10-8-2016

October 8, 2016 (Pages 6281-6522)

Pennsylvania Legislative Reference Bureau

PENNSYLVANIA BULLETIN

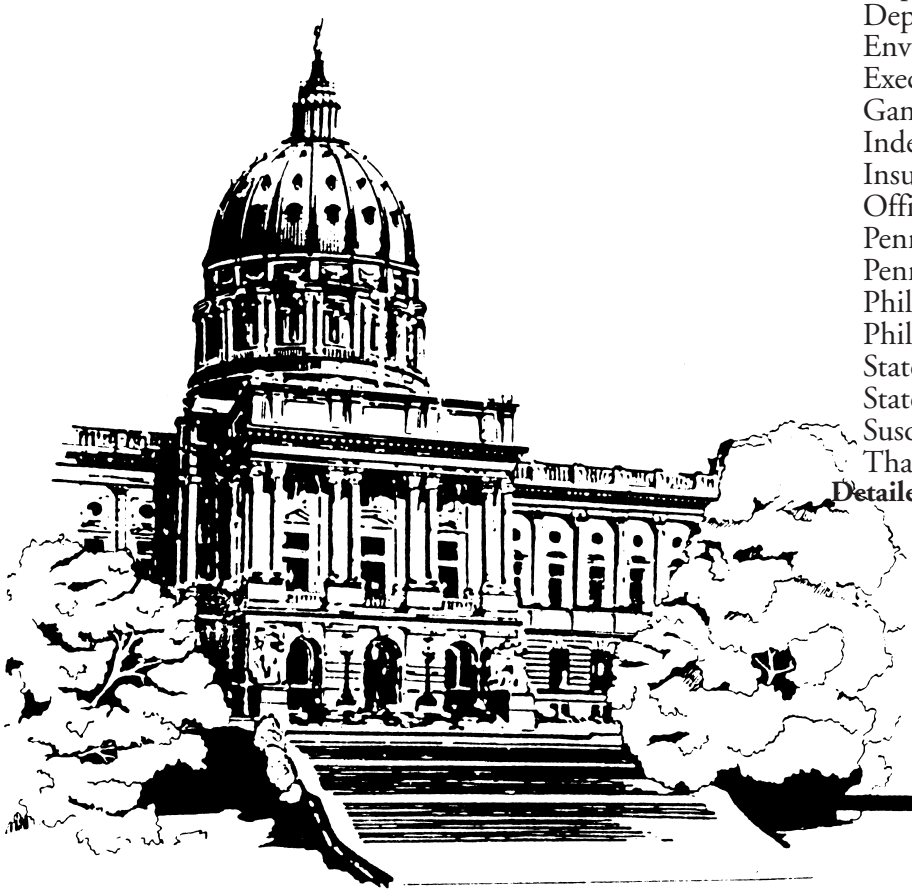
Volume 46 Number 41
Saturday, October 8, 2016 • Harrisburg, PA
Pages 6281—6522

See Part II Page 6431
for the Environmental Quality Board's
Environmental Protection Performance
Standards at Oil and Gas Well Sites
Final-Form Rulemaking

Part I

Agencies in this issue

Detailed list of contents appears inside.



Latest Pennsylvania Code Reporter (Master Transmittal Sheet):

No. 503, October 2016

CUT ON DOTTED LINES AND ENCLOSE IN AN ENVELOPE

CHANGE NOTICE/NEW SUBSCRIPTION

If information on mailing label is incorrect, please email changes to info@pabulletin.com or mail to:

FRY COMMUNICATIONS, INC.
Attn: *Pennsylvania Bulletin*
800 W. Church Rd.
Mechanicsburg, PA 17055-3198

CUSTOMER NUMBER (6 digit number above name on mailing label)

NAME OF INDIVIDUAL

OFFICE NAME—TITLE

ADDRESS (Number and Street)

(City) (State) (Zip Code)

TYPE OR PRINT LEGIBLY

PENNSYLVANIA BULLETIN

(ISSN 0162-2137)

The *Pennsylvania Bulletin* is published weekly by Fry Communications, Inc. for the Commonwealth of Pennsylvania, Legislative Reference Bureau, 641 Main Capitol Building, Harrisburg, Pennsylvania 17120, under the policy supervision and direction of the Joint Committee on Documents under 4 Pa.C.S. Part II (relating to publication and effectiveness of Commonwealth documents). The subscription rate is $82.00 per year, postpaid to points in the United States. Individual copies are $2.50. Checks for subscriptions and individual copies should be made payable to "*Fry Communications, Inc.*" Periodicals postage paid at Harrisburg, Pennsylvania.

Postmaster send address changes to:

FRY COMMUNICATIONS, Inc.
Attn: *Pennsylvania Bulletin*
800 West Church Road
Mechanicsburg, Pennsylvania 17055-3198
(717) 766-0211 ext. 2340
(800) 334-1429 ext. 2340 (toll free, out-of-State)
(800) 524-3232 ext. 2340 (toll free, in State)

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

Fry Communications, Inc.
Attn: *Pennsylvania Bulletin*
800 West Church Road
Mechanicsburg, Pennsylvania 17055-3198

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

CONTENTS

THE COURTS

JUDICIAL SYSTEM GENERAL PROVISIONS

LOCAL COURT RULES

Carbon County

Clinton County

Cumberland County

EXECUTIVE AND INDEPENDENT AGENCIES

DEPARTMENT OF AGRICULTURE

Notices

DEPARTMENT OF BANKING AND SECURITIES

Notices

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices

DEPARTMENT OF GENERAL SERVICES

Notices

DEPARTMENT OF HEALTH

Notices

DEPARTMENT OF TRANSPORTATION

Notices

ENVIRONMENTAL QUALITY BOARD

Rules and Regulations

EXECUTIVE BOARD

Statements of Policy

GAME COMMISSION

Notices

INDEPENDENT REGULATORY REVIEW COMMISSION

Notices

INSURANCE DEPARTMENT

Notices

OFFICE OF THE BUDGET

Notices

PENNSYLVANIA GAMING CONTROL BOARD

Rules and Regulations

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Notices

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

Pennsylvania Bulletin

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

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

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Pennsylvania 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 when the agency may omit the proposal step; it 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, it must repropose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number, a page number and date. Example: Volume 1, *Pennsylvania Bulletin*, page 801, January 9, 1971 (short form: 1 Pa.B. 801 (January 9, 1971)).

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* is available at www.pacode.com.

Source Notes give the history of regulations. 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*.

A chronological table of the history of *Pennsylvania Code* sections may be found at www.legis.state.pa.us/cfdocs/legis/CH/Public/pcde_index.cfm.

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. The *Pennsylvania Bulletin* is available at www.pabulletin.com.

SUBSCRIPTION INFORMATION: (717) 766-0211
GENERAL INFORMATION AND FINDING AIDS: (717) 783-1530

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 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. A fiscal note provides 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 5 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 5 succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

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

List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2016.

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

[204 PA. CODE CH. 29]

Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 467 Judicial Administration Doc.

Order

Per Curiam

And Now, this 23rd day of September, 2016, *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 2015 as required by Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

§ 29.401a. Consumer Price Index—costs and fines.

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 2015 as required by Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. 467 Judicial Administration Docket.

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 2015 was 0.7% percent. (*See*, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOOSAO, January 20, 2016.)

[Pa.B. Doc. No. 16-1711. Filed for public inspection October 7, 2016, 9:00 a.m.]

PART II. GENERAL ADMINISTRATION

[204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 468 Judicial Administration Doc.

Order

Per Curiam

And Now, this 23rd day of September, 2016, *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 costs outlined in the Financial Regulations are effective as of January 1, 2017.

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

§ 29.401. Scope.

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized by Administrative Order, 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, and judges and staff of all divisions of the Philadelphia Municipal Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under 42 Pa.C.S. § 3502(a) of the Judicial Code, the following regulations are adopted to implement Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

§ 29.402. 42 Pa.C.S. § 1725.1. Costs.

(a) *Civil cases*.—In calendar year 2017, 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 $51.50

(2) Actions involving more than $500 but not more than $2,000 ..... $69.00

(3) Actions involving more than $2,000 but not more than $4,000 ..... $86.00

(4) Actions involving between $4,001 and $12,000 ..... $129.00

(5) Landlord-tenant actions involving $2,000 or less $77.50

(6) Landlord-tenant actions involving more than $2,000 but not more than $4,000. ..... $94.50

(7) Landlord-tenant actions involving more than $4,000 but not more than $12,000 ..... $129.00

(8) Order of execution. $39.00

(9) Objection to levy $17.50

(10) Reinstatement of complaint $9.00

(11) Entering Transcript on Appeal or Certiorari. $4.50

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 2017, 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) $8.00

(b) *Criminal cases.*—In calendar year 2017, 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 $49.00

(2) Summary conviction, motor vehicle cases, other than paragraph (3) $39.00

(3) Summary conviction, motor vehicle cases, hearing demanded $47.00

(4) Misdemeanor $56.00

(5) Felony $64.50

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 2017, 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 $9.00

(2) Marrying each couple, making record thereof, and certificate to the parties $43.00

(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) $17.50

(4) Issuing a search warrant (except as provided in subsection (d)) $17.50

(5) Any other issuance not otherwise provided in this subsection $17.50

§ 29.403. 42 Pa.C.S. § 3571.

In calendar year 2017, Commonwealth portion of fines, etc.

* * * * *

(c) *Costs in magisterial district judge proceedings.*

(2) Amounts payable to the Commonwealth:

(i) Summary conviction, except motor vehicle cases $17.10

(ii) Summary conviction, motor vehicle cases other than subparagraph (iii) $17.10

(iii) Summary conviction, motor vehicle cases, hearing demanded $17.10

(iv) Misdemeanor $22.40

(v) Felony $34.40

(vi) Assumpsit or trespass involving:

(A) $500 or less $21.50

(B) More than $500 but not more than $2,000 .. $34.50

(C) More than $2,000 but not more than $4,000 ..... $51.60

(D) Between $4,001 and $12,000 ..... $86.00

(vii) Landlord-tenant proceeding involving:

(A) $2,000 or less $34.50

(B) More than $2,000 but not more than $4,000 ..... $42.95

(C) More than $4,000 but not more than $12,000 ..... $60.20

(viii) Objection to levy $8.75

(ix) Order of execution $26.00

(x) Issuing a search warrant (except as provided in section 1725.1(d) (relating to costs)) $12.25

(xi) Order of possession $15.00

(xii) Custody cases (except as provided in section 1725(c)(2)(v)) $6.40

[Pa.B. Doc. No. 16-1712. Filed for public inspection October 7, 2016, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Amendment of Rule 1.17 of the Pennsylvania Rules of Professional Conduct; No. 145 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 23rd day of September, 2016, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania; the proposal to amend Pa.R.P.C. 1.17 having been published for comment in the *Pennsylvania Bulletin*, 45 Pa.B. 6583 (November 14, 2015):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1.17 of the Rules of Professional Conduct is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.17. Sale of Law Practice.

A lawyer or law firm may, for consideration, sell or purchase a law practice, **or an area of practice,** including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law**, or in the area of practice that has been sold,**

in Pennsylvania; **however, the seller is not prohibited from assisting the purchaser in the orderly transition of active client matters for a reasonable period after the closing without a fee.**

(b) The seller sells the **entire** practice **[as an entirety to a single lawyer], or the entire area of practice, to one or more lawyers or law firms**. **[For purposes of this Rule, a practice is sold as an entirety if the purchasing lawyer assumes responsibility for all of the active files except those specified in paragraph (g) of this Rule.]**

(c) **[Actual written notice is given] The seller gives written notice** to each of the seller's clients, which notice must include at a minimum:

(1) notice of the proposed transfer of the client's representation, including the identity and address of the **[purchasing lawyer] purchaser**;

(2) a statement that the client has the right to representation by the **[purchasing lawyer] purchaser** under the preexisting fee arrangements;

(3) a statement that the client has the right to retain other counsel or to take possession of the file; and

(4) a statement that the client's consent to the transfer of the representation will be presumed if the client does not take any action or does not otherwise object within 60 days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale. Existing agreements between the seller and the client concerning fees and the scope of work must be honored by the purchaser, unless the client gives informed consent confirmed in writing.

(e) The agreement of sale shall include a clear statement of the respective responsibilities of the parties to maintain and preserve the records and files of the seller's practice, including client files.

(f) In the case of a sale by reason of disability, if a proceeding under Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement has not been commenced against the **[selling lawyer, the selling lawyer] seller, the seller** shall file the notice and request for transfer to voluntary inactive status, as of the date of the sale, pursuant to Rule 219(j) thereof.

(g) The sale shall not be effective as to any client for whom the proposed sale would create a conflict of interest for the purchaser or who cannot be represented by the purchaser because of other requirements of the Pennsylvania Rules of Professional Conduct or rules of the Pennsylvania Supreme Court governing the practice of law in Pennsylvania, unless such conflict, requirement or rule can be waived by the client and the client gives informed consent.

(h) For purposes of this Rule**[:], the term "seller" means an individual lawyer or a law firm that sells a law practice or an area of law practice, and includes both the personal representative or estate of a deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.**

[(1) the term "single lawyer" means an individual lawyer or a law firm that buys a law practice, and

(2) the term "seller" means an individual lawyer or a law firm that sells a law practice and includes both the personal representative or estate of a deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.]

(i) Admission to or withdrawal from a law partnership or professional association, retirement plan or similar arrangement or a sale limited to the tangible assets of a law practice is not a sale or purchase for purposes of this Rule 1.17.

Comment:

(1) The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or a law firm ceases to engage in the private practice of law **or ceases to practice in an area of law** in Pennsylvania and **[another lawyer or firm takes] other lawyers or firms take** over the representation of the clients of the seller, the seller, including the personal representative or estate of a deceased or disabled lawyer, may obtain compensation for the reasonable value of the practice similar to withdrawing partners of law firms. See Rules 5.4 and 5.6. Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[*Sale of Entire Practice*] *Termination of Practice by the Seller*

(2) The requirement that all of the private practice**, or all of an area of practice,** be sold is satisfied if the seller in good faith makes the entire practice**, or the area of practice,** available for sale to the **[purchaser] purchasers**. The fact that a number of the seller's clients decide not to be represented by the **[purchaser] purchasers** but take their matters elsewhere, therefore, does not result in a violation of this Rule. **Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to a judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.**

[*Single Purchaser*]

(3) The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

(4) This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint respon-

sibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves this jurisdiction typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[(3)] (5) This Rule requires **[a single purchaser] that the seller's entire practice, or an entire area of practice, be sold**. The prohibition against **[piecemeal sale of a practice] sale of less than an entire practice area** protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee generating matters. The **[purchaser is] purchasers are** required to undertake all client matters in the practice, **or practice area,** subject to client consent. If, however, the purchaser is unable to undertake all client matters because of nonwaivable conflicts of interest, other requirements of these Rules or rules of the Supreme Court governing the practice of law in Pennsylvania, the requirement **[that there be a single purchaser]** is nevertheless satisfied.

*Client Confidences**[, Consent and Notice]***

[(4)] (6) Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms with respect to which client consent is not required. See Rule 1.6(c)(6) and (7). Providing the purchaser access to the client-specific detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given **[actual]** written notice of the contemplated sale and file transfer including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 60 days. If **[actual]** notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed.

Notice and Consent

[(5)] (7) Once an agreement is reached between the seller and the purchaser, the client must be given written notice of the contemplated sale and file transfer including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 60 days. If notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed. The Rule provides the minimum notice to the seller's clients necessary to make the sale effective under the Rules of Professional Conduct. The **[person responsible for notice] seller** is encouraged to give sufficient information concerning the purchasing law firm or lawyer who will handle the matter so as to provide the client adequate information to make an informed decision concerning ongoing representation by the purchaser. Such information may include without limitation the **[buyer's] purchaser's** background, education, experience with similar matters, length of practice, and whether the **[lawyer(s) are] purchaser is** currently licensed in Pennsylvania.

[(6)] (8) No single method is provided for the giving of **[actual]** written notice to the client under paragraph (c). It is up to the **[person undertaking to give notice] seller** to determine the most effective and efficient means for doing so. For many clients, certified mail with return receipt requested will be adequate. However, with regard to other clients, this method may not be the best method. It is up to the **[person responsible for giving notice] seller** to make this decision.

[(7) The party responsible for giving notice is likewise not identified in the Rule. In many cases the seller will undertake to give notice. However, the Rule permits the purchasing lawyer or law firm to fulfill the notice requirement.

(8)] (9) All of the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice **or area of practice**.

Fee Arrangements Between Client and Purchaser

[(9)] (10) The sale may not be financed by increases in fees charged to the clients of the practice. This protection is underscored by both paragraph (c)(2) and paragraph (d). Existing agreements between the seller and the client as to the fees and the scope of the work must be honored by the purchaser, unless the client gives informed consent confirmed in writing.

Other Applicable Ethical Standards

[(10)] (11) Lawyers participating in the sale of a law practice **or a practice area** are subject to ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure **[client] the client's** informed consent for those conflicts which can be waived by the client (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation. See Rules 1.6 and 1.9.

[(11)] (12) If approval of the substitution of the purchasing attorney for the selling attorney is required by the Rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. See Rule 1.16.

Applicability of the Rule

[(12)] (13) This Rule applies to the sale of a law practice by representatives of a deceased**[,] or** disabled **[or disappeared]** lawyer. Thus, the seller may be

represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in the sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the **[purchasing lawyer] purchaser** can be expected to see to it that they are met.

[(13)] (14) This Rule does not apply to transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice **or an area of practice**.

[Pa.B. Doc. No. 16-1713. Filed for public inspection October 7, 2016, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Amendment of Local Rule of Judicial Administration 1901—Prompt Disposition of Matters; Termination of Inactive Cases; 15-0149; CP-13-AD-0000003-2015; 15-9033

Administrative Order No. 14-2016

And Now, this 20th day of September, 2016, it is hereby

Ordered and *Decreed* that, effective December 31, 2016, Carbon County *Amends* Local Rule of Judicial Administration 1901 governing the prompt disposition of matters and termination of inactive cases.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File one (1) copy electronically to adminrules@pacourts.us of this Administrative Order and Rule with the Administrative Office of Pennsylvania Courts.

2. File two (2) paper copies and one (1) electronic copy in a Microsoft Word format to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish the Rule on the Carbon County Court website at http://www.carboncourts.com.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Administrative Order and Rule in the Clerk of Courts Office.

7. Incorporate the Rule no later than thirty (30) days after publication in the *Pennsylvania Bulletin* with this Court's complete set of Rules of Court published at http://www.carboncourts.com.

By the Court

ROGER N. NANOVIC,
President Judge

Rule 1901. Prompt Disposition of Matters; Termination of Inactive Cases.

A. *Cases before the Court of Common Pleas*:

The Prothonotary, Register of Wills/Clerk of Orphans Court, and Clerk of Courts shall prepare and forward to the District Court Administrator a list of all cases in which no steps or proceedings have been taken for two years or more prior to the 15th day of August of each year for call on the following first Monday of December, or on such other date as the Court by special order may direct. Notice of the proposed termination as provided by Pa.R.J.A. 1901(c), and as provided by Pa.R.C.P. 230.2 for actions governed by the Pennsylvania Rules of Court Procedure, shall be given by the Prothonotary, Register of Wills/Clerk of Orphans Court, and Clerk of Courts, as applicable, to all parties and/or attorneys prior to the call, including, where required, by publication in the *Carbon County Law Journal*. If no action is taken, or written objection or statement of intention to proceed is filed, prior to the call, or if good cause for continuing the matter is not shown at the call, the Court shall enter an order dismissing the proceedings.

B. *Cases before the Magisterial District Courts*:

1. On or before the 15th day of November of each year, each Magisterial District Court shall:

a. Identify all summary citations or tickets issued, including these for violation of any local ordinance, where no plea has been entered or other disposition rendered, and there is no evidence of activity for the immediately preceding three year period.

b. Compile a list for all cases identified in subparagraph (a) above and attach a secure docket sheet that indicates the name of the affiant, the name of the defendant, the docket number and the charge(s) associated with the docket number.

c. Forward this list with attachments to the District Court Administrator.

2. Upon receipt of this list, the District Court Administrator shall:

a. Publish the list in the *Carbon County Law Journal*.

b. Provide a copy of the list to the Carbon County District Attorney.

3. The publication shall include a notice that the matters listed shall be terminated after thirty (30) days of publication unless a party to the proceeding requests a hearing from the appropriate Magisterial District Court.

a. If the defendant requests a hearing, the matter shall promptly be scheduled for such hearing or other disposition pursuant to the Rules of Criminal Procedure.

b. If the Commonwealth requests a hearing to oppose termination, the matter shall promptly be scheduled to determine if termination is appropriate.

c. Disposition of any hearing, including hearings where a citation or ticket is dismissed over the objection of the Commonwealth, shall be filed of record in the MDJS.

d. The Commonwealth shall have the right to appeal any determination to the Court of Common Pleas within the time period for Summary Appeals pursuant to the Rules of Criminal Procedure.

4. In the event a hearing is not requested within thirty (30) days of publication, the Magisterial District Judge shall:

a. Dismiss any summary traffic and non-traffic citation or parking violation filed which was issued three years prior to November 15th of each respective year.

b. Vacate any active warrant issued for the dismissed summary citation or ticket and promptly remove the warrant from MDJS.

c. Forward notice to the Pennsylvania Department of Transportation that the citation or ticket has been dismissed and request withdrawal of the defendant's license suspension, if applicable, pursuant to Pa.R.Crim.P. 470.

d. Promptly forward to the District Court Administrator a list of all cases which have been dismissed.

[Pa.B. Doc. No. 16-1714. Filed for public inspection October 7, 2016, 9:00 a.m.]

CLINTON COUNTY

Local Rules No. 29 January Term 1976; No. 29 January Term 1976

Order

And Now, this 19th day of September, 2016, *It Is Hereby Ordered* that the following amendments to the Clinton County Local Rules of Court are adopted and shall become effective 30 days after the publication of same in the *Pennsylvania Bulletin*:

1) Clinton County Rule of Miscellaneous Procedure No. 401 (Compulsory Submission-Arbitration) is re-numbered as Clinton County Rule of Civil Procedure No. 1301.1 (see following).

2) Clinton County Rule of Miscellaneous Procedure No. 402 (Arbitrators) is re-numbered as Clinton County Rule of Civil Procedure No. 1301.2 (see following).

3) Clinton County Rule of Miscellaneous Procedure No. 403 (Consolidation of Arbitration Actions) is re-numbered and *Amended* as Clinton County Rule of Civil Procedure No. 1301.3 (see following).

4) Clinton County Rule of Miscellaneous Procedure No. 404 (Place of Arbitration Hearing) is re-numbered as Clinton County Rule of Civil Procedure No. 1301.4 (see following).

5) Clinton County Rule of Miscellaneous Procedure No. 405 (Fees of Arbitrators) is re-numbered as Clinton County Rule of Civil Procedure No. 1301.5 (see following).

6) Clinton County Rule of Civil Procedure No. 203 (Counsel's Pre-Trial Conference) is re-numbered and *Amended* as Clinton County Local Rule of Civil Procedure No. 212.3 (see following).

7) New Clinton County Local Rule of Civil Procedure No. 205.2(a) (Redaction of Pleadings) (see following).

8) New Clinton County Local Rule of Civil Procedure No. 205.2(b) (Required Motion Cover Sheet) (see following).

9) New Clinton County Rule of Civil Procedure No. 1920.31 (Filing a claim for Alimony Pendente Lite) (see following).

10) New Clinton County Rule of Criminal Procedure No. 506.1 (Filing a Private Criminal Complaint for Violation of Protection from Abuse Order or Violation of Protection of Victims of Sexual Violence or Intimidation Act) (see following).

11) Clinton County Rule of Miscellaneous Procedure No. 801 (Termination of Inactive Cases) is *Vacated*.

12) Clinton County Rule of Criminal Procedure No. 507 (Approval of Felony Arrests by District Attorney) is *Vacated*.

13) All Clinton County Orphans' Court Rules are *Vacated* (Rules 1.3, 1.4, 1.5, 1.6, 1.7, 1.8. 1.9, 3.1, 3.4, 3.6, 6.3, 6.4, 6.6, 6.9, 6.10, 6.11, 7.1, 8.1, 8.6, 8.7, 9.1, 10.2, 11.1. 12.1, 12.2, 12.3, 12.5, 12.6, 12.7, 12.9, 12.10, 12.11, 14.2, 14.3, 16.1).

It Is Further Ordered that one copy of this Order and attachments shall be sent via email to the Administrative Office of Pennsylvania Courts (adminrules@pacourts.us), that two copies of this Order and attachments shall be sent to Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and one copy emailed to bulletin@palrb.us, that one copy of the Order and attachments be filed with the Office of the Prothonotary of Clinton County, Pennsylvania, and that the new and amended rules be incorporated into the Court Rules section of the Clinton County Court website (http://www.clintoncountypa.com/departments/court_services/county_courts/) within 30 days after the publication in the *Pennsylvania Bulletin*.

By the Court

CRAIG P. MILLER,
President Judge

Clinton County Local Rule of Civil Procedure No. 1301.1. Compulsory Submission.

All cases which are at issue where the amount in controversy is Fifty Thousand ($50,000.00) Dollars or less, except those involving title to real estate, shall first be submitted to and heard by a Board of three members of the Bar of this Court, as provided by 42 Pa.C.S.A. 7361. Unless a party has demanded a jury trial, the President Judge may dispense with compulsory arbitration and order the matter tried as a non-jury trial. At such non-jury trial, the parties may proceed pursuant to Pa.R.C.P. 1305 with respect to evidentiary matters.

Clinton County Local Rule of Civil Procedure No. 1301.2. Arbitrators.

1. All members of the Clinton County Bar shall constitute the Board of Arbitrators and all members shall act as arbitrators. No two members from the same firm or office, or related by blood or marriage, shall serve on the same board, unless this requirement is waived in writing by all parties in interest or their counsel.

2. The Prothonotary shall maintain, in alphabetical order, a list of all members of the Bar. Upon the filing of a praecipe for arbitration, the Prothonotary shall submit a list of five names to the plaintiff or the attorney for the plaintiff. In the event there are additional parties to the proceeding, the Prothonotary shall add an additional name for each additional party. This list shall be in the order in which the names appear on the Prothonotary's list, passing those who are disqualified to the next qualified. The plaintiff may strike one member from the list and forward the list to the defendant who may likewise strike one member. In the event of an additional party or parties, the defendant shall forward the list to that party who may likewise strike one member. When all parties have exercised the right to strike, the list shall be returned to the Prothonotary. In the event a party or parties do not exercise the right to strike, the first three remaining members shall constitute the Board and the first shall be the chairperson. Any stricken member, as well as any disqualified member, shall, in alphabetical order, be at the head of the list for the next and/or subsequent cases.

Clinton County Local Rule of Civil Procedure No. 1301.3. Consolidation of Arbitration Actions.

When the same transaction or occurrence, or series of transactions or occurrences, gives rise to more than one cause of action and separate actions have been commenced, all such actions shall be consolidated for arbitration, referred to the same board of arbitration, and heard together, unless the total amount in controversy exceeds Fifty Thousand ($50,000.00), in which case none of them shall be submitted to arbitration. It shall be the duty of every board of arbitration, before proceeding with the hearing, to ascertain whether or not any such separate action has been commenced.

Clinton County Local Rule of Civil Procedure No. 1301.4. Place of Arbitration Hearing.

All hearings shall be held in the Clinton County Courthouse.

Clinton County Local Rule of Civil Procedure No. 1301.5. Fees of Arbitrators.

The fee of the chairperson shall be Two Hundred ($200.00) Dollars. The fee of each other arbitrator shall be One Hundred Seventy-Five ($175.00) Dollars. These fees shall be applicable in all cases, including those which have been consolidated as provided under Clinton R.C.P. 1301.3. In cases requiring lengthy hearings or involving unusual questions of law or fact, the Court may, on petition of the arbitrators, increase the fees to an amount which will reasonably compensate them for the services performed.

Clinton County Local Rule of Civil Procedure No. 212.3. Counsel's Pre-Trial Conference (Civil Jury and Non-Jury Trials).

1. Within twenty (20) days of the posting of the civil trial list or as otherwise directed by the Court, plaintiff's counsel shall contact all other counsel to arrange for a pre-trial conference between counsel which shall be completed within forty-five (45) days of the posting of the aforesaid trial list. Counsel's conference shall be conducted at the Clinton County Courthouse unless all counsel agree to another location. Arrangements for the availability of a room at the Courthouse shall be made through the Court Administrator. The failure of plaintiff's counsel to comply with the schedule provided herein shall upon motion be grounds for a non pros.

2. At counsel's conference the following matters shall be accomplished:

a. Counsel shall exchange lists of potential witnesses, their addresses, and a general statement of the proposed testimony of each witness. The lists shall indicate which witnesses will be called and which may be called. Only witnesses so listed will be permitted to testify at trial.

b. Counsel shall examine, number, and list all exhibits which they intend to introduce and use at trial, whether during the case in chief or in rebuttal. Exhibits shall be marked by using the labels then in use by the Court. Any party may use at trial any exhibit listed by any other party. Only exhibits so listed and numbered will be admitted into evidence at trial. Counsel shall make a good faith attempt to agree as to the authenticity and admissibility of exhibits which have been listed and marked. If such an agreement cannot be reached, the objecting party shall state in detail the reasons for an objection together with any authorities in support of that position.

c. Counsel shall agree upon a brief factual statement of the case to be read to the jury as a part of voir dire and submit proposed questions to be used by the Court or counsel in conducting voir dire.

d. Each party shall submit to the other parties, in writing, the principles upon which they intend to rely at trial. If the parties disagree as to the applicability of a particular legal principle, a statement shall be prepared indicating the nature of said disagreement and each party's respective position.

e. Each party claiming damages shall submit to the party against whom the claim is asserted, an itemized list of special damages together with a list of the categories of general damages being sought and the estimated value of said general damages.

f. Counsel shall explore in depth the prospects for settlement and if a settlement cannot be achieved be prepared to explain to the Court the areas of difference in arriving at a settlement.

3. The Court may, in its discretion, sua sponte dispense with the requirement of Counsel's Pre-Trial Conference and request that the Court Administrator schedule a Pre-Trial Conference between the assigned Judge and Counsel.

Clinton County Local Rule of Civil Procedure 205.2(a). Required Redaction of Pleadings and Other Papers Filed with the Court.

Unless required by an applicable law or rule of court, or unless ordered by the court, any party or non-party filing a document in the Prothonotary's Office must redact identifying information appearing in the filing, including any attachments thereto, as follows:

(1) An individual's or business entity's social security number or taxpayer identification number must be redacted, provided that the filing may include the last four digits of the social security number or employer identification number;

(2) With respect to any financial account number, including but not limited to any bank account, investment account, or credit card account, the account number must be redacted, as well as any PIN, password or other number used to secure such account, provided that the filing may include the last four digits of the account number;

(3) The court may order, for good cause shown in a specific case, that additional information must be redacted from any filing, including but not limited to the home street address or driver's license number of a specified individual, medical records, treatment, diagnosis, individual financial information and proprietary or trade secret information;

(4) The court may order the person making a redacted filing to file, in addition, an unredacted copy under seal; and

(5) Where the court has permitted a filing to be made under seal, the court may later unseal the filing and may order the filing party to redact the filing at that time.

The responsibility for redacting the identifying information rests with the party or non-party making the filing and his or her counsel. Legal papers will not be reviewed by the Prothonotary for compliance with this Rule.

Clinton County Local Rule of Civil Procedure No. 205.2(b). Motion Cover Sheet.

The procedure set forth in this section shall apply to every request for relief and/or application to the court for an order, whether by petition, motion, preliminary objec-

tion, exception, or stipulation, that the filing party desires to bring before the court, except a motion for a continuance.

1. A cover sheet substantially in the form set forth in subsection 7 of this section shall be attached to the front of every request for a court order to which this rule applies. Any request for relief on the front of which an applicable Pennsylvania Rule of Civil Procedure requires a specific order or notice to be attached shall include that order or notice directly following the cover sheet.

2. The cover sheet shall consist of only one page. Captions may be abbreviated. If additional space is necessary to list counsel and unrepresented parties, a separate sheet may be attached. The filing party or counsel shall be responsible for identifying all parties and others to be given notice or their counsel on the cover sheet. If a party was not served with a copy of the executed cover sheet as a result of an omission of the filing party, the argument or hearing may be rescheduled or, in the discretion of the court, the request for relief may be denied.

3. If a cover sheet is not attached as required by this rule, the court may choose not to act upon the request for relief until an appropriate cover sheet is filed. If the filing party does not attach a cover sheet as required by this rule, a cover sheet, along with a copy of the original motion may be filed by any party, or the court.

4. If expedited consideration by the court is requested or required by statute or rule of procedure, the reason for such consideration shall be set forth on the cover sheet. Such consideration must be requested if the date of the pretrial conference has been set or if the case has already been pretried.

5. A proposed order granting the relief requested shall be attached to the cover sheet.

6. The court shall schedule argument, hearing or briefing as the court may require, note the scheduling information on the cover sheet, and issue the scheduling order appearing on the cover sheet. The prothonotary shall docket and promptly forward the completed cover sheet to all parties identified on the cover sheet.

