	58160-0856-57	25 × 0.5	0.5 ml	\$23.07
GlaxoSmithKline	(5) Engerix-B	58160-0857-01	1.0 ml	1.0 ml	\$55.35
GlaxoSmithKline	(5) Engerix-B syringe	58160-0857-46	5 × 1.0	1.0 ml	\$54.24
GlaxoSmithKline	(5) Engerix-B syringe	58160-0857-50	25 × 1.0	1.0 ml	\$54.24
<p>(1) Pediatric/Adolescent formulation (preservative-free) @ 5 mcg/.5ml (2) Adolescent/infant high risk formulation @ 10 mcg/ml DISCONTINUED (3) Adult formulation @ 10 mcg/1 ml DISCONTINUE (3a) Adult formulation (preservative free) @ 10 mcg/1 ml (3b) Two dose regimen for 11 through 15 years of age (preservative free) (3c) Dialysis formulation (preservative free) @ 40 mcg/1 ml (4) Pediatric formulation @ 10 mcg/0.5 ml (5) Adult formulation @ 20 mcg/ml</p>					
Hepatitis B / HIB					
Merck & Co.	COMVAX	0006-4898-00	10 × 0.5	0.5 ml	\$47.98
Hepatitis A & Hepatitis B Vaccine:					
GlaxoSmithKline	Twinrix	58160-0850-01	1.0 ml	1.0 ml	\$84.96
GlaxoSmithKline	Twinrix	58160-0850-11	10 × 1.0	1.0 ml	\$83.60
GlaxoSmithKline	Twinrix syringe	58160-0850-46	5 × 1.0	1.0 ml	\$83.88
Influenza Vaccine :					
sanofi pasteur	Fluzone PF	49281-0373-25	10 × 0.5	0.25 ml	\$25.92
sanofi pasteur	Fluzone	49281-0374-11	10 × 1	0.5 ml	\$12.27
sanofi pasteur	Fluzone	49281-0374-15	10 × 1	0.5 ml	\$9.18
MedImmune	Flumist	66019-0101-01	10 × 1	0.5 ml	\$16.20

Product Name, Company	Brand/Product Name	NDC Number	Unit	Dose	AWP/ Dose*
Pneumococcal Vaccine:					
Wyeth Pharmaceuticals	Prenar	0005-1970-67	5 × 0.5	0.5 ml	\$71.09
Merck & Co.	Pneumovax 23	0006-4739-00	2.5 ml	0.5 ml	\$23.27
Merck & Co.	Pneumovax 23	0006-4739-50	10 × 2.5 ml	0.5 ml	\$26.12
Merck & Co.	Pneumovax 23	0006-4943-00	10 × 0.5	0.5 ml	\$26.12
Merck & Co.	Pneumovax 23 syringe	0006-4894-00	5 × 0.5	0.5 ml	\$19.30
Varicella Virus Vaccine Live (Chickenpox):					
Merck & Co.	Varivax**	00006-4827-00	10 × 0.5	0.5 ml	\$72.02
Merck & Co.	Varivax**	00006-4826-00	0.5 ml	0.5 ml	\$75.53

*Indicates the Estimated Acquisition Cost (EAC) as stated in the Department of Public Welfare, Office of Medical Assistance Programs, Medical Assistance Regulations at 55 Pa. Code § 1121.56 (relating to drug cost determination).

**Comes with a box of 10 vials of diluent (package B: 00006-4309-00)

Persons with disability who require an alternative format of this notice (for example, large print, audiotape, Braille) should contact Alice Gray, Director, Division of Immunizations, Department of Health, P. O. Box 90, Harrisburg, PA 17108-0090, (717) 787-5681 or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1727. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Carbon-Schuylkill Endoscopy Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Carbon-Schuylkill Endoscopy Center has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1728. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Carlisle Regional Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

notice that Carlisle Regional Surgery Center has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1729. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Frick Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Frick Hospital has requested an exception to the requirements of 28 Pa. Code § 107.26(b)(2) (relating to additional committees).

The request is on file with the Department. Persons may receive a copy of a request for exception by request-

ing a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1730. Filed for public inspection September 16, 2005, 9:00 a.m.]

notice that North Shore Endoscopy Center, LLC has requested an exception to the requirements of 28 Pa. Code § 555.31 (relating to principle).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1732. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Hazleton General Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Hazleton General Hospital has requested an exception to the requirements of 28 Pa. Code § 101.191 (relating to multiple-clinical facilities).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1731. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Punxsutawney Area Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Punxsutawney Area Hospital has requested an exception to the requirements of 28 Pa. Code § 107.26(b)(2) (relating to additional committees).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1733. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of North Shore Endoscopy Center, LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

Application of St. Clair Memorial Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

notice that St. Clair Memorial Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 7.2.B1, 7.2.B2, 7.2.B5—7.2.B7, 7.2.B9, 7.2.B11, 7.2.B12, 7.2.B13a, 7.2.B14—7.2.B17, 7.2.B19 and 7.2.B22.

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1734. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of South Hills Endoscopy Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that South Hills Endoscopy Center has requested an exception to the requirements of 28 Pa. Code § 555.31(a) (relating to principle).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or

hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1735. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of South Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that South Surgery Center has requested an exception to the requirements of 28 Pa. Code §§ 553.1, 555.2 and 555.3 (relating to principle; medical staff membership; and requirements for membership and privileges).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1736. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Surgery Center of Lebanon, LP for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Surgery Center of Lebanon, LP has requested an exception to the requirements of 28 Pa. Code § 551.21(d) (relating to criteria for ambulatory surgery).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be

reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1737. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Temple East, Inc./Northeastern Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Temple East, Inc./Northeastern Hospital has requested an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1738. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application of Westmoreland Regional Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Westmoreland Regional Hospital has requested an exception to the requirements of 28 Pa. Code § 107.26(b)(2) (relating to additional committees).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1739. Filed for public inspection September 16, 2005, 9:00 a.m.]

Chronic Renal Disease Advisory Committee Meeting

The Chronic Renal Disease Advisory Committee, established by section 4 of the act of June 23, 1970 (P. L. 419, No. 140) (35 P. S. § 6204), will hold a public meeting on Friday, October 28, 2005, from 10 a.m. to 3 p.m. in Room 327, Health and Welfare Building, Commonwealth Avenue and Forster Street, Harrisburg, PA.

For additional information, contact Robert Staver, Program Administrator, Chronic Renal Disease Program, Division of Child and Adult Health Services at (717) 772-5138. Persons who wish to attend this meeting or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should contact Robert Staver at (717) 772-5138 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1740. Filed for public inspection September 16, 2005, 9:00 a.m.]

Health Research Advisory Committee Public Hearing and Meeting

The Health Research Advisory Committee (Committee) of the Department of Health (Department) will hold a public hearing on November 21, 2005, and a meeting on November 22, 2005, at the Harrisburg Hilton and Towers, Corner of Second and Market Streets, Harrisburg, PA.

The primary purpose of the public hearing is to obtain suggestions for health research priorities under the Tobacco Settlement/Act 77, Commonwealth Universal Research Enhancement Program for the State Fiscal Year 2006-07. Current and past State fiscal year priorities for both formula funded and nonformula funded health research are posted on the Department's website at www.health.state.pa.us/cure.

The public hearing will be held on November 21, 2005, from 1:30 p.m. to 5 p.m. Public comments must be

submitted by e-mail to John Koch at jkoch@state.pa.us by 2:30 p.m. on October 24, 2005. Persons wishing to present written statements orally at the public hearing must contact John Koch at (717) 783-2548 by 2:30 p.m. on October 24, 2005, to make a reservation for testifying at the hearing.

Written comments must be limited to no more than five single-spaced typewritten pages. Comments should recommend research on one or more health related issues that have a significant impact on the health of Pennsylvanians. Although comments may include data supporting the significance of a particular health related issue, written comments should identify, in priority order, the specific research issues and questions that need to be addressed. Testimony should include the specific aims of the research being proposed.

Oral testimony will be limited to 3 minutes. Prior to the public hearing, a copy of written comments will be provided to the Committee members for their review. Therefore, oral presentations should not repeat the written comments but instead should focus on the highlights or key research issues contained in the written comments. If time permits, 2 minutes will be allowed for questions and answers following the oral testimony. Persons will be scheduled on a first come, first served basis, as time permits. Oral testimony that is duplicative of previously presented testimony may not be allowed if time is limited.

On November 22, 2005, a meeting of the Committee will be held from 9 a.m. to 3:30 p.m. The purpose of the meeting is to review the findings of the nonformula health research projects related to health disparities and to discuss the research priorities for the State Fiscal Year 2006-07.

The hearing and meeting are open to the public. No reservations are required to attend the hearing or meeting, but those wishing to present oral testimony at the public hearing must submit their written comments in advance in accordance with the guidance provided previously.

For additional information, contact Patricia W. Potrzebowski, Director, Bureau of Health Statistics and Research or Robin C. Cohick, Administrative Officer, Bureau of Health Statistics and Research, 555 Walnut Street, 6th Floor, Harrisburg, PA 17101-1914 or (717) 783-2548.

Persons with a disability who wish to attend the hearing or meeting and require an auxiliary aid, service or other accommodation should contact Patricia W. Potrzebowski or Robin Cohick at (717) 783-2548 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

The hearing and meeting are subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1741. Filed for public inspection September 16, 2005, 9:00 a.m.]

Immunization Practices for Children in Child Care Group Settings

In accordance with 28 Pa. Code § 27.77(c) (relating to immunization requirements for children in child care

group settings), the Department of Health (Department), Bureau of Communicable Diseases, Division of Immunization, is updating the list of Morbidity and Mortality Weekly Report (MMWR) publications that contain the Advisory Committee on Immunization Practices (ACIP) recommendations that meet the standards of 28 Pa. Code § 27.77(c). Children in child care group settings as defined by 28 Pa. Code § 27.77(c) are required to be immunized in accordance with the recommendations included in the following publications. The Department is providing a summary of the publications for the ease of reference of the public:

August 5, 2005/Vol. 54/No. 30

Tiered Use of Inactivated Influenza Vaccine in the Event of a Vaccine Shortage

The United States has experienced disruptions in the manufacture or distribution of inactivated influenza vaccine during three of the last five influenza seasons. Delays in delivery of influenza vaccine or vaccine shortages remain possible, in part, because of inherent time constraints in manufacturing the vaccine, given the annual updating of influenza vaccine strains and uncertainties regarding vaccine supply (including licensure of new vaccine preparations).

July 29 2005/Vol. 54/No. 29

National, State, and Urban Area Vaccination Coverage Among Children Aged 19-35 Months—United States, 2004

The National Immunization Survey (NIS) provides vaccination coverage estimates for children aged 19-35 months for each of the 50 states and 28 selected urban areas. This report summarizes results from the 2004 NIS, which indicated Nationwide increases in coverage with at least one dose of varicella vaccine, pneumococcal conjugate vaccine, and the 4:3:1, 4:3:1:3:3 and 4:3:1:3:3:1 vaccine series. These levels represent an important accomplishment by exceeding for the first time the *Healthy People 2010* goal of greater than or equal to 80% coverage for the 4:3:1:3:3 vaccine series.

Immunization Information System Progress—United States, 2003

One of the National Health Objectives for 2010 is to increase to at least 95% the proportion of children aged less than 6 years who participate in fully operational, population-based immunization registries (objective 14-26). Immunization registries are confidential, computerized information systems that collect and consolidate vaccination data from multiple health-care providers, generate reminder and recall notifications, and assess vaccination coverage. A registry with added capabilities, such as vaccine management, adverse event reporting, lifespan vaccination histories, and interoperability with electronic medical records (EMRs), is called an immunization information system (IIS). This report summarizes data from the Centers for Disease Control's (CDC) 2003 Immunization Registry Annual Report, a survey of IIS grantees in 50 states, five cities and the District of Columbia that receive funding under section 317b of the Public Health Service Act. The findings of the 2003 IRAR indicate that approximately 44% of United States children aged less than 6 years participated in an IIS. In addition, 76% of public vaccination provider sites and 36% of private vaccination provider sites submitted immunization data to an IIS during the last 6 months of 2003. Increasing health-care provider participation by linking EMRs to IISs is vital to meeting the National health objective.

July 1, 2005/Vol. 54/No. 25

Notice to Readers: Satellite Broadcast on Immunization Update 2005

The CDC's National Immunization Program and the Public Health Training Network will present a live satellite broadcast, "Immunization Update 2005," on July 28, 2005, from 9 to 11:30 a.m. EDT, and a rebroadcast of the same program that day from 12 to 2:30 p.m. EDT. Both broadcasts will include a live question-and-answer session, during which participants nationwide can interact with course instructors by means of toll-free telephone lines.

July 30, 2005/Vol. 54/No. 21

Prevention and Control of Meningococcal Disease: Recommendations of the ACIP

In January 2005, a tetravalent meningococcal polysaccharide-protein conjugate vaccine ([MCV4] Menactra,TM manufactured by Sanofi Pasteur, Inc., Swiftwater, Pennsylvania) was licensed for use among persons aged 11-55 years. CDC's ACIP recommends routine vaccination of young adolescents (defined in this report as persons aged 11-12 years) with MCV4 at the preadolescent health-care visit (at age 11-12 years). Introducing a recommendation for MCV4 vaccination among young adolescents might strengthen the role of the preadolescent visit and have a positive effect on vaccine coverage among adolescents. For those persons who have not previously received MCV4, ACIP recommends vaccination before high-school entry (at approximately age 15 years) as an effective strategy to reduce meningococcal disease incidence among adolescents and young adults. By 2008, the goal will be routine vaccination with MCV4 of all adolescents beginning at age 11 years. Routine vaccination with meningococcal vaccine also is recommended for college freshmen living in dormitories and for other populations at increased risk (that is, military recruits, travelers to areas in which meningococcal disease is hyperendemic or epidemic, microbiologists who are routinely exposed to isolates of *Neisseria meningitidis*, patients with anatomic or functional asplenia, and patients with terminal complement deficiency). Other adolescents, college students and persons infected with human immunodeficiency virus who wish to decrease their risk for meningococcal disease may elect to receive vaccine.