7. The form of the cover sheet shall be substantially as follows:

COURT OF COMMON PLEAS, CLINTON COUNTY, PENNSYLVANIA
MOTION COVER SHEET

CAPTION (may be abbreviated)

vs.

DOCKET NO. _____

Case Assigned to Judge _____

_____ NONE

1. NAME OF FILING PARTY:
2. FILING PARTY'S ATTORNEY:
3. TYPE OF FILING:

4. THE FOLLOWING IS/ARE REQUESTED:
   - ☐ Argument
   - ☐ Evidentiary Hearing
   - ☐ Court Conference
   - ☐ Rule to Show Cause
   - ☐ Issue an Appropriate Order
   - ☐ Entry of Uncontested Order (attach supporting documentation)
   - ☐ Expedited Consideration.

     State the Basis:

     _____

     _____

     _____
   - ☐ Telephone Conferencing Requested. (Telephone number shall be provided to court administrator prior to hearing.)
   - ☐ Video Conferencing Requested.
   - ☐ Attach this Cover Sheet to the Original Motion Previously Filed on: _____
   - ☐ Other: _____

5. Agreement of Opposing Part Sought?
   Yes/No
   If yes, was it granted or denied? _____

6. TIME REQUIRED:
   _____

7. NAMES AND ADDRESSES OF ALL COUNSEL OF RECORD AND UNREPRESENTED PARTIES:

☐ Continued on Separate Sheet.

ORDER

1. ____ An ____ Argument ____ Factual Hearing ____ Court Conference is scheduled for _____ at _____ ___ .M. in Courtroom No. _____ , Clinton County Courthouse, Lock Haven, PA.

2. ____ Briefs are to be filed by the following dates:

Filing Party _____

Responding Party/Parties _____

3. ____ A Rule is issued upon Respondent to show cause why the Petitioner is not entitled to the relief requested.

4. ____ A Response to the Motion/Petition shall be filed as follows: _____ .

5. ____ See Order Attached. _____ See Separate Order Issued This Date.

6. ____ Other: _____ .

DATE: _____

_____

JUDGE

cc: ALL PARTIES OR OTHERS TO BE SERVED WITH NOTICE MUST BE DESIGNATED IN "7" ABOVE.

Clinton County Local Rule of Civil Procedure No. 1920.31. Filing a Claim for Alimony Pendente Lite.

(a.1) Upon request the Court of Common Pleas shall schedule a hearing to determine whether Alimony Pendente Lite shall be awarded. The Scheduling Order shall direct that the matter be referred to the Domestic Relations Office to determine the parties' incomes prior to the hearing before the Court. The Court in its discretion may decide the amount of Alimony Pendente Lite, or may refer the matter to the Domestic Relations Section to calculate the award.

(a.2) This Rule shall not apply to orders for spousal support which automatically convert to Alimony Pendent Lite upon the entry of a divorce decree where economic claims remain pending. See Pa.R.C.P. Rule 1920.31(d).

Clinton County Local Rule of Criminal Procedure No. 506.1. Private Criminal Complaint for Violation of Order or Agreement Entered Pursuant to the Protection from Abuse Act (23 Pa.C.S.A. § 6101, et seq.) or the Protection of Victims of Sexual Violence or Intimidation Act (42 Pa.C.S.A. § 62A01, et seq.).

(a) In lieu of filing a complaint with the police, a plaintiff may file a private criminal complaint against a defendant alleging indirect criminal contempt for a non-economic violation of any provision of an order or court-approved consent agreement issued under the Protection from Abuse Act, 23 Pa.C.S. § 6101 et seq., with the Office of District Attorney, the Court or the Magisterial District Judge in the district where the violation occurred in accordance with the following procedure:

(1) *With the Office of District Attorney*—The Plaintiff may file with the Office of District Attorney a private criminal complaint on a form approved by the Court. The District Attorney's Office shall review the complaint and approve or disapprove it without unreasonable delay. If the District Attorney approves the complaint, the attorney shall indicate this decision on the complaint form and shall docket the complaint with the Clerk of Courts. The Clerk of Courts shall forward it to the Judge who handled the original order or consent agreement. The Judge shall review the allegations and if the Judge finds that probable cause exists, the judge shall issue a warrant. The court shall forward the warrant to the Sheriff of Clinton County.

The Sheriff shall serve the warrant upon the defendant and take the Defendant before the Court without unnecessary delay. If the Court is not in session the Defendant shall be taken to the appropriate Magisterial District Judge. The defendant shall be afforded a preliminary arraignment pursuant to 23 Pa.C.S. § 6113(d) or 42 Pa.C.S.A. § 62A12(c) and bail shall be set (and the Court shall be notified if arraignment occurs in front of a Magisterial District Judge). The court shall schedule a hearing within ten (10) days of the filing of the private criminal complaint. If the Judge finds that sufficient grounds are not alleged in the complaint, the Judge may summarily dismiss the complaint without a hearing.

If the District Attorney disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas and proceed pro se in accordance with subsection (2).

(2) *With the Court or the Magisterial District Judge in the district where the violation occurred*—The Plaintiff may file with the Court or the Magisterial District Judge in the district where the violation occurred a private criminal complaint on a form approved by the court. After the complaint is filed, it shall be immediately forwarded to the Office of the District Attorney (unless the District Attorney has already disapproved the complaint, in which case the affiant shall proceed pro se), who shall review it and follow the procedure outlined in subsection (a)(1) of this Rule.

[Pa.B. Doc. No. 16-1715. Filed for public inspection October 7, 2016, 9:00 a.m.]

CUMBERLAND COUNTY

Rules of the Court of Common Pleas; Local Rules 1996-1335

Order of Court

And Now, this 19th day of September, 2016, effective November 11, 2016, or thirty (30) days after publication in the *Pennsylvania Bulletin*, whichever is later, Cumberland County Local Rules 1028(c), 1034(a) and 1035.2(a) are rescinded and replaced in the following form.

Pursuant to R.J.A. 103(d), the Court Administrator is directed to distribute two (2) paper copies of the rules and a copy on a computer diskette, CD-ROM, or other agreed upon alternate format that complies with the requirements of 1 Pa. Code § 13.11(b) to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*,

file one (1) copy of the rules with the Administrative Office of Pennsylvania Courts, publish a copy of the rules on the county website, incorporate the rules in the complete set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*, and forward one (1) copy to the *Cumberland Law Journal*.

The rules shall be kept continuously available for public inspection and copying in the office of the prothonotary and on the county website.

By the Court

EDWARD E. GUIDO,
President Judge

Rule 1028(c). Preliminary Objections.

All preliminary objections shall be filed with the Cumberland County Prothonotary's Office. Thereafter, the issues raised will be disposed of at regular sessions of argument court, which shall be scheduled as part of the annual court calendar. The procedure for disposition of matters at argument court shall be as follows:

1) The Prothonotary shall maintain the argument court list.

2) A case shall be listed by filing a praecipe, in duplicate, with the Prothonotary. The party listing the case for argument shall serve a copy of the praecipe on all counsel and any unrepresented party.

3) A case may be listed for argument either after all briefing requirements are met or the time for the briefing schedule has elapsed, whichever occurs first. A brief with two copies, containing a statement of facts, discussion of the issues and reference to all authorities relied upon, shall be filed with the Prothonotary concurrently with the preliminary objections. The objecting party shall furnish the briefs and serve a copy of the brief upon opposing counsel and any unrepresented party. The responding party shall furnish briefs in a similar manner within twenty (20) days of the date of service of the objecting party's brief. Argument may be denied to any party who fails to comply with the filing requirements of this paragraph. If the party seeking the order has not filed a timely brief in accordance with this rule, the Court may deny the relief sought on that basis alone.

4) The argument list shall be closed twenty (20) days prior to the date for argument. The list shall then be prepared by the Prothonotary and the cases shall be set out in order of their listing. Upon the closing of the argument list, the Prothonotary shall furnish notification to all attorneys and unrepresented parties, who have cases listed for argument, of the listing by regular mail.

5) One week prior to argument, the Court Administrator, at the direction of the President Judge, shall prepare the final list of cases to be argued before either a single judge or an en banc panel of two judges, or three judges. The list of assigned cases shall be listed in the Prothonotary's Office and the Law Library six (6) days prior to the date for argument.

6) Issues raised, but not briefed, shall be deemed abandoned.

7) References in any brief to parts of the record appearing in a reproduced record shall be to the pages and the lines in the reproduced record where said parts appear, e.g., "(r. pg. 30 l. 15)." If references are made in the briefs to parts of the original record not reproduced, the references shall be to the parts of the record involved, e.g., "(Answer p. 7)," "(Motion for Summary Judgment p. 2)."

8) Counsel or any party presenting oral argument shall be limited to fifteen (15) minutes unless prior permission is granted to extend argument in a complex case.

9) Prior approval of the Court must be obtained to present cases only on briefs. Any request is to be made to the Court Administrator no later than five (5) days prior to argument. Cases submitted for argument on briefs are subject to the briefing schedule set forth in paragraph (5).

10) Briefs will be retained by the Prothonotary and will be on the record.

11) All agreements for continuances and/or withdrawals shall be communicated to the Court Administrator no later than seven (7) days prior to argument court.

Rule 1034(a). Motions for Judgment on the Pleadings.

Motions for judgment on the pleadings shall be filed with the Cumberland County Prothonotary's Office and disposed of in the same manner as preliminary objections in accordance with Rule 1028(c).

Rule 1035.2(a). Motions for Summary Judgment.

All motions for summary judgment shall be filed with the Cumberland County Prothonotary's Office and disposed of in the same manner as preliminary objections in accordance with Rule 1028(c).

Note: The foregoing rules 206.1, 206.4(c), 208.2(d), 208.3(a), 1028(c), 1034(a) and 1035.2(a) are promulgated pursuant to Pa.R.C.P. 239.1 et seq. These Supreme Court Rules require that courts of common pleas adopt rules with respect to motions practice. The foregoing local rules retain current practices and are, to a large extent, existing rules renumbered and reconfigured in accordance with the requirements of the Pennsylvania Supreme Court. These rules are derived from and also rescind existing Cumberland County rules 205-1, 206-1 through 209-2, 210-1 through 210-14, 227.1-1, 227.1-2, and 4001-1.

1028(c)(5) amended February 3, 2011, effective February 3, 2011

1028(c)(5) amended July 27, 2011, effective July 27, 2011

1028(c) amended September 16, 2016, effective November 11, 2016.

[Pa.B. Doc. No. 16-1716. Filed for public inspection October 7, 2016, 9:00 a.m.]

RULES AND REGULATIONS

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 659a]

Fortune Asia Poker; Table Games Rules of Play

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 13A02(1) and (2) (relating to regulatory authority), amends Chapter 659a (relating to Fortune Asia Poker) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

This final-form rulemaking will change the name of Asia Poker to Fortune Asia Poker and will add two additional side wagers to the game, the Insurance and Progressive Payout Wagers.

Explanation of Chapter 659a

Asia Poker was renamed Fortune Asia Poker when a different licensed table game manufacturer acquired the rights to the game. In § 659a.1 (relating to definitions), additional definitions are added reflecting the addition of the two new side wagers to the game. A description of the table requirements, the additional side wagers and the ranking of the hands for the additional side wagers are added to §§ 659a.2, 659a.6 and 659a.7 (relating to Fortune Asia Poker table; shaker; physical characteristics; Fortune Asia Poker rankings; and wagers).

The dealing procedures in §§ 659a.8—659a.11 are updated to reflect the addition of the two new side wagers.

The payout odds for the new Insurance and Progressive Payout Wagers are added to § 659a.12 (relating to payout odds).

Comment and Response Summary

Notice of the proposed rulemaking was published at 45 Pa.B. 1383 (March 21, 2015). The Board did not receive comments from the regulated community. On May 20, 2015, the Independent Regulatory Review Commission (IRRC) provided the following comments.

IRRC requested that the Board provide the house advantage for the two new side wagers, the Insurance Wager and the Progressive Payout Wager, and explain how the final-form rulemaking compares with the payout tables/percentage approved in other jurisdictions.

For the optional Insurance Wager, the proprietary owner/manufacturer of the table game submitted three payout tables ranging in hold percentage from 3.91% to 8.05%. After reviewing the hold percentage for all three tables, the Board believed all three to be reasonable for an otherwise optional wager and thus all three are included in this final-form rulemaking. For the Progressive Payout Wager, this side wager has a hold percentage of 24.3%, which is a standard hold percentage for most progressive side wagers, is approved for play in Chapter 645a (relating to Pai Gow Poker) and is the only payout table submitted by the manufacturer.

As all payout tables submitted by the manufacturer were ultimately approved by the Board, the final-form rulemaking should in no way impede a facility's ability to compete with other gaming jurisdictions that offer Fortune Asia Poker.

In addition to the questions regarding house advantage/hold percentage, IRRC had a few miscellaneous clarity suggestions in §§ 659a.6(d)(1) and 659.12(d)(2) and § 659a.11(h)(1)(i)(B) (relating to procedures for completion of each round of play), all of which were made in this final-form rulemaking.

Other than the revisions made in accordance with IRRC's comments, the Board did not make other revisions between the proposed and final-form rulemakings.

Affected Parties

Slot machine licensees that elect to offer Fortune Asia Poker will be impacted by this final-form rulemaking as operators will have a greater number of side wagers associated with the game to offer at their facilities.

Fiscal Impact

Commonwealth. The Board does not expect that this final-form rulemaking will have fiscal impact on the Board or other Commonwealth agencies. Updates to Rules Submission forms and internal control procedures will be reviewed by existing Board staff.

Political subdivisions. This final-form rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector. This final-form rulemaking will provide certificate holders with additional operational options. If a certificate holder decides to offer Fortune Asia Poker with the additional side wagers within the licensed facility, the certificate holder will be required to train dealers on the rules of play and may need to purchase new equipment which will allow for the placement of progressive wagers. Costs incurred to train employees or purchase/lease equipment should be offset by the proceeds of gaming.

General public. This final-form rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

If a certificate holder selects different options for the play of table games, the certificate holder will be required to submit an updated Rules Submission reflecting the changes. These forms are available and submitted to Board staff electronically.

Effective Date

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 11, 2015, the Board submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 1383, to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 17, 2016, the final-form

rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 18, 2016, and approved the final-form rulemaking.

Findings

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapter 659a, are amended by amending §§ 659a.1—659a.3 and 659a.5—659a.12 to read as set forth in Annex A.

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

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

DAVID M. BARASCH,
Chairperson

(*Editor's Note*: See 46 Pa.B. 5790 (September 3, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 125-187 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart K. TABLE GAMES

CHAPTER 659a. FORTUNE ASIA POKER

§ 659a.1. Definitions.

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

Copy hand—A high hand, medium hand or low hand of a player that is identical in rank to the corresponding high hand, medium hand or low hand of the dealer.

Envy Bonus—An additional fixed sum payout made to a player who placed a Qualifying Wager when another player at the Fortune Asia Poker table is the holder of an Envy Bonus Qualifying Hand.

Envy Bonus Qualifying Hand—A player's Fortune Asia Poker hand with a rank of a four-of-a-kind or better formed from the seven cards dealt to a player.

High hand—The four-card hand that is formed from the seven cards dealt so as to rank higher than the medium hand and the low hand.

Low hand—The one-card hand that is formed from the seven cards dealt so as to rank lower than the high hand and the medium hand.

Medium hand—The two-card hand that is formed from the seven cards dealt so as to rank lower than the high hand and higher than the low hand.

Qualifying Wager—A Fortune Bonus Wager of at least $5 that may entitle a player to an Envy Bonus.

Setting the hands—The process of forming a high hand, medium hand and low hand from the seven cards dealt.

§ 659a.2. Fortune Asia Poker table; shaker; physical characteristics.

(a) Fortune Asia Poker shall be played at a table having betting positions for no more than six players on one side of the table and a place for the dealer on the opposite side of the table.

(b) The layout for a Fortune Asia Poker table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

(1) The name or logo of the certificate holder.

(2) A separate betting area designated for the placement of the Fortune Asia Poker Wager for each player.

(3) Three separate areas designated for the placement of the high hand, medium hand and low hand of each player.

(4) Three separate areas designated for the placement of the high hand, medium hand and low hand of the dealer.

(5) If the certificate holder offers the optional Fortune Bonus Wager authorized under § 659a.7(e)(1) (relating to wagers), a separate area designated for the placement of the Fortune Bonus Wager for each player.

(6) If the certificate holder offers the optional Insurance Wager authorized under § 659a.7(e)(2), a separate area designated for the placement of the Insurance Wager for each player.

(7) If the certificate holder offers the optional Progressive Payout Wager authorized under § 659a.7(e)(3), a separate area designed for the placement of the Progressive Payout Wager for each player.

(8) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If the payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Fortune Asia Poker table.

(c) To determine the starting position for the dealing or delivery of the cards, Fortune Asia Poker may be played with:

(1) A shaker, approved in accordance with § 601a.10(a), which shall be designed and constructed to maintain the integrity of the game. The shaker shall be the responsibility of the dealer, may not be left unattended while at the table and must:

(i) Be capable of housing three dice that when not being shaken shall be maintained within the shaker. Dice that have been placed in a shaker for use in gaming may not remain on a table for more than 24 hours.

(ii) Be designed to prevent the dice from being seen while being shaken.

(iii) Have the name or logo of the certificate holder imprinted or impressed thereon.

(2) A computerized random number generator which must be approved by the Bureau of Gaming Laboratory Operations in accordance with § 461a.4 (relating to submission for testing and approval) prior to its use.

(d) If the certificate holder offers the optional Progressive Payout Wager in accordance with § 659a.7(e)(3), the Fortune Asia Poker table must have a progressive table game system in accordance with § 605a.7 (relating to progressive table games) for the placement of Progressive Payout Wagers. The progressive table game system must include:

(1) A wagering device at each betting position that acknowledges or accepts the placement of the Progressive Payout Wager.

(2) A device that controls or monitors the placement of Progressive Payout Wagers at the gaming table, including a mechanism, such as a lock-out button, that prevents the placement of any Progressive Payout Wager that a player attempts to place after the dealer has announced "no more bets."

(e) Each Fortune Asia Poker table must have a drop box and a tip box attached on the same side of the gaming table as, but on opposite sides of, the dealer and in locations approved by the Bureau of Casino Compliance in accordance with § 601a.10(g). The Bureau of Casino Compliance may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

(f) Each Fortune Asia Poker table must have a discard rack securely attached to the top of the dealer's side of the table.

§ 659a.3. Cards; number of decks.

(a) Except as provided in subsection (b), Fortune Asia Poker shall be played with one deck of cards that are identical in appearance and two cover cards. The deck of cards used to play Fortune Asia Poker must include one joker. A certificate holder may use decks that are manufactured with two jokers provided that only one joker is used for gaming.

(b) If an automated card shuffling device is utilized, Fortune Asia Poker may be played with two decks of cards in accordance with the following requirements:

(1) The cards in each deck must be of the same design. The backs of the cards in one deck must be of a different color than the cards included in the other deck.

(2) One deck of cards shall be shuffled and stored in the automated card shuffling device while the other deck is being used to play the game.

(3) Both decks of cards shall be continuously alternated in and out of play, with each deck being used for every other round of play.

(4) The cards from only one deck shall be placed in the discard rack at any given time.

(c) The decks of cards used in Fortune Asia Poker shall be changed at least every:

(1) Four hours if the cards are dealt by hand.

(2) Eight hours if the cards are dealt from a manual or automated dealing shoe.

§ 659a.5. Shuffle and cut of the cards; procedures for determining the starting position for dealing cards.

(a) Immediately prior to commencement of play, unless the cards were preshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), after each round of play has been completed or when directed by the floorperson or above, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack provided, however, that the certificate holder may use an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.

(b) After the cards have been shuffled and stacked, the dealer shall:

(1) If the cards were shuffled using an automated card shuffling device, determine the starting position in accordance with subsection (g), then deal the cards in accordance with § 659a.8, § 659a.9 or § 659a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe).

(2) If the cards were shuffled manually or were preshuffled, cut the cards in accordance with subsection (c).

(c) If a cut of the cards is required, the dealer shall place the cover card in the stack at least ten cards in from the top of the stack. Once the cover card has been inserted, the dealer shall take all cards above the cover card and the cover card and place them on the bottom of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play. The dealer shall then determine the starting position in accordance with subsection (g), and deal the cards in accordance with § 659a.8, § 659a.9 or § 659a.10.

(d) After the cards have been cut and before any cards have been dealt, a floorperson or above may require the cards to be recut if the floorperson determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.

(e) If there is no gaming activity at a Fortune Asia Poker table which is open for gaming, the cards shall be removed from the dealing shoe and discard rack and spread out on the table face down unless a player requests that the cards be spread face up on the table. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, the procedures in § 659a.4(c) (relating to opening of the table for gaming) and this section shall be completed.

(f) A certificate holder may utilize a dealing shoe or other device designed to automatically reshuffle the cards provided that the device is submitted and approved in accordance with § 461a.4 (relating to submission for testing and approval) prior to its use in the licensed facility. If a certificate holder is utilizing the approved device, subsections (c)—(e) do not apply.

(g) To determine the starting position for the dealing of cards, the certificate holder shall use one of the following:

(1) A shaker in accordance with the following procedures:

(i) The dealer shall shake the shaker at least three times to cause a random mixture of the dice.

(ii) The dealer shall then remove the lid covering the dice and place the uncovered shaker on the designated area of the table layout. The dealer shall then total the dice and announce the total.

(iii) To determine the starting position, the dealer shall count each betting position in order, regardless of whether there is a wager at the betting position, beginning with the dealer as number one and continuing around the table in a counterclockwise manner, until the count matches the total of the three dice.

(iv) After the dealing procedures required under § 659a.8, § 659a.9 or § 659a.10 have been completed, the dealer shall place the cover on the shaker and shake the shaker once. The shaker shall then be placed to the right of the dealer.

(2) A computerized random number generator to select and display a number from 1 to 7. To determine the starting position, the dealer shall count each betting position in order, regardless of whether there is a wager at the betting position, beginning with the dealer as number one and continuing around the table in a counterclockwise manner, until the count matches the number displayed by the random number generator.

(h) After the starting position for a round of play has been determined, a certificate holder may mark that position with an additional cover card or similar object approved by the Bureau of Gaming Operations.

§ 659a.6. Fortune Asia Poker rankings.

(a) The rank of the cards used in Fortune Asia Poker, in order of highest to lowest, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. Notwithstanding the foregoing, an ace may be used to complete a straight flush or a straight formed with a 2, 3 and 4 but may not be combined with any other sequence of cards (for example: queen, king, ace and 2). The joker shall be used and ranked as an ace or may be used as any card to complete a straight, a flush, a straight flush or a royal flush.

(b) The permissible Poker hands at the game of Fortune Asia Poker, in order of highest to lowest rank, shall be:

(1) Four aces, which is a hand consisting of four aces.

(2) A straight flush, which is a hand consisting of four cards of the same suit in consecutive ranking, with ace, king, queen, jack being the highest ranking straight flush and an ace, 2, 3, 4 being the second highest ranking straight flush.

(3) A four-of-a-kind, which is a hand consisting of four cards of the same rank, with four kings being the highest ranking four-of-a-kind and four 2s being the lowest ranking four-of-a-kind.

(4) A flush, which is a hand consisting of four cards of the same suit. When comparing two flushes, the provisions in subsection (c) shall be applied.

(5) A straight, which is a hand consisting of four cards of consecutive rank, regardless of suit, with an ace, king, queen and jack being the highest ranking straight; an ace, 2, 3 and 4 being the second highest ranking straight; and a 2, 3, 4 and 5 being the lowest ranking straight.

(6) A three-of-a-kind, which is a hand containing three cards of the same rank, with three aces being the highest ranking three-of-a-kind and three 2s being the lowest ranking three-of-a-kind.

(7) Two pair, which is a hand containing two pairs, with two aces and two kings being the highest ranking two pair hand and two 3s and two 2s being the lowest ranking two-pair hand.

(8) A pair, which is a hand consisting of two cards of the same rank, with two aces being the highest ranking pair and two 2s being the lowest ranking pair.

(c) When comparing two high hands, two medium hands or two low hands that are of identical hand rank under subsection (b), or contain none of the hands in subsection (b), the hand that contains the highest ranking card under subsection (a) shall be considered the higher ranking hand. If the two hands are of identical rank after the application of this section, the hands shall be considered a copy.

(d) If the certificate holder offers the optional Fortune Bonus Wager under § 659a.7(e)(1) (relating to wagers), the following seven-card hands shall be used to determine the amount of the bonus payout to a winning player:

(1) A seven-card straight flush with no joker, which is a hand consisting of seven cards of the same suit in consecutive ranking, with no joker used to complete the straight flush.

(2) A royal flush plus Royal Match, which is a seven-card hand consisting of an ace, king, queen, jack and a 10 of the same suit, with or without a joker, with an additional king and queen of the same suit.

(3) A seven-card straight flush with a joker, which is a hand consisting of seven cards of the same suit in consecutive ranking with a joker used to complete the straight flush.

(4) Five aces, which is a hand consisting of four aces and a joker.

(5) A royal flush, which is a five-card hand consisting of an ace, king, queen, jack and 10 of the same suit.

(6) A straight flush, which is a hand consisting of five cards of the same suit in consecutive rank.

(7) A four-of-a-kind, which is a hand consisting of four cards of the same rank regardless of suit.

(8) A full house, which is a hand consisting of a three-of-a-kind and a pair.

(9) A flush, which is a hand consisting of five cards of the same suit.

(10) A three-of-a-kind, which is a hand containing three cards of the same rank regardless of suit.

(11) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(e) If the certificate holder offers the optional Progressive Payout Wager under § 659a.7(e)(3), the following seven-card hands shall be used to determine the amount of the progressive payout to a winning player:

(1) Seven-card straight flush is a hand consisting of seven cards of the same suit in consecutive ranking, with or without a joker.

(2) Five aces, which is a hand consisting of four aces and a joker.

(3) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit or a king, queen, jack and 10 of the same suit and a joker.

(4) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.

(5) A four-of-a-kind, which is a hand consisting of four cards of the same rank.

(6) A full house, which is a hand consisting of a three-of-a-kind and a pair.

§ 659a.7. Wagers.

(a) Wagers at Fortune Asia Poker shall be made by placing value chips or plaques on the appropriate areas of

the Fortune Asia Poker layout. Verbal wagers accompanied by cash may not be accepted.

(b) Only players who are seated at a Fortune Asia Poker table may wager at the game. Once a player has placed a wager and received cards, that player shall remain seated until the completion of the round of play. If a player leaves the table during a round of play, any wagers made by the player may be considered abandoned and may be treated as losing wagers.

(c) All wagers at Fortune Asia Poker shall be placed prior to the dealer announcing "no more bets" in accordance with the dealing procedures in § 659a.8, § 659a.9 or § 659a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe). A wager may not be made, increased or withdrawn after the dealer has announced "no more bets."

(d) To participate in a round of play and compete against the dealer's high hand, medium hand and low hand, a player shall place a Fortune Asia Poker Wager.

(e) If specified in its Rules Submission under § 601a.2 (relating to table games Rules Submissions), a certificate holder may offer to each player who placed a Fortune Asia Poker Wager in accordance with subsection (d), the option of placing the following additional wagers:

(1) A Fortune Bonus Wager that the seven cards dealt to the player will form a hand with a rank of a straight or better as described in § 659a.6(d) (relating to Fortune Asia Poker rankings) or three pairs or better, depending on the payout table selected by the certificate holder.

(2) An Insurance Wager that the seven cards dealt to the player will form a seven-card Poker hand that does not contain a pair or better, as described in § 659a.6(d), but will contain a card ranked a 9-high or better.

(3) A Progressive Payout Wager that the seven cards dealt to the player will form a seven-card Poker hand with a rank of a full house or better as described in § 659a.6(e).

(f) If specified in its Rules Submission under § 601a.2, a certificate holder may permit a player to wager on two adjacent betting areas at a Fortune Asia Poker table. If a certificate holder permits a player to wager on adjacent betting areas, the cards dealt to each betting area shall be played separately. If the two wagers are not equal, the player shall set the hand with the larger wager before ranking and setting the other hand. If the amounts wagered are equal, each hand shall be played separately in a counterclockwise rotation with the first hand being ranked and set before the player proceeds to rank and set the second hand. Once a hand has been ranked, set and placed face down on the layout, the hands may not be changed.

§ 659a.8. Procedures for dealing the cards from a manual dealing shoe.

(a) If a manual dealing shoe is used, the dealing shoe must be located on the table in a location approved by the Bureau of Casino Compliance. Once the procedures required under § 659a.5 (relating to shuffle and cut of the cards; procedures for determining the starting position for dealing cards) have been completed, the stacked deck of cards shall be placed in the dealing shoe either by the dealer or by an automated card shuffling device.

(b) Prior to dealing any cards, the dealer shall announce "no more bets" and:

(1) If the Fortune Bonus Wager is being offered and a player makes a Qualifying Wager, the dealer shall place an Envy lammer next to that player's wager.

(2) If the Progressive Payout Wager is being offered, the dealer shall use the progressive table game system to prevent the placement of any additional Progressive Payout Wagers. If any Progressive Payout Wagers have been made, the dealer shall collect the wagers and, on the layout in front of the table inventory container, verify that the number of value chips wagered equals the number of Progressive Payout Wagers accepted by the progressive table game system. The dealer shall then place the value chips into the table inventory container.

(c) The dealer shall determine the starting position for dealing the cards using one of the procedures authorized under § 659a.5(g). The dealer shall then deal the first card to the starting position as determined in § 659a.5(g) and, continuing around the table in a clockwise manner, deal one card at a time to all other positions, regardless of whether there is a wager at the position, and the dealer, until each position and the dealer has seven cards. Each card dealt shall be removed from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and placed face down on the appropriate area of the layout with the opposite hand.

(d) After seven cards have been dealt to each position and the dealer, the dealer shall remove the stub from the manual dealing shoe and determine whether four cards are left by spreading them face down on the layout. The four cards that remain may not be exposed to anyone and shall be placed in the discard rack.

(e) If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt (a player position or the dealer has more or less than seven cards), all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

(f) If the dealer determines the cards were dealt properly, the dealer shall collect any stacks dealt to a position where there was no wager and place them in the discard rack without exposing the cards.

§ 659a.9. Procedures for dealing the cards from the hand.

(a) If the cards are dealt from the dealer's hand, the following requirements shall be observed:

(1) An automated shuffling device shall be used to shuffle the cards.

(2) After the procedures required under § 659a.5 (relating to shuffle and cut of the cards; procedures for determining the starting position for dealing cards) have been completed, the dealer shall place the deck of cards in either hand. After the dealer has chosen the hand in which to hold the cards, the dealer shall continue to use that hand when holding the cards during that round of play. The cards held by the dealer shall be kept over the table inventory container and in front of the dealer at all times.

(3) Prior to dealing any cards, the dealer shall announce "no more bets" and:

(i) If the Fortune Bonus Wager is being offered and a player makes a Qualifying Wager, the dealer shall place an Envy lammer next to that player's wager.

(ii) If the Progressive Payout Wager is being offered, the dealer shall use the progressive table game system to prevent the placement of any additional Progressive Payout Wagers. If any Progressive Payout Wagers have been made, the dealer shall collect the wagers and, on the layout in front of the table inventory container, verify that the number of value chips wagered equals the number of Progressive Payout Wagers accepted by the progressive table game system. The dealer shall then place the value chips into the table inventory container.

(b) The dealer shall determine the starting position for dealing the cards using one of the procedures authorized under § 659a.5(g). The dealer shall then deal the first card to the starting position as determined in § 659a.5(g) and, continuing around the table in a clockwise manner, deal one card at a time to all other positions, regardless of whether there is a wager at the position, and the dealer, until each position and the dealer has seven cards.

(c) After seven cards have been dealt to each position and the dealer, the dealer shall determine whether four cards are left by spreading them face down on the layout. The four cards that remain may not be exposed to anyone and shall be placed in the discard rack.

(d) If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt (a player position or the dealer has more or less than seven cards), all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

(e) If the dealer determines the cards were dealt properly, the dealer shall collect any stacks dealt to a position where there was no wager and place them in the discard rack without exposing the cards.

§ 659a.10. Procedures for dealing the cards from an automated dealing shoe.

(a) If the cards are dealt from an automated dealing shoe, after the procedures under § 659a.5 (relating to shuffle and cut of the cards; procedures for determining the starting position for dealing cards) have been completed, the cards shall be placed in the automated dealing shoe. Prior to the shoe dispensing any stacks of cards, the dealer shall announce "no more bets" and:

(1) If the Fortune Bonus Wager is being offered and a player makes a Qualifying Wager, the dealer shall place an Envy lammer next to that player's wager.

(2) If the Progressive Payout Wager is being offered, the dealer shall use the progressive table game system to prevent the placement of any additional Progressive Payout Wagers. If any Progressive Payout Wagers have been made, the dealer shall collect the wagers and, on the layout in front of the table inventory container, verify that the number of value chips wagered equals the number of Progressive Payout Wagers accepted by the progressive table game system. The dealer shall then place the value chips into the table inventory container.