This report updates previous reports from ACIP concerning prevention and control of meningococcal disease. It also provides updated recommendations regarding use of the tetravalent meningococcal polysaccharide vaccine (MPSV4) and on antimicrobial chemoprophylaxis.

April 15, 2005/Vol. 54/No. 14

Notice to Readers: National Infant Immunization Week—April 24 through 30, 2005

National Infant Immunization Week is April 24 through 30, 2005. The theme this year is "Vaccination: an Act of Love. Love Them. Protect Them. Immunize Them." This annual event emphasizes the importance of timely infant and childhood vaccination, one of the most effective ways to protect infants and children from potentially serious diseases.

April 8, 2005/Vol. 54/No. 13

Update: Influenza Activity—United States, 2004-05 Season Notice to Readers

This report summarizes influenza activity in the United States during October 3, 2004, through March 26, 2005,

updates the previous summary, and describes the composition of the 2005-06 influenza vaccine. Influenza activity was moderate in the United States overall, but varied by region. Preliminary data collected through the seven components of the CDC Influenza Surveillance System indicate that national influenza activity peaked in early-February.

50th Anniversary of the First Effective Polio Vaccine—April 12, 2005

April 12, 2005, marks the 50th anniversary of the announcement that the polio vaccine, developed by Jonas Salk and his team of scientists at the University of Pittsburgh, worked. "Safe, effective, and potent" were the words used to announce to the world that an effective vaccine had been found against a disease that once paralyzed 13,000–20,000 persons each year in the United States.

April 1, 2005/Vol. 54/No. 12

Estimated Influenza Vaccination Coverage Among Adults and Children—United States, September 1, 2004, through January 31, 2005

In response to the unexpected shortfall in the 2004-05 influenza vaccine supply, CDC recommended in October 2004 that vaccine be reserved for persons in certain priority groups, including persons aged 65 years or older and 6-23 months, persons aged 2-64 years with conditions that increased their risk for influenza complications, residents of chronic-care facilities, close contacts of infants aged less than 6 months, and health-care workers with direct patient contact. To monitor influenza vaccination coverage during the 2004-05 season, the Behavioral Risk Factor Surveillance System, an ongoing, State-based, telephone survey of civilian, noninstitutionalized persons, added new questions to collect information on priority status and the month and year of vaccination for adults and children. This report is based on analysis of data collected during February 1 through 27, 2005, regarding respondent-reported receipt of influenza vaccination during September 1, 2004, through January 31, 2005. The results of this analysis indicated that influenza vaccination coverage levels through January 2005 among adults in priority groups nearly reached those in recent years, whereas coverage levels among adults not in priority groups were approximately half of levels in 2003, in part because 9.3% of those unvaccinated persons in nonpriority groups declined vaccination this season. The results further suggested that designation of the priority groups successfully directed the nation's influenza vaccine supply to those at highest risk. In addition, vaccination coverage among children aged 6-23 months was notable (48.4%), given that 2004-05 was the first year this group was recommended for influenza vaccination.

February 18, 2005/Vol. 54/No. 6

Hepatitis A Vaccination Coverage Among Children Aged 24-35 Months—United States, 2003

This report is the first national analysis of hepatitis A vaccination coverage among children. The results indicate that, in 2003, vaccination coverage levels with at least 1 dose of hepatitis A vaccine for children aged 24-35 months varied from 6.4% to 72.7% in areas where routine vaccination is recommended. In addition, hepatitis A vaccination coverage rates for children aged 24-35 months are lower than overall rates for other vaccines recommended for children. Sustaining and improving vaccination coverage among young children is needed to ensure continued declines in hepatitis A incidence in the United States.

Additional information relating to vaccinations may be obtained from the Department's website at www.dsf.health.state.pa.us/health and from the National Immunization Program of the Centers for Disease Control and Prevention at the following website: www.cdc.gov/nip/default.htm.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape, Braille), should contact Alice Gray, Director, Division of Immunization, Department of Health, P. O. Box 90, Harrisburg, PA 17108-0090, (717) 787-5681 or for speech and/or hearing impaired persons, at V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-1742. Filed for public inspection September 16, 2005, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Transportation Funding and Reform Commission Meeting

The Transportation Funding and Reform Commission will meet on Thursday, September 29, 2005, at 9:30 a.m. in Conference Room 8N1, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA. Chairperson Allen D. Biehler will preside. The meeting is open to the public.

The meeting location is accessible to persons with disabilities. Persons having special needs or requiring special aides should contact Jeanie Schneider, Department of Transportation, Bureau of Public Transportation at (717) 787-3921 prior to the meeting.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 05-1743. Filed for public inspection September 16, 2005, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

JDM Materials Company v. DEP; EHB Doc. No. 2005-264-K

JDM Materials Company has appealed the issuance by the Department of Environmental Protection of an NPDES permit to same for a facility in Telford Borough, Bucks County, PA.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (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 interested parties 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 § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

MICHAEL L. KRANCER,
Chairperson

[Pa.B. Doc. No. 05-1744. Filed for public inspection September 16, 2005, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Mandated Benefits

Section 9 of the act of July 17, 2003 (P. L. 31, No. 14) (Act 14) requires that the Health Care Cost Containment Council (Council) review proposed mandated health benefits on request of the executive and legislative branches of government. Representative Nicholas A. Micozzie, Chairperson of the House Insurance Committee, has requested that the Council review House Resolution 400, Printer's Number 2469 (Bunt). House Resolution 400 directs the Council to study the requirement of comprehensive insurance coverage for the diagnosis and treatment of infertility.

The Council is requesting that anyone supporting or opposing these mandated insurance benefits provide six copies of documentation to the Council no later than 5 p.m. on November 17, 2005. The documentation should be mailed to Flossie Wolf, Health Care Cost Containment Council, 225 Market Street, Suite 400, Harrisburg, PA 17101.

Documentation submitted should be in accordance with the following information categories described in section 9 of Act 14:

(i) The extent to which the proposed benefit and the services it would provide are needed by, available to and utilized by the population of this Commonwealth.

(ii) The extent to which insurance coverage for the proposed benefit already exists, or if no such coverage exists, the extent to which this lack of coverage results in inadequate health care or financial hardship for the population of this Commonwealth.

(iii) The demand for the proposed benefit from the public and the source and extent of opposition to mandating the benefit.

(iv) Relevant findings bearing on the social impact of the lack of the proposed benefit.

(v) Where the proposed benefit would mandate coverage of a particular therapy, the results of at least one professionally accepted, controlled trial comparing the medical consequences of the proposed therapy, alternative therapies and no therapy.

(vi) Where the proposed benefit would mandate coverage of an additional class of practitioners, the results of at least one professionally accepted, controlled trial com-

paring the medical results achieved by the additional class of practitioners and those practitioners already covered by benefits.

(vii) The results of any other relevant research.

(viii) Evidence of the financial impact of the proposed legislation, including at least:

(A) The extent to which the proposed benefit would increase or decrease cost for treatment or service.

(B) The extent to which similar mandated benefits in other states have affected charges, costs and payments for services.

(C) The extent to which the proposed benefit would increase the appropriate use of the treatment or service.

(D) The impact of the proposed benefit on administrative expenses of health care insurers.

(E) The impact of the proposed benefits on benefits costs of purchasers.

(F) The impact of the proposed benefits on the total cost of health care within this Commonwealth.

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 05-1745. Filed for public inspection September 16, 2005, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
12-67	Department of Labor and Industry General Provisions 35 Pa.B. 3807 (July 9, 2005)	8/8/05	9/7/05
12-68	Department of Labor and Industry Qualifications for Vocational Experts 35 Pa.B. 3820 (July 9, 2005)	8/8/05	9/7/05

**Department of Labor and Industry Regulation #12-67 (IRRC #2484)
General Provisions
September 7, 2005**

We submit for your consideration the following comments on the proposed rulemaking published in the July 9, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the Department of Labor and Industry (Department) to respond to all comments received from us or any other source.

**1. Section 121.1.—Definitions.—Clarity.
Employer**

This term incorporates by reference two definitions of “employer” found in Sections 103 and 401 of the Workers’ Compensation Act (Act). Section 103 of the Act is under Article I, relating to interpretation and definition. Section 401 of the Act is under Article IV, relating to procedure. The definitions from the Act differ and are not interchangeable. Therefore, both statutory definitions should not be combined in one regulatory definition. The Department should select one statutory definition that is most

appropriate for Chapter 121, relating to general provisions. If one statutory definition is more appropriate in a certain section than the other statutory definition, then that definition should be referenced in or added to that section.

Insured employer

The definition of this term includes employers who chose to insure their workers’ compensation liabilities through a workers’ compensation insurance carrier. The Department has indicated that this term also encompasses employers who cover their liabilities through the State Workmen’s Insurance Fund. The final-form regulation should be amended to reflect this fact.

**2. Section 121.3.—Filing of forms.—Clarity.
Subsection (a) and (c)**

These subsections use the terms “electronic format” and “electronic means.” The Department has stated that forms can be filed electronically on their website or through an approved electronic data interchange protocol. Because these terms are vague and could include methods other than those noted by the Department such as e-mail or telephone, we recommend that the terms be defined.

Subsection (b)

This subsection allows the Bureau of Workers' Compensation (Bureau) to return forms that are not properly completed or filed. The final-form regulation should require the Bureau to inform the applicant why the form was not completed or filed correctly.

Subsection (d)

This subsection addresses how the filing date will be determined when delivery is made using the United States Postal Service. However, it does not address how the filing date will be determined if other means of delivery are used.

The Department recently amended Section 101.82 of its regulations on unemployment compensation relating to time for filing an appeal from determinations of the Department. This section establishes how the filing dates for appeals filed by a variety of means including U.S. mail, common carrier, fax, electronic transmission and personal delivery will be determined. Language similar to Section 101.82 should be included in this subsection.

3. Section 121.3b.—Posting workers' compensation information.—Clarity.*Subsection (a)*

This subsection requires an employer to post information at its primary place of business and its "sites of employment." We note that language used in this subsection is similar to language in the Act. However, the phrase "sites of employment" lacks clarity and could make it difficult for an employer to fulfill all of its responsibilities. For example, what would the "site of employment" be for a visiting nurse or pharmaceutical salesperson that works exclusively from their home or automobile? The final-form regulation should specify how an employer can meet its obligations if some or all of its employees do not report to a particular "site of employment."

Subsection (b)

Paragraph (6) states the following: "If your claim is denied, you have the right to request a hearing before a workers' compensation judge." For clarity, this subsection should be amended to state, "If your claim is denied by your employer, you have the right to request a hearing before a workers' compensation judge." (emphasis added)

4. Section 121.7.—Notice of compensation payable and notice of temporary compensation payable.—Clarity.*Subsections (c) and (d)*

These subsections allow an employer to file certain forms as "amended" or "estimated" by clearly identifying those forms as such. We asked the Department how an employer would be able to clearly identify forms filed electronically as "amended" or "estimated." The Department responded that they intend to revise the forms to include a box that could be checked to indicate that the forms are "amended" or "estimated." We believe this revision is appropriate and recommend that the forms be amended before this regulation is finalized. The same comment applies to the similar language in Section 121.8(c) and (d), Section 121.9(d) and (e), and Section 121.12(a).

Subsection (e)

This subsection contains two subjects. The first relates to amending a Notice of Compensation Payable, Form LIBC-495, and Notice of Temporary Compensation Payable Form, LIBC-501. The second relates to filing a

Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337. These two provisions should be separated into two distinct subsections. The same comment applies to the similar language in Section 121.8(d) and Section 121.9(e).

Subsection (f)

This subsection states that an employer "may" file a Notice of Compensation Payable, Form LIBC-495, when an employee's injury has not resulted in lost time from work in medical only cases. The Department has indicated that filing Form LIBC-495 is not the only form that can be used. However, employers are expected to file either Form LIBC-495 or other forms for medical only cases. The final-form regulation should be amended to reflect the fact that employers are expected to notify the Department of medical only cases. It should also list what forms could be filed to meet this requirement.

5. Section 121.11.—Supplemental agreements for compensation for death.—Clarity.

Subsection (b) states that, "Form LIBC-338 *may* be changed" (emphasis added) when one of the listed changes occur. It is our understanding that a Supplemental Agreement for Compensation of Death, Form LIBC-339 *must* be used to amend Form LIBC-338 when one of the listed changes occurs. To reflect the requirement to amend the agreement, the word "may" should be replaced with "shall" in the final-form regulation. The same comment applies to similar language in Section 121.12(a) as it applies to correcting errors in computing wages and Form LIBC-495 and Form LIBC-501.

6. Section 121.16.—Updating claims status.—Need; Reasonableness; Paperwork; Preparation costs.

This section requires insurers to file an Annual Claims Status report, Form LIBC-774.

We have three concerns with this requirement. First, the Department has indicated that this form has yet to be developed. Without having this form, it is impossible for this Commission to assess whether it places unnecessary burdens on the regulated community. We suggest that this form be developed and shared with the regulated community before this regulation is returned in final-form.

Second, commentators have questioned the need for requiring the submission of the new Form LIBC-774 as a replacement for Form LIBC-392, which insurers did not routinely submit, although required to do so. The Department should explain the purpose and need for Form LIBC-774.

Finally, the Department should explain what additional paperwork will be required and provide an estimate of the preparation costs associated with filing the form for both the Department and the insurers.