(b) The dealer shall determine the starting position for delivering the stacks of cards using one of the procedures under § 659a.5(g). After the starting position for delivering the cards has been determined in accordance with § 659a.5(g), the dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to that position. As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other positions, regardless of whether there is a wager at the position, and the dealer.

(c) After seven cards have been dispensed and delivered to each position and the dealer, the dealer shall remove the remaining cards from the shoe and determine whether four cards are left by spreading them face down on the layout. The four cards that remain may not be exposed to anyone and shall be placed in the discard rack.

(d) If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt (a player position or the dealer has more or less than seven cards), all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

(e) If the dealer determines the cards were dealt properly, the dealer shall collect any stacks dealt to a position where there was no wager and place them in the discard rack without exposing the cards.

§ 659a.11. Procedures for completion of each round of play.

(a) After the dealing procedures required under § 659a.8, § 659a.9 or § 659a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) have been completed, each player shall examine his cards subject to the following limitations:

(1) Each player who wagers at a Fortune Asia Poker table shall be responsible for setting his own hands and no person other than the dealer and the player to whom the cards were dealt may touch the cards of that player. If a player requests assistance in the setting of his hands, the dealer shall inform the player of the manner in which the certificate holder requires the hands of the dealer to be set in accordance with the certificate holder's Rules Submission under § 601a.2 (relating to table games Rules Submissions).

(2) Each player shall keep his seven cards in full view of the dealer at all times.

(3) Once each player has set his three hands and placed them face down on the appropriate area of the layout, the player may not touch the cards again.

(b) Each player shall set his hands by arranging the cards into a high hand, a medium hand and a low hand. When setting the three hands, the four-card high hand must be higher in rank than the two-card medium hand and the medium hand must be higher in rank than the one-card low hand. For example, if the two-card medium hand contains a pair of sevens, the four-card high hand must contain at least a pair of sevens and the two remaining cards.

(c) After all players have set their hands and placed the cards on the table, the seven cards of the dealer shall be turned over and the dealer shall set his hands by arranging the cards into a high hand, medium hand and low hand. The certificate holder shall specify in its Rules Submission under § 601a.2 the manner in which the hands of the dealer shall be set. The dealer shall then place the three hands face up on the appropriate area of the layout.

(d) Unless a player has placed an optional wager in accordance with § 659a.7(e) (relating to wagers), a player may surrender his wager after the hands of the dealer

have been set. The player shall announce his intention to surrender prior to the dealer exposing any of the three hands of that player as provided in subsection (e). Once the player has announced his intention to surrender, the dealer shall immediately collect the Fortune Asia Poker Wager from that player and collect the seven cards dealt to that player without exposing the cards to anyone at the table. If any Qualifying Wagers have been placed, the cards of the player must remain on the table until collected in accordance with subsection (h). The dealer shall verify that seven cards were collected by counting them face down on the layout prior to placing them in the discard rack.

(e) After the dealer has set a high hand, medium hand and a low hand, the dealer shall reveal all three hands of each player, beginning with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction. The dealer shall compare the high, medium and low hand of each player to the high, medium and low hand of the dealer and shall announce if the Fortune Asia Poker Wager of that player wins or loses.

(f) A Fortune Asia Poker Wager will:

(1) Lose and will immediately be collected if:

(i) Any two of the player's three hands are identical or lower in rank than the dealer's corresponding hands.

(ii) Any one of the player's three hands is identical in rank to the corresponding hand of the dealer and one of the player's remaining hands is lower in rank than the dealer's corresponding hand.

(iii) The high hand of the player was not set so as to rank higher than the medium hand of that player.

(iv) The medium hand of the player was not set so as to rank higher than the low hand of that player.

(v) The three hands of the player were not otherwise set correctly in accordance with this chapter.

(2) Win if any two of the player's three hands are higher in rank than the dealer's corresponding hands. The dealer shall pay the winning Fortune Asia Poker Wager in accordance with the payout odds in § 659a.12(a) (relating to payout odds).

(g) Except as provide in subsection (h), after settling the player's Fortune Asia Poker Wager, the dealer shall place the cards of the player in the discard rack.

(h) If a player placed a Fortune Bonus, Insurance or Progressive Payout Wager, after settling the player's Fortune Asia Poker Wager, the dealer shall rearrange the seven cards of any player and form the highest ranking hand and shall be responsible for creating the hand. If any player at the table placed a Qualifying Wager, the dealer shall rearrange the cards of all players regardless of whether the player placed a Fortune Bonus Wager. After rearranging the player's seven cards, the dealer shall settle the player's Fortune Bonus, Insurance or Progressive Payout Wagers as follows:

(1) For the player's Fortune Bonus Wager:

(i) If a player:

(A) Does not have a straight or higher, as described in § 659a.6(d) (relating to Fortune Asia Poker rankings) or three pair or higher, depending on the payout table selected by the certificate holder, the dealer shall collect the Fortune Bonus Wager and place the cards of the player in the discard rack.

(B) Has a straight or higher, or three pair or higher, depending on the payout table selected by the certificate holder, the dealer shall pay the winning Fortune Bonus Wager in accordance with § 659a.12(b) and place the cards of the player in the discard rack. If the player has an Envy Bonus Qualifying Hand and any player at the table placed a Qualifying Wager, the dealer shall verbally acknowledge the Envy Bonus Qualifying Hand and leave the cards of the player face up on the table.

(C) Did not place a Fortune Bonus Wager but has an Envy Bonus Qualifying Hand, and another player at the table placed a Qualifying Wager, the dealer shall verbally acknowledge the Envy Bonus Qualifying Hand and leave the cards of the player face up on the table.

(ii) After all Fortune Bonus Wagers have been settled, if any player is the holder of an Envy Bonus Qualifying Hand, the dealer shall pay an Envy Bonus in accordance with § 659a.12(b) to each player who has an Envy lammer at the player's betting position. Players are entitled to multiple Envy Bonuses when another player at the same Fortune Asia Poker table is the holder of an Envy Bonus Qualifying Hand. A player is not entitled to an Envy Bonus for his own hand or the hand of the dealer.

(2) For the player's Insurance Wager, if a player:

(i) Has a pair or better, the dealer shall collect the player's Insurance Wager and place the cards of the player in the discard rack.

(ii) Does not have a pair or better, but has a card ranked a 9-high or better, the dealer shall pay the winning Insurance Wager in accordance with § 659a.12(c). The dealer shall then place the cards of the player in the discard rack.

(3) For the player's Progressive Payout Wager, if a player:

(i) Does not have a full house or better, as described in § 659a.6(e), the dealer shall collect the Progressive Payout Wager and place the cards of the player in the discard rack.

(ii) Has a full house or better, the dealer shall:

(A) Verify that the hand is a winning hand.

(B) Verify that the appropriate light on the progressive table game system has been illuminated.

(C) Have a floorperson or above validate the progressive payout in accordance with the certificate holder's approved internal control procedures.

(D) Pay the winning Progressive Payout Wager in accordance with the payout odds in § 659a.12(d). If a player has won a progressive payout that is a percentage of the progressive meter, the progressive payout may not be paid from the table inventory container. If a player has won a progressive payout that is not being paid from the table inventory, the cards of that player shall remain on the table until the necessary documentation has been completed.

(i) Notwithstanding the card collection requirements in subsection (h), if the certificate holder offers more than one optional wager, the dealer shall settle all of the player's optional wagers before placing the player's cards in the discard rack.

(j) All cards removed from the table shall be placed in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 659a.12. Payout odds.

(a) A certificate holder shall pay each winning Fortune Asia Poker Wager at odds of 1 to 1.

(b) The certificate holder shall pay out winning Fortune Bonus Wagers and Envy Bonus payouts at the odds and amounts in one of the following paytables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2 (relating to table games Rules Submissions):

Hand	*Paytable A*	*Envy Bonus*
Seven-card straight flush	8,000 to 1	$5,000
Royal flush and Royal Match	2,000 to 1	$1,000
Seven-card straight flush with joker	1,000 to 1	$500
Five aces	400 to 1	$250
Royal flush	150 to 1	$50
Straight flush	50 to 1	$20
Four-of-a-kind	25 to 1	$5
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

Hand	*Paytable B*	*Envy Bonus*
Seven-card straight flush	5,000 to 1	$3,000
Royal flush and Royal Match	2,000 to 1	$1,000
Seven-card straight flush with joker	1,000 to 1	$500
Five aces	400 to 1	$250
Royal flush	150 to 1	$50
Straight flush	50 to 1	$20
Four-of-a-kind	25 to 1	$5
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

Hand	*Paytable C*	*Envy Bonus*
Seven-card straight flush	5,000 to 1	$1,000
Royal flush and Royal Match	1,000 to 1	$250
Seven-card straight flush with joker	750 to 1	$100
Five aces	250 to 1	$50
Royal flush	100 to 1	$25
Straight flush	50 to 1	$10
Four-of-a-kind	20 to 1	$5
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	
Three pair	Push	

Hand	*Paytable D*	*Envy Bonus*
Seven-card straight flush	2,500 to 1	$1,000
Royal flush and Royal Match	1,000 to 1	$750
Seven-card straight flush with joker	750 to 1	$250
Five aces	250 to 1	$100
Royal flush	125 to 1	$50
Straight flush	50 to 1	$20
Four-of-a-kind	25 to 1	$5
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

(c) The certificate holder shall pay out winning Insurance Wagers at the odds in one of the following paytables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	*Paytable A*	*Paytable B*	*Paytable C*
9-high	100 to 1	100 to 1	100 to 1
10-high	40 to 1	50 to 1	40 to 1
Jack-high	10 to 1	10 to 1	10 to 1
Queen-high	7 to 1	7 to 1	7 to 1
King-high	6 to 1	5 to 1	5 to 1
Ace-high	3 to 1	3 to 1	3 to 1

(d) If the certificate holder offers the Progressive Payout Wager:

(1) The certificate holder shall pay out winning Progressive Payout Wagers at the odds in the following paytable:

Hand	*Payout*
Seven-card straight flush	100%
Five aces	10%
Royal flush	500 for 1
Straight flush	100 for 1
Four-of-a-kind	75 for 1
Full house	4 for 1

(2) The initial and reset amount must be in the certificate holder's Rules Submission filed in accordance with § 601a.2 and be at least $2,000.

[Pa.B. Doc. No. 16-1717. Filed for public inspection October 7, 2016, 9:00 a.m.]

PROPOSED RULEMAKING

PHILADELPHIA PARKING AUTHORITY

Request for Comments Concerning Proposed Changes for the Regulation of the Philadelphia Taxicab and Limousine Industries

Article XVI-M of the act of July 13, 2016 (P.L. 664, No. 85) temporarily authorizes transportation network companies (TNC) to operate in Philadelphia under the regulatory oversight of the Philadelphia Parking Authority (Authority).

The Taxicab and Limousine Division (TLD) of the Authority is seeking information and comment from the public at large, members of the taxicab, limousine and dispatcher industries, prospective and existing technology vendors, and other interested parties regarding proposed changes to the current regulations governing the operation of taxicab and limousine service in Philadelphia.

The TLD's request stems from advancements in technology, the introduction of TNCs, varying consumer demands and expectations and competitive challenges in the transportation marketplace in Philadelphia.

The comments being requested may address, but not be limited to, meter technology, taxicab tariff, safety measures, driver certification, vehicle age and mileage standards, vehicle inspections, vehicle insurance requirements, criminal history background check requirements and driving record requirements.

Written comments shall provide specific suggestions for proposals or changes, or both, and include citations to current regulations that relate to the comments and a detailed rationale to support the proposal or change, or both.

Written comments must be submitted no later than November 15, 2016, to the TLD to the attention of Christine Kirlin, Esq., Administrative Counsel, ckirlin@philapark.org or by mail to the Philadelphia Parking Authority, Taxicab and Limousine Division, 2415 South Swanson Street, Philadelphia, PA 19148-4113.

MICHAEL CASEY,
Director
Taxicab and Limousine Division

[Pa.B. Doc. No. 16-1718. Filed for public inspection October 7, 2016, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CH. 806]
Review and Approval of Projects

Summary: This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. These rules are designed to enhance the Commission's existing authorities to manage the water resources of the basin and add regulatory clarity.

Dates: In addition, the Commission will be holding two informational webinars explaining the proposed rulemaking on October 11, 2016, and October 17, 2016. Instructions for registration for the webinars will be posted on the Commission's website.

Comments on the proposed rulemaking may be submitted to the Commission on or before January 30, 2017. The Commission has scheduled four public hearings on the proposed rulemaking:

1. November 3, 2016, 2 p.m. to 5 p.m. or at the conclusion of public testimony, whichever is sooner; Harrisburg, PA.

2. November 9, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Binghamton, NY.

3. November 10, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Williamsport, PA.

4. December 8, 2016, 1 p.m. to 3 p.m. or at the conclusion of public testimony, whichever is sooner; Annapolis, MD.

The locations of the public hearings are listed in the Addresses section of this document.

Addresses: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to regcomments@srbc.net. The public hearings locations are:

1. Harrisburg—Pennsylvania State Capitol (East Wing, Room 8E-B), Commonwealth Avenue, Harrisburg, PA 17120.

2. Binghamton—DoubleTree by Hilton Hotel Binghamton (South Riverside Room), 225 Water Street, Binghamton, NY 13901.

3. Williamsport—Holiday Inn Williamsport (Gallery Room), 100 Pine Street, Williamsport, PA 17701.

4. Annapolis—Loews Annapolis Hotel (Powerhouse-Point Lookout), 126 West Street, Annapolis, MD 21401.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

For Further Information Contact: Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's website at http://www.srbc.net.

Supplementary information:

The Commission's regulations have not undergone a thorough review since the last comprehensive rulemaking in 2006. Many of these regulations remain unchanged. However, since initial implementation, the Commission recognizes the need for clarity in some sections and statement of procedure in others. These changes are designed to bring clarity and certainty to the regulated community. This rulemaking reflects the efforts of a

comprehensive internal review by the Commission staff and review by the Commission's member jurisdictions. The rulemaking centers on a few key areas of the regulations: project review, consumptive use mitigation, registration of grandfathered projects, and administrative procedures. The Commission proposed this rulemaking to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. Because the concept is a new addition to the regulations, the Commission believes that an explanation for the rationale for the proposed rules relating to the registration of grandfathered projects would be helpful for the public.

Sources and Activities That Predate Regulations

The Commission's regulations provide that certain withdrawals and pre-compact consumptive uses that are in excess of the Commission's regulatory thresholds do not require Commission approval under § 806.4(a) if those sources predated regulations, provided there is no environmental harm. This exemption from review and approval is commonly referred to as "grandfathering." Generally, pre-compact consumptive uses initiated prior to January 23, 1971, groundwater withdrawals initiated prior to July 13, 1978, and surface water withdrawals initiated prior to November 11, 1995, are considered "grandfathered" and do not need to apply for a regulatory approval by the Commission. The Commission's current regulations provide several mechanisms by which a grandfathered project must apply for regulatory approval, including a change in the nature of the use, change of ownership, an increase in the quantity of the withdrawal or use, or adding a new source.

However, in enacting the Compact that created the Commission, Congress and the participating states declared that. . .

> the conservation, utilization, development, management and control of the water resources of the Susquehanna River Basin **under comprehensive multiple purpose planning** will produce the greatest benefits and produce the most efficient service in the public interest. Compact Preamble Sect 1—emphasis added.

The Commission's "Comprehensive Plan for the Water Resources of the Susquehanna Basin" contains an objective to wisely manage the water resources of the Basin to assure short-term resource availability and long-term balance between healthy ecosystems and economic viability (SRBC Comprehensive Plan, 2013). The desired result of one of the key water resource needs, identified as Sustainable Water Development, is to regulate and plan for water resources development in a manner that maintains economic viability, protects instream users, and ensures ecological diversity; and meets immediate and future needs of the people of the basin for domestic, municipal, commercial, agricultural and industrial water supply and recreational activities.

As part of this objective, the Commission recently completed a major effort to characterize water use and availability for the Susquehanna River Basin. The Cumulative Water Use and Availability Study (CWUAS) represents the most comprehensive analysis to date regarding water availability. The Commission is increasingly concerned about the availability of water to meet immediate and future needs as water is needed to satisfy the continuing prospect of growing population and increasing demands for drinking water, freshwater inflow to the Chesapeake Bay, power generation, industrial activity, commercial uses, recreation and ecological diversity. Water resources are neither limitless nor equally distributed across the basin, and in some areas the demand for and use of water resources may be approaching or exceeding the sustainable limit.

As part of the CWUAS, the Commission developed a comprehensive water use database by integrating water use records from the Commission, and its member jurisdictions of New York, Pennsylvania, and Maryland in an unprecedented compilation effort. Compiling accurate water use data is a common challenge for water resource agencies, even recognizing advances in accessing data records through electronic reporting for both the Commission and our member states. The study shows water availability in nearly 1 in 10 watersheds is sufficiently compromised to warrant additional analysis and improved knowledge of patterns of withdrawal and use.

The CWUAS also reveals the limitations of the currently available water use data. While these data include records of regulated public water supply withdrawals for all states, withdrawals for the remaining variety of self-supplied uses are commonly lacking with the exception of those projects regulated by the Commission. Coverage for unregulated withdrawals, including grandfathered projects, is provided through state registration programs and varies widely in data quality and completeness among the member jurisdictions. For the most part, data for consumptive use not regulated by the Commission are absent altogether.

At the time of its formation and adoption of its initial regulations, neither the Commission nor its member jurisdictions conducted any inventory of existing water users, their sources or the quantity of existing water use. Grandfathered water withdrawals and use are clearly factors in the determination of sustainable water availability. The Commission's analysis estimates a total of 760 grandfathered projects with an estimated water use of 970 million gallons per day, which is approximately equal to the total existing regulated consumptive use approved by the Commission. With such large water quantities in question, it is obvious that some of the grandfathered projects are among the largest users of basin waters. Therefore, appropriate regulation and comprehensive planning for the use of the water resources are seriously hampered without accurate and reliable data regarding the quantity of the grandfathered uses and withdrawals. This is even more critical for areas identified as potentially stressed, water challenged or otherwise having limited water availability.

While our member jurisdictions have made efforts to collect water withdrawal data, and the Commission uses that data as available, our member jurisdictions do not comprehensively register consumptive water use. In addition, they do not have comprehensive historic data for legacy water users to effectively determine the quantity of water withdrawn prior to 1995 or the water consumptively used prior to 1971. This lack of comprehensive and reliable data hampers the Commission by creating significant gaps in our knowledge and data of water withdrawals and water use in the basin, which in turn hinders our ability to comprehensively manage the water resources of the basin and fulfill our regulatory and planning functions.

It is, therefore, appropriate for the Commission to act to address this knowledge gap as no other jurisdiction is solely capable of insuring the effectuation of the compre-

hensive plan. In these regulations the Commission is proposing a mechanism for acquiring accurate water use and withdrawal information for grandfathered projects through a required registration program. It is imperative that we have no misrepresentations about the sustainability of our water supply so that sound water resource decisions can be made for the benefit of all the basin's users. Grandfathered uses and withdrawals represent a longstanding gap in knowledge and, as such, have increasingly become a water management issue in the Commission's regulation and planning for water resources development.

Registration of grandfathered uses and withdrawals will definitively answer questions about the number of grandfathered projects, the locations of their sources, how much water they are withdrawing and from which water bodies and aquifers, and how much of that water they are using consumptively. In short, it will allow water resource decisions to be made with more certainty and confidence. The registration requirements proposed do not require review and approval of dockets under § 806.4 and do not add any new pathways for a grandfathered project to be subject to review and approval if it registers in accordance with the proposed regulation.

The Commission expects the registration of grandfathered uses will achieve a number of crucial goals to allow better management of basin resources. The Commission will receive more consistent and complete data than what can be obtained through voluntary registration programs, such as peak quantities, patterns of usage and accurate locational data for withdrawals and uses. The data required for registration is more easily attainable data from the most recent five years, as opposed to historical data. This data will be more recent and based on more accurate and reliable metering and measurement devices. Registration will eliminate legacy issues by closing the knowledge gap about grandfathered withdrawals from and usage of the water resources of the basin. The information obtained through the registration will allow the Commission staff to conduct thorough water availability analyses.

Registration will also provide more direct benefits to the grandfathered projects by providing the Commission with complete, contemporary withdrawal and usage data that can be utilized by the Commission in evaluating new withdrawals or consumptive uses in the watersheds where the grandfathered projects operate and allow the Commission to better prevent impacts and interference to the operations of grandfathered projects by newer projects. Registration will also provide unambiguous determinations concerning pre-regulation quantities of withdrawals and consumptive uses in the basin for both project sponsors and the Commission, providing much more certainty with regards to how a grandfathered project may operate and retain their existing exempt status and avoid the full project review and approval process. As such, project sponsors can plan and anticipate when they might fall under the Commission's jurisdiction and avoid situations where they unknowingly could fall into noncompliance, as currently happens.

Registration also should provide for ongoing information concerning contemporary water withdrawals and uses at grandfathered projects, to meet Commission management goals of the Comprehensive Plan, including:

• Supporting water conservation measures through monitoring and reporting data;

• Making informed regulatory decisions about cumulative effect on other uses/withdrawals, including analyses for low flow protection (passby flows) and consumptive use mitigation;

• Projecting future water availability to support and inform development decisions, including siting of new facilities critical for water supply, energy development and industrial needs; and

• Identifying critical water planning areas where potential shortages due to drought are projected or intense competition among water users exists.

Registration of grandfathered projects allows the Commission to continue to allow those projects to receive the exemption from the Commission's review and approval under § 806.4 but also fulfills the Commission's need to have accurate, current and reliable data on the amount of the water withdrawals and consumptive use of grandfathered projects to use in the Commission's management decisions for the water resources of the basin. Registration is a one-time event that allows a grandfathered project to continue to operate under the exemption from the Commission's regulations for review and approval of projects, and the only ongoing obligation of project registration is to periodically report withdrawal and usage data. Registration is not review and approval of the project and the proposed rulemaking does not eliminate the grandfathering exemption for projects that register. This means a grandfathered project will not need to meet the requirements and standards set forth in part 806, subparts A through D, which include making an application to Commission, conducting an aquifer test for groundwater withdrawals, evaluation for the sustainability of water withdrawals, evaluation of impact on surface water features, wetlands, other water supplies and wells, establishment of passby flows to protect surface waters, imposition of mitigation for withdrawals or consumptive use, or imposition of conditions or limits on the grandfathered withdrawal or consumptive use. In addition, the Commission has designed the registration to be as simple and accessible as possible to greatly minimize costs, and/or eliminate the need for a grandfathered project to engage a consultant to complete the registration process.

New subpart E and revisions to 18 CFR § 806.4—Registration of Grandfathered Projects.

New subpart E sets forth the rules related to registration of grandfathered projects.

Section 806.40 defines the grandfathered projects within the scope of the regulations and registration requirement.

Section 806.41 provides that grandfathered projects must register within a two-year window or they become subject to review and approval by the Commission in accordance with the Commission's project review regulations and standards. The proposal also contains corresponding changes in § 806.4(a)(1)(iii) and (a)(2)(iv) to clearly provide when a project with some grandfathered aspect or element is subject to review and approval.

The proposed regulations in §§ 806.40(b) and 806.41(c) do not protect grandfathered projects that can be shown to have clearly lost grandfathered status under the regulations in effect at the time the relevant action took place. For example, a grandfathered project that underwent a change of ownership, but did not seek review and approval as required by the §§ 806.4 and 806.6, is not eligible to register and will be required to submit an application for review and approval of the project.

Other projects that have a grandfathered aspect, but that do not withdraw or use water at a jurisdictional threshold to qualify as a grandfathered project under § 806.40, are not eligible to register and will be subject to review and approval if those projects ever withdraw or consumptively use water above the jurisdictional thresholds, pursuant to §§ 806.4(a)(1)(iii)(B), 806.4(a)(2)(iv)(B), and 806.40(c).

Paragraph 806.41(e) provides that the Commission may establish fees in accordance with § 806.35. The Commission will establish any registration fee simultaneously at the time of the adoption of a final rule. Because the amount of any fee will likely be of interest to the public, the Commission, in conjunction with this proposed rulemaking, is proposing a staggered fee for registration. Section 806.41(a) establishes a two-year window during which grandfathered projects must register. The Commission proposes that project sponsors that submit their registration within the first 6 months of that two-year registration period will pay no fee. During the next 6 months of the registration period, the fee will be $500. During the last year of the registration period, the fee will be $1,000. The registration fee is a one-time fee. By providing a no fee option during the first six months of the registration period, the Commission intends to provide relief for project sponsors that may be concerned about payment of a registration fee and to incentivize project sponsors to register sooner which will lead to an earlier submission of the data that the Commission is seeking through the registration process.

Section 806.42 outlines the primary information needs of the Commission for registration of withdrawals and consumptive uses. Because of the problems frequently encountered with producing reliable historical data, paragraph 806.42(a)(6) requests the most recent five years of quantity data for a project's withdrawals and consumptive use for at least the past five calendar years.

Section 806.43 provides that the Commission shall review the project's current metering and monitoring for its grandfathered withdrawals and consumptive uses. The Commission may require the project to follow a metering and monitoring plan to ensure that withdrawal and use quantities are accurate and reliable. This section also provides for ongoing reporting of quantities for grandfathered withdrawals and consumptive uses. The Commission may accept quantities reported under the requirements of the applicable member jurisdiction in lieu of additional monitoring data. This information is vital to the Commission in its ongoing evaluation of the water resources of the basin and will be used in revising the Commission's Comprehensive Plan, in its ongoing evaluation of cumulative water use in the basin and to provide data to assess and evaluate impacts of new projects seeking review and approval by the Commission.

Sections 806.44 and 806.45 provide a process for the determination of grandfathered quantities for withdrawals and consumptive uses. This determination will be made by the Executive Director taking into account the most reliable data. An increase above this amount would require review and approval under §§ 806.4(a)(1)(iii)(A) and 806.4(a)(2)(iv)(A). A project will be able to appeal this determination to the Commission. Any hearing conducted will be done in accordance with the Commission's appeal procedures in Part 808.

Project Review Application Procedures—18 CFR Subpart B

Section 806.11 is revised to include a specific reference to § 801.12(c)(2), noting that preliminary consultations, or pre-application meetings, are encouraged but not mandatory except for electric power generation projects.

Section 806.12 is revised to clarify when project sponsors will perform a constant-rate aquifer test and to clarify that reviews of aquifer test plan submittals are subject to termination of review under § 806.16.

Section 806.14 detailing the contents of applications to the Commission is rewritten. The new section as proposed better aligns to the actual items sought in the Commission's applications, as well as provides required items specific to each type of approval (i.e., groundwater withdrawal, surface water withdrawal, consumptive use). The proposed regulation includes new requirements specific to projects such as mine and construction dewatering, water resources remediation, and gravity-drained acid mine drainage (AMD) remediation facilities to align with the newly proposed standards for these types of projects under § 806.23(b)(5). The proposal also includes specific requirements for renewal applications.

This section as rewritten retains the requirement for an alternatives analysis for new projects, if prompted by a request from the Commission. However, for new surface water withdrawal projects, an alternatives analysis *must* be performed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality.

Section 806.15 regarding notice requirements for applications is revised to provide notice to appropriate county agencies, removing the specific reference to county planning agencies. Appropriate county agencies include the county governing body, county planning agencies and county conservation districts. Section 806.15(b)(3) is added to allow the Commission or Executive Director to allow notification of property owners by other means where the property is served by a public water supply.

Standards for Review and Approval—18 CFR Subpart C

Section 806.21 is revised to mention that a project must be "feasible" to align it with the standard presently used for projects during review to determine that they are feasible from both a financial and engineering perspective.

Section 806.22 regarding standards for the consumptive use of water is revised. The proposed revisions lower the 90-day standard for consumptive use mitigation to 45 days and require a mitigation plan that can have several elements and encourages blended mitigation options. The purpose of these changes is to reduce the barriers to project sponsors finding their own mitigation and to correspondingly reduce the number of projects paying the consumptive use mitigation fee. Analysis of the past 100 plus years of river flow records show that the overwhelming majority of low flow/drought events in the Basin are adequately covered by a 45-day consumptive use mitigation standard.

Section 806.22(b) is also revised to clarify that when a project is subject to review and approval and also has an element of pre-compact consumptive use, the project sponsor will be required to provide mitigation going forward for this consumptive use if the project is located in a water critical area. The location of a project in a water critical area will also be a factor used by the Commission in determining the manner of acceptable mitigation under paragraph (c). A definition of water critical area is included in § 806.3 that will rely on both the existing member jurisdiction designations and the ongoing efforts by the Commission to identify areas where water resources are limited or the demand for water has

exceeded or is close to exceeding the sustainable supply. Any action to identify a water critical area will be taken by a separate action of the Commission and may be subject to a public hearing under the revisions to § 808.1(b)(4).

Paragraph 806.22(e)(1) is amended to allow a project sourced by more than one public water supply to be eligible for an Approval by Rule for consumptive use as long as the public water supplies are the sole source of water for the project. New § 806.22(e)(2) and (3) were added so both the Approvals by Rule in paragraph (e) and (f) had matching procedures. The time frame for making notice was extended to 20 days in § 806.22(f)(3) to match the changes previously made to § 806.15, related to notice, during the last Commission rulemaking.

Section 806.23 related to standards for withdrawals is amended to include elements that presently form the basis of conditions to approvals for withdrawals. The proposal clarifies that the Commission can establish conditions based on the project's effect on groundwater and surface water availability, including cumulative uses and effects on wetlands. This section is clarified to expressly include the Commission's practice of establishing and requiring a total system limit on projects.

A new § 806.23(b)(5) is added to provide special review provisions for projects consisting of mine dewatering, water resources remediation, and gravity-drained AMD facilities. Because the nature of these types of facilities is fundamentally different from the other withdrawal projects that come before the Commission and because they are heavily regulated by our member jurisdictions, the Commission may appropriately limit consideration of adverse impacts of these projects on groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels.

Hearings and Enforcement Actions—Part 808

Section 808.1 is revised. The revised section in paragraph (a) identifies those actions that must have a public hearing pursuant to the Susquehanna River Basin Compact. Paragraph (b) outlines all other instances when the Commission may hold a hearing. No changes are contemplated to how the Commission currently conducts its hearings. Paragraphs (c) through (h) are revised to both update the regulations and also to reflect the Commission's current public hearing procedures.

Section 808.2 is revised to amend the scope and procedure for administrative appeals to the Commission. The non-mandatory appeal language is removed and paragraph (a) is revised to provide a mandatory appeal to the Commission of a final action or decision made by the Executive Director, including a non-exclusive list of appealable actions. Where the Commission itself takes a final action, including actions or decisions it makes on appeal of Executive Director actions, those decisions must be appealed to the appropriate federal district court in accordance with the provisions of section 3.10 of the Compact. This section also clarifies that the Commission will determine the manner in which it will hear an appeal, including whether a hearing is granted or whether the issue will be decided through submission of briefs.

Section 808.11 is revised to expressly recognize directives issued from Commission staff.

Section 808.14 is revised to provide the Executive Director broader authority to issue compliance orders. These orders would be appealable to the Commission. Paragraph (e) is added to expressly recognize Consent Orders and Agreements in the regulations. These agreements are vital to the Commission in fulfilling its compliance and enforcement obligations under the Compact and allow for a constructive resolution of most enforcement actions.

Section 808.15 is revised to allow the Executive Director to determine the appropriateness of a civil penalty in the first instance in a show cause proceeding. Any decision of the Executive Director is appealable to the Commission. Paragraph (c) is added to reflect the Commission's intent that any finding regarding the imposition of a civil penalty by the Executive Director shall be based on the relevant policies and guidelines adopted by the Commission, as well as the relevant law and facts and information presented as a part of the show cause proceeding.

Section 808.16 regarding civil penalty criteria is revised to be consistent with other changes in this proposed rulemaking, as well as add a new factor regarding the punitive effect of a civil penalty on a violator.

Section 808.17 is revised to be consistent with other changes in the proposed rulemaking.

Section 808.18 is revised to allow the Executive Director to enter into settlement agreements to resolve enforcement actions. Currently all settlement agreements must be brought to the Commission for approval at the Commission's quarterly meeting with the exception of settlements under $10,000 pursuant to Commission Resolution 2014-15. The revision provides greater authority for the Executive Director to approve settlement agreements, but retains the ability of the Commission to require certain types of settlements to be submitted for the Commission's approval through adoption of a Resolution.

Miscellaneous Changes

Section 806.1 is revised to include diversions within the scope of Part 806, which was an omission. The address of the Commission is also updated.

Section 806.3 related to definitions is revised. The definition of facility is revised to include consumptive use, which was an omission. The definition of production fluids is revised to include other fluids associated with the development of natural gas resources. The Commission routinely receives questions regarding other fluids, such as stormwater captured and stored in a drilling rig apparatus, and what rules apply to such water. The Commission is electing to treat all such water as a production fluid to ensure it is accounted for. A definition of wetland is added that mirrors the definition used by the U.S. Army Corps of Engineers for its regulatory program.

Section 806.4 related to projects requiring review and approval is revised, in addition to the changes discussed regarding new subpart E. Paragraph (a) is revised to clarify that aquifer testing pursuant to § 806.12 is not a project governed by § 806.4. Paragraph (a)(2), related to the regulation of withdrawals, is revised to clarify that a project includes all of its sources and to include a reference to the general project review standards in § 806.21.

A new paragraph (a)(3)(vii) is added to allow flowback and production fluids into the basin for in-basin treatment or disposal. The Commission does not want its regulations to be a disincentive to treatment of flowback where the activity is conducted in accordance with the environmental standards and requirements of its member jurisdictions.

Section 806.30 related to monitoring is revised and clarified. The revisions provide that measuring, metering or monitoring devices must be installed per the specifications and recommendations of the device's manufacturer. The revisions clarify that the Commission may require measurement of groundwater levels in wells other than production wells and may require other monitoring for environmental impacts.

Section 806.31 related to the term of approvals is revised to provide that if a project sponsor submits an application one month prior to the expiration of an ABR or NOI approval, the project sponsor may continue to operate under the expired approval while the Commission reviews the application. In the Commission's experience, the six month time frame currently in the regulation and still applicable to existing Commission docket approvals is longer than necessary for ABR approvals.

Transition Issues

The Commission is contemplating that all changes proposed in this rulemaking will take effect immediately upon publication in the *Federal Register*, with the exception of the adoption of Subpart E (related to registration of grandfathered projects) and the corresponding changes to § 806.4(a)(1)(iii) and (a)(2)(iv), which would be effective six months after the date of publication in the *Federal Register*.

List of Subjects in 18 CFR Parts 806 and 808

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR parts 806 and 808 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub.L. 91-575, 84 Stat. 1509 et seq.

2. Amend § 806.1 by revising paragraphs (a) and (f) to read as follows:

§ 806.1 Scope.

(a) This part establishes the scope and procedures for review and approval of projects under section 3.10 of the Susquehanna River Basin Compact, Public Law 91-575, 84 Stat. 1509 et seq., (the compact) and establishes special standards under section 3.4(2) of the compact governing water withdrawals, the consumptive use of water, and diversions. The special standards established pursuant to section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under section 3.10. This part, and every other part of 18 CFR chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

* * * * *

(f) Any Commission forms or documents referenced in this part may be obtained from the Commission at 4423 North Front Street, Harrisburg, PA 17110, or from the Commission's website at http://www.srbc.net.

3. In § 806.3:

a. Revise the definitions for "Facility" and "Production fluids"; and

b. Add, in alphabetical order, definitions for "Water critical area" and "Wetland".

The revisions and additions read as follows:

§ 806.3 Definitions.

* * * * *

Facility. Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, consumptive use, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

* * * * *

Production fluids. Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a byproduct of the production activity or other fluids associated with the development of natural gas resources.

* * * * *

Water critical area. A watershed or sub-watershed identified by the Commission where there are significantly limited water resources, where existing or future demand for water exceeds or has the potential to exceed the safe yield of available surface water and/or groundwater resources, or where the area has been identified or designated by a member jurisdiction as requiring more intensive water planning.

* * * * *

Wetlands. Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

4. Amend § 806.4 by revising paragraphs (a) introductory text, paragraph (a)(1)(iii), (a)(2) introductory text, and paragraph (a)(2)(iv), and adding paragraph (a)(3)(vii) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) * * *

(iii) With respect to projects that existed prior to January 23, 1971, any project:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its consumptive use in accordance with subpart E of this part.

* * * * *

(2) *Withdrawals*. Any project, including all of its sources, described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or part 801 of this chapter. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

* * * * *

(iv) With respect to groundwater projects that existed prior to July 13, 1978, surface water projects that existed prior to November 11, 1995, or projects that existed prior to January 1, 2007, with multiple sources involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more that did not require Commission review and approval, any project:

(A) Registered in accordance with Subpart E that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or cumulatively from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its withdrawals in accordance with subpart E.

* * * * *

(3) * * *

(vii) The diversion of any flowback or production fluids from hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

* * * * *

5. Amend § 806.11 by revising paragraph (b) to read as follows:

§ 806.11 Preliminary consultations.

* * * * *

(b) Except for project sponsors of electric power generation projects under § 801.12(c)(2) of this chapter, preliminary consultation is optional for the project sponsor (except with respect to aquifer test plans under § 806.12) but shall not relieve the sponsor from complying with the requirements of the compact or with this part.

6. Amend § 806.12 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 806.12 Constant-rate aquifer testing.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform a constant-rate aquifer test in accordance with this section.

* * * * *

(f) Review of submittals under § 806.12 may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

7. Revise § 806.14 to read as follows:

§ 806.14 Contents of application.

(a) Applications for a new project or a major modification to an existing approved project shall include, but not be limited to, the following information and, where applicable, shall be subject to the requirements in paragraph (b) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and identification of all water sources related to the project including location and date of initiation of each source.

(4) Anticipated impact of the project, including impacts on existing water withdrawals, nearby surface waters, and threatened or endangered species and its habitats.

(5) The reasonably foreseeable need for the proposed quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(6) A metering plan that adheres to § 806.30.

(7) Evidence of coordination and compliance with member jurisdictions regarding all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project.

(8) Project estimated completion date and estimated construction schedule.

(9) Draft notices required by § 806.15.

(10) The Commission may also require the following information as deemed necessary:

(i) Engineering feasibility;

(ii) Ability of the project sponsor to fund the project.

(b) Additional information is required for a new project or a major modification to an existing approved project as follows.

(1) *Surface water*. (i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife and natural environment features.

(v) Alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) *Groundwater*—(i) *Constant-rate aquifer tests*. With the exception of mining related withdrawals solely for the purpose of dewatering; construction dewatering withdrawals and withdrawals for the sole purpose of groundwater or below water table remediation generally which are addressed in paragraph (b)(6) of this section, the project sponsor shall provide an interpretative report that includes all monitoring and results of a constant-rate aquifer test consistent with § 806.12 and an updated groundwater availability estimate if changed from the aquifer test plan. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) *Consumptive use*. (i) Consumptive use calculations, and a mitigation plan consistent with § 806.22(b).

(ii) Water conservation methods, design or technology proposed or considered

(iii) Alternatives analysis as required by the Commission.

(4) *Into basin diversions*. (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) *Out of basin diversions*. (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(b).

(ii) Project setting.

(6) Other projects, including without limitation, mine dewatering, construction dewatering, water resources remediation projects, and gravity-drained AMD remediation facilities

(i) In lieu of aquifer testing, report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the proposed project and effects on local water availability.

(c) All applications for renewal of expiring approved projects shall include, but not be limited to, the following information, and, where applicable, shall be subject to the requirements in paragraph (d) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: purpose, proposed quantity to be withdrawn or consumed if applicable, identification of all water sources related to the project including location and date of initiation of each source, and any proposed project modifications.

(4) The reasonably foreseeable need for the requested renewal of the quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(5) An as-built and approved metering plan.

(6) Copies of permits from member jurisdictions regarding all necessary permits or approvals obtained for the project from other federal, state or local government agencies having jurisdiction over the project.

(7) Copy of any approved mitigation or monitoring plan and any related as-built for the expiring project.

(8) Demonstration of registration of all withdrawals or consumptive uses in accordance with the applicable state requirements.

(9) Draft notices required by § 806.15.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) *Surface water*. (i) Historic water use quantities and timing of use.

(ii) Changes to stream flow or quality during the term of the expiring approval.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose.

(2) *Groundwater*—(i) *Constant-rate aquifer tests*. The project sponsor shall provide an interpretative report that includes all monitoring and results of any constant-rate aquifer testing previously completed or submitted to support the original approval. In lieu of a testing report, historic operational data pumping and elevation data may be considered. Those projects that did not have constant-rate aquifer testing completed for the original approval that was consistent with § 806.12 or sufficient historic operational pumping and groundwater elevation data may be required to complete constant-rate aquifer testing consistent with § 806.12, prepare and submit an interpretative report that includes all monitoring and results of any constant-rate aquifer test.

(ii) An interpretative report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed hydro report.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (i.e., other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(3) *Consumptive use*. (i) Consumptive use calculations, and a copy of the approved plan or method for mitigation consistent with § 806.22.

(ii) Changes to the facility design;

(iii) Any proposed changes to the previously authorized purpose;

(4) *Into basin diversion*. (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) *Out of basin diversion*. (i) Historic water use quantities and timing of use;

(ii) Changes to stream flow or quality during the term of the expiring approval;

(iii) Changes to the facility design;

(iv) Any proposed changes to the previously authorized purpose;

(6) Other projects, including without limitation, mine dewatering, water resources remediation projects, and gravity-drained AMD facilities

(i) Copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i).

(iii) Demonstration of continued need for expiring approved water source and quantity.

(e) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

(f) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

(1) Description of the project;

(2) Description of all sources, consumptive uses and diversions related to the project;

(3) Description of the requested modification;

(4) Statement of the need for the requested modification; and

(5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin;

(g) For any applications, the Executive Director or Commission may require other information not otherwise listed in this section.

8. Amend § 806.15 by revising paragraph (a), adding paragraph (b)(3) and revising paragraph (g) to read as follows:

§ 806.15 Notice of application.

(a) Except with respect to paragraphs (h) and (i) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn, obtained from sources other than withdrawals, or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission

* * * * *

(b) * * *

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property is served by a public water supply.

* * * * *

(g) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and appropriate county agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

* * * * *

9. Amend § 806.21 by revising paragraphs (a) and (c)(1) to read as follows:

§ 806.21 General standards.

(a) A project shall be feasible and not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

* * * * *

(c) * * *

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated application by reapplying to the

Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

* * * * *

10. Revise § 806.22 to read as follows:

§ 806.22 Standards for consumptive use of water.

(a) The project sponsors of all consumptive water uses subject to review and approval under § 806.4, § 806.5, or § 806.6 of this part shall comply with this section.

(b) *Mitigation*. All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, § 806.5, § 806.6, or § 806.17 of this part shall mitigate such consumptive use, including any pre-compact consumptive use if located in a water critical area. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. The Commission shall require mitigation in accordance with an approved mitigation plan. The proposed mitigation plan shall include the method or combination of the following methods of mitigation:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's total consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 days without impact.

(ii) Release water for flow augmentation, in an amount equal to the project's total consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 days without impact.

(iii) Discontinue the project's consumptive use, except that reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (b)(3) of this section for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for all water consumptively used over the course of a year, in an amount and manner prescribed by the Commission.

(4) Implement other alternatives approved by the Commission.

(c) *Determination of manner of mitigation*. The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, including whether the project is located in a water critical area, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 806.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) *Quality of water released for mitigation*. The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 806.2, as applicable.

(e) *Approval by rule for consumptive uses*. (1) Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project who is solely supplied water for consumptive use by public water supply may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

(2) *Notification of intent*. Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a notice of intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) *Metering, daily use monitoring, and quarterly reporting*. The project sponsor shall comply with metering, daily use monitoring, and quarterly reporting as specified in § 806.30.

(5) *Standard conditions*. The standard conditions set forth in § 806.21 shall apply to projects approved by rule.

(6) *Mitigation*. The project sponsor shall comply with mitigation in accordance with § 806.22 (b)(2) or (3).

(7) *Compliance with other laws*. The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(8) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(9) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) *Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development*. (1) Any unconventional natural gas development project, or any hydrocarbon development project subject to review and approval under § 806.4, 806.5, or 806.6, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(2) *Notification of intent*. Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a notice of

intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water, including stimulation additives, flowback, drilling fluids, formation fluids and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state, or local government agencies having jurisdiction over the project. The Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member jurisdiction.

(10) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire five years from the date of such notification, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Precipitation or stormwater collected on the drilling pad site, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(iv) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to § 806.4(a) or by the Executive Director pursuant to this section, provided it is used only for the purposes authorized therein, and in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a), or by the Executive Director pursuant to paragraph (f)(14) of this section, and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(14) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize water obtained from a hydrocarbon water storage facility that is not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director and are constructed and maintained in compliance with all standards and requirements of the applicable member jurisdiction. The owner or operator of any such facility shall submit a request for approval on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(15) The project sponsor shall provide a copy of any registration or source approval issued pursuant to this section to the appropriate agency of the applicable member jurisdiction. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered or approved hereunder. Any source approval issued hereunder shall also be subject to such monitoring and reporting requirements as may be contained in such approval or otherwise required by this part.

11. Amend § 806.23 by revising paragraphs (b)(2) and (b)(3)(i) and adding paragraph (b)(5) to read as follows:

§ 806.23 Standards for water withdrawals.

* * * * *

(b) * * *

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; groundwater and surface water availability, including cumulative uses; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; affecting wetlands; or affecting low flow of perennial or intermittent streams.

(3) * * *

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown, including requiring a total system limit.

* * * * *

(5) For projects consisting of mine dewatering, water resources remediation, and gravity-drained AMD facilities, review of adverse impacts will have limited consideration of groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels provided these projects are operated in accordance with the laws and regulations of the member jurisdictions.

12. Amend § 806.30 by revising the introductory text and revising paragraph (a)(4) and adding paragraph (a)(8) to read as follows:

§ 806.30 Monitoring.

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, and installed per the specifications and recommendations of the manufacturer of the device, and shall be subject to inspection by the Commission at any time.

(a) * * *

(4) Measure groundwater levels in all approved production and other wells, as specified by the Commission.

* * * * *

(8) Perform other monitoring for impacts to water quantity, water quality and aquatic biological communities, as specified by the Commission.

* * * * *

13. Amend § 806.31 by revising paragraphs (d) and (e) to read as follows:

§ 806.31 Term of approvals.

* * * * *

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may revoke the approval for such withdrawal, diversion or consumptive use.

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission docket approval or no later than one month prior to the expiration of its existing ABR or NOI approval, the existing approval will be deemed extended until such time as the Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provides otherwise.

14. Add subpart E to read as follows:

Subpart E—Registration of Grandfathered Projects

Sec.
806.40 Applicability.
806.41 Registration and eligibility.
806.42 Registration requirements.
806.43 Metering and monitoring requirements.
806.44 Determination of grandfathered quantities.
806.45 Appeal of determination.

§ 806.40 Applicability.

(a) This subpart is applicable to the following projects, which shall be known as grandfathered projects:

(1) The project has an associated average consumptive use of 20,000 gpd or more in any consecutive 30-day period all or part of which is a pre-compact consumptive use that has not been approved by the Commission pursuant to § 806.4.

(2) The project has an associated groundwater withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to July 13, 1978, that has not been approved by the Commission pursuant to § 806.4.

(3) The project has an associated surface water withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to November 11, 1995, that has not been approved by the Commission pursuant to § 806.4.

(4) The project (or an element of the project) has been approved by the Commission but has an associated consumptive use or water withdrawal that has not been approved by the Commission pursuant to § 806.4.

(5) Any project not included in paragraphs (a)(2) through (4) of this section that has a total withdrawal average of 100,000 gpd or more in any consecutive 30-day average from any combination of sources which was initiated prior to January 1, 2007, that has not been approved by the Commission pursuant to § 806.4.

(6) Any source associated with a project included in paragraphs (a)(2) through (5) of this section regardless of quantity.

(b) A project, including any source of the project, that can be determined to have been required to seek Commission review and approval under the pertinent regulations in place at the time is not eligible for registration as a grandfathered project.

§ 806.41 Registration and eligibility.

(a) Projects sponsors of grandfathered projects identified in § 806.40 shall submit a registration to the Commission, on a form and in a manner prescribed by the Commission, within two years of the effective date of this regulation.

(b) Any grandfathered project that fails to register under paragraph (a) of this section shall be subject to Commission's review and approval under § 806.4.

(c) Any project that is not eligible to register under paragraph (a) of this section shall be subject to Commission's review and approval under § 806.4.

(d) The Commission may establish fees for obtaining and maintaining registration in accordance with § 806.35.

(e) A registration under this subpart may be transferred pursuant to § 806.6.

§ 806.42 Registration requirements.

(a) Registrations shall include the following information:

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of the project and site in terms of:

(i) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters.

(ii) Project purpose.

(3) Identification of all sources of water, including the date the source was put into service, each source location (including latitude and longitude coordinates in decimal degrees accurate to within 10 meters), and if applicable, any approved docket numbers.

(4) Identification of current metering and monitoring methods for water withdrawal and consumptive use.

(5) Identification of current groundwater level or elevation monitoring methods at groundwater sources.

(6) All quantity data for water withdrawals and consumptive use for a minimum of the previous five calendar years. If quantity data are not available, any information available upon which a determination of quantity could be made.

(7) For consumptive use, description of processes that use water, identification of water returned to the Basin, history of the use, including process changes, expansions and other actions that would have an impact on the amount of water consumptively used during the past five calendar years.

(8) Based on the data provided, the quantity of withdrawal for each individual source and consumptive use the project sponsor requests to be grandfathered by the Commission.

(9) Any ownership or name changes to the project since January 1, 2007.

(b) The Commission may require any other information it deems necessary for the registration process.

§ 806.43 Metering and monitoring requirements.

(a) As a part of the registration process, the Commission shall review the current metering and monitoring for grandfathered withdrawals and consumptive uses.

(b) The Commission may require a metering and monitoring plan for the project sponsor to follow.

(c) Project sponsors, as an ongoing obligation of their registration, shall report to the Commission all information specified in the grandfathering determination under § 806.44 in a form and manner determined by the Commission. If quantity reporting is required by the member jurisdiction where the project is located, the Commission may accept that reported quantity to satisfy the requirements of this paragraph.

§ 806.44 Determination of grandfathered quantities.

(a) For each registration submitted, the Executive Director shall determine the grandfathered quantity for each withdrawal source and consumptive use.

(b) In making a determination, the following factors should be considered:

(1) The most recent withdrawal and use data;

(2) The reliability and accuracy of the data and/or the meters or measuring devices;

(3) Determination of reasonable and genuine usage of the project, including any anomalies in the usage; and

(4) Other relevant factors.

§ 806.45 Appeal of determination.

(a) A final determination of the grandfathered quantity by the Executive Director must be appealed to the Commission within 30 days from actual notice of the determination.

(b) The Commission shall appoint a hearing officer to preside over appeals under this section. Hearings shall be governed by the procedures set forth in part 808 of this chapter.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

15. The authority citation for part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub.L. 91-575, 84 Stat. 1509 et seq.

16. Revise § 808.1 to read as follows:

§ 808.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by section 14.1 of the compact.

(2) Review and approval of diversions.

(3) Imposition or modification of rates and charges.

(4) Determination of protected areas.

(5) Drought emergency declarations.

(6) Hearing requested by a member jurisdiction.

(7) As otherwise required by sections 3.5(4), 4.4, 5.2(e), 6.2(a), 8.4, and 10.4 of the compact.

(b) A public hearing may be conducted by the Commission or the Executive Director in any form or style chosen by the Commission or Executive Director in the following instances:

(1) Proposed rulemaking.

(2) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(3) Adoption of policies and technical guidance documents.

(4) Identification of a water critical area.

(5) When it is determined that a hearing is necessary to give adequate consideration to issues related to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information on a matter before the Commission.

(c) *Notice of public hearing*. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. In all other cases, at least 20 days prior to the hearing, notice shall be posted on the Commission Web site, sent to the parties who, to the Commission's knowledge, will participate in the hearing, and sent to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, hearing notices need only be forwarded to the directors of the *New York Register*, the *Pennsylvania Bulletin*, the *Maryland Register* and the *Federal Register*, and it is sufficient that this notice appear in the *Federal Register* at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure*. (1) Hearings shall be open to the public. Participants may be any person, including a project sponsor, wishing to appear at the hearing and make an oral or written statement. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within 10 days or a reasonable time thereafter as may be specified by the presiding officer.

(2) Participants are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity*. Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority.

(f) *Description of project*. When notice of a public hearing is issued, there shall be available for inspection, consistent with the Commission's Access to Records Policy, all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer*. A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission or Executive Director. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript*. Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

17. Revise § 808.2 to read as follows:

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Executive Director shall file a written appeal with the Commission within 30 days of the receipt of actual notice by the project sponsor or within 30 days of publication of the action on the Commission's website or in the *Federal Register*. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal. The following is a non-exclusive list of actions by the Executive Director that are subject to an appeal to the Commission:

(1) A determination that a project requires review and approval under § 806.5 of this chapter;

(2) An approval or denial of an application for transfer under § 806.6 of this chapter;

(3) An approval of a Notice of Intent under a general permit under § 806.17 of this chapter.

(4) An approval of a minor modification under § 806.18 of this chapter; and

(5) A determination regarding an approval by rule under § 806.22(e) or (f) of this chapter;

(6) A determination regarding an emergency certificate under § 806.34 of this chapter;

(7) Enforcement orders issued under § 808.14;

(8) A finding regarding a civil penalty under § 808.15(c);

(9) A determination of grandfathered quantity under § 806.44 of this chapter;

(10) A decision to modify, suspend or revoke a previously granted approval;

(11) A records access determination made pursuant to Commission policy;

(b) The appeal shall identify the specific action or decision being appealed, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing nunc pro tunc; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under Federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) The Commission will determine the manner in which it will hear the appeal. If a hearing is granted, the Commission shall serve notice thereof upon the petitioner and project sponsor and shall publish such notice in the *Federal Register*. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule. If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(g) If a hearing is not granted, the Commission may set a briefing schedule and decide the appeal based on the record before it. The Commission may, in its discretion, schedule and hear oral argument on an appeal.

(h) *Intervention*. (1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the *Federal Register*. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with Federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

(i) Where a request for an appeal is made, the 90-day appeal period set forth in section 3.10(6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

18. Revise § 808.11 to read as follows:

§ 808.11 Duty to comply.

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, staff directives or any other requirement of the Commission.

19. Revise § 808.14 to read as follows:

§ 808.14 Orders.

(a) Whether or not an NOV has been issued, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket or other approval, the commissioners or Executive Director may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners or Executive Director may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

(e) The Commission or Executive Director may enter into a Consent Order and Agreement with an alleged violator to resolve non-compliant operations and enforcement proceedings in conjunction with or separately from settlement agreements under § 808.18.

20. Revise § 808.15 to read as follows:

§ 808.15 Show cause proceeding.

(a) The Executive Director may issue an order requiring an alleged violator to show cause why a penalty should not be assessed in accordance with the provisions of this chapter and section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date by which the alleged violator must provide a written response to the order.

(3) Identify the civil penalty recommended by Commission staff.

(b) The written response by the project sponsor should include the following:

(1) A statement whether the project sponsor contests that the violations outlined in the Order occurred;

(2) If the project sponsor contests the violations, then a statement of the relevant facts and/or law providing the basis for the project sponsor's position;

(3) Any mitigating factors or explanation regarding the violations outlined in the Order;

(4) A statement explaining what the appropriate civil penalty, if any, should be utilizing the factors at § 808.16.

(c) Based on the information presented and any relevant policies, guidelines or law, the Executive Director shall make a written finding affirming or modifying the civil penalty recommended by Commission staff.

21. Amend § 808.16 by revising paragraph (a) introductory text and paragraph (a)(7), adding paragraph (a)(8), and revising paragraph (b) to read as follows:

§ 808.16 Civil penalty criteria.

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission and Executive Director shall consider:

* * * * *

(7) The length of time over which the violation occurred and the amount of water used, diverted or withdrawn during that time period.

(8) The punitive effect of a civil penalty.

(b) The Commission and/or Executive Director retains the right to waive any penalty or reduce the amount of the penalty recommended by the Commission staff under § 808.15(a)(3) should it be determined, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

22. Revise § 808.17 to read as follows:

§ 808.17 Enforcement of penalties, abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with this part shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to section 15.17 of the compact.

23. Revise § 808.18 to read as follows:

§ 808.18 Settlement by agreement.

(a) An alleged violator may offer to settle an enforcement action by agreement. The Executive Director may enter into settlement agreements to resolve an enforcement action. The Commission may, by Resolution, require certain types of enforcement actions or settlements to be submitted to the Commission for action or approval.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission or Executive Director may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

Dated: September 19, 2016.

ANDREW D. DEHOFF,
Executive Director

(*Editor's Note*: See 46 Pa.B. 6427 (October 8, 2016) for a notice relating to this proposed rulemaking.)

Fiscal Note: Fiscal Note 72-13 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IV. SUSQUEHANNA RIVER BASIN COMMISSION

CHAPTER 806. REVIEW AND APPROVAL OF PROJECTS

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 (2016) (relating to review and approval of projects) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 16-1719. Filed for public inspection October 7, 2016, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Education

The Executive Board approved a reorganization of the Department of Education effective September 26, 2016.

The organization chart at 46 Pa.B. 6326 (October 8, 2016) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(*Editor's Note*: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of *Pennsylvania Code*) as a document general and permanent in nature which shall be codified in the *Pennsylvania Code*.)

[Pa.B. Doc. No. 16-1720. Filed for public inspection October 7, 2016, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

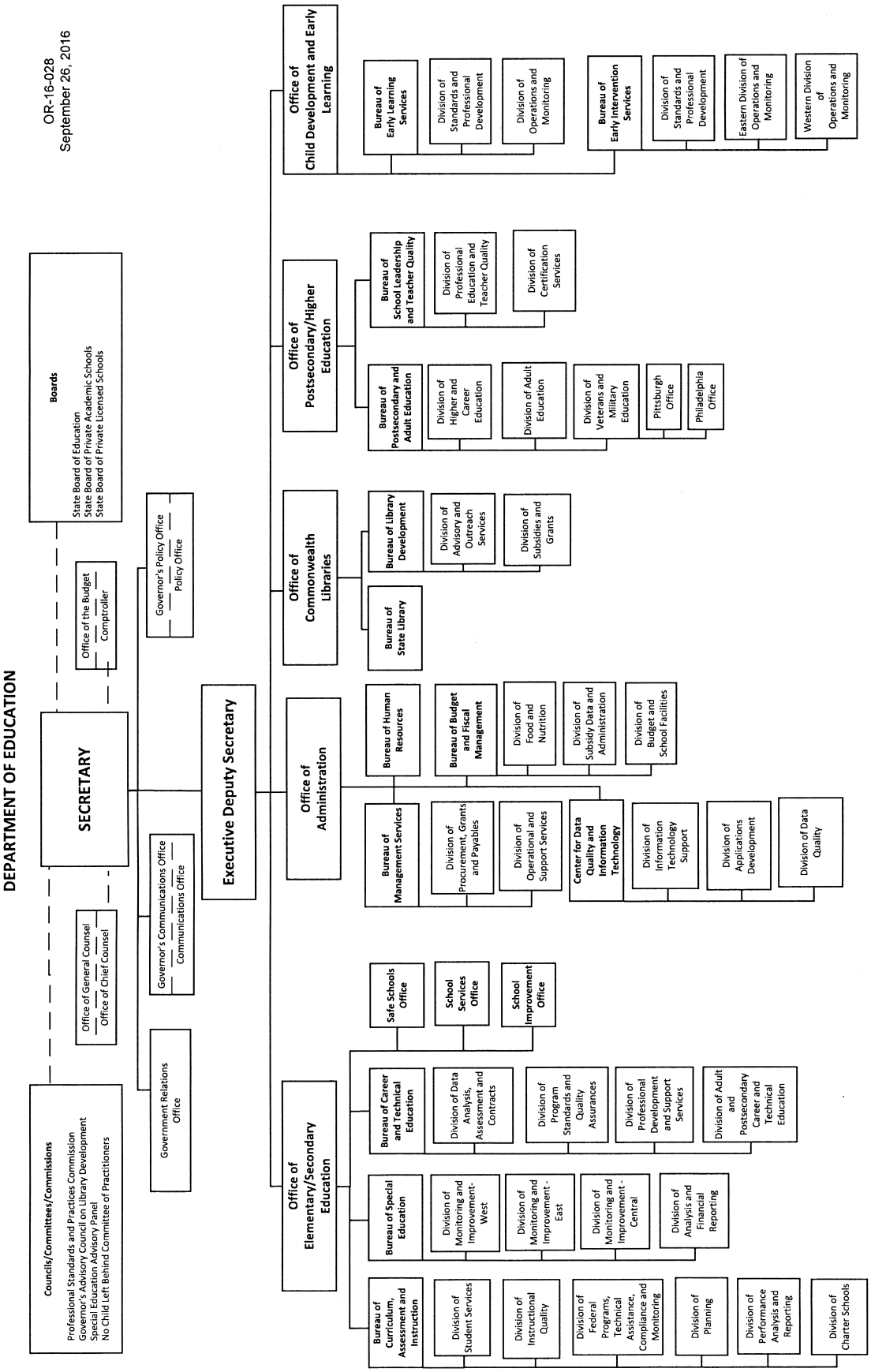
Reorganization of the Department of Human Services

The Executive Board approved a reorganization of the Department of Human Services effective September 21, 2016.

The organization chart at 46 Pa.B. 6327 (October 8, 2016) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

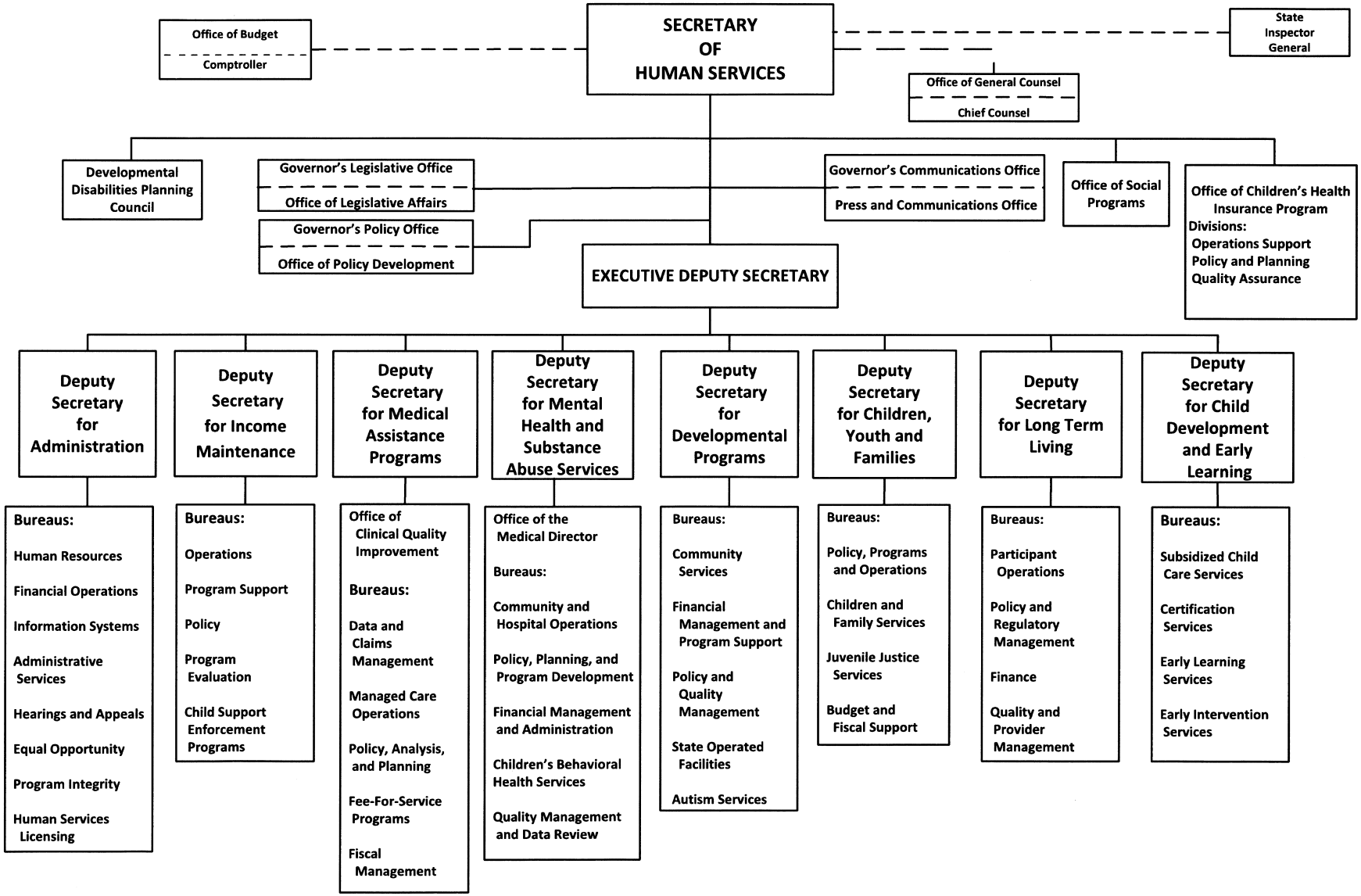
(*Editor's Note*: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of *Pennsylvania Code*) as a document general and permanent in nature which shall be codified in the *Pennsylvania Code*.)