7. Section 121.17.—Change in compensation.—Clarity.*Subsections (a), (b) and (c)*

These subsections state that certain forms "may" be filed if there is a change in compensation. The Department has indicated that Subsections (a) and (b) pertain to situations in which both the employer and employee are in agreement pertaining to changes in compensation and Subsection (c) pertains to suspension or modification of compensation by the employer. It is our understanding that in these subsections the proper forms must be filed. As currently drafted, these subsections do not reflect this fact. To improve clarity, we recommend that Subsections

(a) and (b) be amended to reflect that if the employer and employee are in agreement, then the appropriate forms shall be filed with the Bureau and Subsection (c) be amended to require the filing of a Notification of Suspension or Modification, Form LIBC-751.

Additionally, Subsection (c) references Sections 413(c) and (d) of the Act, but does not include a corresponding Purdon's citation. To be consistent with the rest of the proposed rulemaking, we recommend that the Purdon's citation be included.

8. Section 121.18.—Subrogation.—Clarity.

Subsection (a) states, “[I]f a third party obtains recovery. . . .” It is our understanding from our discussions with the Department that “third party” should be deleted and replaced with “employee.”

9. Section 121.21.—Reimbursement for silicosis, anthraco-silicosis or coal workers’ pneumoconiosis.—Clarity.

Subsection (b)

Paragraph (1) requires certain information to be reported “. . . in a format as required by the Bureau.” What is the required format? Will the Bureau provide a form for the requested information? The final-form regulation should include an explanation of the format that will be required in this subsection or delete the phrase, “. . . in a format required by the Bureau.”

Subsection (c)

This subsection states that insurers shall keep records for three years and that these records shall be available for inspection at reasonable times. We have two concerns. First, the final-form regulation should include an explanation as to when the three-year retention period begins. Second, the phrase, “reasonable times” is vague and should be changed to “normal business hours” in the final-form regulation. This comment also applies to similar language in Section 121.30(d).

10. Section 121.25.—Issuance of compensation checks.—Clarity.

Paragraph (2) states that “[N]otice of the first payment to a claimant shall be sent to counsel of record.” The final-form regulation should specify who is responsible for notifying the counsel of record and the manner in which counsel of record will be notified.

11. Section 121.27.—Orders to show cause.—Clarity.

Subsection (a)

This subsection references “the act or regulations.” The term “act” is defined at Section 121.1, relating to definitions. However, the term “regulations” is not defined. For clarity, the Department should include specific references to the regulations that must be followed. This comment also applies to the similar language in Subsection (g) of this section and in Section 121.27a(a) and Section 121.30(e).

Subsection (d)

This subsection states that a hearing will be conducted under this section and, when applicable, 1 Pa. Code Part II. The phrase “when applicable” is vague. The final-form regulation should either delete this phrase or provide more detail as to when 1 Pa. Code Part II will be followed.

Subsection (e)

This subsection requires that hearings be recorded and that the Department keep transcripts of the hearings.

Since the Department is not required to keep records for a specific time period, the phrase, “and kept by the Department” should be deleted.

Additionally, this section refers to “the Department” while the rest of the regulation refers to “the Bureau.” The regulation should be consistent in references to the agency throughout the regulation.

12. Section 121.27a.—Bureau intervention and penalties.—Clarity.

Subsection (a)

This subsection contains two “may” provisions. The first relates to the possible imposition of penalties by a workers’ compensation judge for an alleged violation of the act or regulations. The second pertains to the notification of the imposition of penalties by the workers’ compensation judge to the Bureau. The first “may” provision is appropriate because the workers’ compensation judge has discretion when imposing penalties. However, once it is determined that penalties will be imposed, we believe the notification of the Bureau should be mandatory. Therefore, the second “may” provision should be “shall” to require notification of the Bureau.

Subsection (b)

This subsection states that the workers’ compensation judge will provide a copy of the description of the nature of the alleged violation to the Bureau and provide copies of the notification to all parties. It is our understanding that it is the Department’s intent that the Bureau and the other parties will be notified at the same time. To improve clarity, Subsection (b) should include language to that effect.

**Department of Labor and Industry Regulation
#12-68 (IRRC #2485)**

Qualifications for Vocational Experts

September 7, 2005

We submit for your consideration the following comments on the proposed rulemaking published in the July 9, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the Department of Labor and Industry to respond to all comments received from us or any other source.

1. Section 123.201b. Definitions.—Clarity.

Financial interest, Subsection (ii)

This subsection uses the term “employment relationship,” whereas Subsections (i) and (iii) use the terms “employs the vocational expert” and “employing the vocational expert.” If the phrase “employment relationship” is intended to include circumstances other than the employment of the vocational expert by the insurer, the Department should clarify that intent.

2. Section 123.202a. Qualifications for vocational experts under Act 53 of 2003.—Protection of the public welfare; Feasibility; Reasonableness.

Subsection (a)(1)

Under this subsection, a vocational expert is qualified if he or she possesses a professional counselor license. Although the list of professional counselor examinations in 49 Pa. Code Section 49.11 includes the “Certified Rehabilitation Counselor (CRC) Examination given by CRCC,” it also includes other examinations that do not appear to be relevant to vocational experts, such as the

“Art Therapy Credentials Board (ATCB) Certification Examination given by ATCB” and the “Advanced Alcohol & Other Drug Abuse Counselor Examination given by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse Inc.” The Department should review 49 Pa. Code Section 49.11 and narrow the scope of examinations the Department finds acceptable for a vocational expert.

Subsection (a)(2)

Under this subsection, a person holding a bachelors degree must also have either certification by a professional organization or one year’s experience. A person who is certified by a professional organization is accountable to that organization. How will a person with one year’s experience be held accountable for their actions? Why is the option for a lower level of accountability provided?

3. Section 123.204. Conduct of expert witness.—Reasonableness.

Code of Professional Ethics for Rehabilitation Counselors

Section 123.201 states that the “act’s requirements for compliance with the Code of Professional Ethics for Rehabilitation Counselors . . . are also contained in this subchapter.” However, we did not find any further reference to the Code of Professional Ethics for Rehabilitation Counselors (Code of Ethics). We agree with the Insurance Federation of Pennsylvania, Inc. that a specific reference to the Code of Ethics should be added to Section 123.204.

Subsection (a)

The disclosure required by this subsection is needed for the workers’ compensation judge to make a compliance determination under Section 123.203(c). Therefore, we recommend that the regulation require this disclosure to be in writing.

This subsection does not specify when disclosure must be made to the employee. The Pennsylvania Workers’ Compensation Judges’ Association commented that a time frame is needed so a judge can determine compliance with Section 123.203(c). We agree and recommend that the Department add language addressing the time frame for disclosure to the appropriate section of its regulations.

Subsection (b)

This subsection requires documentation of the interview, but does not state what must be done with the documentation. Commentators questioned whether the employee gets a copy and when. An employee who undergoes this assessment has a vested interest in the outcome regardless of whether the outcome was in the employee’s favor or the insurer’s favor. The Department should add the requirement, in the appropriate section of its regulations, that the employee be given a copy of the vocational expert’s report within a specific, reasonable time frame.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 05-1746. Filed for public inspection September 16, 2005, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulation on the date indicated. To obtain the date and time of the meeting at which the Commission will consider this regulation, con-

tact the Commission at (717) 783-5417 or visit its website at www.irrc.state.pa.us. To obtain a copy of the regulation, contact the promulgating agency.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
6-280	State Board of Education Pupil Personnel Services and Students	9/6/05

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 05-1747. Filed for public inspection September 16, 2005, 9:00 a.m.]

INSURANCE DEPARTMENT

Application for Approval to Acquire Control

Christopher E. Gagnon has filed an application to acquire a controlling interest of American Independent Insurance Company, a Pennsylvania domiciled stock casualty insurance company. The filing was made under the Insurance Holding Companies Act (40 P. S. §§ 991.1401—991.1413). Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, rbrackbill@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-1748. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application for Merger

An application has been received requesting approval of the merger of ACE Employers Insurance Company, a stock casualty insurance company organized under the laws of the Commonwealth, with ACE American Insurance Company, a stock casualty insurance company organized under the laws of the Commonwealth. The survivor of the merger would be ACE American Insurance Company. The initial filing was received on August 31, 2005, and was made under 15 Pa.C.S. §§ 1921—1932 (relating to merger, consolidation, share exchanges and sale of assets), the GAA Amendments Act of 1990 (15 P. S. §§ 21101—21208) and the Insurance Holding Companies Act (40 P. S. §§ 991.1401—991.1413). Persons wishing to comment on the grounds of public or private interest in this merger are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of publication of this notice in the *Pennsylvania Bulletin*. Written statements must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient

detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Stephanie Ohnmacht, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, sohnmacht@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-1749. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application for Merger

An application has been received requesting approval of the merger of Allied Insurance Company, a nonadmitted stock insurance company organized under the laws of California, with ACE American Insurance Company, a stock casualty insurance company organized under the laws of the Commonwealth. The survivor of the merger would be ACE American Insurance Company. The initial filing was received on August 31, 2005, and was made under 15 Pa.C.S. §§ 1921—1932 (relating to merger, consolidation, share exchanges and sale of assets), the GAA Amendments Act of 1990 (15 P. S. §§ 21101—21208) and the Insurance Holding Companies Act (40 P. S. §§ 991.1401—991.1413). Persons wishing to comment on the grounds of public or private interest in this merger are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of publication of this notice in the *Pennsylvania Bulletin*. Written statements must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Stephanie Ohnmacht, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, sohnmacht@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-1750. Filed for public inspection September 16, 2005, 9:00 a.m.]

Application for Merger

An application has been received requesting approval of the merger of INA Surplus Insurance Company, a stock casualty insurance company organized under the laws of the Commonwealth, with Illinois Union Insurance Company, a foreign eligible surplus lines insurer organized under the laws of the State of Illinois. The survivor of the merger would be Illinois Union Insurance Company. The initial filing was received on August 31, 2005, and was made under 15 Pa.C.S. §§ 1921—1932 (relating to merger, consolidation, share exchanges and sale of assets), the GAA Amendments Act of 1990 (15 P. S. §§ 21101—21208) and the Insurance Holding Companies Act (40 P. S. §§ 991.1401—991.1413). Persons wishing to comment on the grounds of public or private interest in this merger are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of publication of this notice in the *Pennsyl-*

vania Bulletin. Written statements must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Stephanie Ohnmacht, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, sohnmacht@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-1751. Filed for public inspection September 16, 2005, 9:00 a.m.]

LEGISLATIVE REFERENCE BUREAU

Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of Bulletin). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no documents have been received. For questions concerning or copies of documents filed, but not published, call (717) 783-1530.

Governor's Office

Manual M215.3—Field Procurement Handbook, Revision No. 5, Dated July 20, 2005.

Administrative Circular No. 05-13—Mailing Address Change—Commonwealth Media Services, Still Imaging Section, Dated August 3, 2005.

Administrative Circular No. 05-14—Refueling of Commonwealth Automotive Fleet Vehicles, Dated August 3, 2005.

Administrative Circular No. 05-15—Automotive Fleet Preventive Maintenance Schedule, Dated August 5, 2005.

Administrative Circular No. 05-16—State Employees Purchasing Vehicles at the Commonwealth Auction, Dated August 5, 2005.

Administrative Circular No. 05-17—Placing of Decals and Logos on Commonwealth Vehicles, Dated August 5, 2005.

Administrative Circular No. 05-18—Appropriation, Authorization, and Expenditure of Federal Funds, Dated August 9, 2005.

Administrative Circular No. 05-19—2006—07 Budget Instructions, Dated August 15, 2005.

Administrative Circular No. 05-20—Holidays—2006, Dated August 31, 2005.

MARY JANE PHELPS,
Director
Pennsylvania Bulletin

[Pa.B. Doc. No. 05-1752. Filed for public inspection September 16, 2005, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board lease will expire:

Philadelphia County, Wine & Spirits Shoppe #5191, 2401 Vare Avenue, Philadelphia, PA 19145.

Lease Expiration Date: September 30, 2010

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 5,700 net useable square feet of new or existing retail commercial space within a 1/4-mile radius of the intersection of Vare Avenue and 24th Street, Philadelphia.

Proposals due: October 7, 2005, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128-2113
Contact: Robert Jolly, (215) 482-9671

JONATHAN H. NEWMAN,
Chairperson

[Pa.B. Doc. No. 05-1753. Filed for public inspection September 16, 2005, 9:00 a.m.]

PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY AND DEPARTMENT OF ENVIRONMENTAL PROTECTION

Clean Water and Drinking Water State Revolving Fund Programs Public Hearing on Federal Fiscal Year 2006 and 2007 Project Priority Lists

The Pennsylvania Infrastructure Investment Authority (PENNVEST) and the Department of Environmental Protection (Department) have prepared the Federal Fiscal Year (FY) 2006/2007 Project Priority Lists (PPLs) of drinking water and pollution abatement projects to be considered for a design and engineering or construction loan from funds the Commonwealth expects to receive from moneys approved by Congress to capitalize the Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) programs.

The projects to be considered for a loan from the DWSRF and CWSRF programs must meet the Federal requirements for funding in accordance with the Federal Safe Drinking Water Act and Clean Water Act. Accordingly, the projects included on the PPLs are expected to meet the requirements applicable to use of the DWSRF and CWSRF loan funds. Projects listed on this Commonwealth's FY 2006/2007 PPL are expected to proceed with design and engineering or to construction in the near future.

Federal guidance on development of the PPLs requires that the lists be subject to public review and comment before being submitted to the United States Environmental Protection Agency.

The Department has scheduled a public hearing for 10 a.m. on November 2, 2005, in the Auditorium, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The hearing is scheduled for the purpose of receiving comments from the public regarding the FY 2006/2007 PPLs. Interested persons are invited to express their views on the priority rating or ranking of projects on the PPLs. Persons wishing to offer comments at the public hearing should contact the Infrastructure Grants Administrative Section at the address or telephone number listed as follows or by e-mail at amaisano@state.pa.us by 4 p.m., November 1, 2005. Where written statements are prepared and will be submitted at the hearing, speakers will be asked to restrict the oral portion of the statement to a summary of the written comments.