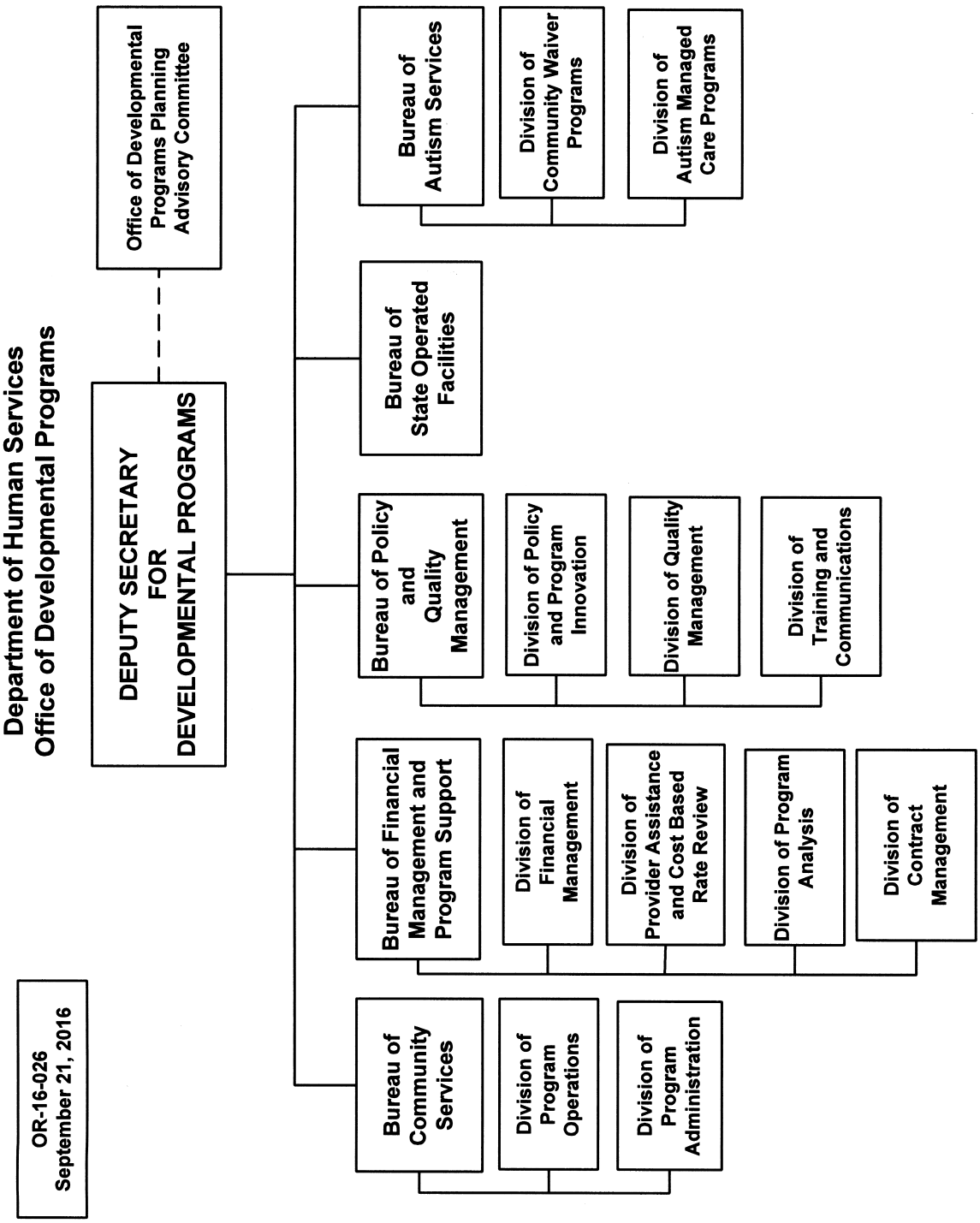
[Pa.B. Doc. No. 16-1721. Filed for public inspection October 7, 2016, 9:00 a.m.]


DEPARTMENT OF EDUCATION
OR-16-028
September 26, 2016
Councils/Committees/Commissions
Professional Standards and Practices Commission
Governor's Advisory Council on Library Development
Special Education Advisory Panel
No Child Left Behind Committee of Practitioners
Boards
State Board of Education
State Board of Private Academic Schools
State Board of Private Licensed Schools
SECRETARY
Office of General Counsel
Office of Chief Counsel
Office of the Budget
Comptroller
Governor's Policy Office
Policy Office
Governor's Communications Office
Communications Office
Government Relations Office
Executive Deputy Secretary
Office of Child Development and Early Learning
Bureau of Early Learning Services
Division of Standards and Professional Development
Division of Operations and Monitoring
Bureau of Early Intervention Services
Division of Standards and Professional Development
Eastern Division of Operations and Monitoring
Western Division of Operations and Monitoring
Office of Postsecondary/Higher Education
Bureau of School Leadership and Teacher Quality
Division of Professional Education and Teacher Quality
Division of Certification Services
Bureau of Postsecondary and Adult Education
Division of Higher and Career Education
Division of Adult Education
Division of Veterans and Military Education
Pittsburgh Office
Philadelphia Office
Office of Commonwealth Libraries
Bureau of Library Development
Division of Advisory and Outreach Services
Division of Subsidies and Grants
Bureau of State Library
Office of Administration
Bureau of Human Resources
Bureau of Budget and Fiscal Management
Division of Food and Nutrition
Division of Subsidy Data and Administration
Division of Budget and School Facilities
Bureau of Management Services
Division of Procurement, Grants and Payables
Division of Operational and Support Services
Center for Data Quality and Information Technology
Division of Information Technology Support
Division of Applications Development
Division of Data Quality
Office of Elementary/Secondary Education
Safe Schools Office
School Services Office
School Improvement Office
Bureau of Career and Technical Education
Division of Data Analysis, Assessment and Contracts
Division of Program Standards and Quality Assurances
Division of Professional Development and Support Services
Division of Adult and Postsecondary Career and Technical Education
Bureau of Special Education
Division of Monitoring and Improvement - West
Division of Monitoring and Improvement - East
Division of Monitoring and Improvement - Central
Division of Analysis and Financial Reporting
Bureau of Curriculum, Assessment and Instruction
Division of Student Services
Division of Instructional Quality
Division of Federal Programs, Technical Assistance, Compliance and Monitoring
Division of Planning
Division of Performance Analysis and Reporting
Division of Charter Schools

DEPARTMENT OF HUMAN SERVICES

OR-16-026
September 21, 2016




Department of Human Services
Office of Developmental Programs
OR-16-026
September 21, 2016
DEPUTY SECRETARY FOR DEVELOPMENTAL PROGRAMS
Office of Developmental Programs Planning Advisory Committee
Bureau of Autism Services
Division of Community Waiver Programs
Division of Autism Managed Care Programs
Bureau of State Operated Facilities
Bureau of Policy and Quality Management
Division of Policy and Program Innovation
Division of Quality Management
Division of Training and Communications
Bureau of Financial Management and Program Support
Division of Financial Management
Division of Provider Assistance and Cost Based Rate Review
Division of Program Analysis
Division of Contract Management
Bureau of Community Services
Division of Program Operations
Division of Program Administration

NOTICES

DEPARTMENT OF AGRICULTURE

Addendum to the Order of Quarantine; Spotted Lanternfly

Recitals

A. Spotted lanternfly, *Lycorma delicatula*, is a new pest to the United States and has been detected in the Commonwealth. This is a dangerous insect to forests, ornamental trees, orchards and grapes and not widely prevalent or distributed within or throughout the Commonwealth or the United States. Spotted lanternfly has been detected in the Commonwealth and has the potential to spread to uninfested areas by natural means or through the movement of infested articles.

B. The Plant Pest Act (Act) (3 P.S. §§ 258.1—258.27) empowers The Department of Agriculture (Department) to take various measures to detect, contain and eradicate plant pests. A plant pest is defined as an organism, including other plants, causing or capable of causing injury or damage to plants or plant products (3 P.S. § 258.2). These powers include the authority, set forth at section 258.21 of the Act (3 P.S. § 258.21), to establish quarantines to prevent the spread of plant pests within this Commonwealth.

C. Under the authority of section 258.20 of the Act (3 P.S. § 258.20) the Department may declare a pest to be a public nuisance when the Department determines a plant pest to be dangerous or destructive to the agriculture, horticulture or forests of this Commonwealth. For the reasons set forth in Paragraph A above, the Department declares Spotted lanternfly, *Lycorma delicatula*, to be a public nuisance.

D. Consistent with the Order of Quarantine published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, where the Department detects or confirms any of the plant pests established in this Order of Quarantine—Spotted lanternfly, *Lycorma delicatula*—the place or area in which any of these plant pests are detected or confirmed shall be subject to the provisions of that Order of Quarantine published at 44 Pa.B. 6947 issued Saturday, November 1, 2014.

E. The place or area in which the plant pest is detected or confirmed shall be added to the Order of Quarantine, published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, through an addendum delineating the specific location and geographic parameters of the area or place. Such Addendum shall be published in the *Pennsylvania Bulletin* and enforcement of the Addendum to the Order of Quarantine, published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, with regard to that place or area shall become effective immediately.

Order

Under authority of section 21 of the act (3 P.S. § 258.21), and with the Recitals previously listed incorporated into and made a part hereof this Addendum to the Order of Quarantine published at 44 Pa.B. 6947 issued Saturday, November 1, 2014 by reference, the Department orders the following:

1. *Establishment of Quarantine.*

A quarantine is hereby established with respect to Whitehall, South Whitehall, Upper Saucon and Lower Milford Townships and Allentown City, Lehigh County and Lower Pottsgrove, Upper Fredrick, Marlborough, Montgomery County. This is in addition to, and does not replace, any townships and areas already subject to the Spotted Lanternfly Quarantine Order published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, and any previous Addendums to that Quarantine Order.

2. *All Provisions Apply.*

All of the provisions established in the Spotted Lanternfly Quarantine Order published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, are hereby incorporated herein and made a part hereof this Addendum as if fully set forth herein and shall hereby be made applicable to Whitehall, South Whitehall, Upper Saucon and Lower Milford Townships and Allentown City, Lehigh County and Lower Pottsgrove, Upper Fredrick, Marlborough, Montgomery County.

RUSSELL C. REDDING,
Secretary

[Pa.B. Doc. No. 16-1722. Filed for public inspection October 7, 2016, 9:00 a.m.]

DEPARTMENT OF BANKING AND SECURITIES

Actions on Applications

The Department of Banking and Securities (Department), under the authority contained in the act of November 30, 1965 (P.L. 847, No. 356), known as the Banking Code of 1965; the act of May 15, 1933 (P.L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P.L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending September 27, 2016.

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

BANKING INSTITUTIONS

Interim Incorporations

Date	*Name and Location of Applicant*	*Action*
9-22-2016	Monument Interim Bank Doylestown Bucks County	Effective

The purpose of Monument Interim Bank, Doylestown, is to merge with Monument Bank, Doylestown, to facilitate the proposed reorganization of Monument Bank into a bank holding company structure whereby Monument Bank will become the wholly-owned subsidiary of Monument Bancorp, Inc., a new holding company in formation.

Consolidations, Mergers and Absorptions

Date	*Name and Location of Applicant*	*Action*
9-9-2016	Northwest Bank Warren Warren County	Effective

Application for approval to purchase assets and assume liabilities of 18 branches of First Niagara Bank, National Association, Buffalo, NY, located at:

14 Lafayette Square Buffalo Erie County, NY	6409 Transit Road East Amherst Erie County, NY
2070 George Urban Boulevard Depew Erie County, NY	3105 Niagara Falls Boulevard Amherst Erie County, NY
1531 Niagara Falls Boulevard Amherst Erie County, NY	1248 Abbott Road Lackawanna Erie County, NY
690 Kenmore Avenue Buffalo Erie County, NY	3488 Amelia Drive Orchard Park Erie County, NY
1690 Sheridan Drive Kenmore Erie County, NY	364 Connecticut Street Buffalo Erie County, NY
5751 South Park Avenue Hamburg Erie County, NY	2300 Grand Island Boulevard Grand Island Erie County, NY
4435 Transit Road Clarence Erie County, NY	55 East Avenue Lockport Niagara County, NY
1035 Payne Avenue North Tonowanda Niagara County, NY	805 Main Street Niagara Falls Niagara County, NY
4381 Military Road Niagara Falls Niagara County, NY	500 Center Street Lewistown Niagara County, NY

9-22-2016	First Commonwealth Bank Indiana Indiana County	Approved

Application for approval to purchase assets and assume liabilities of 13 branches of FirstMerit Bank, NA, Akron, OH, located at:

6252 Middlebranch Avenue, NE Canton Stark County, OH	3100 Atlantic Boulevard, NE Canton Stark County, OH
1110 30th Street, NW Canton Stark County, OH	2917 Whipple Avenue, NW Canton Stark County, OH
4555 Belden Village Street, NW Canton Stark County, OH	5594 Wales Avenue, NW Massillon Stark County, OH

Date	*Name and Location of Applicant*	*Action*
	2150 Locust Street S Canal Fulton Stark County, OH	
	140 Lincoln Way E Massillon Stark County, OH	
	2704 Lincoln Way E Massillon Stark County, OH	
	100 Central Plaza S Canton Stark County, OH	
	308 East Gorgas Street Louisville Stark County, OH	
	4200 Park Avenue Ashtabula Ashtabula County, OH	
	22 West Jefferson Street Jefferson Ashtabula County, OH	
9-23-2016	Monument Bank Doylestown Bucks County	Filed
	Application for approval to merge Monument Interim Bank, Doylestown, with and into Monument Bank, Doylestown.	
	The merger will facilitate the proposed reorganization of Monument Bank, Doylestown, into a bank holding company structure whereby Monument Bank will become the wholly-owned subsidiary of Monument Bancorp, Inc., a new holding company in formation.	

Branch Applications

De Novo Branches

Date	*Name and Location of Applicant*	*Location of Branch*	*Action*
9-23-2016	Landmark Community Bank Pittston Luzerne County	781 Airport Road Hazle Township Luzerne County	Approved

Branch Discontinuances

Date	*Name and Location of Applicant*	*Location of Branch*	*Action*
8-26-2016	Northwest Bank Warren Warren County	22 North Main Street Union City Erie County	Closed
	Articles of Amendment provide for the institution's Articles of Incorporation to be amended and restated in their entirety.		

CREDIT UNIONS

No activity.

The Department's web site at www.dobs.pa.gov includes public notices for more recently filed applications.

ROBIN L. WIESSMANN,
Secretary

[Pa.B. Doc. No. 16-1723. Filed for public inspection October 7, 2016, 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 POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications concern, but are not limited to, discharges regarding industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater

associated with construction activities or concentrated animal feeding operations (CAFO). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

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

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

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 Individual Permits and Individual Stormwater Construction Permits in Sections IV and VI, the Department, based upon preliminary reviews, has made tentative determinations of proposed effluent limitations and other terms and conditions for the permit applications. In accordance with 25 Pa. Code § 92a.32(d), the proposed discharge of stormwater associated with construction activities will be managed in accordance with the requirements of 25 Pa. Code Chapter 102. These determinations are published as proposed actions for comments prior to taking final actions.

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

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

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

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

I. NPDES Renewal Applications

Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401. Phone: 484.250.5970.

NPDES No. (Type)	*Facility Name & Address*	*County & Municipality*	*Stream Name (Watershed No.)*	*EPA Waived Y/N?*
PA0056537 (Storm Water)	Highway Materials Malvern Plant 680 Morehall Road Frazer, PA 19355	Chester County East Whiteland Township	Unnamed Tributary to Valley Creek (3-F)	Yes

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

NPDES No. (Type)	*Facility Name & Address*	*County & Municipality*	*Stream Name (Watershed #)*	*EPA Waived Y/N?*
PA0011374—IW	Stanley Black & Decker (former Baldwin Hardware) 1000 Stanley Drive New Britain CT 06053	Berks County/ Reading City	UNT Schuylkill River/ 6-C	Y
PA0086967—IW	Myerstown Water Authority 601 Stracks Dam Road Myerstown, PA 17067	Lebanon County/ Jackson Township	UNT Tulpehocken Creek/3-C	Y

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N?
PA0043486—IW	Lancaster County Solid Waste Management Authority—Creswell Landfill 1299 Harrisburg Pike PO Box 4425 Lancaster, PA 17604-4425	Lancaster County/ Manor Township	Manns Run/7-J	Y

Northcentral Regional Office: Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0112275 (Industrial)	Con Lime Bellefonte Facility 965 E College Avenue Bellefonte, PA 16823	Centre County Benner Township	Buffalo Run (9-C)	Yes

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

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

PA0253359, Industrial, SIC Code 4941, **Cambria Somerset Authority**, 110 Franklin Street, Suite 200, Johnstown, PA 15901-1829. Facility Name: Cambria Somerset Authority. This existing facility is located in Quemahoning Township, **Somerset County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of untreated industrial supply water. In the future, the facility will receive wastewater from a 1,040 MW natural gas combined cycle steam electric power plant known as the CPV Fairview Energy Center, to be discharged through Outfalls 001 and/or 002.

The receiving stream(s), Hinckston Run (001) and Peggys Run (002), is located in State Water Plan watershed 18-E and 18-D and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 6 MGD.—Interim Limits (prior to commencement of power plant discharge).

	Mass Units (lbs/day)			Concentrations (mg/L)		
Parameters	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	XXX	60.0
Aluminum, Total	XXX	XXX	XXX	0.75	0.75	0.75
*Antimony, Total (µg/L)	XXX	XXX	XXX	6.4	9.9	16
*Arsenic, Total (µg/L)	XXX	XXX	XXX	11.4	15.6	28.5
*Cadmium, Total (µg/L)	XXX	XXX	XXX	0.3	0.5	0.8
Iron, Total	XXX	XXX	XXX	1.5	3.0	3.8
*Lead, Total (µg/L)	XXX	XXX	XXX	3.6	5.6	9.0
Manganese, Total	XXX	XXX	XXX	1.0	2.0	2.5
*Mercury, Total (µg/L)	XXX	XXX	XXX	0.06	0.09	0.15
*Selenium, Total (µg/L)	XXX	XXX	XXX	5.7	8.8	14.3
*Thallium, Total (µg/L)	XXX	XXX	XXX	0.3	0.4	0.8

The proposed effluent limits for Outfall 001 are based on a design flow of 6 MGD.—Final Limits (upon commencement of power plant discharge).

	Mass Units (lbs/day)			Concentrations (mg/L)		
Parameters	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	XXX	60.0
Total Dissolved Solids	XXX	XXX	XXX	Report	Report	XXX
Aluminum, Total	Report	Report	XXX	0.75	0.75	0.75
*Antimony, Total (µg/L)	XXX	XXX	XXX	6.4	9.9	16
*Arsenic, Total (µg/L)	XXX	XXX	XXX	11.4	17.7	28.5
*Cadmium, Total (µg/L)	XXX	XXX	XXX	0.3	0.5	0.8
*Copper, Total (µg/L)	XXX	XXX	XXX	10.2	15.9	15.9

Parameters	Mass Units (lbs/day) Average Monthly	Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Daily Maximum	Instant. Maximum
Iron, Total	Report	Report	XXX	1.5	3.0	3.8
*Lead, Total (µg/L)	XXX	XXX	XXX	3.6	5.6	9.0
Manganese, Total	Report	Report	XXX	1.0	2.0	2.5
*Mercury, Total (µg/L)	XXX	XXX	XXX	0.06	0.09	0.15
*Nickel, Total (µg/L)	XXX	XXX	XXX	59.0	84.0	148
*Selenium, Total (µg/L)	XXX	XXX	XXX	5.7	8.8	14.3
*Silver, Total (µg/L)	XXX	XXX	XXX	3.8	4.3	4.3
Sulfate, Total	XXX	XXX	XXX	Report	Report	XXX
*Thallium, Total (µg/L)	XXX	XXX	XXX	0.3	0.4	0.8
Chloride	XXX	XXX	XXX	Report	Report	XXX
Bromide	XXX	XXX	XXX	Report	Report	XXX

The proposed effluent limits for Outfall 002 are based on a design flow of 5.9 MGD.—Interim Limits (prior to commencement of power plant discharge).

Parameters	Mass Units (lbs/day) Average Monthly	Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	XXX	60.0
Aluminum, Total	XXX	XXX	XXX	0.75	0.75	0.75
*Antimony, Total (µg/L)	XXX	XXX	XXX	5.7	8.9	14.3
*Arsenic, Total (µg/L)	XXX	XXX	XXX	10.1	15.6	25.3
*Cadmium, Total (µg/L)	XXX	XXX	XXX	0.3	0.4	0.8
Iron, Total	XXX	XXX	XXX	1.5	3.0	3.8
*Lead, Total (µg/L)	XXX	XXX	XXX	3.2	5.0	8.0
Manganese, Total	XXX	XXX	XXX	1.0	2.0	2.5
*Mercury, Total (µg/L)	XXX	XXX	XXX	0.05	0.08	0.13
*Selenium, Total (µg/L)	XXX	XXX	XXX	5.1	7.9	12.8
*Thallium, Total (µg/L)	XXX	XXX	XXX	0.2	0.4	0.5

The proposed effluent limits for Outfall 002 are based on a design flow of 5.9 MGD.—Final Limits (upon commencement of power plant discharge).

Parameters	Mass Units (lbs/day) Average Monthly	Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	XXX	60.0
Total Dissolved Solids	XXX	XXX	XXX	Report	Report	XXX
Aluminum, Total	Report	Report	XXX	0.75	0.75	0.75
*Antimony, Total (µg/L)	XXX	XXX	XXX	5.7	8.9	14.3
*Arsenic, Total (µg/L)	XXX	XXX	XXX	10.1	15.8	25.3
*Cadmium, Total (µg/L)	XXX	XXX	XXX	0.3	0.4	0.8
*Copper, Total (µg/L)	XXX	XXX	XXX	9.3	14.2	14.2
Iron, Total	Report	Report	XXX	1.5	3.0	3.8
*Lead, Total (µg/L)	XXX	XXX	XXX	3.2	5.0	8.0
Manganese, Total	Report	Report	XXX	1.0	2.0	2.5
*Mercury, Total (µg/L)	XXX	XXX	XXX	0.05	0.08	0.13
*Nickel, Total (µg/L)	XXX	XXX	XXX	53.0	83.0	133
*Selenium, Total (µg/L)	XXX	XXX	XXX	5.1	7.9	12.8
*Silver, Total (µg/L)	XXX	XXX	XXX	3.8	3.8	3.8
Sulfate, Total	XXX	XXX	XXX	Report	Report	XXX
*Thallium, Total (µg/L)	XXX	XXX	XXX	0.2	0.4	0.5
Chloride	XXX	XXX	XXX	Report	Report	XXX
Bromide	XXX	XXX	XXX	Report	Report	XXX

The proposed effluent limits for Internal Monitoring Point 101 are based on a design flow of 2.2 MGD.—-Final Limits.

Parameters	Mass Units (lbs/day) Average Monthly	Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6
Temperature (°F)	XXX	XXX	XXX	Report	XXX	110

Parameters	Mass Units (lbs/day) Average Monthly	Mass Units (lbs/day) Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Concentrations (mg/L) Daily Maximum	Concentrations (mg/L) Instant. Maximum
Total Suspended Solids	XXX	XXX	XXX	Report	Report	XXX
Total Dissolved Solids	XXX	XXX	XXX	Report	Report	XXX
Oil and Grease	XXX	XXX	XXX	15.0	XXX	30.0
Aluminum, Total	Report	Report	XXX	Report	Report	XXX
Antimony, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Arsenic, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Cadmium, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Copper, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Iron, Total	Report	Report	XXX	Report	Report	XXX
Lead, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Manganese, Total	Report	Report	XXX	Report	Report	XXX
Mercury, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Nickel, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Selenium, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Silver, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Sulfate, Total	XXX	XXX	XXX	Report	Report	XXX
Thallium, Total (µg/L)	XXX	XXX	XXX	Report	Report	XXX
Chloride	XXX	XXX	XXX	Report	Report	XXX
Bromide	XXX	XXX	XXX	Report	Report	XXX

The proposed effluent limits for Internal Monitoring Point 201 are based on a design flow of 0.29 MGD.—Final Limits.

Parameters	Mass Units (lbs/day) Average Monthly	Mass Units (lbs/day) Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Concentrations (mg/L) Daily Maximum	Concentrations (mg/L) Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	100.0	XXX
Oil and Grease	XXX	XXX	XXX	15.0	20.0	XXX

The proposed effluent limits for Internal Monitoring Point 301 are based on a design flow of 1.82 MGD.—Final Limits.

Parameters	Mass Units (lbs/day) Average Monthly	Mass Units (lbs/day) Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Concentrations (mg/L) Daily Maximum	Concentrations (mg/L) Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Free Available Chlorine	XXX	XXX	XXX	0.2	XXX	0.5
Chromium, Total	XXX	XXX	XXX	0.2	0.2	XXX
Zinc, Total	XXX	XXX	XXX	1.0	1.0	XXX

The permittee did not sample to the quantitation level (QL) values as determined by the Department. As a result, the water quality based effluent limitations marked with a "" may be resampled by the permittee during the comment period. The Department will re-evaluate the applicability of the limits and may impose monitoring or removal of these water quality based effluent limits in the final permit, if appropriate.

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

• The permittee will be required to sample for Pollutant Groups 1, 2, 3, 4 and 5 at Outfalls 001, 002 and Internal Monitoring Point 101 following commencement of the discharge from the CPV Fairview Energy Center power plant.

• No detectable amounts of the126 Priority Pollutants from chemicals added for cooling tower maintenance

• Operation of the supply water distribution system to ensure that users who have requested not to receive reclaim water do not receive the water in part, or in whole, along the supply pipeline.

• If any modification to the CSA supply pipeline system requires an amendment to any other permit, it is the permittee's responsibility to apply for those permits.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 412-442-4000.

The EPA Waiver is not in effect.

Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5970.

PA0026689, Sewage, SIC Code 4952, **Philadelphia Water Department**, 1101 Market Street 5th Floor, Philadelphia, PA 19107-2994. Facility Name: PWD NEWPCP. This existing facility is located in Philadelphia City, **Philadelphia County**.

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

The receiving stream(s), Delaware River, Frankford Creek, Pennypack Creek, Tacony Creek, Unnamed Tributary to Delaware River, Unnamed Tributary to Pennypack Creek and Unnamed Tributary to Tacony Creek, is located in State Water Plan watershed 3-J and is classified for Warm Water Fishes, Migratory Fishes, Warm Water Fishes, Trout Stocking and Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 210 MGD.

	Mass (lb/day)			*Concentration (mg/l)*		
Parameters	*Average Monthly*	*Weekly Average*	*Minimum*	*Average Monthly*	*Daily Maximum*	*Instant. Maximum*
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	Report	Report	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.0
Color (Pt-Co Units)	XXX	XXX	XXX	Report Daily Max	XXX	XXX
$CBOD_5$						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
$CBOD_5$	36,430	54,645	XXX	25	40 Wkly Avg	50
BOD_5						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
$CBOD_{20}$	71,760	XXX	XXX	XXX	XXX	XXX
$CBOD_5$ Minimum						
Percent Removal	XXX	XXX	86	XXX	XXX	XXX
Total Suspended Solids	52,540	78,810	XXX	30	45 Wkly Avg	60
Total Suspended Solids						
Raw Sewage Influent	Report	Report	XXX	Report	XXX	XXX
TSS Minimum						
Percent Removal	XXX	XXX	85	XXX	XXX	XXX
Total Dissolved Solids	XXX	XXX	XXX	Report	Report	XXX
Specific Conductance * (µmhos/cm)	XXX	XXX	XXX	Report	Report	XXX
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200 Geo Mean	XXX	1,000**
Ammonia-Nitrogen	XXX	XXX	XXX	35	Report	70
Nitrate as N	XXX	XXX	XXX	Report	Report	XXX
Nitrite as N	XXX	XXX	XXX	Report	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	Report	XXX
Total Phosphorus	XXX	XXX	XXX	Report	Report	XXX
Total Copper	XXX	XXX	XXX	Report	XXX	XXX
Dissolved Iron	XXX	XXX	XXX	Report	XXX	XXX
Total Iron	XXX	XXX	XXX	Report	XXX	XXX
Total Mercury	XXX	XXX	XXX	Report	XXX	XXX
Total Zinc	XXX	XXX	XXX	Report	XXX	XXX
4,4-DDD	XXX	XXX	XXX	Report	XXX	XXX
4,4-DDT	XXX	XXX	XXX	Report	XXX	XXX
4,4-DDE	XXX	XXX	XXX	Report	XXX	XXX
Benzidine	XXX	XXX	XXX	Report	XXX	XXX
Chlordane	XXX	XXX	XXX	Report	XXX	XXX
1,2-Dichloroethane	XXX	XXX	XXX	Report	XXX	XXX
gamma-BHC	XXX	XXX	XXX	Report	XXX	XXX
Heptachlor	XXX	XXX	XXX	Report	XXX	XXX
Tetrachloroethylene	XXX	XXX	XXX	Report	XXX	XXX
Trichloroethylene	XXX	XXX	XXX	Report	XXX	XXX
PCBs (Dry Weather) (pg/L)	XXX	XXX	XXX	XXX	Report Max	XXX
PCBs (Wet Weather) (pg/L)	XXX	XXX	XXX	XXX	Report Max	XXX
Chronic Toxicity—						
Ceriodaphnia Survival (TUc)	XXX	XXX	XXX	XXX	Report	XXX
Ceriodaphnia Reproduction (TUc)	XXX	XXX	XXX	XXX	Report	XXX
Acute Toxicity—						
Ceriodaphnia Survival (TUa)	XXX	XXX	XXX	XXX	Report	XXX
Chronic Toxicity—						
Pimephales Survival (TUc)	XXX	XXX	XXX	XXX	Report	XXX

Parameters	Mass (lb/day) Average Monthly	Weekly Average	Minimum	Concentration (mg/l) Average Monthly	Daily Maximum	Instant. Maximum
Acute Toxicity—						
Pimephales Survival (TUa)	XXX	XXX	XXX	XXX	Report	XXX
Chronic Toxicity—						
Pimephales Growth (TUc)	XXX	XXX	XXX	XXX	Report	XXX

* Specific conductance shall be measured from the same sample taken for TDS.

** Shall not exceed in more than 10% samples tested.

The proposed effluent limits for Outfall 061 are based on stormwater.

Parameters	Mass (lb/day) Average Monthly		Minimum	Concentration (mg/l) Average Monthly	Daily Maximum	Instant. Maximum
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
$CBOD_5$	XXX	XXX	XXX	XXX	Report	XXX
Chemical Oxygen Demand	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limitations for Combined Sewer Overflow Outfalls 002—008, 010—052 and 058—060 as follows:

All discharges of floating materials, oil, grease, scum, foam, sheen, and substances which produce color, tastes, odors, turbidity or settle to form deposits shall be controlled to level which will not be initial or harmful to the water uses to be protected or to human, plant or aquatic life.

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

I.

A. Stormwater Discharge

B. Necessary Property Rights

C. Sludge Disposal

D. 86% $CBOD_5$ reduction

E. Toxic Approved Test Methods

F. TRC

G. TMDL / WLA Analysis

H. O&M Plan

I. Act 11 Notification

J. Sampler equipment

K. Effluent and influent sampling

L. Methods for exceeding 315 MGD flow

II. Stormwater Requirements

III. POTW Pretreatment Program Implementation

IV. Combined Sewer Overflows

V. PCB Minimization Plan and Monitoring

VI. Whole Effluent Toxicity Testing

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

The EPA Waiver is not in effect.

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

PA0026875, Sewage, SIC Code 4952, **Hanover Borough**, 44 Frederick Street, Hanover, PA 17331-3501. Facility Name: Hanover Regional WWTP. This existing facility is located in Hanover Borough, **York County**.

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

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

The proposed effluent limits for Outfall 001 are based on a design flow of 5.6 MGD:

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Weekly Average*	*Minimum*	*Average Monthly*	*Weekly Average*	*Instant. Maximum*
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.28	XXX	0.93
$CBOD_5$						
May 1 - Oct 31	467	700	XXX	10	15	20
Nov 1 - Apr 30	934	1,401	XXX	20	30	40
BOD_5						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	XXX	XXX
Total Suspended Solids	1,401	2,101	XXX	30	45	60
Total Suspended Solids						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	XXX	XXX
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Ammonia-Nitrogen						
May 1 - Oct 31	70	XXX	XXX	1.5	XXX	3.0
Nov 1 - Apr 30	140	XXX	XXX	3.0	XXX	6.0
Total Phosphorus	93	XXX	XXX	2.0	XXX	4.0

The proposed effluent limits for Outfall 002 are based on an emergency discharge flow of 12 MGD:

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Weekly Average*	*Minimum*	*Average Monthly*	*Weekly Average*	*Instant. Maximum*
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.22	XXX	0.72
$CBOD_5$)	Report	Report	XXX	20	30	40
Total Suspended Solids	Report	Report	XXX	30	45	60
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Ammonia-Nitrogen						
May 1 - Oct 31	Report	XXX	XXX	1.5	XXX	3.0
Nov 1 - Apr 30	Report	XXX	XXX	3.0	XXX	6.0
Total Phosphorus	Report	XXX	XXX	2.0	XXX	4.0

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

Parameters	*Monthly*	*Annual*	*Minimum*	*Monthly Average*	*Maximum*
Ammonia—N	Report	Report	XXX	Report	XXX
Kjeldahl—N	Report	XXX	XXX	Report	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX
Net Total Nitrogen	Report	82,991	XXX	XXX	XXX
Net Total Phosphorus	Report	10,959	XXX	XXX	XXX

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

Parameters	*Monthly*	*Annual*	*Minimum*	*Monthly Average*	*Maximum*
Ammonia—N	Report	Report	XXX	Report	XXX
Kjeldahl—N	Report	XXX	XXX	Report	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX
Net Total Nitrogen	Report	Report	XXX	XXX	XXX
Net Total Phosphorus	Report	Report	XXX	XXX	XXX

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Chapter 96 regulations. The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

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

- Chesapeake Bay Nutrient Monitoring Requirements
- Whole Effluent Toxicity (WET) Testing Requirements
- Stormwater Monitoring Requirements

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

The EPA Waiver is not in effect.