It is not necessary to appear at the public hearing to present comments on the list of projects. Interested persons may submit written comments to the Department at the address that follows. Written comments will be considered equivalent to oral statements presented at the hearing. To be considered by the Department and PENNVEST, the written comments must be received by the Infrastructure Grants Administrative Section on or before the date of the hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Tony Maisano as noted previously or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

A copy of the FY 2006/2007 PPLs may be requested from or are available for public review in the offices listed at the end of this notice and are accessible electronically through the Department's website as follows:

www.dep.state.pa.us/dep/deputate/watermgt/wsm/WSM_TAO/Finan_Tech_Asst.htm

Department of Environmental Protection
 Bureau of Water Standards and Facility Regulation
 Division of Technical and Financial Assistance
 Infrastructure Grants Administrative Section
 10th Floor, Rachel Carson State Office Building
 400 Market Street
 Harrisburg, PA 17101
 (717) 787-6744

PENNVEST
 22 S. Third Street
 4th Floor, Keystone Building
 Harrisburg, PA 17101
 (717) 787-8137

KATHLEEN A. MCGINTY,
Secretary
Department of Environmental Protection
Vice-Chairperson
Pennsylvania Infrastructure Investment Authority

and
 PAUL K. MARCHETTI,
Executive Director
Pennsylvania Infrastructure Investment Authority

[Pa.B. Doc. No. 05-1754. Filed for public inspection September 16, 2005, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Delegation of Certain Routine, Ministerial and Nonpolicymaking Public Meeting Agenda Items; M-00970915

Public Meeting held
August 25, 2005

Commissioners Present: Wendell F. Holland, Chairperson;
James H. Cawley, Vice Chairperson; Bill Shane, concur-
ring and dissenting in part; Kim Pizzigrilli; Terrance
J. Fitzpatrick, dissenting

*Commonwealth Telephone Company PSI/SPI Filing for
Year 2005; Supplement No. 94 to Tariff Telephone Pa.
PUC No. 24; Supplement No. 87 to Tariff Telephone PA.
PUC No. 23; R-00050551*

*Petition for Amended Alternative Regulation and Network
Modernization Plan of Commonwealth Telephone
Company; P-00961024F1000*

*Petition for Alternative Regulation and Network
Modernization Plan of Commonwealth Telephone
Company; P-00961024*

Order

By the Commission:

I. BACKGROUND

Before us for disposition are the Commonwealth Telephone Company (CTCo or the Company) annual 2005 Price Stability Index and Service Price Index (PSI/SPI) filing and the associated revenue and proposed tariff rate increases. CTCo's annual 2005 PSI/SPI filing was made under the provisions of the new Chapter 30 law, Act 183 of 2004, P. L. 1398 (66 Pa.C.S. §§ 3011—3019) (Act 183) and pursuant to the Company's Alternative Regulation and Network Modernization Plan (Chapter 30 Plan) that this Commission approved at Docket No. P-00961024F1000.¹

CTCo possesses the statutory right under 66 Pa.C.S. § 3105(a)(1)(iii) and its approved Chapter 30 Plan to seek and obtain an automatic revenue and rate increase as contemplated by the new Chapter 30 law. Under the Company's Price Stability Plan (PSP), the PSI/SPI calculates the allowable change (increase or decrease) in rates for noncompetitive services based on the annual change in the Gross Domestic Product Price Index (GDP-PI). The PSP also addresses revenue neutral rate rebalancing/restructuring. The PSP set forth in CTCo's Chapter 30 Plan is a complete substitution of the rate base/rate of return regulation. Further, CTCo's Chapter 30 Plan acknowledges that nothing in its Plan shall be construed to limit the requirement under 66 Pa.C.S. § 1301 that rates shall be just and reasonable.

Pursuant to a previous Settlement Agreement,² CTCo is prohibited from any increase in its SPI until its banked decreases from prior PSI/SPI filings are retired. In accordance with CTCo's Chapter 30 Plan, banked amounts, including principal and interest, shall be assumed to be retired in 12 equal monthly increments in the future PSI

period and interest will accrue on such increments through the end of the month in which the increment is retired.

II. COMPANY FILING AND RATE PROPOSAL

On February 1, 2005, CTCo filed its annual PSI/SPI Price Stability Index (PSI) Report using the change in 2003 and 2004 third quarter GDP-PI that produced a 2.25% increase allowable for noncompetitive rates. On May 3, 2005, CTCo served advance notice of the forthcoming filing upon the Commission, the Office of Small Business Advocate, the Office of Consumer Advocate, and the Office of Trial Staff. Notice requirements for end-users were met via billing notices. Fifteen days later, the Company filed proposed tariff supplements seeking to consolidate the Company's existing rate groups from 12 to six and to increase monthly rates for basic dial-tone and nonpublished telephone number service with an effective date of September 1, 2005. No complaints were filed and no hearings were held.

According to CTCo, the retirement of the former banked amount combined with the 2005 PSI/SPI rate changes would result in an annualized revenue increase of \$3.2 million and a new banked amount of \$98,723.

CTCo submitted two tariff supplements affecting specific elements of noncompetitive local service:

- Supplement 87 to Tariff Telephone PA. PUC No. 23 increases the monthly rate for nonpublished telephone number service from \$1.50 to \$2.25 and affects 45,700 end-users.

- Supplement 94 to Telephone Tariff PA. PUC No. 24 consolidates existing local service rate groups from 12 to six and increases the monthly rates, thereby affecting all residential access lines, business access lines and Private Branch Exchange (PBX) trunks.

III. DISCUSSION

A. Procedural Disposition

Chapter 30 annual PSI/SPI filings by incumbent local exchange carriers (ILECs) have previously been disposed of through the issuance of Secretarial Letters. However, due to concerns outlined below, PSI/SPI filings will now be accomplished through Commission action at the Public Meeting.

1. The new Chapter 30 law virtually provides automatic revenue and rate increases for those ILECs with price stability mechanism (PSM) plans and price cap formulas, where the statutorily mandated inflation offset values have been reduced to 0% or 0.5% depending on the amended network modernization plan option that these ILECs have selected. The past practice of issuing Secretarial Letters for annual Chapter 30 ILEC PSI/SPI filings largely addressed revenue and rate decreases that were caused by the higher values of the inflation offsets established by the Commission in the respective ILEC PSM and price cap formulas.

2. Automatic revenue and rate increases under the new Chapter 30 law annual ILEC PSI/SPI filings have concrete revenue and rate impacts on end-user consumers. The Commission should disclose these effects in a transparent and adequately documented fashion. The issuance of Secretarial Letters does not accomplish these purposes. Since these filings impact end-user consumers in a substantial fashion, the Commission will publicly rule on these filings at Public Meeting.

3. Although these filings may be uncontested, the allocation of the related revenue increases among the

¹ *Petition for Amended Alternative Regulation and Network Modernization Plan of Commonwealth Telephone Co.*, Docket No. P-00961024F1000 (Order entered March 3, 2005).

² Commission Order adopting the Recommended Decision of Administrative Judge Smolen at P-00032020, P-00961024F0002, P-00961024, and R-00027695, dated July 21, 2003.

ILECs' categories of services may and will present issues that will be decided by this Commission at a Public Meeting.

4. The new Chapter 30 law annual ILEC PSI/SPI filings will not be separated from other proceedings that are pending before this Commission or the Federal Communications Commission, e.g., intercarrier compensation, intrastate and interstate access charge reform, intrastate and interstate universal service fund (USF) support, etc.³ The interaction of such policy issues with the ILECs' PSI/SPI filings are better decided at Public Meeting.

5. The disposition of the new Chapter 30 law ILEC PSI/SPI filings will involve issues that link the ILECs' non-competitive services with the services that have been classified as competitive under 66 Pa.C.S. § 3016(b), and ILEC "service bundles" that consist of protected, non-competitive, and competitive services that are offered and flexibly priced under 66 Pa.C.S. § 3016(e). Such issues are better decided at Public Meeting.

The issuance of Secretarial Letters for the disposition of matters pending before the Commission is inextricably linked with the authority delegation that this Commission has provided to its Staff Bureaus and Offices to dispose of such matters. A review of this Commission's delegation of authority to its Staff Bureaus and Office Directors discloses that the substantial revenue and rate increases that are being implemented through the new Chapter 30 law annual ILEC PSI/SPI filings should be handled through Public Meetings and the issuance of Commission Orders rather than through the issuance of Secretarial Letters.

The original intent of the Commission's delegation of authority to its Staff Bureaus and Office Directors was the reduction of the Public Meeting agenda. The Staff Bureaus and Offices would deal with certain ministerial items not requiring the formal vote of the Commission.⁴ Subsequent actions of the Commission delegating additional authority to the Staff Bureaus and Office Directors specifically focused on routine matters or actions that would not have had negative rate effects on end-user consumers of public utility services within the Commonwealth, or constituted uncontested compliance filings in matters previously approved by the Commission after full evidentiary adjudications. For example, the related Commission action on July 9, 1998, permitted the Bureau of Fixed Utility Services to dispose of matters pertaining to:

2. Uncontested compliance tariff filings made in response to § 1308(d) general rate increases approved by the Commission.

* * * * *

4. Uncontested local exchange telephone company extended area service filings which have *no rate effect* for the company's intrastate regulated services and *no rate effect* for the end-users of the company's intrastate regulated services.

5. Uncontested local exchange telephone company extended area service filings resulting in rate changes for the company's end-user customers *into preexisting rate structure elements and or bands*, and where the total

³ See generally *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105; *In re Developing a Unified Intercarrier Compensation Regime*, (FCC Rel. March 3, 2005), CC Docket No. 01-92 (Further Notice of Proposed Rulemaking, FCC 05-33).

⁴ *Delegation of Certain Routine, Ministerial and Nonpolicy-making Public Meeting Agenda Items*, Docket No. M-00970915, adopted March 13, 1997, 27 Pa.B. 2220 (May 3, 1997).

overall revenue effect is either *neutral* or *decreases* the company's intrastate regulated operations [revenues].

6. Uncontested additions of routes to preexisting and preapproved optional calling plans which have *no* or *de minimis* rate and revenue effects.

Delegation of Additional Routine, Ministerial and Nonpolicy-making Public Meeting Agenda Items, Docket No. M-00970915, adopted July 9, 1998, 28 Pa.B. 3566 (July 25, 1998) (emphasis added).

The new Chapter 30 law annual ILEC PSI/SPI filings do not constitute "compliance filings" and are not encompassed within "pre-existing" authority delegation parameters which may have not been established in the first place for two key reasons.

First, the ILECs' PSI/SPI filings cannot be "compliance filings" since their compatibility with the ILECs' respective new Chapter 30 law Amended Chapter 30 Plans must be adjudicated anew by this Commission each time these filings are made. Furthermore, the Commission still has the statutory mandate, authority, and responsibility under 66 Pa.C.S. § 3019(h) to adjudicate whether the proposed rate changes are just and reasonable and non-discriminatory respectively under sections 1301 and 1304 of the Public Utility Code, 66 Pa.C.S. §§ 1301 and 1304. This mandate and responsibility is not compatible with the nature of "ministerial acts" that this Commission can easily delegate to one of its Staff Bureaus or Offices.

Second, a "compliance filing" also presupposes a previous evidentiary adjudication of a matter before the Commission that has specified the basic parameters of the "compliance filing." Naturally, such an adjudication cannot take place in advance for the new Chapter 30 law annual ILEC PSI/SPI filings since neither the changes in the annual GDP-PI index are known in advance, nor have the ILECs themselves decided on how to implement their respective proposed revenue and rate increases until they make these filings with the Commission, i.e., what services will absorb these proposed revenue and rate increases. Thus, these matters are not of a "routine ministerial" nature that can be disposed of through delegation of authority to a Staff Bureau or Office and the issuance of summary Secretarial Letters.

The Commission conducts full evidentiary adjudications and decides via Public Meeting votes on the rate increase requests by water and wastewater utilities amounting to a few thousand dollars. Accordingly, ILEC requests under the new Chapter 30 law for multimillion dollar revenue and rate increases should be processed with the same degree of transparency.

B. Substantive Compliance

1. Banked Revenues

The new Chapter 30 law annual ILEC PSI/SPI submissions must conform to their corresponding Commission-approved Amended Chapter 30 Plans. The instant Commonwealth PSI/SPI filing contains the disposition of past PSM accumulated revenue decreases that have been "banked" by the Company. CTC's 2003 and 2004 "banked" revenue decreases were carried forward and are being retired through the present PSI/SPI filing. The retirement of these "banked" decreases is carried out in the Company's present PSI/SPI filing purportedly in compliance with a related settlement that this Commission approved at Docket No. P-00032020, et al.⁵

⁵ *Petition of Commonwealth Telephone Company For Recognition of an Exogenous Event Under Its Alternative Regulation Plan, et al.*, Docket Nos. P-00032020, P-00961024F0002, P-00961024, R-00027695 (Order entered July 21, 2003).

Based on our review, some confusion exists relating to the Company's presentation of the retirement of the banked principal and interest from 2003 and 2004. While the Company's calculation appears to be correct, the presentation in the instant filing was unclear, because the banked amount from the years 2003-2004 to be carried forward to the 2005 filing was not clearly identified. CTCO is directed to work with Bureau of Fixed Utility Services to clarify and re-file its Exhibit 3 (from its original filing) to resolve this confusion.

2. Rate Group Restructuring

The present Commonwealth PSI/SPI submission does not simply implement a PSM revenue and rate increase; it also includes the restructuring of basic local exchange service rates. The Company in its current filing is consolidating its 12 basic local exchange service dial-tone line groups to six. According to the Company's Amended Chapter 30 Plan, in the event that the Company proceeds with a "rate rebalancing and restructuring," the "Company shall provide cost studies of each service for which a rate change is proposed at the time of the filing where such rate change is proposed." CTCO, Chapter 30 Plan, Part B.3. Although the proposed rate increases may be compatible with other provisions of the Company's Amended Chapter 30 Plan relating to rate increase limitations (Amended Chapter 30 Plan, Part B.1 (a)), the submission of the cost studies as specified in the Amended NMP has not been made.

3. Nonpublished Telephone Number Service

The Company is proposing a 50% rate increase in the rate element for non-published directory numbers of residential and business customers from \$1.50 per month to \$2.25 per month. The use of nonpublished directory numbers is often linked with such issues as the protection of personal privacy, domestic abuse situations, public safety agency interests and operations, etc. Under the new Chapter 30 law, the Commission retains jurisdiction over "quality of service standards" that address the "privacy of telecommunications services." 66 Pa.C.S. § 3019(b)(2). There has not been an adequate justification presented on whether a 50% proposed rate increase for nonpublished directory numbers is in the public interest and whether it will negatively affect the ability of those CTCO residential and business customers to protect their privacy for legitimate reasons. Furthermore, since the Company did not submit any cost studies with its filing, the Commission cannot ascertain whether this particular rate element will now be providing a higher residual profit to the Company's operations at its new monthly level. For this reason, this proposed increase for the nonpublished directory numbers is not adequately supported and is contrary to the above-referenced public interest considerations; *Therefore,*

It Is Ordered That:

1. The new Chapter 30 law annual ILEC PSI/SPI filings with revenue and rate increases that are made under the provisions of 66 Pa.C.S. § 3015, be presented to the Commission for disposition at the Commission's Public Meeting.

2. The proposed revenue and rate increase proposed by Commonwealth Telephone Company through the consolidation of its 12 basic local exchange service dial-tone line groups to six be permitted to go into effect as filed.

3. The Company submit a revised Exhibit 3 (from its original filing) within 30 days of the entry date of this Order.

4. The Company's failure to file any cost studies associated with its rate rebalancing and restructuring proposals is not in compliance with its Amended Chapter 30 Plan.

5. The Company's 2005 PSI/PSM filing is in partial compliance with its Commission-approved Amended Chapter 30 Plan.

6. The Company be given the alternative to either "bank" the proposed revenue increase associated with the nonpublished telephone number service or, alternatively, allocate the proposed revenue increase amount associated with the nonpublished telephone number service to the basic local exchange services and rate elements that are the subject of Moving Paragraph No. 2 in accordance with the applicable provisions of the Company's Amended Chapter 30 Plan, and that the Company provide the appropriate notification to the Commission within ten (10) days after the date of entry of the Commission's Order disposing of this matter. In the event that the Company does not accept either alternative, the proposed revenue and rate increase for nonpublished telephone number service will be suspended and investigated for a period not to exceed six months on whether it is just and reasonable under 66 Pa.C.S. § 1301, whether it negatively impacts the privacy protection interests of the Company's end-users, and whether it complies with the Company's Commission-approved Amended Chapter 30 Plan.

7. The Company file the appropriate modified tariff supplements to become effective on one day's notice in accordance with the above-referenced ordering paragraphs.

8. The Commission Order in this matter be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-1755. Filed for public inspection September 16, 2005, 9:00 a.m.]

Monitoring and Enforcement of Network Modernization Plans; M-00051872

Public Meeting held
August 11, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson, dissenting statement follows; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Verizon Pennsylvania Inc. Petition and Plan for Alternative Form of Regulation under Chapter 30; 2000 Biennial Update to Network Modernization Plan (Amendment to NMP); P-00930715F0002

Verizon Pennsylvania Inc. Petition and Plan for Alternative Form of Regulation under Chapter 30; 2000 Biennial Update to Network Modernization Plan (Petition For Reconsideration of May 15, 2002 Order); P-00930715

Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations; M-00001353

Tentative Order

By the Commission:

The Monitoring and Enforcement of Network Modernization Plan docket at M-00051872 is intended to develop appropriate monitoring and enforcement procedures in

incumbent local exchange carriers' (ILECs) network modernization plans consistent with the provisions of the new Chapter 30, commonly known as Act 183. 66 Pa.C.S. §§ 3011—3019.

Briefly, at our Public Meeting of March 23, 2005, the Commission had before it a proposed Tentative Order setting forth the details for an audit of the Network Modernization Plan (NMP) of Verizon Pennsylvania Inc. (Verizon PA) in response to a previous order entered September 17, 2003, at the previously captioned P-00930715F0002 and P-00930715 dockets. Because of the enactment of Act 183, however, which occurred after we announced our intent to audit Verizon PA's NMP, we concluded that further evaluation was necessary to determine the best way to fulfill our statutory role of monitoring and enforcing ILECs' compliance with the NMP provisions of Act 183. At the March 23, 2005 Public Meeting, therefore, we approved an Order that was entered on April 15, 2005, at the immediately previously cited dockets and at M-00051872 that directed the filing of comments by interested parties on all relevant issues relating to the development of a useful, comprehensive and appropriate NMP monitoring and enforcement program in accordance with Act 183.

Among the comments received from interested parties, Verizon PA and Verizon North Inc. (collectively, "Verizon") offered an alternative plan to pay for their NMP audits whereby the companies would not object to paying for outside consultants to perform the audits if the outside consultants were paid from the approximately \$1 million then still in the "Escrow Fund" established by the Commission's April 11, 2001 Order in the previously captioned Verizon PA Structural Separation proceeding at M-00001353 (April 11, 2001 Order).

After reviewing this proposal, including how the Escrow Fund monies have been spent in the past and the proposed usage for the remaining amount, and in consideration of Verizon's proposal to apply any remaining funds toward their NMP audits, we are initially persuaded that this proposal is reasonable and should be accepted by this Commission, subject to the requirement that Verizon will make up any funding shortfall if the Escrow Fund is insufficient to cover the full cost of the Verizon NMP audit(s) now or in the future.

However, because the Escrow Fund was originally created to facilitate the Commission's analysis of metric reports, some interested parties could contend that the Commission should not, in effect, expand the purpose of the Escrow Fund to permit the use of these monies for an NMP audit. Alternatively, others could observe that both uses of the Escrow Fund relate to and directly facilitate the Commission's technical ability to monitor Verizon's compliance with its obligations under the Public Utility Code and Commission orders.

Therefore, before issuing a Final Order addressing the nature, extent and funding of any monitoring and enforcement program that may be needed to verify independently each company's network deployment as reported in its NMP updates, and consistent with the mandate of 66 Pa.C.S. § 703(g), we seek comments on Verizon's alternative funding proposal to use the Escrow Fund created by our April 11, 2001 Order; *Therefore,*

It Is Ordered That:

1. The Secretary serve a copy of this Tentative Order on all incumbent local exchange telecommunications carriers, on all parties to the Structural Separation proceeding at M-00001353 and the Performance Metrics and

Remedies docket at M-00011468, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Telephone Association and also cause a copy of this Order to be published in the *Pennsylvania Bulletin*.

2. An original and 15 copies of any comments by interested parties shall be filed with the Secretary within 10 days of publication in the *Pennsylvania Bulletin* on the issue of NMP audit funding using the Escrow Fund established by this Commission in its April 11, 2001 Order at M-00001353.

3. Any money remaining in the Escrow Fund as of June 30, 2005, and for which there are no further contractual obligations during fiscal year 2006, shall remain unspent pending a Final Order in this matter.

4. The contact persons for this matter are Dennis Hosler, Bureau of Audits, (717) 772-0312, Lou Samsel, Bureau of Fixed Utility Services, (717) 787-5164, and Carl S. Hisiro, Law Bureau, (717) 783-2812.

JAMES J. MCNULTY,
Secretary

**Dissenting Statement of Vice Chairperson
James H. Cawley**

*Public Meeting August 11, 2005; AUG-2005-L-0079**

*Monitoring and Enforcement of Network Modernization
Plans; M-00051872*

*Verizon Pennsylvania Inc. Petition for Alternative Form of
Regulation under Chapter 30; 2000 Biennial Update to
Network Modernization Plan (Amendment to NMP);
P-00930715F0002*

*Verizon Pennsylvania Inc. Petition and Plan for
Alternative Form of Regulation Under Chapter 30; 2000
Biennial Update to Network Modernization Plan (Petition
For Reconsideration of May 15, 2002 Order); P-00930715*

Before us for disposition is the Staff recommendation on the development of appropriate monitoring and enforcement procedures for the incumbent local exchange carrier (ILEC) network modernization plans (NMPs), consistent with the provisions of Act 183 of 2004 or the new Chapter 30 law, 66 Pa.C.S. § 3011 et seq. The Staff report and recommendation correctly concludes that the Commission possesses the requisite authority under the Public Utility Code to perform an investigative-type audit for the independent verification of an ILEC's reported progress in implementing its Commission-approved NMP, and to require the ILEC in question to pay for such an audit.

However, the Staff recommendation defers the implementation of any such NMP auditing activity for Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North) until after their respective biennial reports are respectively filed on June 30, 2007 and March 31, 2007. I believe that since the Staff has concluded that the Commission possesses the requisite statutory authority to proceed with ILEC NMP audits, and to order affected ILECs to bear the costs of such audits, the delay for proceeding with an audit of at least the Verizon PA NMP implementation until 2007 is unwarranted.

It is an established fact that since the original 1994 Commission approval of Verizon PA's (then Bell Atlantic-Pennsylvania, Inc.) Alternative Regulation and Network Modernization Plan at Docket No. P-00930715 under the preceding version of the Chapter 30 law, Verizon PA's NMP has not undergone a comprehensive and independent audit. Although certain aspects of Verizon PA's NMP

implementation and broadband deployment and availability were tested in an evidentiary adjudication before this Commission in 2003, the Commission still stated the following:

In light of our disposition reached on the above issues, it is imperative that this Commission and the public have the assurance that Verizon PA will work toward meeting the requirements established herein. As such, it is necessary for this Commission to have confidence in the facts related to Verizon PA's network modernization filings as well as to *have appropriate enforcement tools readily available should non-compliance become an issue*. We are of the opinion that this information will be beneficial with regard to other Chapter 30 companies' network modernization filings as well.

In order to accomplish this, we shall direct the Bureau of Audits, in conjunction with the Law Bureau and the Bureau of Fixed Utility Services, to prepare, within sixty days after the date of entry of this Opinion and Order, a recommendation to the Commission detailing the nature and scope of an appropriate audit plan regarding the network plans of Verizon PA and other Chapter 30 companies. The recommendation shall address the appropriate reporting process, auditing procedures and types of information that Chapter 30 companies would need to file with the Commission so that the progress of each Chapter 30 network modernization plan can be adequately tracked and *independently verified*.

Verizon Pennsylvania Inc. Petition and Plan for Alternative Form of Regulation under Chapter 30; 2000 Biennial Update to Network Modernization Plan (Amendment to NMP), Docket Nos. P-00930715F0002 and P-00930715, Order entered September 17, 2003, at 76 (September 2003 Order—Non-Proprietary Version, emphasis in italics added).

Almost two years have passed since the Commission first expressed its concrete intention to proceed with the independent audit and verification of Verizon PA's NMP implementation. Verizon PA is currently operating under an Amended NMP that this Commission approved under the statutory framework of the new Chapter 30 law. *Petition for Amended Network Modernization Plan of Verizon Pennsylvania Inc.*, Docket No. P-00930715F1000, Order entered May 20, 2005. However, Verizon PA's Amended NMP does not substantively change the Company's compliance benchmarks that have been established in its earlier NMPs approved by the Commission with or without modification. See *generally* September 2003 Order. Thus, for a period of eleven (11) years the implementation of Verizon PA's NMP has not been independently tested, examined, and verified through a comprehensive Commission-directed and supervised audit. Rather than proceeding with such an independent audit forthwith, the majority of the Commission is willing to wait for an additional 2-year period before engaging in this necessary endeavor.

I believe that the decision to postpone the independent audit of Verizon PA's NMP to 2007 will deprive this Commission of the opportunity to effectively exercise its enforcement powers that the new Chapter 30 law has vested to this independent regulatory agency. It is imperative that the Commission establish a baseline assessment of Verizon PA's original and Amended NMP implementation and compliance obligations through a comprehensive and independent audit. This independent audit and baseline assessment could have included

Verizon PA's Fifth Biennial Update to its NMP that was submitted to the Commission on or about June 30, 2005 at Docket No. P-00930715. The related audit activities could have included the verification of Verizon PA's compliance with the directives of the Commission's September 2003 Order. Furthermore, these audit activities could also have been used to train the Commission's own Staff in the compliance evaluation of Verizon PA's subsequent biennial Amended NMP updates. The development of the related Staff expertise would have been used for the in-depth evaluation of biennial reports from other ILECs with Commission-approved amended NMPs.

The independent audit could also have examined and independently verified Verizon PA's response times to requests for broadband facilities and services throughout its service territory and its various urban, suburban, and rural exchange areas. It must be understood that the past and ongoing deployment of broadband facilities in and of itself does not necessarily translate to the readily accessible availability of broadband services. For example, the presence of dark fiber in Verizon PA's network does not provide broadband services until the dark fiber links become lit and activated through the attachment of the appropriate electronics.

The new Chapter 30 law has permitted ILECs that operate under Amended NMPs and price stability mechanism—price change opportunity (PSM/PCO) formulas—including Verizon PA—to avail themselves of annual revenue and rate increases through the statutory specification of the productivity offset value at 0% or 0.5% depending on the ILEC's rural or non-rural classification and its chosen amended NMP option. See generally 66 Pa.C.S. § 3015(a)(1). However, the new Chapter law also contemplates revenue and rate refunds and additional penalties if an ILEC fails to meet its interim and final Commission-approved amended NMP commitments and compliance obligations. 66 Pa.C.S. § 3015(a)(2). This statutory enforcement mandate to this Commission cannot be meaningfully and timely exercised unless the Commission is capable of policing the ILECs' amended NMP implementation and compliance obligations. I fear that, without the utilization of timely, comprehensive, and independent audits of the ILECs' amended NMPs, this Commission will be unable to meaningfully and timely exercise its policing functions entrusted to it by the General Assembly under the new Chapter 30 law.