PA0055328, SIC Code 4953, **New Morgan Landfill Co. Inc.**, 420 Quarry Road, P O Box 128, Morgantown, PA 19543-0128. Facility Name: Conestoga Landfill. This existing facility is located in New Morgan Borough, **Berks County**.

Description of Existing Activity: The DEP is proposing to add one parameter for outfall 001 to existing permit, Net Total Phosphorus, consistent with DEP's published strategy to implement Chesapeake Bay TMDL and track nutrient loads. Outfalls that are not affected are not shown below.

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

The proposed effluent limits for Outfall 001 are based on a design flow of 0.075 MGD.

	Mass (lb/day)			*Concentration (mg/l)*		
Parameters	*Average Monthly*	*Daily Maximum*	*Minimum*	*Average Monthly*	*Daily Maximum*	*Instant. Maximum*
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
$CBOD_5$	13.1	26.3	XXX	21	42	53
Total Suspended Solids	16.9	55.0	XXX	27	88	110
Oil and Grease	XXX	XXX	XXX	15	XXX	30
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
Ammonia-Nitrogen	3.1	6.3	XXX	4.9	10	12.5
a-Terpineol	0.010	0.021	XXX	0.016	0.033	0.041
Benzoic Acid	0.044	0.075	XXX	0.071	0.12	0.18
p-Cresol	0.009	0.016	XXX	0.014	0.025	0.035
Phenol	0.009	0.016	XXX	0.015	0.026	0.038
Total Zinc	0.069	0.125	XXX	0.11	0.20	0.28
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus (lbs)	Report Total Monthly	64.0				
Total Annual	XXX	XXX	XXX	XXX		
Total Dissolved Solids	Report	XXX	XXX	Report	XXX	XXX
Chloride	Report	XXX	XXX	Report	XXX	XXX
Bromide	Report	XXX	XXX	Report	XXX	XXX
Sulfate	Report	XXX	XXX	Report	XXX	XXX
1,4-Dioxane	XXX	XXX	XXX	Report	XXX	XXX
Total Antimony	XXX	XXX	XXX	Report	XXX	XXX

Parameters	Mass (lb/day) Average Monthly	Mass (lb/day) Daily Maximum	Minimum	Concentration (mg/l) Average Monthly	Concentration (mg/l) Daily Maximum	Concentration (mg/l) Instant. Maximum
Total Arsenic	XXX	XXX	XXX	Report	XXX	XXX
Total Cadmium	XXX	XXX	XXX	Report	XXX	XXX
Hexavalent Chromium	XXX	XXX	XXX	Report	XXX	XXX
Total Copper	XXX	XXX	XXX	Report	XXX	XXX
Dissolved Iron	XXX	XXX	XXX	Report	XXX	XXX
Total Iron	XXX	XXX	XXX	Report	XXX	XXX
Total Manganese	XXX	XXX	XXX	Report	XXX	XXX

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

Parameters	Mass (lbs) Monthly	Mass (lbs) Annual	Concentration (mg/l) Minimum	Concentration (mg/l) Monthly Average	Concentration (mg/l) Maximum
Ammonia—N	Report	Report	XXX	Report	XXX
Kjeldahl—N	Report	XXX	XXX	Report	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX
Total Phosphorus	Report	64.0	XXX	Report	XXX
Net Total Nitrogen*	Report	12,500	XXX	XXX	XXX
Net Total Phosphorus*	Report	64.0	XXX	XXX	XXX

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen effluent mass limits, under the Department's Chapter 96 regulations. The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department. Credits cannot be used to meet the Net Total Phosphorus effluent mass limit which derives from a Total Maximum Daily Limit on the receiving waterway.

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

The EPA Waiver is not in effect.

PA0010502, Industrial, SIC Code 3489, **U.S. Army Fort Detrick**, 1 Overcash Avenue, Chambersburg, PA 17201-4150. Facility Name: Letterkenny Army Depot. This existing facility is located in Greene Township, **Franklin County**.

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

The receiving stream(s), Rowe Run, Rocky Spring Branch, and Unnamed Tributary of Conococheague Creek, is located in State Water Plan watershed 7-B and 13-C and is classified for Cold Water Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.29 MGD.—Limits.

Parameters	Mass Units (lbs/day) Average Monthly	Mass Units (lbs/day) Daily Maximum	Minimum	Concentrations (mg/L) Average Monthly	Concentrations (mg/L) Daily Maximum	Concentrations (mg/L) Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)	48.0	97.0	XXX	20.0	40.0	50
Total Suspended Solids	24.0	48.0	XXX	10.0	20.0	25
Oil and Grease	36.0	72	XXX	15.0	30.0	30
Total Phosphorus	4.8	9.7	XXX	2.0	4.0	5
Cadmium, Total	0.004	0.005	XXX	0.0015	0.0023	0.0038
Chromium, Total	4.13	6.7	XXX	1.71	2.77	4.25
Copper, Total	0.13	0.2	XXX	0.054	0.084	0.135
Cyanide, Total	Report	Report	XXX	0.65	1.2	1.62
Lead, Total	0.059	0.092	XXX	0.024	0.038	0.061
Nickel, Total	0.73	1.13	XXX	0.3	0.469	0.75
Silver, Total	0.061	0.094	XXX	0.025	0.039	0.063
Zinc, Total	1.07	1.67	XXX	0.443	0.692	1.108
Total Toxic Organics	XXX	XXX	XXX	XXX	2.13	XXX
Bis(2-Ethylhexyl)Phthalate	0.052	0.081	XXX	0.021	0.033	0.054

The proposed effluent limits for Outfall S01 are based on a design flow of 0 MGD.—Limits.

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Average Weekly*	*Minimum*	*Annual Average*	*Maximum*	*Instant. Maximum*
pH (S.U.)	XXX	XXX	XXX	Report	XXX	XXX
Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)	XXX	XXX	XXX	Report	XXX	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	XXX	XXX	XXX	Report	XXX	XXX
Oil and Grease	XXX	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX
Aluminum, Total	XXX	XXX	XXX	Report	XXX	XXX
Iron, Total	XXX	XXX	XXX	Report	XXX	XXX
Zinc, Total	XXX	XXX	XXX	Report	XXX	XXX

The proposed effluent limits for Outfall S02 are based on a design flow of 0 MGD.—Limits.

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Average Weekly*	*Minimum*	*Annual Average*	*Maximum*	*Instant. Maximum*
pH (S.U.)	XXX	XXX	XXX	Report	XXX	XXX
Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)	XXX	XXX	XXX	Report	XXX	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	XXX	XXX	XXX	Report	XXX	XXX
Oil and Grease	XXX	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX
Aluminum, Total	XXX	XXX	XXX	Report	XXX	XXX
Cadmium, Total	XXX	XXX	XXX	Report	XXX	XXX
Chromium, Total	XXX	XXX	XXX	Report	XXX	XXX
Copper, Total	XXX	XXX	XXX	Report	XXX	XXX
Cyanide, Total	XXX	XXX	XXX	Report	XXX	XXX
Iron, Total	XXX	XXX	XXX	Report	XXX	XXX
Lead, Total	XXX	XXX	XXX	Report	XXX	XXX
Nickel, Total	XXX	XXX	XXX	Report	XXX	XXX
Silver, Total	XXX	XXX	XXX	Report	XXX	XXX
Zinc, Total	XXX	XXX	XXX	Report	XXX	XXX
Total Toxic Organics	XXX	XXX	XXX	Report	XXX	XXX

The proposed effluent limits for Outfall S03 are based on a design flow of 0 MGD.—Limits.

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Average Weekly*	*Minimum*	*Annual Average*	*Maximum*	*Instant. Maximum*
pH (S.U.)	XXX	XXX	XXX	Report	XXX	XXX
Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)	XXX	XXX	XXX	Report	XXX	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	XXX	XXX	XXX	Report	XXX	XXX
Oil and Grease	XXX	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX
Aluminum, Total	XXX	XXX	XXX	Report	XXX	XXX
Iron, Total	XXX	XXX	XXX	Report	XXX	XXX
Zinc, Total	XXX	XXX	XXX	Report	XXX	XXX

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

- Stormwater Outfall requirements
- PPC plan
- Stormwater BMPs

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

The EPA Waiver is not in effect.

PA0246760, Industrial, SIC Code 4941, **Franklin County Gen Authority**, 5000 Letterkenny Road, Suite 230, Chambersburg, PA 17201. Facility Name: Franklin County Gen Authority WTP. This existing facility is located in Greene Township, **Franklin County**.

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

The receiving stream(s), Dry Swale to Unnamed Tributary of Conococheague Creek, is located in State Water Plan watershed 13-C and is classified for Cold Water Fishes and Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.14 MGD.—Limits.

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Daily Maximum*	*Minimum*	*Average Monthly*	*Daily Maximum*	*Instant. Maximum*
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	9.0	XXX
					Max	
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.0
Total Suspended Solids	35	70	XXX	30	60	75
Aluminum, Total (MGD)	4.8	9.6	XXX	4	8	10
Iron, Total	2.4	4.8	XXX	2	4	5
Manganese, Total	1.2	2.4	XXX	1	2	2.5

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

- Sedimentation basin cleaning notification
- Collection and disposal of solids
- Chlorine minimization
- Dry stream requirements

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

The EPA Waiver is in effect.

PA0261378, Sewage, SIC Code, **Sheetz Inc.**, 5700 Sixth Avenue, Altoona, PA 16602. Facility Name: Sheetz Clarks Ferry Store 461. This existing facility is located in Reed Township, **Dauphin County**.

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

The receiving stream(s), Susquehanna River, and a concrete Swale to Juniata River is located in State Water Plan watershed 6-C and is classified for Migratory Fishes and Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0075 MGD.—Interim Limits.

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Average Weekly*	*Minimum*	*Average Monthly*	*Maximum*	*Instant. Maximum*
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
		Daily Max				
pH (S.U.)	XXX	XXX	6.0	XXX	9.0	XXX
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)	XXX	XXX	XXX	10	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10	XXX	20
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	XXX	1,000
				Geo Mean		
Ultraviolet light transmittance (%)	XXX	XXX	Report	XXX	XXX	XXX
Total Nitrogen	XXX	XXX	XXX	5.0	XXX	10
Total Phosphorus	XXX	XXX	XXX	0.5	XXX	1

The proposed effluent limits for Outfall 002 are based on a design flow of 0.0075 MGD.—Final Limits.

	Mass Units (lbs/day)			*Concentrations (mg/L)*		
Parameters	*Average Monthly*	*Average Weekly*	*Minimum*	*Average Monthly*	*Maximum*	*Instant. Maximum*
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
		Daily Max				
pH (S.U.)	XXX	XXX	6.0	XXX	9.0	XXX
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)	XXX	XXX	XXX	25.0	XXX	50

Parameters	Mass Units (lbs/day) Average Monthly	Average Weekly	Minimum	Concentrations (mg/L) Average Monthly	Maximum	Instant. Maximum
Total Suspended Solids	XXX	XXX	XXX	30.0	XXX	60
Fecal Coliform (CFU/100 ml)						
Nov 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Oct 31	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Ultraviolet light transmittance (%)	XXX	XXX	Report	XXX	XXX	XXX

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

Parameters	Mass Units (lbs/day) Monthly	Annual	Minimum	Concentrations (mg/L) Monthly Average	Maximum	Instant. Maximum
Kjeldahl—N	Report	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX	XXX
Net Total Nitrogen	Report	38	XXX	XXX	XXX	XXX
Net Total Phosphorus	Report	3.8	XXX	XXX	XXX	XXX

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

Parameters	Mass Units (lbs/day) Monthly	Annual	Minimum	Concentrations (mg/L) Monthly Average	Maximum	Instant. Maximum
Kjeldahl—N	Report	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX	XXX
Net Total Nitrogen	Report	38	XXX	XXX	XXX	XXX
Net Total Phosphorus	Report	3.8	XXX	XXX	XXX	XXX

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Chapter 96 regulations. The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

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

The EPA Waiver is in effect.

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

PA0264628, Sewage, SIC Code 8800, **Stephen Manning**, P.O. Box 85, East Smethport, PA 16730. Facility Name: Stephen Manning SRSTP. This proposed facility is located in Keating Township, **McKean County**.

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

The receiving stream(s), Unnamed Tributary to Marvin Creek, is located in State Water Plan watershed 16-C and is classified for Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

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

Parameters	Mass Units (lbs/day) Average Monthly	Average Weekly	Minimum	Concentrations (mg/L) Average Monthly	Maximum	Instant. Maximum
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	9.0	XXX
Biochemical Oxygen Demand (BOD_5)	XXX	XXX	XXX	10.0	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200 Geo Mean	XXX	1,000

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

The EPA Waiver is in effect.

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

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

WQM Permit No. 0216402 A-1, Sewage, **W Mifflin Sanitary Sewer Municipal Authority Allegheny County**, 1302 Lower Bull Run Road, West Mifflin, PA 15122-2902.

This existing facility is located in West Mifflin Borough, **Allegheny County**.

Description of Proposed Action/Activity: Conversion of two existing circular concrete anaerobic digesters to aerobic digesters in the wastewater treatment plant. Aeration equipment will be installed in both tanks and three new blowers will be installed.

WQM Permit No. 0416402, Sewage, **Bill J. Lilly**, 845 Barclay Hill Road, Beaver, PA 15009.

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

Description of Proposed Action/Activity: Construction of a single residence sewage treatment plant consisting of a Norweco Singulair Model 960 Aerobic Unit, a Norweco Bio Film Reactor and a Salcor 3G Ultra-Violet Disinfection Unit.

WQM Permit No. 2616400, Sewage, **Laurel Highlands Council—Boy Scouts of America**, Flag Plaza Scout Center, 1275 Bedford Avenue, Pittsburgh, PA 15219.

This proposed facility is located in Wharton Township, **Fayette County**.

Description of Proposed Action/Activity: The applicant proposed to install an Ultraviolet Disinfection System to replace the existing Chlorine Disinfection System at the Laurel Highlands Council Boy Scouts of America's Heritage Reservation STP.

WQM Permit No. 6316403, Sewage, **First Federal Savings & Loan Association**, 25 East High Street, Waynesburg, PA 15370.

This proposed facility is located in South Franklin Township, **Washington County**.

Description of Proposed Action/Activity: Installation of a Single Residence Sewage Treatment Plant at 650 Moore Road.

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

Southeast Region: Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAI011516009	Integrated Land Management, Inc. 3 Lucas Lane Malvern, PA 19355	Chester	Willistown Township	Ridley Creek HQ

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes Barre, PA 18701-1915.

Lehigh County Conservation District, Lehigh Ag Center, Suite 102, 4184 Dorney Park Rd., Allentown, PA 18104

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAI023916018	Tom Williams, Jr. Cooper Farms, LLC 1954 O'Brien Court Bethlehem, PA 18015	Lehigh	Coopersburg Borough	UNT to Laurel Run (CWF, MF), EV Wetlands
PAI023916020	Darrel Stein Sealmaster 6853 Ruppsville Road Allentown, PA 18106	Lehigh	Upper Macungie Township	Iron Run (HQ-CWF, MF) Little Lehigh Creek (HQ-CWF, MF)

Southwest Region: Waterways and Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAI050415001	Department of General Services, Building 0-13 Fort Indiantown Gap Annville, PA 17003	Beaver County	Chippewa Township	UNT to North Fork Little Beaver Creek (HQ-CWF)

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAI056316001	Brownlee Land Ventures P.O. Box 51 West Middletown, PA 15379	Washington County	Hopewell Township, and Independence Township	UNT to Haynan Run (HQ-WWF)
PAI056316003	First Pennsylvania Resource, LLC 33 Terminal Way Suite 431A Pittsburgh, PA 15219	Washington County	Donegal Township	UNTs to Buck Run (HQ-WWF)

STATE CONSERVATION COMMISSION

PROPOSED NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES PERMITS FOR CAFOs

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under 3 Pa.C.S. Chapter 5 and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (NOIs) for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92a. This notice is provided in accordance with 25 Pa. Code Chapter 92a and 40 CFR Part 122, implementing The Clean Streams Law and the Federal Clean Water Act.

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

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based. Comments should be sent to the SCC, Agriculture Building, Room 310, 2301 North Cameron Street, Harrisburg, PA 17110.

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

Agricultural Operation (Name and Address)	*County*	*Total Acres*	*Animal Equivalent Units (AEUs)*	*Animal Type*	*Special Protection Waters (HQ or EV or NA)*	*New or Renewal*
Inguran, LLC dba ST Genetics 1141 State Road Lincoln Univ., PA 19352	Chester	165.3	1,292.68	Dairy	Hodgeson Run—HQ	New 3-yr
Kish View 4733 East Main St. Belleville, PA 17004	Mifflin	709.6	852.7	Dairy Cows	Unnamed tributary to Tea Creek-HQ-CWF, unnamed tributary to Kishacoquillas Creek-HQ-CWF	renewal
			168.5	Dairy Heifers		
			53.6	Dairy Calves		

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

Agricultural Operation Name and Address	*County*	*Total Acres*	*Animal Equivalent Units*	*Animal Type*	*Special Protection Waters (HQ or EV or NA)*	*Renewal / New*
Presque Isle Downs 8199 Perry Highway Erie, PA 16509	Erie	237	469.9	Horse	NA	R

PUBLIC WATER SUPPLY (PWS) PERMITS

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

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

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

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

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

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes Barre, PA 18701-1915.

Application No. 4816504ma, Public Water Supply.

Applicant	**PA American Water** 800 W. Hershey Park Drive Hershey, PA.17033
[Township or Borough]	Palmer Township **Northampton County**
Responsible Official	Mr. David Kaufman Vice President-Engineering
Type of Facility	Public Water Supply
Consulting Engineer	Mr. Scott Thomas, PE PA American Water Company 852 Wesley Drive Mechanicsburg , PA 17055
Application Received	September 14, 2016
Description of Action	Installation of mixture system

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 2116508 MA, Minor Amendment, Public Water Supply.

Applicant	**South Middleton Township Municipal Authority**
Municipality	South Middleton Township
County	**Cumberland**
Responsible Official	Robert L. Kissinger, Manager 345 Criswell Drive Boiling Springs, PA 17007-0008
Type of Facility	Public Water Supply
Consulting Engineer	Howard Butler, P.E. GHD 1240 N Mountain Road Harrisburg, PA 17112
Application Received:	7/29/2016
Description of Action	Interconnection and installation of a pressure reducing valve between the "Main System" and the "Well No. 3 System."

Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

Application No. 4116506—Bulk Water Hauler Public Water Supply.

Applicant	**Stallion Oilfield Construction, LLC**
Township/Borough	City of Williamsport
County	**Lycoming**
Responsible Official	Robert J. Ryan Deputy General Counsel Stallion Oilfield Construction, LLC 950 Corbindale, Suite 400 Houston, TX 77024
Type of Facility	Public Water Supply
Consulting Engineer	Matthew E. Pierce, P.E. Penn Environmental & Remediation, Inc. 111 Ryan Court Pittsburgh, PA 15205
Application Received	September 21, 2016
Description of Action	Bulk water hauler—add an additional water source (Aqua America, PWSID # 2080028).

Southwest Region: Safe Drinking Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit No. 3016509, Public Water Supply.

Applicant	**Southwestern Pennsylvania Water Authority** 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
[Township or Borough]	Cumberland Township
Responsible Official	John W. Golding, Manager Southwestern Pennsylvania Water Authority 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
Type of Facility	Water system

Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road Suite 200 Cheswick, PA 15024
Application Received Date	September 27, 2016
Description of Action	Retrofitting two existing clarifiers at the water treatment plant.

Permit No. 0216532, Public Water Supply.

Applicant	**Moon Township Municipal Authority** 1700 Beaver Grade Road Suite 200 Moon Township, PA 15108
[Township or Borough]	Moon Township
Responsible Official	John F. Riley, Manager Moon Township Municipal Authority 1700 Beaver Grade Road Suite 200 Moon Township, PA 15108
Type of Facility	Water system
Consulting Engineer	KLH Engineers, Inc. 5173 Campbells Run Road Pittsburgh, PA 15205
Application Received Date	September 23, 2016
Description of Action	Installation of booster chlorination at the Airport Tank # 5.

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

Permit No. 3716503, Public Water Supply

Applicant	**PA American Water Company**
Township or Borough	Ellwood City Borough
County	**Lawrence County**
Responsible Official	William Lage
Type of Facility	Public Water Supply
Consulting Engineer	William Lage
Application Received Date	August 29, 2016
Description of Action	Bridge Street Booster Station

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes Barre, PA 18701-1915.

Application No. 4816505MA, Minor Amendment.

Applicant	**Pennsylvania American Water Company** 800 West Hersheypark Dr. Hershey, PA 17033
[Township or Borough]	Upper Mt. Bethel Twp., **Northampton County**
Responsible Official	David R. Kaufman, Vice President— Engineering Pennsylvania American Water Company 800 West Hersheypark Dr. Hershey, PA 17033
Type of Facility	Public Water Supply
Consulting Engineer	Craig Darosh, PE Pennsylvania American Water Company 4 Wellington Blvd. Wyomissing, PA 19610
Application Received Date	9/20/2016
Description of Action	The applicant proposes the installation of baffling at the Upper Handelong Tanks.

Application No. 2400423, Minor Amendment.

Applicant	**Misericordia University** Facilities Department 301 Lake Street Dallas, PA 18612
[Township or Borough]	Dallas Township **Luzerne County**
Responsible Official	Mr. Mark Van Etten Misericordia University Facilities Department 301 Lake Street Dallas, PA 18612
Type of Facility	Public Water Supply
Consulting Engineer	NA
Application Received Date	August 12, 2016
Description of Action	This project provides for water quality parameter designations.

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

Application No. 3016510MA, Minor Amendment.

Applicant	**Southwestern Pennsylvania Water Authority** 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
[Township or Borough]	Franklin Township and Waynesburg Borough
Responsible Official	John W. Golding, Manager Southwestern Pennsylvania Water Authority 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
Type of Facility	Water system
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road Suite 200 Cheswick, PA 15024
Application Received Date	September 27, 2016

Description of Action	Installation of approximately 23,900 feet of 24-inch diameter transmission main.

Application No. 3013501WMP3, Minor Amendment.

Applicant	**Southwestern Pennsylvania Water Authority** 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
[Township or Borough]	Washington Township
Responsible Official	John W. Golding, Manager Southwestern Pennsylvania Water Authority 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
Type of Facility	Water system
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road Suite 200 Cheswick, PA 15024
Application Received Date	September 15, 2016
Description of Action	Harris Vault bulk water station along Byard Road.

Application No. 3013501WMP4, Minor Amendment.

Applicant	**Southwestern Pennsylvania Water Authority** 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
[Township or Borough]	Amwell Township
Responsible Official	John W. Golding, Manager Southwestern Pennsylvania Water Authority 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
Type of Facility	Water system
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road Suite 200 Cheswick, PA 15024
Application Received Date	September 26, 2016
Description of Action	Hyel Route 19 bulk water station along Amity Ridge Road.

Application No. 3013501WMP5, Minor Amendment.

Applicant	**Southwestern Pennsylvania Water Authority** 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
[Township or Borough]	Washington Township
Responsible Official	John W. Golding, Manager Southwestern Pennsylvania Water Authority 1442 Jefferson Road PO Box 187 Jefferson, PA 15344
Type of Facility	Water system
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road Suite 200 Cheswick, PA 15024
Application Received Date	September 15, 2016
Description of Action	Big Sky Vault bulk water station along Dunn Station Road.

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

Application No. 6106501-MA2, Minor Amendment.

Applicant	**Cornplanter Township**
Township or Borough	Cornplanter Township
Responsible Official	Heather Fields
Type of Facility	Public Water Supply
Consulting Engineer	Joseph Roddy, P.E./Stiffler McGraw
Application Received Date	September 2, 2016
Description of Action	Finished Water Storage Painting

Application No. 2595501-MA3, Minor Amendment.

Applicant	**Erie City Water Works**
Township or Borough	City of Erie
Responsible Official	Craig Palmer
Type of Facility	Public Water Supply
Consulting Engineer	Chad Ellsworth, P.E.
Application Received Date	September 15, 2016
Description of Action	Install PAX Mixing System and PAX Power Vent

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 the Commonwealth

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

WA 54-13C, Water Allocation, **Schuylkill County Municipal Authority**, 221 S. Centre St., Pottsville, PA 17901, New Castle Township, **Schuylkill County**. The applicant is requesting the renewal of an allocation for the withdrawal of up to 8.42 MGD, peak day, as follows: 1.6 MGD for the Mt. Laurel Surface Water RWSS (Mt. Laurel Reservoir & Kaufmann Reservoir), 4.42 MGD for the Broad Mtn. Surface Water RWSS (Eisenhuth Reservoir, Pine Run Intake, and Wolf Creek Intake), and 2.4 MGD Indian Run Surface Water RWSS (Indian Run Reservoir). Application received June 17, 2016.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995 PREAMBLE 1

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

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

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

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

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

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Gustafson 6H Well Pad, 606 Granville Road, Snyder Township, **Jefferson County**. EnviroTrac, Ltd., 176 Thorn Hill Road, Warrendale, PA 15086, on behalf of EXCO Resources (PA), LLC, 260 Executive Drive, Suite 100, Cranberry Township, PA 16066, submitted a Notice of Intent to Remediate. Site has been found to be contaminated with flow back fluids which is suspected to have contaminated soil on the site. The Notice of Intent to Remediate was published in the *Courier Express* on May 5, 2016.

HAZARDOUS WASTE VARIANCE APPLICATION

Application(s) for variance in accordance with Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003)

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

Nulife Glass NY, Inc., 3213 Middle Road, Dunkirk, NY 14048: In accordance with the Solid Waste Management Act, and the regulations promulgated thereto, the Commonwealth of Pennsylvania, Department of Environmental Protection (Department) proposes to deny an application submitted by Nulife Glass NY (Nulife Glass) for a conditional variance from classification as solid waste for cathode ray tubes (CRTs) that are stored by Nulife Glass NY in three warehouses in **Erie County** and one in **Mercer County**. Nulife Glass operates a furnace in Dunkirk, NY. The proposed denial applies only to the warehouse facilities located in Pennsylvania.

This notice announces the opportunity for interested parties to review and comment on the variance application prior to a final decision by the Department. The application was submitted to the Department in accordance with Federal hazardous waste regulations at 40 CFR 260.30(a) (relating to variances from classification as a solid waste), incorporated by reference at 25 Pa. Code § 260a.1 (relating to incorporation by reference, purpose, scope and applicability). This variance provision is applicable to those materials that are accumulated speculatively without sufficient amounts being recycled when, among other criteria, the applicant can demonstrate that sufficient amounts of the material will be recycled or transferred for recycling in the following year.

The specific material for which Nulife Glass has requested a variance is, without limitation: used, intact cathode ray tubes; used, broken cathode ray tubes; intact and broken glass removed from used cathode ray tubes; and glass removed from used cathode ray tubes destined for a lead smelter after processing (collectively, "cathode ray tube materials"). According to its variance application, in Nulife Glass's recycling process, the company receives whole cathode ray tubes ("CRTs"), processes the CRT into its component parts which are panel glass, funnel glass, and metal. The metal is recycled while the panel glass and the funnel glass undergo secondary processing a part of which involves furnace operations for leaded panel glass at its Dunkirk NY facility, and other miscellaneous product recycling and waste generation.

Speculative accumulation is described in 40 CFR 261.1(c)(8). Materials that are accumulated prior to recycling are not speculatively accumulated if a material has a feasible means of being recycled and the amount of materials that is recycled during the calendar year equals

at least 75 percent of the materials by weight or volume accumulated since the beginning of the period. Currently, there are approximately 17 million pounds of CRT materials stored in Pennsylvania warehouses, largely consisting of CRT funnel glass. Storage at these facilities began in May, 2014.

The conditions for meeting the variance may be found under 40 CFR 260.31(a). Without an approved variance for the CRT materials currently being stored in warehouses in Erie and Mercer counties, the CRT materials stored by Nulife Glass would be regulated as hazardous waste.

Standards and criteria for variances from classification as a solid waste

After careful evaluation, the Department has tentatively determined that Nulife Glass does not meet the requirements for approval of a variance from classification as a solid waste.

The CRT materials stored in warehouses in Erie and Mercer counties have been speculatively accumulated without a feasible means of recycling the material or the appropriate amounts being recycled within the relevant time period(s). If the variance is denied, the CRT materials will be considered hazardous waste.

Some of the issues not satisfactorily addressed by Nulife Glass in its variance application include: (1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition or recycling is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling); (2) The reason(s) that the applicant has accumulated the material for one or more years without recycling 75 percent of the weight or volume accumulated at the beginning of the year; and (3) The quantity of material expected to be generated and accumulated before the material is recycled. Nulife Glass has also failed to provide adequate assurances that it has the financial ability to properly dispose of the speculatively accumulated CRT glass in the event that Nulife Glass is required to do so.

Persons wishing to comment on Nulife Glass' variance request and the Department's proposed decision to deny the request are invited to submit comments by (Month, Day, 2016—30-days), to the Department at the following address. For more detailed information on the specific aspects of Nulife Glass' variance request, to review a copy of the request or to submit comments, contact M. Thomas Mellott; Department of Environmental Protection; Division of Hazardous Waste Management; P.O. Box 8471; Harrisburg, PA 17105; (717) 787-6239; mtmellott@pa.gov. Comments received within the comment period will be considered by the Department in making the final decision regarding Nulife Glass' request. 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. Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Department as specified previously. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Applications deemed administratively complete under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal area or Site.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

Application No. 101611. Berks Transfer, Inc., 59 Willow Creek Road, P.O. Box 12706, Reading, PA 19612-2706. An application for permit renewal was submitted by Berks Transfer, Inc. for their municipal waste transfer facility located in Ontelaunee Township, **Berks County**. The permit expires on March 11, 2017. The application was deemed administratively complete by the Southcentral Regional Office on September 23, 2016.

The Department will accept comments from the general public recommending revisions to, and approval or denial of the application during the time that the Department is reviewing the permit application.

Comments concerning the application should be directed to Mr. John Oren, Permits Chief, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200. Persons interested in obtaining more information about this permit application may contact the Southcentral Regional Office at (717) 705-4706. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

Permit No. 301347 Covanta Environmental Solutions, LLC (Residual Waste Processing Facility) 280 North East Street, York, PA 17403. Covanta Environmental Solutions, LLC submitted a permit reissuance (change of ownership) application for RecOil, Inc. Residual Waste Processing facility located in the City of York, **York County**. This application was deemed administratively complete by the Southcentral Regional Office on September 23, 2016. The Department will accept comments from the general public recommending revisions to, and approval or denial of the application during the entire time the Department is reviewing the permit application.

Comments concerning the application should be directed to Mr. John Oren, Permits Chief, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200. Persons interested in obtaining more information about this permit application may contact the Southcentral Regional Office at (717) 705-4706. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

Permit No. 301280 Cycle Chem, Inc., 550 Industrial Drive, Lewisberry, PA 17339-9537. The application submitted is to renew the permit for the residual waste processing facility located in Fairview Township, **York County**. The permit expires on April 15, 2017. This application was deemed administratively complete by the South-central Regional Office on September 20, 2016. The Department will accept comments from the general public recommending revisions to, and approval or denial of the application during the entire time the Department is reviewing the permit application.

Comments concerning the application should be directed to Mr. John Oren, Permits Chief, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200. Persons interested in obtaining more information about this permit application may contact the

Southcentral Regional Office at (717) 705-4706. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

The Department has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the general public. This approach allows the owner or operator of a facility to submit permitting documents relevant to its application for all sources related to a facility or a proposed project, affords an opportunity for public input, and provides for a decision on the issuance of the necessary permits.

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

Copies of the application, the Department's analysis, all pertinent documents used in the evaluation of the application and subsequently prepared proposed plan approvals/operating permits are available for public review during normal business hours at the appropriate Department Regional Office. Appointments for scheduling a review must be made by calling the appropriate Department Regional Office. The address and phone number of the Regional Office is listed before the application notices.

Persons wishing to file a written protest or provide comments or additional information, which they believe should be considered prior to the issuance of a permit, may submit the information to the Department's Regional Office. A 30-day comment period from the date of this publication will exist for the submission of comments, protests and information. Each submission must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval/Operating Permit including the permit number and a concise statement regarding the relevancy of the information or objections to issuance of the permit.

A person wishing to request a hearing may do so during the 30-day comment period. A public hearing may be held, if the Department, in its discretion, decides that a hearing is warranted based on the information received. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper, the *Pennsylvania Bulletin* or by telephone, when the Department determines this type of notification is sufficient. Requests for a public hearing and any relevant information should be directed to the appropriate Department Regional Office.