In summary, I believe that the need of an independent verification of Verizon PA's NMP implementation and compliance requires that we proceed with the appropriate audit forthwith rather than waiting for two more years until 2007. I also agree with the Staff's assessment that the cost of the related audit activities be borne by Verizon PA pursuant to 66 Pa.C.S. § 516, and that such cost should not be offset by monies in the "Escrow Fund" established by the Commission through its April 11, 2001 Order in the Verizon PA Structural Separation proceeding at Docket No. M-00001353.

Therefore, for these reasons I dissent.

[Pa.B. Doc. No. 05-1756. Filed for public inspection September 16, 2005, 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. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 with a copy served on the applicant by October 11, 2005. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Application of the following for approval to *begin* operating as *common carriers* for transportation of *persons* as described under the application.

A-00122084. Midnight Limousine, LLC (120 North Fifth Street, Indiana, Indiana County, PA 15701), a limited liability company of this Commonwealth—persons, in limousine service, between points in the Counties of Indiana, Armstrong, Allegheny, Jefferson and Westmoreland, and from points in said counties, to points in Pennsylvania, and return. *Attorney:* Michael J. Supinka, 936 Philadelphia Street, 3rd Floor, Indiana, PA 15701.

Application of the following for approval of the *beginning* of the exercise of the right and privilege of operating motor vehicles as *common carriers* for the transportation of *persons* by *transfer of rights* as described under the application.

A-00122083. Stephen G. Murray t/a Imperial Coach Limousine (453 West 8th Avenue, Homestead, Allegheny County, PA 15120)—persons, in limousine service, between points in Pennsylvania, including between points in Allegheny County; which is to be a transfer of all the right authorized under the certificate issued at A-00117471 to Imperial Coach Limousine, Inc., subject to the same limitations and conditions.

Application of the following for *amendment* to the certificate of public convenience approving the operation of motor vehicles as *common carriers* for the transportation of *household goods* as described under the application.

A-00119007, Folder 2, Am-B. Williams Moving & Storage, Inc. t/a Parks-Centre Carriers, Parks Moving & Storage, Fife Moving & Storage Co. and Werner Donaldson Moving Systems, Inc. (740 Commonwealth Drive, Warrendale, Butler County, PA 15086), a corporation of this Commonwealth—for the amendment to its common carrier certificate, which grants the right, inter alia, to transport by motor vehicle household goods in use, from points in the County of Beaver to other points in Pennsylvania, and vice versa, *So As To Permit* the transportation of household goods in use: (1) from points in the County of Allegheny to other points in Pennsylvania and vice versa; (2) between points in the County of Allegheny; and (3) from points in the County of Allegheny to points within an airline distance of 25 statute miles of the City-County Building in the City of Pittsburgh, Allegheny County, which is to be a transfer of all the rights authorized under the certificate issued to Best Moving & Storage, Inc. at A-00107776, F. 1, Am-A, subject to the same limitations and conditions. *Attorney:* David M. Boyle, Wick, Streiff, Meyer, O'Boyle & Szeligo,

P. C., 1450 Two Chatham Center, Pittsburgh, PA 15219-3427.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-1757. Filed for public inspection September 16, 2005, 9:00 a.m.]

Telecommunications

A-310814F7005. North Pittsburgh Telephone Company and US LEC of Pennsylvania, Inc. Joint petition for approval of an interconnection agreement between North Pittsburgh Telephone Company and US LEC of Pennsylvania, Inc. under section 252(e) of the Telecommunications Act of 1996.

North Pittsburgh Telephone Company and US LEC of Pennsylvania, Inc., by its counsel, filed on August 26, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the North Pittsburgh Telephone Company and US LEC of Pennsylvania, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-1758. Filed for public inspection September 16, 2005, 9:00 a.m.]

Tentative Order

Public Meeting held
August 25, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Franklin Manor Utilities, Ltd.; A-230116

Tentative Order

By the Commission:

Franklin Manor Utilities, Ltd. ("Franklin Manor"), the owner and operator of a sewage treatment plant that serves certain residents of South Franklin Township, was issued a certificate of public convenience by the Commission on May 13, 1988, at A-230116. On June 20, 2005, the Pennsylvania Department of Environmental Protection ("DEP") issued an Administrative Order to South Franklin Township requiring the Township to assume responsibility for the operation and maintenance of the sewage treatment plant as a result of Franklin Manor's failure to properly operate and maintain the plant. The order sets forth a lengthy history of Franklin Manor's non-compliance with DEP's regulations, the most severe of which has resulted in the discharge of untreated sewage from the plant causing pollution to waters of the

Commonwealth in violation of Franklin Manor's National Pollutant Discharge Elimination System ("NPDES") permit.

Prior to issuance of the June 20, 2005 order to the Township, DEP pursued protracted enforcement action against Franklin Manor issuing two prior orders to address the operation and maintenance problems at the sewage treatment plant and filing several actions in Commonwealth Court. According to the DEP order, Franklin Manor repeatedly ignored DEP's orders as well as those issued by Commonwealth Court, failed to take appropriate action to correct the situation, and failed to comply with its NPDES permit obligations. A recent DEP inspection revealed a continued failure of Franklin Manor to properly operate the plant resulting in continued discharge of untreated sewage from the plant. As a result, DEP determined that the imminent discharge of inadequately treated sewage into waters of the Commonwealth was a situation requiring immediate remedial action and ordered the Township to take over operation of the plant within five (5) days of the date of receipt of the June 20, 2005 Order.

While the Township is not opposed to taking over operation of the sewage treatment plant, the Township has filed an appeal from DEP's order. One of the issues raised on appeal is that the plant is currently subject to the Commission's jurisdiction and therefore, the Township has no legal authority to operate and maintain the facility. Additionally, as long as Franklin Manor holds a certificate of public convenience allowing it to operate the plant, the Township is unable to finance the operation, maintenance and repair of the system by establishing rates and charging and collecting user fees.

A certificate of public convenience is a privilege and not a contract or property right under which the holder acquires vested rights. *Western Pennsylvania Water Company v. PUC*, 311 A.2d 370 (Pa. Cmwlth. 1973). As such, a certificate of public convenience may be revoked where the utility fails to perform its essential service functions to the public. Accordingly, we take judicial notice of DEP's June 20, 2005 order, and based upon the findings set forth therein, we conclude that Franklin Manor is incapable and unwilling to operate the sewage treatment plant in a lawful manner and has failed to provide "adequate, efficient, safe and reasonable service and facilities" in accordance with its statutory duty under Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501. Given that the Township has been ordered to take over operation of the system to serve customers within the Township pursuant to DEP's order, we believe that it is appropriate to revoke Franklin Manor's certificate of public convenience without the necessity of first filing a formal complaint, and we tentatively conclude that revocation of Franklin Manor's certificate of public convenience pursuant to 66 Pa.C.S. § 1102(a)(2) is in the public interest. At the same time, revocation will not become effective until the Township legally and operationally is prepared to assume control of the sewage treatment system. *Therefore*,

It Is Ordered That:

1. Revocation of Franklin Manor's certificate of public convenience is hereby approved as being in the public interest.

2. The Secretary serve a copy of this Tentative Order upon Franklin Manor Utilities, Ltd., the Department of Environmental Protection Southwest Regional Counsel and Central Office Bureau of Regulatory Counsel, South

Franklin Township, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff; and also cause a copy of this Tentative Order to be published in the *Pennsylvania Bulletin* with a ten (10) day comment period.

3. Absent the filing of adverse public comment within ten (10) days after publication in the *Pennsylvania Bulletin*, this Tentative Order shall become final without further action by the Commission.

4. Upon this Order becoming final and without further action by the Commission, the certificate of public convenience held by Franklin Manor Utilities, Ltd. at A-230116 shall be cancelled consistent with the Township's resolution of its Appeal and an indication that it is ready to take over operation of the sewage treatment system.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-1759. Filed for public inspection September 16, 2005, 9:00 a.m.]

Transfer by Sale

A-210052F5000 and A-230081F5000. St. Peters Town, LP, Warwick Water Works, Inc. and Warwick Drainage Company. Joint application of St. Peters Town, LP, Warwick Water Works, Inc. and Warwick Drainage Company for approval of the transfer by sale of all of the common stock of Warwick Water Works, Inc. and Warwick Drainage Company to St. Peters Town, LP.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before September 26, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Joint Applicants: St. Peters Town, LP, Warwick Water Works, Inc. and Warwick Drainage Company

Through and By Counsel: Daniel P. Delaney, Esquire, James P. Melia, Esquire, Kirkpatrick & Lockhart Nicholson Graham LLP, 17 North Second Street, 18th Floor, Harrisburg, PA 17101-1507

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-1760. Filed for public inspection September 16, 2005, 9:00 a.m.]

Transfer of Stock

A-210072F0003, A-230063F0003, A-230013F0004 and A-210093F0002. Penn Estates Utilities, Inc., Water and Wastewater Divisions, Utilities Inc. of Pennsylvania, and Utilities Inc.—Westgate Division. Joint application of Penn Estates Utilities, Inc., Water and Wastewater Divisions, Utilities Inc. of Pennsylvania and Utilities Inc.—Westgate Division, for approval of a stock transfer leading to a change in control of their parent corporation, Utilities, Inc.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utili-

ties). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before October 3, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Penn Estates Utilities, Inc., Utilities Inc. of Pennsylvania and Utilities Inc.—WestGate

Through and By Counsel: James P. Dougherty, Esquire, Susan E. Bruce, Esquire, McNees Wallace and Nurick, LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108-1166

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-1761. Filed for public inspection September 16, 2005, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #05-071.1, Remove/Replace Six (6) Rolling Steel Doors, Pier 80 South, until 2 p.m. on Thursday, October 6, 2005. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 North Delaware Avenue, 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available September 20, 2005. Additional information and project listings may be found at www.philaport.com. The cost of the bid document is \$35 (includes 7% Pennsylvania Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations. Bidders must provide to the Procurement Department, in writing, the names of individuals that will be attending prebid meetings. This information is needed 24 hours prior to the meeting. Fax to (215) 426-6800, Attn: Procurement Department.

A mandatory prebid job site meeting will be held on September 29, 2005, at 10 a.m. at Pier 80 South. The meeting will begin at the Pier 78/80 Guardhouse, located

300 feet north of the intersection of Tasker Street and Columbus Boulevard, Philadelphia.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 05-1762. Filed for public inspection September 16, 2005, 9:00 a.m.]

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

Hearings Scheduled

Hearings have been scheduled, as authorized by 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code), in connection with the Public School Employees' Retirement System's (System) denial of claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg, PA 17101:

October 26, 2005	Ruth A Himes (D) (Death Benefit)	2:30 p.m.
December 14, 2005	John P. Wabby William J. Toomey, Jr. (Retirement Covered Compensation)	1 p.m.
December 21, 2005	Albert P. Burkhardt (Disability Retirement)	1 p.m.

Persons with a disability who wish to attend the listed hearings and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact Marilyn Fuller-Smith, Assistant to the Executive Director, at (717) 720-4921 to discuss how the System may best accommodate their needs.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 22 Pa. Code § 201.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

JEFFREY B. CLAY,
Executive Director

[Pa.B. Doc. No. 05-1763. Filed for public inspection September 16, 2005, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The 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.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

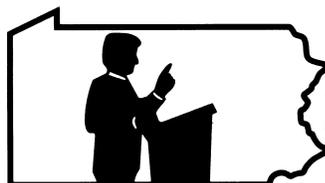
30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
PA Department of Community and Economic Development
374 Forum Building
Harrisburg, PA 17120
800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

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

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:
Vendor Services Section
717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

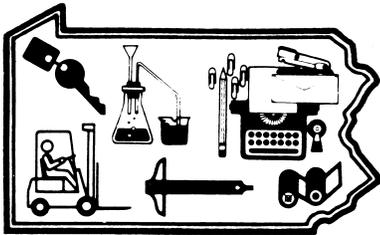
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

DO BUSINESS WITH STATE AGENCIES

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. The bureau is, by law, the central repository for all state contracts over \$5,000. Contract Specialists can supply you with descriptions of contracts, names of previous bidders, pricing breakdowns and other information. They can also direct you to the appropriate person and agency looking for your product or service. Copies of state contracts are also available. (Duplicating and mailing costs may apply). For more information, visit us online at www.patreasury.org.

Contact: **Bureau of Contracts and Public Records**
 Pennsylvania Treasury Department
 201 Finance Building
 Harrisburg, PA 17120
 Phone: (717) 787-2990 or 1-800-252-4700
 Fax: (717) 772-0977

ROBERT P. CASEY, Jr.,
State Treasurer

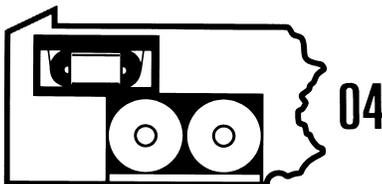


Commodities

Sign post & fasteners PENNDOT. Butler Count Dist.1020 is soliciting bids from individuals, firms, and corporations, to purchase channel bar sign posts (coat green paint), channel bar anchors (coat green paint), straps and fasteners. Must meet all PENNDOT specifications of the Pub 408. All vendor must be register on line at www.vendorregistration.state.pa.us to do business with the Commonwealth of PA. Please fax or e-mail, your name and your company and the complete address, phone number, can be fax or e-mail to fax # (724) 283-3571 or e-mail askunda@state.pa.us.