Permits issued to the owners or operators of sources subject to 25 Pa. Code Chapter 127, Subchapter D or E, or located within a Title V facility or subject to 25 Pa. Code § 129.51(a) or permits issued for sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may be submitted to the United States Environmental Protection Agency for review and approval as a revision to the State Implementation Plan. Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the sources are constructed and operating in compliance with applicable requirements in the Air Pollution Control Act (35 P.S. §§ 4001—4015), 25 Pa. Code Chapters 121—145, the Federal Clean Air Act (42 U.S.C.A. §§ 7401—7671q) and regulations adopted under the Federal Clean Air Act.

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

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.

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

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

22-05024C: Penn State University, Milton S. Hershey Medical Center (500 University Drive, Hershey, PA 17033) for the construction of a Combined Heat & Power (CHP) project at the Medical Center located in Derry Township, **Dauphin County**. The expected increases in facility emissions as a result of the proposed project are 8.5 tpy of CO, 48.9 tpy of NO_x, 5.0 tpy of PM, 4.4 tpy of SO_2, 7.6 tpy of VOCs, and 1.1 tpy of HAPs. The facility is a State Only facility. DEP's review of the information submitted by the applicant indicates that the air contamination sources as constructed or modified will comply with all regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology requirement (BAT) of 25 Pa. Code §§ 127.1 and 127.12, and the Federal requirements of 40 CFR Part 60, Subpart KKKK—Standards of Performance for Stationary Combustion Turbines. Based on these findings, the Department proposes to issue a plan approval for the proposed construction. If, after the project has been implemented, the Department determines that the sources are constructed and operated in compliance with the plan approval conditions and the specification of the application for plan approval, the requirements established in the plan approval will be incorporated into an Operating Permit pursuant to the administrative amendment provisions of 25 Pa. Code § 127.450.

36-05158B: Perdue AgriBusiness, LLC (PO Box 1537, Salisbury, MD 21802-1537) for the authorization to transfer and use the VOC emission reduction credits (ERCs) described below in order to comply with the offset requirements of Plan Approval No. 36-05158A, Section C, Condition # 021 at the proposed soybean processing facility in Conoy Township, **Lancaster County**. In accordance with 25 Pa. Code Chapter 127, Subchapter E, the Department proposes to authorize the transfer and use of the following ERCs:

(a) 174.0 tons per year (tpy) of VOC ERCs for offset purposes from Element Markets, LLC, Houston, Texas. The 174.0 tpy of VOC ERCs were generated by the source reduction related to wood furniture surface coating sources at Bush Industries, Inc., Orange County, Middletown, NY on May 1, 1992. The ERCs were certified by the New York State Department of Environmental Conservation (NYSDEC) and entered in the NYSDEC's ERC Registry system on December 31, 1996.

(b) 94.0 tons per year (tpy) of VOC ERCs for offset purposes from Garden State Tanning, Inc. a.k.a. GST

AutoLeather, Inc. (GST), Washington County, Maryland. The 94.0 tpy of VOC ERCs were generated by the shutdown of sources at GST on January 1, 2007. The ERCs were certified by the Maryland Department of the Environment (MDE) and entered into the MDE's ERC Registry system on February 12, 2014.

There are no increases in facility emissions as a result of the proposed activity. The proposed facility qualifies as a Title V facility. Based on the above findings, the Department proposes to issue a plan approval for the proposed transfer and use of ERCs.

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

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

08-00001B: Tennessee Gas Pipeline Company, LLC (PO Box 2511, Houston, TX 77252-2511) has submitted an application to the Pennsylvania Department of Environmental Protection (PA DEP) for plan approval to construct a natural gas-fired combustion turbine which will be coupled to a centrifugal compressor, as part of the Susquehanna West Project, at the Compressor Station 319 facility located in Wyalusing Township, **Bradford County**. The proposed construction also includes the ancillary equipment for operation of the new natural gas compression process, such as valves, flanges, connectors, etc.

The proposed combustion turbine is a Solar® Titan 130-20502S equipped with SoLoNO$_x$™ technology, a lean premix type of combustion technology, also known as Dry Low NO$_x$ Combustion technology. The SoLoNO$_x$ technology is described to be capable of achieving NO$_x$ emission of 9 ppmvd at 15% O$_2$. TGP also proposes to equip the exhaust of the source with an add-on device that employs oxidation catalyst technology to control volatile organic compounds (VOCs) including formaldehyde and carbon monoxide (CO) in the turbine's exhaust. The source is subject to the Best Available Technology (BAT) requirements of 25 Pa. Code §§ 127.1 and 127.12. The proposed combustion turbine is also subject to the Standards of Performance for Stationary Combustion Turbines of 40 CFR Part 60 Subpart KKKK. The proposed construction also triggers the Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015 as codified in 40 CFR Part 60 Subpart OOOOa. The collection of fugitive emissions components is subject to the leak detection and repair requirements pursuant to 40 CFR Part 60 Subpart OOOOa and BAT. The potential to emit of the proposed combustion turbine is 37.2 tons per year (tpy) for NO$_x$ (expressed as NO$_2$), 51.9 tpy for CO, 9.2 tpy for SO$_x$ (expressed as SO$_2$), 4.4 tpy for PM$_{10}$ and PM$_{2.5}$, 3.1 for VOCs, 2.0 for HAPs, and 1.2 for formaldehyde.

PA DEP's review of the information submitted by the facility indicates that the proposed construction will comply with all applicable air quality regulatory requirements, including the BAT requirements. The following is a summary of the conditions that the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable air quality regulatory requirements. The plan approval includes emission restrictions for NO$_x$, CO, VOCs, SO$_x$, PM$_{10}$, PM$_{2.5}$, and formaldehyde, as follows: 9—15 ppm for NO$_x$; 2 ppm for CO; 3 ppm for VOCs (as propane); 0.028 lb/MMBtu for SO$_x$; 0.0066 lb/MMBtu for PM$_{10}$ and PM$_{2.5}$; and 0.0017 lb/MMBtu for formaldehyde. Stack testing on the proposed turbine for these pollutants is required no later than 180 days from the date of startup. The facility is required to continuously monitor certain turbine parameters that indicate whether or not the unit is operating continuously in low-NO$_x$ mode during all periods of operation except those in which the ambient temperature is below 0 degrees Fahrenheit and startup and shutdown operations. Additionally, the inlet and outlet oxidation catalyst temperatures and differential pressure across the oxidation catalyst are required to be continuously monitored. The plan approval also includes recordkeeping and reporting conditions. The facility will be also required to monitor on-site equipment for leaks on a monthly basis and perform leak detection and repair program quarterly.

Based on the findings presented above, the Department proposes to issue a plan approval for the proposed construction. If the Department determines that the sources are constructed and operated in compliance with the plan approval conditions including the specifications in the application, the plan approval will be incorporated into a State-Only operating permit which will be required to be filed no later than 120 days upon request by the Department. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's North Central Regional office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

PLAN APPROVAL

PUBLIC HEARINGS

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

Contact: Ronald Davis, New Source Review Chief—Telephone: 17-705-4702.

36-05158B: Perdue AgriBusiness, LLC (PO Box 1537, Salisbury, MD 21802-1537) to receive comments for the authorization to transfer and use the VOC emission reduction credits (ERCs) described below in order to comply with the offset requirements of Plan Approval No. 36-05158A, Section C, Condition # 021 at the proposed soybean processing facility in Conoy Township, **Lancaster County**. In accordance with 25 Pa. Code Chapter 127, Subchapter E, the Department proposes to authorize the transfer and use of the following ERCs:

(a) 174.0 tons per year (tpy) of VOC ERCs for offset purposes from Element Markets, LLC, Houston, TX. The 174.0 tpy of VOC ERCs were generated by the source reduction related to wood furniture surface coating sources at Bush Industries, Inc., Orange County, Middletown, NY on May 1, 1992. The ERCs were certified by the New York State Department of Environmental Conservation (NYSDEC) on December 30, 1996 and subsequently entered in the NYSDEC's ERC Registry system.

(b) 94.0 tons per year (tpy) of VOC ERCs for offset purposes from Garden State Tanning, Inc. a.k.a. GST AutoLeather, Inc. (GST), Washington County, MD. The 94.0 tpy of VOC ERCs were generated by the shutdown of sources at GST on January 1, 2007. The ERCs were certified by the Maryland Department of the Environment (MDE) and entered into the MDE's ERC Registry system on February 12, 2014.

There are no increases in facility emissions as a result of the proposed activity. The proposed facility qualifies as a Title V facility. Based on the above findings, the Department proposes to issue a plan approval for the proposed transfer and use of ERCs.

Copies of the plan approval application and other relevant information are available for public review at DEP's Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110-8200. An appointment to review the documents may be scheduled by calling 717-705-4732 between 8:00 A.M. and 3:30 P.M., Monday through Friday, except holidays.

The public hearing will be held on November 16, 2016, from 6:30-8:30 PM at the Bainbridge Fire Hall, located at 34 South 2nd Street, Bainbridge, PA 17502. Those wishing to comment orally are requested to contact Brenda Esterline at 717-705-4704 to reserve a time to present any testimony. Testimony must be pre-scheduled by no later than November 9, 2016. Commenters are requested to provide two (2) written copies of their remarks at the time of the hearing. Oral testimony will be limited to ten (10) minutes per person. Organizations are requested to designate a representative to present testimony on their behalf. Written comments may be submitted to the Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, no later than November 26, 2016.

Individuals who are in need of an accommodation for the hearing as provided for in the Americans with Disabilities Act should contact Brenda at the number provided above or make accommodations through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD).

OPERATING PERMITS

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

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

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

23-00119: Sunoco Partners Marketing & Terminals (100 Green Street, Marcus Hook, PA 19061) for operation of a separation and storage petrochemical facility in Marcus Hook Borough, **Delaware County**. This Permit Modification Application will follow the same procedures that apply to initial permit issuance in accordance with 25 Pa. Code §§ 127.542(b), 127.505 and 127.424. This will satisfy the regulatory requirement (25 Pa. Code § 127.424(e)(3)) and 40 CFR 70.8(c)) by allotting the US EPA it's official forty-five (45) day review period as the permitting actions listed below were issued prior to achievement of a Title V status and/or issuance of a Title V operating permit. This modification also addresses some typographical errors and the permanent removal of some sources. This action will incorporate Plan Approval 23-0001AD into the Title V operating permit. Additional permitting actions to be incorporated by reference into the Title V operating permit include: 23-0119; 23 0119A; 23-0119B; 23-0119C; and 23-0119D, and Request for Determinations (RFDs) 5236 and 5597. There will be no changes in actual emissions of any air contaminant, nor will there be any new sources constructed or installed as a result of this action.

The Title V operating 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.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

36-05013: Lancaster County Solid Waste Management Authority (1911 River Road, Bainbridge, PA 17502-9360) to renew a Title V Operating Permit for the Waste-to-Energy Plant in Conoy Township, **Lancaster County**. Actual emissions from the facility as reported in 2015 were 29.3 tons of CO, 593.7 tons of NO_x, 8.8 tons of SO_x, and 4.1 tons of PM_{10}. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 40 CFR Part 60, Subpart C_b—Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors that are constructed on or before September 20, 1994, 40 CFR Part 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, and the "RACT 2" NO_x requirements in accordance with 25 Pa. Code § 129.97(f).

67-05016: R.H. Sheppard Company, Inc. (P.O. Box 877, Hanover, PA 17331) to issue a Title V Operating Permit renewal for the gray and ductile iron foundry located in Hanover Borough, **York County**. The actual emissions from the facility in 2015 were 119.2 tons CO; 26.8 tons VOC; 8.8 tons PM_{10}; 8.8 tons $PM_{2.5}$; 5.8 tons NO_x; 2.0 tons SO_x; 2.5 tons benzene; 1.3 ton phenol; 0.7 ton hydrocyanic acid; 0.3 ton toluene; 0.1 ton lead; 4.9 tons total HAPs; 6,354.3 tons CO_2; 0.1 ton CH4; and 6,379.3 tons CO_2e. The Operating Permit will include emission limits and work practice standards along with testing, monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 40 CFR Part 63, Subpart ZZZZZ—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources (Source IDs 103, 109, 110, 111, 112, 112A/B, 112C, 113, 114A, 119, 120, 121, 124, 124A, 125, 126, 127, and 128); 40 CFR Part 63, Subpart JJJJJJ—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources (Source ID 035); and 40 CFR Part 63, Subpart ZZZZ—National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (Source IDs 501, 502, 503, and 504).

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

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

18-00007: Brodart Company (500 Arch Street, Williamsport, PA 17701) for renewal of the Title V operating permit for their McElhatten facility located in Wayne Township, **Clinton County**. The facility is currently operating under Title V Operating Permit 18-00007. The facility's main sources are twelve (12) surface coating paint booths, two (2) remote reservoir parts cleaners and woodworking operations. The facility has potential emissions of 12.04 tons per year of nitrogen oxides, 0.05 ton per year of sulfur oxides, 10.57 tons per year of carbon monoxide, 330.31 tons per year of particulate matter less than 10 microns in diameter, 128.99 tons per year of volatile organic compounds, and 49.98 tons per year of total hazardous air pollutants (HAPs). The emission limits, throughput limitations and work practice

standards along with testing, monitoring, record keeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 40 CFR Part 63 Subpart JJ, 40 CFR Part 63 Subpart ZZZZ, 40 CFR Part 63 Subpart DDDDD and 25 Pa. Code Chapters 121—145. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

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

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

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

60-00005: Elkay Wood Products Company (100 Industrial Park Road, Mifflinburg, PA 17844) to issue a renewal State Only Operating Permit for their facility located in Mifflinburg Borough, **Union County**. The facility is currently operating under State Only Operating Permit 60-00005. The facility's sources include two (2) boilers, lumber drying operation, wood component and assembly process, rough milling process, surface coating process and a parts washer. The facility has the potential to emit 21.46 tons of nitrogen oxides (NO_x) per year, 26.46 tons of carbon monoxide (CO) per year, 34.46 tons of volatile organic compounds (VOCs) per year, 1.75 ton of hazardous air pollutants, 1.10 ton of sulfur oxides per year (SO_x), 65.03 tons of particulate matter (PM/PM_{-10}) per year and 8,541 tons of greenhouse gasses (GHGs) per year. The emission limits, throughput limitations and work practice standards along with testing, monitoring, record keeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of Subpart JJJJJJ of 40 CFR Part 63 and 25 Pa. Code Chapters 121—145. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

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

Contact: Tom Joseph, Permitting Chief—Telephone: 412-442-4336.

04-00065: WHEMCO—Steel Casting, Inc. (One 12th street, Midland, PA 15059) In accordance with 25 Pa. Code §§ 127.424 and 127.425, notice is hereby given that the Pennsylvania Department of Environmental Protection (DEP) intends to issue an Air Quality State Only Operating Permit (SOOP) renewal to Whemco to authorize the operation of a facility located in in Midland, **Beaver County**.

The foundry produces carbon and alloy steel primarily for making rolling mill rolls, slag pots and other miscellaneous steel casting. The facility currently consists of an electric arc furnace, two coreless induction furnaces, annealing furnaces, heat-treating activities, ladle heater, shot blasting operations, torch burning operations, scrap burning and various emissions control units. Actual facility-wide emissions for 2015 were estimated by the applicant to be 5.30 tpy of PM_{10}, 16.65 tpy of NO_x, 4.96 tpy of VOCs, and 18.23 tpy of CO.

The proposed SOOP contains emission restriction, testing, monitoring, recordkeeping, reporting and work practice standards derived from the applicable requirements of 25 Pa. Code Chapters 121—145, the Area MACT for Iron and Steel Foundries as established under 40 CFR Part 63, Subpart ZZZZZ and the NSPS of 40 CFR Part 60, Subpart AA, Standards of Performance for Steel Plants.

A person may oppose the proposed State Only Operating Permit by filing a written protest with the Department through Noor Nahar via mail to Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222. Each protest or set of written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed State Only Operating Permit (04-00065) and a concise statement of the objections to the Operating Permit issuance and the relevant facts upon which the objections are based.

Whemco State Only Operating Permit application, the Department's Air Quality Review Memorandum, and the Proposed Air Quality Operating Permit for this facility are available for review by any interested party at the Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. To request a review of the Whemco State Only Operating Permit application, to receive an electronic copy of the Department's Air Quality Review Memorandum, or to receive an electronic copy of the Department's proposed air Quality Operating Permit for this facility, a person may contact Phil Bouse at pbouse@pa.gov or 412.442.4000.

All comments must be received prior to the close of business 30 days after the date of this publication.

65-00706: Jeannette Specialty Glass (JSG)/ Jeannette Shade and Novelty Co (215 North Fourth Street, Jeannette, PA 15644) for the manufacturing of pressed and blown glass facility located in Jeannette, **Westmoreland County**. The operation of the facility's air contamination source consisting of: a 10 ton continuous tank (furnace), annealing lehrs, and two paint booths. Emissions are controlled through the use of various baghouses. Emissions from this site will not exceed 27 tons per year of NO_x. This facility is subject to the applicable requirements of 25 Pa. Code Chapters 121—145. Proposed SOOP includes conditions relating to applicable emission restrictions, testing, monitoring, recordkeeping, reporting and work practice standards requirements.

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

Contact: Dave Balog, New Source Review Chief—Telephone: 814-332-6940.

16-00124: Allegheny Valley Connector LLC Truittsburg Station (EQT Plaza, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222), the Department intends to issue a Natural Minor Permit to operate a natural gas transmission and distribution station in Redbank Township, **Clarion County**. The sources at the facility include 2 natural gas compressor engines, a tri-ethylene glycol dehydration system, an emergency

generator, miscellaneous process equipment, a parts washer, and a methanol storage tank. One of the engines is subject to the work practice standards in 40 CFR 63 Subpart ZZZZ pertaining to NESHAPs for Stationary Reciprocating Internal Combustion Engines. The other compressor engine and the emergency generator are subject to 40 CFR 60 Subpart JJJJ. The Triethylene Glycol dehydrator is subject to 40 CFR 63 Subpart HH. The permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act. This facility was previously a Title V Facility but reduced emissions to below the major source thresholds with the removal of an older compressor engine. The potential emissions from the facility are: 30.73 TPY CO, 92.99 TPY NO_x, 3.43 TPY PM / PM_{10}/ $PM_{2.5}$, 0.07 TPY SO_x, 32.16 TPY VOC, 3.61 TPY Formaldehyde, 5.99 TPY Total HAPs, and 16,428 TPY GHGs (CO_2e).

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

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

The City of Philadelphia, Air Management Services (AMS) intends to renew a Minor State Only Operating Permit for the following facility:

N16000017: (Delta Air Lines, PHL, 8500 Essington Ave, Philadelphia, PA 19153) for the operation of multiple non-road engines at the facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission source includes 8 non-road internal combustion engines at Philadelphia Airport. Each engine is less than 500 HP.

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

N16000012: South Eastern Pennsylvania Transportation Authority Callowhill Bus Facility (at 52 and Callowhill Street, Philadelphia, PA 19132), for the operation of a bus maintenance and repair facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission source includes two 4.72 MMBTU/hr and one 1.36 MMBTU/hr boilers firing natural gas and nine 0.83 MMBTU/hr space heaters firing natural gas, one pressure washer and two soil remediation system, two degreasers and a 200 KW emergency generator.

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

N16000011: South Eastern Pennsylvania Transportation Authority Overbrook Maintenance Facility (at 5320 West Jefferson Street, Philadelphia, PA 19131), for the operation of a Trolley maintenance and repair facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission source includes ten 0.300 MMBTU/hr and five 0.800 MMBTU/hr and one 0.400 MMBTU/hr space heaters firing natural gas, and one pressure washer and two parts washers.

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

PLAN APPROVALS

Receipt of Plan Approval Applications and Intent to Issue Plan Approvals, and Intent to Issue Amended Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter B And Subchapter F. 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.

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

58-00020A: Wrighter Energy, LLC (North Shore Place 1, Pittsburgh, PA 15212) for their facility located in Thompson Twp, **Susquehanna County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), that the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to Wrighter Energy, LLC (North Shore Place 1, Pittsburgh, PA 15212) for their facility located in Thompson Twp, Susquehanna County. This Plan Approval No. 58-00020A will be incorporated into a Synthetic Minor Permit through an administrative amendment at a later date.

Plan Approval No. 58-00020A is for the installation and operation of 3 Rolls-Royce Bergen Natural gas fired engines with oxidation catalyst and SCR to control emissions. The company shall be subject to and comply with New Source Performance Standards 40 CFR Part 60 Subpart JJJJ and MACT 40 CFR Part 63 Subpart ZZZZ.

The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Any person(s) wishing to provide DEP with additional information, which they believe should be considered prior to the issuance of this permit, may submit the information to the address shown in the preceding paragraph. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit No.: 58-00020A and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Ray Kempa, Chief, New Source Review Section, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, Phone 570-826-2511 within 30 days after publication date.

Notice is hereby given in accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), that the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to **General Dynamics Ordinance and Tactical Systems** (156 Cedar Avenue, Scranton, PA 18505-1138) for their facility located in Scranton, **Lackawanna County**. This Plan Approval No. 35-00003A will be incorporated into a Synthetic Minor Permit through an administrative amendment at a later date.

Plan Approval No. 35-00003A is for the installation of a new RTO (Regenerative Thermal Oxidizer) to control emissions at their facility. VOC emissions form the plant will remain under their 50 TPY threshold limit, 12-month rolling sum. Malodorous emissions will be controlled by the use of the RTO. The oxidizer will be required to have a destruction efficiency of at least 98%. These limits will meet BAT requirements for this source. A stack test will be required to verify these limits.

The Department will place a condition for the facility to continuously monitor the combustion temperature in the oxidizer. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711.

Any person(s) wishing to provide DEP with additional information, which they believe should be considered prior to the issuance of this permit, may submit the information to the address shown in the preceding paragraph. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit No.: 35-00003A and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Ray Kempa, Chief, New Source Review Section, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711, Phone 570-826-2511 within 30 days after publication date.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.20a). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department. A copy of the application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application and request for Section 401 water quality certification application may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

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

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

When an NPDES number is listed, the mining activity permit application was accompanied by an application for

an individual NPDES permit. A separate notice will be provided after the draft NPDES permit is prepared.

Coal Applications Received

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

32061302 and NPDES No. PA0235768. Rosebud Mining Company, (301 Market Street, Kittanning, PA 16201). To transfer the permit for the Knob Creek Mine in Young and Conemaugh Townships, **Indiana County** and related NPDES permit from Western Allegheny Energy, LLC. No additional discharges. The application was considered administratively complete on September 20, 2016. Application received June 27, 2016.

32131303. Rosebud Mining Company, (301 Market Street, Kittanning, PA 16201). To transfer the permit for the Crooked Creek Mine in Washington Township and Creekside Borough, **Indiana County** from Western Allegheny Energy, LLC. No discharges. The application was considered administratively complete on September 20, 2016. Application received May 2, 2016.

03981301 and NPDES No. PA0215198. Rosebud Mining Company, (301 Market Street, Kittanning, PA 16201). To transfer the permit for the Parkwood Mine in Plumcreek and South Bend Townships, **Armstrong County**, Armstrong Township, **Indiana County** and related NPDES permit from Western Allegheny Energy, LLC. No additional discharges. The application was considered administratively complete on September 20, 2016. Application received May 4, 2016.

30841319. Murray American Energy, Inc., (46226 National Road, St. Clairsville, OH 43950). To transfer the permit for the Blacksville Mine No. 1 in Wayne Township, **Greene County** from Consolidation Coal Company. No discharges. The application was considered administratively complete on September 21, 2016. Application received March 7, 2016.

56100701 and NPDES No. PA0235989. Wilson Creek Energy, LLC, (1576 Stoystown Road, PO Box 260, Friedens, PA 15541). To renew the permit for the Milford # 3 CRDA in Milford Township, **Somerset County** and related NPDES permit. No additional discharges. The application was considered administratively complete on September 21, 2016. Application received April 6, 2016.

32141301 (formerly 32101701) and NPDES No. PA0235890. Consol Mining Company LLC, (CNX Center, 1000 Consol Energy Drive, Canonsburg, PA 15317). To renew the permit for the O'Donnell No. 4/Manor No. 8 Treatment System in Washington Township, **Indiana County** and related NPDES permit. No additional discharges. The application was considered administratively complete on September 22, 2016. Application received June 3, 2015.

03851302 and NPDES No. PA0379302. Rosebud Mining Company, (301 Market Street, Kittanning, PA 16201). To revise the permit and NPDES Permit for the Rosebud No. 3 Mine in Perry Township, **Armstrong County** and related NPDES permit to add an existing discharge as an outfall. Receiving Stream: Unnamed Tributary "A" to Allegheny River, classified for the following use: WWF. Receiving Stream: Armstrong Run to Allegheny River, classified for the following use: WWF. The application was considered administratively complete on September 26, 2016. Application received March 30, 2016.

New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

03950105 and NPDES Permit No. PA0201421. Allegheny Mineral Corp. (P.O. Box 1022, Kittanning, PA 16201). Renewal application for continued treatment to an existing bituminous surface mine, located in West Franklin Township, **Armstrong County**, affecting 439.0 acres. Receiving streams: Patterson Creek and unnamed tributary to Buffalo Creek, classified for the following use: HQ-TSF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: September 16, 2016.

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

Permit No. 54940203R4. Wilbur White Coal Company, (11 Low Road, Pottsville, PA 17901), renewal of an existing anthracite coal refuse reprocessing operation in Butler Township, **Schuylkill County** affecting 23.0 acres, receiving stream: Mahanoy Creek, classified for the following uses: warm water and migratory fishes. Application received: September 21, 2016.

Noncoal Applications Received

Effluent Limits—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

Table 2

Parameter	*30-day Average*	*Daily Maximum*	*Instantaneous Maximum*
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity*			
pH*		greater than 6.0; less than 9.0	

* 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, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

10960304. Allegheny Mineral Corporation (P.O. Box 1022, Kittanning, PA 16201) Renewal of existing NPDES Permit No. PA0227218 in Washington Township, **Butler County**. Receiving streams: South Branch Slippery Rock Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: September 19, 2016.

New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

03950401 and NPDES Permit No. PA0096661. Bradys Bend Corporation (209 Cove Run Road, East Brady, PA 16028). NPDES renewal application for continued mining to an existing noncoal underground mine, located in Bradys Bend Township, **Armstrong County**, affecting 17.7 surface acres and 3,804.6 underground acres. Receiving stream: Cove Run, classified for the following use: WWF. The potable water supplies with intake within 10 miles downstream from the point of discharge: Bradys Bend Water & Sewer Authority, and PA American Water. Renewal application received: September 15, 2016.

03010407 and NPDES Permit No. PA0250040. Stitt Coal Company, Inc. (811 Garretts Run Road, Ford City, PA 16226). NPDES renewal application for continued mining to an existing large noncoal surface mine, located in Kittanning Township, **Armstrong County**, affecting 301.3 acres. Receiving streams: unnamed tributary to Garretts Run and Garretts Run, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: September 19, 2016.

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

Permit No. 40090302C2 and NPDES No. PA0224782. Pennsy Supply, Inc., (1001 Paxton Street, Harrisburg, PA 17105), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Dorrance Township, **Luzerne County** affecting 316.75 acres, receiving streams: Balliet Run and unnamed tributary to Big Wapwallopen Creek, classified for the following uses: HQ-cold water fishes and cold water fishes. Application received: September 16, 2016.

Permit No. 58000846. Norman Holzman, Jr., (1463 Wickizer Road, Kingsley, PA 18826), Stage I & II bond release of a quarry operation in Brooklyn Township, **Susquehanna County** affecting 2.0 acres on property owned by Norman Holzman, Jr. Application received: September 22, 2016.

Permit No. 22880302C and NPDES No. PA0594211. Pennsy Supply, Inc., (1001 Paxton Street, Harrisburg, PA 17105), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Lower Swatara Township, **Dauphin County** affecting 136.02 acres, receiving stream: Swatara Creek, classified for the following uses: warm water fishes. Application received: September 21, 2016.

MINING ACTIVITY NPDES DRAFT PERMITS

This notice provides information about applications for a new, amended or renewed NPDES permits associated with mining activity (coal or noncoal) permits. The applications concern industrial waste (mining) discharges to surface water and discharges of stormwater associated with mining activities. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

The Department of Environmental Protection (Department) has prepared a draft NPDES permit and made a tentative determination to issue the NPDES permit in conjunction with the associated mining activity permit.

Effluent Limits for Coal Mining Activities

For coal mining activities, NPDES permits, when issued, will contain effluent limits that are the more stringent of technology-based (BAT) effluent limitations or Water Quality Based Effluent Limits (WQBEL).

The BAT limits for coal mining activities, as provided in 40 CFR Part 434 and 25 Pa. Code Chapters 87—90 are as follows:

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 applies to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; mined areas backfilled and revegetated; and all other discharges and drainage (resulting from a precipitation event of greater than 1-year 24-hour to less than or equal to a 10-year 24-hour event) from coal refuse disposal piles. Similarly, modified BAT limits apply to iron, manganese and suspended solids in surface runoff, discharges and drainage resulting from these precipitation events and those of greater magnitude in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Exceptions to BAT effluent limits may be applicable in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Effluent Limits for Noncoal Mining Activities

The limits for noncoal mining activities as provided in 25 Pa. Code Chapter 77 are pH 6 to 9 and other parameters the Department may require.

Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional water quality based effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description specifies the parameters.

In addition to BAT or WQBEL limits, coal and noncoal NPDES permits establish effluent limitations in the form of implemented Best Management Practices (BMPs) identified in the associated Erosion and Sedimentation Plan, the Reclamation Plan and the NPDES permit application. These BMPs restrict the rates and quantities of associated pollutants from being discharged into surface waters in this Commonwealth.

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

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 563-2112-115, Developing National Pollutant Discharge Elimination System (NPDES) Permits for Mining Activities. Other specific factors to be considered include public comments and Total Maximum Daily Load(s). Additional discharge limitations may apply in the event that unexpected discharges occur.

Discharge rates for surface mining activities are precipitation driven. Discharge rates for proposed discharges associated with underground mining are noted in the permit description.

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

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92a.82(d). The request or petition for a public hearing shall be filed within 30 days of this public notice and contain the name, address, telephone number and the interest of the party filing the request, and state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. When a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

Coal NPDES Draft Permits

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

NPDES No. PA0249912 (Mining Permit No. 56060102), Mountaineer Mining Corporation, 1010 Garrett Shortcut Road, Berlin, PA 15530, renewal of an NPDES permit for bituminous surface mine in Stonycreek Township, **Somerset County**, affecting 47.1 acres. Receiving stream: unnamed tributary to Schrock Run, classified for the following use: cold water fishes. This receiving stream is included in the Kiski-Conemaugh TMDL. Application received: September 1, 2016.

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

The outfalls listed below discharge to unnamed tributary to Schrock Run:

Outfall Nos.	*New Outfall (Y/N)*
001	N
003	N

The proposed effluent limits for the above listed outfalls are as follows:

Outfalls: 001 and 003 *Parameter*	*30-Day* *Average*	*Daily* *Maximum*	*Instant.* *Maximum*
Iron (mg/l)	1.5	3.0	3.5
Manganese (mg/l)	1.0	2.0	2.5
Aluminum (mg/l)	0.75	1.5	1.8
Total Suspended Solids (mg/l)	35.0	70.0	90.0
pH (S.U.): Must be between 6.0 and 9.0 standard units at all times			
Alkalinity must exceed acidity at all times			

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

NPDES No. PA0243477. (Mining permit no. 17030106), Waroquier Coal Company, P.O. Box 128, 3056 Washington Avenue, Clearfield, PA 16830, renewal of an NPDES permit for surface coal mining permit in Beccaria Township, **Clearfield County**, affecting 244.0 acres. Receiving stream(s): Unnamed Tributaries to Dotts Hollow classified for the following use(s): CWF. Clearfield Creek Watershed. Application received: May 5, 2016.

The outfall(s) listed below discharge to: Dotts Hollow

Outfall No.	*New Outfall (Y/N)*
F	N
G	N
H	N
I	N
J	N

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

Parameters	*Minimum*	*30-Day Average*	*Daily Maximum*	*Instant. Maximum*
pH[1] (S.U.)	6.0			9.0
Iron (mg/l)		3.0	6.0	9.0
Manganese (mg/l)		4.6	3.2	4.0
Aluminum (mg/l)		2.0	4.0	5.0
Alkalinity greater than acidity[1]				
Total Suspended Solids (mg/l)		35.0	70.0	90.0

New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

NPDES No. PA0278173 (Mining permit no. 65-15-04), David L. Patterson, Jr., 12 Short Cut Road, Smithfield, PA 15478, New NPDES permit for a Government Financed Construction Contract (GFCC) in Salem Township, **Westmoreland County**, affecting 60.2 acres. Receiving stream: UNT to Beaver Run Reservoir to Beaver Run to Kiskiminetas-Conemaugh River, classified for the following use: HQ-CWF. This receiving stream is included in the Kiskiminetas-Conemaugh TMDL. Application received: November 24, 2015.

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

The stormwater outfall(s) listed below discharge to UNT and Beaver Run Reservoir

Outfall Nos.	*New Outfall (Y/N)*	*Type*
001	Y	E&S
002	Y	E&S

The proposed effluent limits for the above listed outfall(s) are as follows: for precipitation events less than or equal to a 10 year/24 hour storm event.