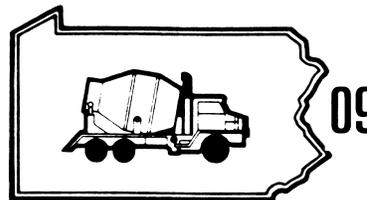
Department: Transportation
Location: Material will be shipped to PA Dept. of Transportation, 351 New Castle Road, Butler, PA 16001.
Duration: June 30, 2006
Contact: Andy Skunda, (724) 284-8226

SERVICES



Audio/Video

4500246484 Pinnacle maintenance
Department: PA Public TV Network
Location: 24 Northeast Drive, Hershey, PA 17033
Duration: 10/01/05 - 06/30/08
Contact: Lorraine McCorkel, (717) 533-6024



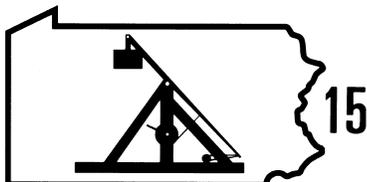
Construction & Construction Maintenance

63-0261 West Chester University of Pennsylvania of the State System of Higher Education is soliciting sealed bids in the Construction Procurement Office, 201 Carter Drive, Suite 201, West Chester University, West Chester, PA 19383 for Project 63-0261—Modular Changing & Storage Room. The work consists of the supply, delivery and set up of one 30' x 60' pre-fabricated modular unit, complete with foundation and connection of all utilities. All work to include but is not necessarily limited to, the furnishing of all labor, superintendence, materials, tools and equipment and performing all work necessary to complete construction to the satisfaction of, and subject to the approval of the State System of Higher Education. Prevailing wages apply. A bid bond in the amount of 10% and contract bonds in the amount of 100% will be required. Plans and specifications will be available at no charge from the Construction Procurement Office of West Chester University. Please fax your request to Barb Cooper at 610-436-2720. Include your company name, address, phone, fax, e-mail and contact person's name. You will be notified when bid packages can be picked up. To arrange express delivery, please provide your UPS or FedEx account number on your request. The project is estimated at \$200,000.00.

Department: State System of Higher Education
Location: S. Matlack St., West Goshen Township, West Chester, PA
Duration: Pre-Bid conference scheduled for noon on 9/16/05. Bid date is 11:00 a.m. on 9/29/05.
Contact: Barb Cooper, (610) 436-2706

MI-890 Dutcher Hall - Entrance Addition & HVAC Upgrade. The project consists of an upgrade to the existing HVAC system and a three (3) story building entrance addition including the associated HVAC, plumbing, fire protection, and electrical work. General construction work includes building Sitework and an elevator. Prime Contracts: General Construction, HVAC, Plumbing/Fire Protection, and Electrical Work. Estimated project cost ranges: General Construction - \$300,000 - \$500,000; HVAC \$100,000 - \$300,000; Plumbing \$25,000 - \$50,000; and Electrical \$100,000 - \$300,000. A Pre-bid Conference will be held September 21, 2005, at 1:00 PM, Dilworth Bldg., Room 203. Bid documents may be reviewed at the Construction Contracting Office, Dilworth Bldg., Room 202C, Millersville University; Harrisburg Builders Exchange Inc., Harrisburg; and Industry Exchange, Inc., Reading. Bid packet requests accepted on-line: http://muweb.millersville.edu/~purchase/large_construction.html. Sealed proposals will be officially accepted until 11:30 AM, October 12, 2005, at Dilworth Bldg., Room 202C.

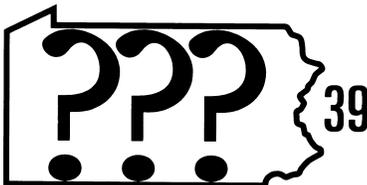
Department: State System of Higher Education
Location: Millersville University, Millersville, PA
Duration: 270 days; beginning January 6, 2006
Contact: Ruth Sheetz, (717) 872-3829



Environmental Maintenance Service

D13-027-101.1 New Jersey Zinc Dam Removal. The principal item of work is Dam Removal and Disposal. This project issues on September 16, 2005 and bids will be opened on October 13, 2005 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received.

Department: Environmental Protection
Location: Palmerton Borough and East Penn Township, Carbon County
Duration: 60 calendar days after the official starting date.
Contact: Construction Contracts Section, (717) 787-7820



Miscellaneous

RFA#2005-ACPG-01 PENNSERVE: The Governor's Office of Citizen Service announces the availability of up to \$50,000 in grant funding for planning/capacity building by community-based and faith-based not-for-profit organizations, government agencies and educational institutions. The grants support the planning/capacity building operations of volunteer service programs that meet locally-identified needs in the areas education, public safety, homeland security, the environment and other human services. The federal program requires a cash and/or in-kind match from successful applicants. Application instructions are available on the PENNSERVE website, www.pennserve.state.pa.us or by calling 1-866-673-7838. All applications are due to PENNSERVE by 4:00 P.M., EST on Thursday, November 10, 2005. Date: Technical assistance will be provided via telephone or email on October 20 and 21, 2005 from 1:00 - 4:00 P.M.

Department: Labor and Industry
Location: 1306 Labor and Industry Building, 7th and Forster Streets, Harrisburg, PA 17120
Duration: 6-8 Months upon award.
Contact: LA-Verna Fountain, 1-866-673-6838

RFP 14-05 The Department of Public Welfare, PeopleStat, is seeking proposals for the Medicaid Services Assurance Initiative to introduce existing home healthcare-industry technology into the delivery of home and community based health care services. Prospective vendors must register with the Integrated Enterprise System (IES) at: www.vendorregistration.state.pa.us. Proposals must be received no later than October 6, 2005 at 2:00 p.m. Please check back often to this site. Updates will be posted as they occur.

Department: Public Welfare
Location: Statewide
Duration: One year demonstration period. Second year (if renewed) operational period. 3 additional 1 year operational period renewal options. Refer to RFP section I-25 for specific details.
Contact: Daniel R. Boyd, (717) 783-3767

[Pa.B. Doc. No. 05-1764. Filed for public inspection September 16, 2005, 9:00 a.m.]

DESCRIPTION OF LEGEND

- | | |
|--|---|
| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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JAMES P. CREEDON.
Secretary

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD [58 PA. CODE CHS. 401, 435, 437 AND 441]

Draft Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to general and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P.L. 572, No. 71). Included in this group of draft regulations are proposed amendments to § 401.4 (relating to definitions). Upon adoption of the regulations and amendments by the Board, the Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). By publishing these regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations to the Pennsylvania Gaming Control Board, Office of Communications, P. O. Box 69060, Harrisburg, PA 17106-9060, Attn: Public Comment. The public comment period will end on Monday, October 10, 2005.

THOMAS A. DECKER,
Chairperson

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4. Definitions.

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

* * * * *

Gaming area—Any portion of a licensed facility where slot machines have been installed for use or play.

* * * * *

Nongaming employee—An employee of a slot machine licensee or vendor licensee whose duties are required to be performed in a gaming area or restricted area but who is not included within the definition of key employee qualifier, key employee or gaming employee, including, but not limited to, the following positions, regardless of job title:

- (i) Bartender.
- (ii) Cocktail server.
- (iii) Persons solely engaged in preparing or serving food or beverages.
- (iv) Clerical or secretarial personnel.
- (v) Janitorial personnel.
- (vi) Stage, sound and light technicians.
- (vii) Other positions the Board will determine based on detailed analyses by the Board of job descriptions as provided in the internal controls of the slot machine licensees as approved by the

Board or provided in the slot machine licensee's verification of the location of vendor services included with the vendor registration or license application.

* * * * *

Regular or continuing basis—A vendor will be deemed to conduct business on a regular or continuing basis if:

- (i) The total dollar amount of transactions with a single slot machine licensee or applicant is or will be greater than \$150,000 within any consecutive 12 month period.
- (ii) The total dollar amount of transactions with slot machine licensees or applicants is or will be greater than \$500,000 within any consecutive 12 month period.

Restricted area—An area specifically designated by the Board as restricted, including:

- (i) The cashiers' cage.
- (ii) The soft count room.
- (iii) The hard count room.
- (iv) The slot booths.
- (v) The surveillance room.
- (vi) The slot machine repair room.
- (vii) The progressive controller room.
- (viii) The central control computer room.
- (ix) The information technology department.
- (x) The specific areas designated and approved by the Board for the conduct of gaming in the licensed facility.
- (xi) Any additional area that a slot machine licensee designates a restricted in its approved internal controls.

* * * * *

VLA—Vendor License Application.

VRF—Vendor Registration Form.

Vendor—A person who provides goods or services to a slot machine licensee or applicant, but who is not required to be licensed as a manufacturer, supplier or junket enterprise. These persons include:

- (i) Suppliers of alcoholic beverages (other than the Pennsylvania Liquor Control Board), food and nonalcoholic beverages.
- (ii) Refuse handlers.
- (iii) Vending machine providers and service personnel.
- (iv) Linen and uniform suppliers.
- (v) Janitorial and maintenance companies, not relating to the repair of slot machines or associated equipment.
- (vi) Tenant businesses or franchises located within licensed facilities.
- (vii) Providers of transportation services.
- (viii) Companies, subcontractors and professionals involved in the construction of a facility for a slot machine licensee or applicant.
- (ix) Lessors of real property or goods.

(x) Other entities which the Board determines based on detailed analyses by the Board of vendor contracts.

Vendor license—A license issued by the Board authorizing a vendor to provide goods or services to a slot machine licensee or applicant.

Vendor licensee—A vendor that holds a vendor license.

Vendor registrant—A vendor that is registered with the Board.

Vendor registration—A registration issued by the Board authorizing a vendor to provide goods or services to a slot machine licensee or applicant.

Subpart B. LICENSING, REGISTERING AND PERMITTING

CHAPTER 435. EMPLOYEES

§ 435.5. Nongaming employee registration.

(a) In accordance with section 1318 of the act (relating to occupation permit application), the Board has the power to classify a category of nongaming employees.

(b) Nongaming employees shall apply for and receive a nongaming employee registration from the Board.

(c) An application for a nongaming employee registration will be on a form prescribed by the Board and include the following information:

(1) The name and address of the individual, to include the home address and residence history and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description of the applicant.

(5) Social Security number.

(6) Citizenship, and, if applicable, resident alien status, including employment authorization.

(7) Employment history, including gaming-related employment and contact information for prior employers.

(8) Verification of the applicant's employment or an offer of employment from a slot machine licensee or applicant or a vendor licensee or applicant.

(9) A description of the employment responsibilities of the individual and their relationship to the operation of the slot machine licensee or vendor licensee.

(10) A signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions about the applicant.

(11) A description of the individual's arrests and convictions, if any.

(12) A photograph that meets the requirements prescribed by the Board.

(13) As deemed necessary by the Board, a set of fingerprints taken by the Pennsylvania State Police or a criminal justice agency designated by the Pennsylvania State Police and transmitted to the Pennsylvania State Police.

(14) Details relating to any similar licenses, permits or registrations obtained, denied or revoked in other jurisdictions.

(15) A nonrefundable application processing fee.

(16) Additional information requested by the Board.

(d) After review of the information required under subsection (c), the Board may register the individual if the individual has proven that he is qualified to be registered under this section.

(e) Nongaming employee registrations shall be submitted to the Board by a slot machine licensee or applicant with a verification provided by the slot machine licensee or applicant of the location of the nongaming employee's duties at the licensed facility.

CHAPTER 437. VENDOR REGISTRATION AND LICENSING

Sec.	
437.1.	Vendor registration requirements.
437.2.	VRF.
437.3.	Vendor license requirements.
437.4.	Vendor license application.
437.5.	Active vendors list; prohibited vendors.
437.6.	Existing agreements.
437.7.	Permission to conduct business prior to licensure.
437.8.	Disqualification criteria.
437.9.	Exemption from vendor registration or licensing requirements.
437.10.	Emergency vendor.

§ 437.1. Vendor registration requirements.

(a) Each slot machine licensee shall file a VRF with the Board to conduct business with a vendor, except as provided in §§ 437.3 and 437.7 (relating to vendor license requirements; and permission to conduct business prior to licensure).

(b) VRFs shall be submitted by a slot machine licensee or applicant with a verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

§ 437.2. VRF.

A VRF shall be in a format prescribed by the Board requesting the following information:

(1) Any official or trade name used.

(2) Business address.

(3) Telephone number.

(4) The nature of the applicant's business and the type of goods or services to be provided and the name of the slot machine licensees or applicants to which the goods or services will be provided.

(5) Federal Employer Identification Number/Tax Identification Number.

(6) Whether the vendor is minority- or women-owned and controlled and the vendor's enterprise certification number, if any, as required by § 481.3 (relating to diversity participation).

(7) Form of business, state and date of incorporation or formation, if applicable.

(8) The date on which a formal acceptance of the agreement to conduct business with a slot machine licensee or applicant occurred and a description thereof including the expected duration and compensation.

(9) The names and addresses of all subsidiaries.

(10) The name, address and percentage of ownership of each entity directly owning more than 5% of the vendor or its business.

(11) The names and addresses of each of the following:

(i) An individual who entered into an agreement with or will deal directly with the slot machine licensee or applicant, including sales representatives; the immediate supervisors of the persons; and the persons responsible for the office out of which the supervisors work.

(ii) Any officer, partner or director who will be significantly involved in the conduct of the vendor business with the slot machine licensee or applicant.

(iii) If the vendor is a sole proprietorship, the name of the sole proprietor.

(iv) Each beneficial owner of more than 5% of the vendor and the percentage of that ownership.

(12) The name, position or title and signature of the individual who supplied the information in the VRF.

(13) Properly executed forms for consents to inspections, searches and seizures; waivers of liability for disclosures of information and consents to examination of accounts and records in forms as prescribed by the Board.

(14) Verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

(15) Other information requested by the Board.

§ 437.3. Vendor license requirements.

(a) If a vendor will conduct business with a slot machine licensee on a regular or continuing basis, the vendor must be licensed by the Board prior to conducting business, except as provided in §§ 437.6 and 437.7 (relating to existing agreements; and permission to conduct business prior to licensure).

(b) Notwithstanding the definition of "regular or continuing basis," the Board may require a vendor to apply for licensure from the Board if one of the following exists:

(1) The Board determines licensure is appropriate based on the Board's analysis of the vendor's services.

(2) The vendor's employees will have access to a restricted area or gaming area.

(c) VLAs shall be submitted by a slot machine licensee or applicant with a verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

§ 437.4. Vendor license application.

A VLA shall consist of an application processing fee and shall be in a format prescribed by the Board requesting the following information:

(1) Any official or trade name used.

(2) Current and former business addresses.

(3) Telephone number.

(4) The nature of the applicant's business and the type of goods or services to be provided and the name of the slot machine licensees or applicants to which the goods or services will be provided.

(5) Federal Employer Identification Number/Tax Identification Number.

(6) Whether the vendor is minority- or women-owned and controlled and the vendor's enterprise certification number, if any.

(7) Form of business and a copy of the certificate of incorporation, charter, by-laws, partnership agreement, trust agreement or other basic documentation of the vendor.

(8) The date on which a formal acceptance of the agreement to conduct business with a slot machine licensee or applicant occurred and a copy of the agreement or in the absence of a written agreement, a description thereof, including the expected duration and compensation.

(9) The names and addresses of all subsidiaries.

(10) Whether the applicant has had any registration, license, permit or certificate granted, denied, suspended, conditioned or revoked by any government agency in the Commonwealth or any other jurisdiction, the nature of the registration, license, permit or certificate, the agency and its location, the date of the action and the facts related thereto.

(11) The names and addresses of each of the following:

(i) Any individual who entered into the agreement with or will deal directly with the slot machine licensee or applicant, including sales representatives; the immediate supervisors of the persons; and all persons responsible for the office out of which the supervisors work.

(ii) Any officer, partner or director who will be involved in the conduct of the vendor business with the slot machine licensee or applicant.

(iii) If the vendor is a sole proprietorship, the name of the sole proprietor.

(iv) Each beneficial owner of more than 5% of the vendor and the percentage of that ownership.

(12) The name, address and percentage of ownership of each entity directly owning more than 5% of the vendor or its business.

(13) A Vendor Application Disclosure Information Form for the applicant and for each affiliate, intermediary, subsidiary and holding company of the applicant.

(14) A Multi-Jurisdictional Personal History Disclosure Form and a Pennsylvania Supplement for each key employee qualifier and key employee.

(15) The applicant's Federal tax returns and related documents for the 3 years, State tax returns, when appropriate and related documents for the 1 year preceding application.

(16) Information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act (11 U.S.C.) or a state insolvency law.

(17) Information regarding any civil, criminal, administrative and investigatory proceedings relating to the applicant and its key employees and key employee qualifiers.

(18) A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481 (relating to general provisions), signed by the chief executive officer of the applicant.

(19) The name, position or title and signature of the individual who supplied the information in the VRF.

(20) Properly executed forms for consents to inspections, searches and seizures; waivers of liability for disclosures of information and consents to examination of accounts and records in forms as prescribed by the Board.

(21) Verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

(22) Additional information requested by the Board.

§ 437.5. Active vendors list; prohibited vendors.

(a) The Board will maintain a list of active registered or licensed vendors and a list of prohibited vendors.

(b) A slot machine licensee or applicant may not enter into an agreement or continue to do business with a vendor listed as a prohibited vendor.

(c) The Board will consider the following factors in determining whether a vendor shall be listed as a prohibited vendor:

(1) The vendor has been found disqualified under § 437.8 (relating to disqualification criteria).

(2) The vendor's registration or license is suspended, revoked or denied.

(3) The vendor is restricted from reapplication by action of the Board.

(4) The vendor is temporarily prohibited from doing business with slot machine license applicants or licensees by action of the Board.

(d) A person or entity may not be removed from the list of prohibited vendors except as follows:

(1) By order of the Board.

(2) Upon expiration of the applicable period of restriction.

§ 437.6. Existing agreements.

(a) An applicant for a Conditional Category 1 license who maintains an existing agreement with an unlicensed or unregistered vendor is permitted to continue doing business with that vendor during the Category 1 license application process if the applicant demonstrates the following:

(1) The applicant has had an existing relationship with the vendor for 2 years immediately preceding the date of application.

(2) The applicant certifies that it has performed due diligence on the vendor.

(3) The applicant has filed a VRF or VLA on behalf of the vendor.

(4) Unless otherwise submitted under paragraph (3), the applicant has submitted a copy of an existing written agreement or a precise written description of an oral agreement with the vendor to the Board.

(b) Notwithstanding the provisions of subsection (a), upon its review of the information pertaining to the vendor, the Board may require termination of the agreement if the Board makes one or more of the following determinations:

(i) Disapproval of the agreement.

(ii) Disapproval of the owners, officers, employees or directors of the vendor.

(iii) Denial of the vendor registration or licensure.

§ 437.7. Permission to conduct business prior to licensure.

(a) Notwithstanding §§ 437.1 and 437.3 (relating to vendor registration; and vendor license requirements), the Board may, upon the petition of a slot machine licensee or applicant for each business transaction, allow an applicant for a vendor license to conduct a business transaction with the slot machine licensee or applicant prior to the licensure of the vendor applicant if all of the following criteria are met:

(1) A completed VLA has been filed by the slot machine licensee or applicant in accordance with § 437.3.

(2) The slot machine licensee or applicant shows good cause for granting the petition.

(b) Permission to conduct business under this section will be limited to 6 months, except that the Board may

extend the relief for additional 6-month periods upon a showing of good cause by the applicant.

§ 437.8. Disqualification criteria.

A vendor registration or license may be denied to any applicant who has failed to prove by clear and convincing evidence that the applicant or any of the persons required to be qualified, are in fact qualified in accordance with the act and this part, or who has violated the act or this part.

§ 437.9. Exemption from vendor registration or license requirements.

(a) The following persons are exempt from the vendor registration requirements of § 437.1 (relating to vendor registration requirements) and the vendor license requirements of § 437.3 (relating to vendor license requirements):

(1) Entities which provide only one or more of the following services to slot machine licensee which are the sole source provider of the services:

(i) Water.

(ii) Sewerage.

(iii) Electricity.

(iv) Natural gas.

(2) Regulated insurance companies providing insurance to the slot machine licensee or applicant and its employees.

(3) Employee benefit and retirement plans and related administrator plans, including incorporated 401K plans and employee stock purchase programs.

(4) National or local professional associates that receive funds from the slot machine licensee for the cost of enrollment, activities and membership.

(5) All State, Federal and municipal operated agencies.

(6) All liquor and wine industries regulated by the Pennsylvania Liquor Control Board.

(7) State and Federally regulated banks or savings and loan associations where funds are deposited by licensees, notwithstanding those sources or transactions provided to a licensee which require Board approval.

(8) Providers of professional services including accountants, attorneys or any person otherwise required to be licensed as such.

(9) Telecommunication service providers.

(10) Nationwide shipping services.

(11) A person that engages in efforts to influence legislative action or administrative action on behalf of a principal for economic consideration.

(12) Public institutions of higher education.

(13) Professional entertainers, sports figures and other celebrities engaged by a slot machine licensee to appear at a slot machine licensee-sponsored special entertainment or promotional event.

(b) This section does not bar any other business entities from seeking a waiver of vendor registration or licensing requirements upon a showing of good cause.

(c) The Board may revoke an exemption or waiver granted under this section and require a person to submit to the vendor registration and licensing requirements under this part.

(d) This section does not relieve a slot machine licensee of reporting obligations required by § 441.15 (relating to maintaining agreements; filing of agreements).

§ 437.10. Emergency vendor.

A slot machine licensee may utilize an unregistered or unlicensed vendor when a threat to public health, welfare or safety exists or circumstances outside the control of the slot machine licensee creates an urgency of need which does not permit the delay involved in using the formal method of vendor registration or licensure. To make an emergency vendor procurement the slot machine licensee shall:

- (1) File a VRF or VRA with the Board within 72 hours of the vendor's commencement of services.
- (2) Provide a written explanation to the Board of the basis for the emergency vendor procurement and for the selection of the particular vendor.

Subpart C. SLOT MACHINE LICENSING

Chapter 441. SLOT MACHINE LICENSES

§ 441.15. Maintaining agreements; filing of agreements.

(a) Each slot machine licensee and applicant shall be required to maintain all of the following:

- (1) A fully signed copy of every written agreement.
 - (2) Records with respect to any oral agreement.
- (b) Slot machine licensees and applicants are under a continuing duty to maintain all changes or amendments to the terms of the agreements subject to subsection (a).
- (c) Each slot machine licensee shall submit the following to the Board:
- (i) A fully signed copy of any written agreement with a supplier licensee or applicant or with a vendor subject to licensure under § 437.3 (relating to vendor license requirements).
 - (ii) A precise written description of any oral agreement, in accordance with the requirements of subsection (f), with a supplier licensee or applicant or with a vendor subject to licensure under § 437.3.
- (d) Slot machine licensees and applicants are under a continuing duty to file all changes or amendments to the terms of the agreements subject to subsection (c).

(e) Notwithstanding the requirements of subsection (c), slot machine licensees or applicants may be required to submit a copy of a written agreement or a precise written description of any oral agreement as requested by the Board.

(f) A written description submitted under this section shall provide, at a minimum, the following:

- (1) The nature of the goods or services to be provided to the slot machine licensee or applicant.
- (2) The full name and business address of the non-slot machine licensee or applicant party to the agreement.
- (3) The duration of the agreement, or if provided in the agreement, the specific dates of performance.
- (4) The financial terms of the agreement.
- (5) A description of the goods or services provided, including the expected duration and compensation.

§ 441.16. Board review of agreements and records of agreements.

(a) The Board may review each agreement and record maintained or filed under § 437.4 or § 441.15 (relating to vendor license application; and maintaining agreements; filing of agreements) to determine the following:

(1) The reasonableness of the terms of the agreement, including the terms of compensation.

(2) The qualifications of the persons involved in and associated with the agreement, after which the Board may make a finding as to the suitability of the persons to be involved or associated with the slot machine licensee or applicant.

(3) Whether a person involved therein or associated therewith is providing or likely to provide goods or services to, or conducting or likely to conduct business with, a slot machine licensee or applicant or its employees which requires a supplier license or a manufacturer license under section 1317 of the act (relating to supplier and manufacturer licenses application), in which case the Board will direct that a supplier or a manufacturer license application be promptly filed by the person.

(4) Whether any action is desirable or necessary to regulate, control or prevent economic concentration in a vendor industry or to encourage or preserve competition in a vendor industry.

(b) If the Board disapproves of an agreement or a person associated therewith, the Board may by order require the termination of the agreement or association or pursue a remedy or combination of remedies provided for in the act or this part. If the disapproved agreement or association is not thereafter promptly terminated, the Board may pursue any remedy or combination of remedies provided for in the act or this part. This subsection applies notwithstanding that the Board has granted an exemption under § 437.9 (relating to exemption from vendor registration or licensing requirements) to a person involved in or associated with the agreement from the vendor license requirements set forth therein.

(c) Each agreement maintained or filed under §§ 437.4 and 441.15 shall be deemed to include a provision for its termination without liability on the part of the slot machine licensee or applicant, or on the part of any qualified party to the agreement or any related agreement the performance of which is dependent upon the agreement, in the event that the Board disapproves the agreement in accordance with subsection (b).

§ 441.17. Master purchasing and disbursement report.

(a) Each slot machine licensee or applicant shall generate a Master Purchasing and Disbursement Report for all vendor transactions. The report shall be submitted to the Board's Bureau of Licensing on the 22nd calendar day of each month by 5 p.m., unless that day is a Saturday, Sunday or a State or Federal holiday, in which case the report shall be provided by 5 p.m. on the first weekday thereafter. The report must include the following information:

(1) A payee register listing alphabetically by payee all nonpayroll transactions drawn by the slot machine licensee or applicant, including wire transfers and credits to vendors, and the following information next to the name of each payee:

(i) Vendor license or registration number or exemption code.

- (ii) Amount of each individual disbursement or credit.
- (iii) Date of each individual disbursement or credit.
- (iv) Subtotal of disbursements or credits by payee.
- (v) The grand total of all disbursements made during the reporting periods.
- (vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

(2) A payee register listing alphabetically by payee all transactions drawn by any affiliate, intermediary, subsidiary, holding company or agent of the slot machine licensee or applicant for goods or services that benefit the slot machine licensee or applicant, including wire transfers and credits to vendors, and the following information next to the name of each payee:

- (i) Vendor license or registration number or exemption code.
- (ii) Amount of each individual disbursement or credit.
- (iii) Date of each individual disbursement or credit.
- (iv) Subtotal of disbursements or credits by payee.
- (v) The grand total of all disbursements made during the reporting periods.
- (vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

(3) A register listing alphabetically by vendor all transactions, including wire transfers and credits, in which the slot machine licensee or applicant itself acted in the capacity of a vendor by providing goods or services. The register must include:

- (i) Vendor licensee or registration number or exemption code of the vendor to whom the goods or services were provided.
 - (ii) Date of each individual transaction.
 - (iii) Amount of each individual transaction.
 - (iv) A general description of the type of goods or services provided.
 - (v) By vendor subtotals of payments or credits received by the slot machine licensee or applicant or disbursements or credits made by the slot machine licensee or applicant during the reporting period.
 - (vi) By vendor totals of payments or credits received or disbursements or credits made by the slot machine licensee or applicant within the applicable 12 month period.
- (b) The reports shall be signed by the slot machine licensee or applicant and transmitted to the Board's Bureau of Licensing by means of electronic data transmission or in a form prescribed by the Board.

[Pa.B. Doc. No. 05-1765. Filed for public inspection September 16, 2005, 9:00 a.m.]