Outfalls: 001, 002, 003, 004, 005 Parameter	*30-Day Average*	*Daily Maximum*	*Instant. Maximum*
Iron (mg/l)	1.5	3.0	3.8
Manganese (mg/l)	1.0	2.0	2.5
Aluminum (mg/l)	.75	1.5	1.9
Total Suspended Solids (mg/l)	35	70	90

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times
Alkalinity must exceed acidity at all times

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

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

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

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

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

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Waterways and Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401, Telephone 484-250-5900.

Type of work: E09-1007. Warrington Township, 852 Easton Road, Warrington, PA 18976, Warrington Township, **Bucks County**, ACOE Philadelphia District.

To remove the accumulation of debris along 225 linear feet situated along an unnamed tributary to the Little Neshaminy Creek associated with the Street Road Gravel Bar Removal. The site is located by the stream crossing at Street Road approximately 1.6 mile north of its intersection with Rt. 611 (Ambler Lat. 40° 14′ 40″; Long. 75° 9′ 42″).

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.

E39-547. Lower Macungie Township, 3400 Brookside Road, Macungie, PA 18062, in Lower Macungie Township, **Lehigh County**, U.S. Army Corps of Engineers, Philadelphia District.

To construct and maintain a 6-foot wide single span pedestrian bridge across Swabia Creek (HQ-CWF, MF), having a 37-foot span and an approximate 3-foot minimum underclearance. The project is located just downstream of the east side of the Gehman Road vehicular bridge that spans Swabia Creek (Allentown West, PA Quadrangle, Latitude: 40°30′57″; Longitude: -75°34′5.7″).

Southwest Region: Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1738, Glasso Development Company, LP, 4201 Cohasset Lane, Allison Park, PA 15101, West Deer Township, **Allegheny County**, Pittsburgh ACOE District.

The applicant is proposing to:

1. Construct and maintain a 167 LF, 48 in-HDPE culvert in an Unnamed Tributary (UNT) to Deer Creek;

2. Place and maintain fill within 0.11 acre of PEM wetlands (aka WL-1);

3. Place and maintain multiple utility line crossings across the aforementioned UNT and wetland under a General Permit No. 5, relating to utility line stream crossings;

For the purpose of developing a residential community located near the intersection of McIntyre Road and Shadow Circle, (Quadrangle: Valencia, PA, Latitude: 40° 37′ 40″; Longitude: -79° 54′ 46″) in West Deer Township, Allegheny County. The permanent impacts will be off-set with on-site stream and wetland mitigation.

Northwest Region: Waterways and Wetlands Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E42-367—National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (Applicant), 1100 State Street, Erie, PA 16501. Northern Access 2016 Project (Project), in Sergeant, Keating, Annin, Eldred, Ceres, and Liberty Townships in **McKean County**, ACOE Pittsburgh District. The proposed Pennsylvania portion of the project starts at the interconnection/tie-in at the existing NFG Midstream Clermont, LLC, facility along SR 146 approximately 1 mile west of Clermont (Crosby, PA Quadrangle N: 41°42′04.84″; W: 78°29′59.98″) in Sergeant Township, McKean County extending generally north crossing through portions of Sergeant, Keating, Annin, Eldred, and Ceres Townships, McKean County, to where it will cross the New York border approximately 2 miles west of where SR 44 crosses the state line (Bullis Mills, PA Quadrangle N: 41°59′57.51″; W: 78°17′56.98″) in Ceres Township, McKean County.

On May 14, 2016 the Department published a notice at 46 Pa.B. 2428 (May 14, 2016) that it had received an application for a Chapter 105 Joint Permit (E42-367) under the Pennsylvania Dam Safety and Encroachments Act. This issue includes notices for an Erosion and Sediment Control General Permit (ESC00083160002) and a request for State Water Quality Certification (WQ42-001) required by Section 401 of the Clean Water Act under review by the Department and McKean County Conservation District for the Project.

The Project, as proposed in Pennsylvania, consists of installation and maintenance of approximately 28 miles, 24-inch pipeline and appurtenant structures. The proposed project impacts in McKean County include a total of 10,663 linear feet (5,136 linear feet of permanent and 5,527 linear feet of temporary) of impacts to the following surface waters: Bloomster Hollow (CWF) and tributaries; tributaries to Irons Hollow (CWF); Blacksmith Run (CWF) and tributaries; Cloverlot Hollow (CWF) and tributaries; Kent Hollow (CWF) and tributaries; Newell Creek (CWF) and tributaries; Oswayo Creek (CWF) and tributaries; Marvin Creek (CWF) and tributaries; Champlin Hollow (CWF) and tributaries; Open Brook (CWF); Allegheny River (CWF); Rock Run (CWF) and tributaries; Barden Brook (CWF) and tributaries; Potato Creek (TSF) and tributaries; tributaries to Cole Creek (CWF); McCrae Run (CWF) and tributaries; and Pierce Brook (CWF), 20.854 acres (9.837 acres of temporary and 11.017 acres of permanent) of impact to floodways, 5.277 acres of temporary impacts to PEM (1.674 acre), PSS (1.64 acre), and PFO (1.963 acre) wetlands and 7.073 acres of permanent impacts to PEM (2,596 acres), PSS (2.539 acres), and PFO (1.938 acre) wetlands. To compensate for the proposed permanent project impacts in McKean County, the applicant is proposing the enhancement of degraded PEM wetlands with planting of 0.507 acre of shrub habitat and 1.175 acre forested habitat and restoration of all wetlands and stream crossings by returning the area to original contours, replacing native soils and streambed materials, and stabilizing the area. The proposed project impacts in this permit application are associated with a proposed transmission pipeline project extending approximately 28 miles in Pennsylvania between Sergeant Township, McKean County, PA and Ceres Township, McKean County, PA.

For more detailed information regarding the McKean County Chapter 105 permit application related to this proposed project, which is available in the DEP regional office, please contact Lori Boughton at 814-332-6879 to request a file review.

District Oil & Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701.

E5829-113: Harmony Township, Bluestone Pipeline Company of Pennsylvania, LLC, 1429 Oliver Road, New Milford, PA 18334-7516; Harmony Township, **Susquehanna County**, ACOE Baltimore District.

To construct, operate, and maintain:

1) a 30 inch diameter steel natural gas pipeline and temporary access crossing impacting 34 lineal feet (544 sq. ft.) of an unnamed tributary to Little Roaring Brook (CWF-MF) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 55″, Longitude: -75° 32′ 26″),

2) a 30 inch diameter steel natural gas pipeline and temporary access crossing impacting 12,270 square feet (0.28 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 53″, Longitude: -75° 32′ 26″),

3) a 30 inch diameter steel natural gas pipeline and temporary access crossing impacting 5,300 square feet (0.28 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 52″, Longitude: -75° 32′ 31″),

4) a 30 inch diameter steel natural gas pipeline and temporary access crossing impacting 11,040 square feet (0.25 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 52″, Longitude: -75° 32′ 66″),

5) a 30 inch diameter steel natural gas pipeline and temporary access crossing impacting 50 lineal feet (800 sq. ft.) of an unnamed tributary to Little Roaring Brook (CWF-MF) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 50″, Longitude: -75° 32′ 38″),

6) a 30 inch diameter steel natural gas pipeline by horizontal directional drill crossing impacting 228 square feet (<0.01 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 08″, Longitude: -75° 33′ 00″),

7) a 30 inch diameter steel natural gas pipeline by horizontal directional drill crossing impacting 153 square feet (<0.01 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 08″, Longitude: -75° 33′ 00″),

8) a 30 inch diameter steel natural gas pipeline by horizontal directional drill crossing impacting 2,160 square feet (0.05 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 08″, Longitude: -75° 33′ 00″),

9) a 30 inch diameter steel natural gas pipeline by horizontal directional drill crossing impacting 30 square feet (<0.01 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 08″, Longitude: -75° 33′ 00″),

10) a 30 inch diameter steel natural gas pipeline and timber mat crossing impacting 1,500 square feet (0.03 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 00″, Longitude: -75° 33′ 00″),

11) a timber mat crossing impacting 2,800 square feet (0.06 acre) of a palustrine emergent wetlands (PEM) (Susquehanna, PA Quadrangle; Latitude: 41° 59′ 49″, Longitude: -75° 32′ 34″).

The project consists of constructing a 30″ diameter steel natural gas gathering line approximately 1.54 mile long in Harmony Township, Susquehanna County. The project will result in 84 lineal feet of temporary stream impacts and 30,445 square feet (0.70 acre) of temporary wetlands impacts all for the purpose of providing safe reliable conveyance of Marcellus Shale natural gas to market.

WATER QUALITY CERTIFICATIONS REQUESTS

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481 Telephone: 814-332-6945.

WQ42-001, National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (Applicant), 1100 State Street, Erie, PA 16501. Northern Access 2016 Project (Project), in Sergeant, Keating, Annin, Eldred, Ceres, and Liberty Townships in **McKean County**, ACOE Pittsburgh District. The proposed Pennsylvania portion of the project starts at the interconnection/tie-in at the existing NFG Midstream Clermont, LLC, facility along SR 146 approximately 1 mile west of Clermont (Crosby, PA Quadrangle N: 41°42′04.84″; W: 78°29′59.98″) in Sergeant Township, McKean County extending generally north crossing through portions of Sergeant, Keating, Annin, Eldred, and Ceres Townships, McKean County, to where it will cross the New York border approximately 2 miles west of where SR 44 crosses the state line (Bullis Mills, PA Quadrangle N: 41°59′57.51″; W: 78°17′56.98″) in Ceres Township, McKean County.

On March 16, 2015, Applicant filed an application with the Federal Energy Regulatory Commission (FERC) under Section 7 of the Natural Gas Act (15 U.S.C.A. § 717f) seeking a certificate of public convenience and necessity to construct and operate its Project (FERC Docket No. CP15-115). The FERC Environmental Assessment for the Project, which was issued on July 27, 2016, may be viewed on FERC's web site at www.ferc.gov (search eLibrary; Docket Search; CP15-115).

On April 5, 2016, Applicant requested a State water quality certification from the Department, as required by Section 401 of the Clean Water Act (33 U.S.C.A. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in Pennsylvania through compliance with State water quality standards and associated State law requirements, which are consistent with the requirements of the Clean Water Act.

On May 14, 2016 the Department published a notice at 46 Pa.B. 2428 (May 14, 2016) that it had received a request for Water Quality Certification under Section 401 of the Federal Clean Water Act, the PA Dam Safety and Encroachments Act, and The Clean Streams Law. This issue includes notices for an Erosion and Sediment Control General Permit (ESC00083160002) and Chapter 105 Joint Permit (E42-367) applications under review by the Department and McKean County Conservation District for the Project.

The Project, as proposed in Pennsylvania, includes approximately 28 mile long, 24-inch pipeline for the purpose of transporting natural gas from Sergeant Township, McKean County, PA to the New York border in Ceres Township, McKean County. Pipeline work also includes three mainline valve sites, cathodic protection, and numerous temporary and permanent access roads to support construction and permanent facility access. Numerous stream and wetland crossings will occur along the project route as described below. The project also will utilize one temporary pipe storage yard and one contractor yard along SR 155 south of Port Allegheny Borough in Liberty Township, McKean County. The pipeline route has been co-located to parallel/overlap existing utility ROWs for a total of 17.75 miles in PA.

The Project, as proposed, will require approximately 378 acres of earth disturbance, and crossing of 141 streams (including floodways of streams not crossed by the pipeline) and 1 pond, totaling 10,663 linear feet (5,136 linear feet of permanent and 5,527 linear feet of temporary) of impacts to the following surface waters: Bloomster Hollow (CWF) and tributaries; tributaries to Irons Hollow (CWF); Blacksmith Run (CWF) and tributaries; Cloverlot Hollow (CWF) and tributaries; Kent Hollow (CWF) and tributaries; Newell Creek (CWF) and tributaries; Oswayo Creek (CWF) and tributaries; Marvin Creek (CWF) and tributaries; Champlin Hollow (CWF) and tributaries; Open Brook (CWF); Allegheny River (CWF); Rock Run (CWF) and tributaries; Barden Brook (CWF) and tributaries; Potato Creek (TSF) and tributaries; tributaries to Cole Creek (CWF); McCrae Run (CWF)

and tributaries; and Pierce Brook (CWF), 20.854 acres (9.837 acres of temporary and 11.017 acres of permanent) of impact to floodways, and 12.350 acres of (5.277 acres of temporary and 7.073 acres of permanent) wetland impacts.

The Department anticipates issuing a State water quality certification to Applicant for the Project that will require compliance with the following State water quality permitting programs, criteria and conditions established pursuant to State law to ensure the Project does not violate applicable State water quality standards set forth in 25 Pa. Code Chapter 93:

1. *Discharge Permit*—Applicant shall obtain and comply with a Department National Pollutant Discharge Elimination System (NPDES) permit for the discharge of water from the hydrostatic testing of the pipeline pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1—691.1001), and all applicable implementing regulations (25 Pa. Code Chapter 92a).

2. *Erosion and Sediment Control Permit*—Applicant shall obtain and comply with the Department's Chapter 102 Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17), and all applicable implementing regulations (25 Pa. Code Chapter 102).

3. *Water Obstruction and Encroachment Permits*—Applicant shall obtain and comply with a Department Chapter 105 Water Obstruction and Encroachment Permits for the construction, operation and maintenance of all water obstructions and encroachments associated with the project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.), and all applicable implementing regulations (25 Pa. Code Chapter 105).

4. *Water Quality Monitoring*—The Department retains the right to specify additional studies or monitoring to ensure that the receiving water quality is not adversely impacted by any operational and construction process that may be employed by Applicant.

5. *Operation*—Applicant shall at all times properly operate and maintain all Project facilities and systems of treatment and control (and related appurtenances) which are installed to achieve compliance with the terms and conditions of this State Water Quality Certification and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

6. *Inspection*—The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of the Department to determine compliance with this State Water Quality Certification, including all required State water quality permits and State water quality standards. A copy of this certification shall be available for inspection by the Department during such inspections of the Project.

7. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project which is affected by this State Water Quality Certification, Applicant shall serve a copy of this certification upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Department Regional Office of such intent. Notice to the Department shall include a transfer agreement signed by the existing and new owner containing a specific date for transfer of certification responsibility, coverage, and liability between them.

8. *Correspondence*—All correspondence with and submittals to the Department concerning this State Water Quality Certification shall be addressed to the Department of Environmental Protection, Northwest Regional Office, Lori Boughton, 230 Chestnut Street, Meadville, PA 16335.

9. *Reservation of Rights*—The Department may suspend or revoke this State Water Quality Certification if it determines that Applicant has not complied with the terms and conditions of this certification. The Department may require additional measures to achieve compliance with applicable law, subject to Applicant's applicable procedural and substantive rights.

10. *Other Laws*—Nothing in this State Water Quality Certification shall be construed to preclude the institution of any legal action or relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal or State law or regulation.

11. *Severability*—The provisions of this State Water Quality Certification are severable and should any provision of this certification be declared invalid or unenforceable, the remainder of the certification shall not be affected thereby.

Prior to issuance of the final State water quality certification, the Department will consider all relevant and timely comments, suggestions or objections submitted to the Department within 30 days of this notice. Comments should be directed to Lori Boughton, Regional Program Manager at the above address or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

EROSION AND SEDIMENT CONTROL PERMITS

The following parties have applied for Erosion and Sediment Control Permits for earth disturbance activities associated with either road maintenance or timber harvesting operations.

Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department proposes to issue a permit to discharge, subject to certain limitations in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

A person wishing to comment on a proposed permit are invited to submit a statement to the appropriate Department regional office listed before the application within 30 days of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and

relevant facts upon which it is based. A public hearing may be held after consideration of comments received by the appropriate Department regional office during the 30-day public comment period.

Following the 30-day comment period, the appropriate regional office water management program manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board (Board).

The application and related documents, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the appropriate regional office.

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

Applications received under sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402)

Southwest District: Oil & Gas Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222.

ESCGP-2 # ESG14-059-0042
Applicant Name Vantage Energy Appalachia, LLC
Contact Person John Moran
Address 116 Inverness Drive East, Suite 107
City, State, Zip Englewood, CO 80112
County Greene County
Township(s) Center Township
Receiving Stream(s)and Classification(s) UNT to Hargus Creek (HQ-WWF)/South Fork Tenmile Creek (HQ-WWF). Hargus Creek/South Fork Tenmile Creek. UNT to South Fork Ten Mile Creek.

ESCGP-2 # ESX16-125-0010
Applicant Name SWN Production Co LLC
Contact Person Carla Suszkowski
Address PO Box 12359
City, State, Zip Spring, TX 77391
County Washington
Township(s) Independence
Receiving Stream(s) and Classification(s) UNTs to Cross Ck (WWF); Cross Ck (WWF)
Secondary—Cross Ck (WWF); Ohio River

ESCGP-2 # ESX16-125-0017
Applicant Name EQT Production—Land, PA
Contact Person Todd Klaner
Address 2400 Zenith Ridge Rd, Suite 200
City, State, Zip Canonsburg, PA 15317
County Washington
Township(s) Deemston
Receiving Stream(s) and Classification(s) Plum Run (TSF), Fishpot Run (WWF)

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

ESCP No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
ESG00083160002	National Fuel Gas Supply Corporation and Empire Pipeline Inc. 11100 State Street Erie, PA 16501	McKean	Sergeant, Keating, Annin, Eldred, Ceres, and Liberty Townships	Bloomster Hollow (CWF) and tributaries; tributaries to Irons Hollow (CWF); Blacksmith Run (CWF) and tributaries; Cloverlot Hollow (CWF) and tributaries; Kent Hollow (CWF) and tributaries; Newell Creek (CWF) and tributaries; Oswayo Creek (CWF) and tributaries; Marvin Creek (CWF) and tributaries; Champlin Hollow (CWF) and tributaries; Open Brook (CWF); Allegheny River (CWF); Rock Run (CWF) and tributaries; Barden Brook (CWF) and tributaries; Potato Creek (TSF) and tributaries; tributaries to Cole Creek (CWF); McCrae Run (CWF) and tributaries; and Pierce Brook (CWF)

ACTIONS

THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

FINAL ACTIONS TAKEN FOR NPDES PERMITS AND WQM PERMITS

The Department has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and NOIs for coverage under General Permits. This notice of final action is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P.S. §§ 691.1—691.101) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

Location	*Permit Authority*	*Application Type or Category*
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Wastes; Discharges to Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

Sections I—VI contain actions regarding industrial, animal or sewage wastes discharges, discharges to groundwater, and discharges associated with MS4, stormwater associated with construction activities and CAFOs. Section VII contains notices for parties who have submitted NOIs for Coverage under General NPDES Permits. The approval for coverage under these General NPDES Permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions in each General Permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions in the respective permit. The permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

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

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should contact a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

NPDES No. (Type)	*Facility Name & Address*	*County & Municipality*	*Stream Name (Watershed No.)*	*EPA Waived Y/N?*
PA0096474 (Storm Water and Hydrostatic Test Water)	Buckeye Terminals LLC Coraopolis/Pittsburgh Terminal Station 3200 University Boulevard Coraopolis, PA 15108	Allegheny County Coraopolis Borough	Ohio River (20-G)	Yes
PA0254851 (Industrial)	Ford City Municipal WTP 1000 Fourth Avenue Ford City, PA 16226	Armstrong County Ford City Borough	Allegheny River (17-E)	Yes
PA0093033 (Sewage)	Elderton STP Cemetary Road Elderton, PA 15736-0262	Armstrong County Elderton Borough	Unnamed Tributary of Crooked Creek (17-E)	Y

Northeast Regional Office: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570.826.2511.

NPDES No. (Type)	*Facility Name & Address*	*County & Municipality*	*Stream Name (Watershed No.)*	*EPA Waived Y/N?*
PA0061581 (Industrial)	Sutton Springs 1823 Sutton Road Shavertown, PA 18708-9521	Luzerne County Jackson Township	Huntsville Creek (5-B)	Yes

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

NPDES No. (Type)	*Facility Name & Address*	*County & Municipality*	*Stream Name (Watershed #)*	*EPA Waived Y/N?*
PA0083364 (Sewage)	Chambersburg Borough PO Box 1009 Chambersburg, PA 17201	Franklin County/ Greene Township	Conococheague Creek/13-C	Y
PA0080080 (Sewage)	Conewago Valley MHP, Inc. 800 York Road Dover, PA 17315	York County/ Newberry Township	Conewago Creek/7-F	Y

Northcentral Regional Office: Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

NPDES No. (Type)	*Facility Name & Address*	*County & Municipality*	*Stream Name (Watershed No.)*	*EPA Waived Y/N?*
PA0033910 (Sewage)	School District Treatment Plant 526 Panther Lane Rome, PA 18837-7892	Bradford County Orwell Township	Johnson Creek (4-D)	Yes
PA0041327 (Sewage)	Schneebeli Earth Science Center Wastewater Treatment Plant 203 Allenwood Camp Lane Montgomery, PA 17752-9219	Lycoming County Clinton Township	Unnamed Tributary to Black Hole Creek (10-C)	Yes
PA0114740 (Industrial)	Roaring Creek Water Treatment Plant Route 54 Coal Township, PA 17866	Northumberland County Coal Township	South Branch Roaring Creek (5-E)	Yes

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

NPDES No. (Type)	*Facility Name & Address*	*County & Municipality*	*Stream Name (Watershed #)*	*EPA Waived Y/N?*
PA0034924 (Sewage)	Paint Elk STP 800 W Hersheypark Drive Hershey, PA 17033	Clarion County Paint Township	Paint Creek (17-B)	Yes
PA0032468 (Sewage)	Cook Forest State Park PO Box 120 113 River Road Cooksburg, PA 16217-0120	Forest County Barnett Township	Clarion River (17-B)	No
PA0025739 (Sewage)	Port Allegany Borough STP 45 W Maple Street Port Allegany, PA 16743-1318	McKean County Port Allegany Borough	Allegheny River (16-C)	Yes
PA0240231 (Sewage)	Jack L Shaeffer SRSTP 510 Pittsville Road Kennerdell, PA 16374	Venango County Rockland Township	Shull Run (16-G)	Yes

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

NPDES Permit No. PA0024252, Storm Water, SIC Code 4226, **Sunoco Partners Marketing & Terminals LP**, 1734 Old Route 66, Delmont, PA 15626.

This existing facility is located in Salem Township, **Westmoreland County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit for an existing discharge of stormwater and hydrostatic test water.

NPDES Permit No. PA0204935, Industrial, SIC Code 3273, **New Enterprise Stone & Lime Co. Inc.**, PO Box 77, New Enterprise, PA 16664-0077.

This existing facility is located in Cambria Township, **Cambria County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit for an existing discharge of treated industrial wastewater and stormwater.

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

NPDES Permit No. PA0229121 A-1, CAFO, SIC Code 0252, **Cotner Farms Inc.**, 127 Rushtown Road, Danville, PA 17821-7605.

This existing facility is located in Rush Township, **Northumberland County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit Amendment for an existing CAFO.

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

NPDES Permit No. PA0264547, Sewage, SIC Code 8800, **Genevieve Snyder**, 1622 Pin Oak Road, Rimersburg, PA 16248.

This proposed facility is located in Madison Township, **Clarion County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Sewage.

NPDES Permit No. PA0264555, Sewage, SIC Code 4952, 8800, **Andrew McMichael**, 133 Route 44, Shinglehouse, PA 16748.

This proposed facility is located in Ceres Township, **McKean County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Sewage.

NPDES Permit No. PA0264491, Sewage, SIC Code 4952, 8800, **Ralph Ricciardi**, 2068 Lake Road, Sharpsville, PA 16150.

This proposed facility is located in Jefferson Township, **Mercer County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Sewage.

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

Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.

WQM Permit No. WQG02481602, Sewage, SIC Code 4952, **Allen Township**, 4714 Indian Trail Road, Northampton, PA 18067.

This proposed facility is located in Allen Township, **Northampton County**.

Description of Proposed Action/Activity:

An 8-inch diameter sewer extension along Willowbrook Road will connect to the existing Hanover Township (Lehigh County) interceptor to serve a new development. The existing interceptor connects to the Borough of Catasauqua for treatment at its wastewater treatment plant.

WQM Permit No. WQG02391601, Sewage, SIC Code 4952, **Hanover Township**, 2202 Grove Road, Allentown, PA 18109.

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

Description of Proposed Action/Activity:

An 8-inch diameter sewer extension along Willowbrook Road will connect to the existing Hanover Township interceptor to serve a new development. The existing interceptor connects to the Borough of Catasauqua collection system for treatment at its wastewater treatment plant.

Northcentral Regional Office: Regional Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

WQM Permit No. 4112406 A-1, Sewage, SIC Code 4952, **West Branch Regional Authority**, 127 Girton Drive, Muncy, PA 17756.

This existing facility is located in Clinton Township, **Lycoming County**.

Description of Proposed Action/Activity: Modifications to the Turkey Run Pump Station.

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

WQM Permit No. 1616405, Sewage, **Genevieve Snyder**, 1622 Pin Oak Road, Rimersburg, PA 16248.

This proposed facility is located in Madison Township, **Clarion County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

WQM Permit No. 4216404, Sewage, **Andrew McMichael**, 133 Route 44, Shinglehouse, PA 16748.

This proposed facility is located in Ceres Township, **McKean County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

WQM Permit No. 4316402, Sewage, **Ralph Ricciardi**, 2068 Lake Road, Sharpsville, PA 16150.

This proposed facility is located in Jefferson Township, **Mercer County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

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

Southeast Region: Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAS10-5312-R5	Philadelphia Authority for Industrial Development (PAID) 4747 South Broad Street Philadelphia, PA 19112	Philadelphia	City of Philadelphia	Tidal Schuylkill Watershed B/ Management District Zone C WWF-MF
PAI011516005	JEP, LLC 566 Cricke Lane Downingtown, PA 19335	Chester	West Whiteland Township	Broad Run HQ-CWF
PAI011516018	Owen J. Roberts School District 901 Ridge Road Pottstown, PA 19465	Chester	East Coventry Township	Pigeon Run HQ-TSF Schuylkill River (POI 2) HQ-TSF

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAI025210006R	Milford Highlands PA, LLC 301 S. College Street 15th Floor Charlotte, NC 28202	Pike	Milford Township	UNT to Delaware River (HQ-CWF, MF), Deep Brook (EV, MF) Crawford Branch (HQ-CWF, MF) Vandermark (HQ-CWF, MF)
PAI024514012(1)	Saint Luke's Hospital 801 Ostrum Street Bethlehem, PA 18015	Monroe	Stroud Township	UNT to Pocono Creek (HQ-CWF, MF)
PAI024516007	Jimmy Schlier P.O. Box 465 Tannersville, PA 18372	Monroe	Pocono Township	Pocono Creek (HQ-CWF, MF)
PAI023912012(3)	Nestle Purina Pet Care 2050 Pope Road Allentown, PA 18104	Lehigh	South Whitehall Township	Jordan Creek (TSF, MF) UNT to Jordan Creek (HQ-CWF, MF)
PAI023916003	Weisenberg Township 2175 Seipstown Road Fogelsville, PA 18051	Lehigh	Weisenberg Township	Lyon Creek (HQ-CWF, MF) Mill Creek (TSF, MF)
PAI024816004	North Run 1, LLC c/o Mr. Doug Armbruster 740 Centre View Blvd Crestview Hills, KY 41017	Northampton	Lower Nazareth Township	Shoeneck Creek (WWF, MF)
PAI023916010	St. Luke's Hospital c/o Mr. Frank Ford 1736 Hamilton Street Allentown, PA 18104	Lehigh	City of Allentown	Little Lehigh Creek (HQ-CWF, MF)

Southwest Region: Waterways and Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAI050415001	Department of General Services Building 0-13 Fort Indiantown Gap Annville, PA 17003	Beaver County	Chippewa Township	UNT to North Fork Little Beaver Creek (HQ-CWF)

NPDES Permit No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water / Use*
PAI056316001	Brownlee Land Ventures P.O. Box 51 West Middletown, PA 15379	Washington County	Hopewell Township, and Independence Township	UNT to Haynan Run (HQ-WWF)
PAI056316003	First Pennsylvania Resource, LLC 33 Terminal Way Suite 431A Pittsburgh, PA 15219	Washington County	Donegal Township	UNTs to Buck Run (HQ-WWF)

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 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
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges from Small Flow Treatment Facilities
PAG-5	General Permit for Discharges from Petroleum Product Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional 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 Discharges from Hydrostatic Testing of Tanks and Pipelines
PAG-11	General Permit for Discharges from Aquatic Animal Production Facilities
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)
PAG-14	(To Be Announced)
PAG-15	General Permit for Discharges from the Application of Pesticides

General Permit Type—PAG-02

Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.

Facility Location & Municipality	*Permit No.*	*Applicant Name & Address*	*Receiving Water / Use*	*Contact Office & Phone No.*
Bristol Township Bucks County	PAG02000916042	Two Farms, Inc. 3611 Roland Avenue Baltimore, MD 21211	Mill Creek Delaware River South WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Middletown Township Bucks County	PAG02000916037	12800 Tuckahoe Creek Parkway Richmond, VA 23238-1115	Mill Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Warminster Township Bucks County	PAG02000913038(1)	County Builders, Inc. 76 Griffiths Miles Circle Warminster, PA 18974	Unnamed Tributary to Little Neshaminy Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

Facility Location & Municipality	*Permit No.*	*Applicant Name & Address*	*Receiving Water / Use*	*Contact Office & Phone No.*
Doylestown Township Bucks County	PAG02000914009(1)	Penn Color, Inc. 400 Old Dublin Pike Doylestwon, PA 18901-2399	Pine Urn TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Warwick Township Bucks County	PAG02000916034	Adam Sailor 2195 Warwick Road Warrington, PA 18976	Unnamed Tributary to Neshaminy Creek TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Solebury Township Bucks County	PAG02000916021	Charles Ehne 6226 Pikcock Creek Road New Hope, PA 18938	Dark Hollow Run TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
New Hanover Township Montgomery County	PAG02004615105	New Hanover Township Authority 2990 Fagleysville Road Gilbertsville, PA 19525	Tributary to Swamp Creek TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Limerick Township Montgomery County	PAG02004616022	Buckman Enterprises LLC 105 Airport Road Pottstown, PA 19464	Possum Hollow Run WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Skippack Township Montgomery County	PAG02004616046	Palmer International, Inc. 2036 Lucon Road Skippack, PA 19474	Unnamed Tributary to Skippack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Marple Township Delaware County	PAG02002316016	Marple Associates, L.P. 1001 Baltimore Pike Springfield, PA 19064	Langford Run WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Bethel Township Delaware County	PAG02002316019	Middletown Parkview Developers, LLC 1 Raymond Drive Havertown, PA 19083	Green Creek CWF-MF South Branch of Naamans Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Concord Township Delaware County	PAG02002314003	Redwood-ERC Concord, LLC c/o Erickson Living Properties, Inc. 701 Maiden Choice Lane Baltimore, MD 21228	Webb Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Facility Location: Municipality & County	*Permit No.*	*Applicant Name & Address*	*Receiving Water / Use*	*Contact Office & Phone No.*
Moosic Borough Lackawanna County	PAG02003516004	Minooka Motor Sales, Inc. 4141 Birney Avenue Moosic, PA 18507-1301	Lackawanna River (CWF, MF)	Lackawanna County Conservation District 570-392-3086
Exeter Borough Luzerne County	PAC400001	Fox Hill Country Club Shane Bradley 454 Tunkhannock Ave. Exeter, PA 18643	Hicks Creek (CWF, MF)	Luzerne Conservation District 570-674-7991

Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Crawford, Section Chief, 717.705.4802.

Facility Location: Municipality & County	*Permit No.*	*Applicant Name & Address*	*Receiving Water / Use*	*Contact Office & Phone No.*
Littlestown Borough Adams County	PAG02000116007	Littlestown Area School District 162 Newark Street Littlesown, PA 17340	Alloway Creek/ WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325-3404 (717) 334-0636
Butler Township Adams County	PAG02000116011	Christopher Rossman 13 Country Drive Gettysburg PA 17325	Unnamed Tributaries to Conewago Creek/ WWF Rock Creek/ WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325-3404 (717) 334-0636
Reading Township Adams County	PAG02000116010	Fletcher Farms LP 18001 Georgia Avenue Olney MD 20832	Conewago Creek/WWF Tributary 08758 Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325-3404 (717) 334-0636
Greenwich Township Berks County	PAG02000616022	Timothy J. Moyer 679 Luella Drive Kutztown, PA 19530	UNT Maiden Creek/TSF, MF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533-9710 (610) 372-4657
Ontelaunee Township Berks County	PAG02000616022	Ryder Systems, Inc. 1 Jefferson Boulevard Warwick, RI 02888	Schuylkill River/WWF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533-9710 (610) 372-4657
Catherine Township Blair County	PAG02000716006	Randy Brubaker 121 Hemlock Lane Williamsburg, PA 16693	UNT Roaring Run/WWF	Blair County Conservation District 1407 Blair Street Hollidaysburg, PA 16648 (814) 696-0877
Greenfield Township Blair County	PAG02000716010	Central States Manufacturing, Inc. 302 Jane Place Lowell, AR 72745	Beaverdam Creek/CWF Smoky Run/CWF Wetlands	Blair County Conservation District 1407 Blair Street Hollidaysburg, PA 16648 (814) 696-0877
Hampden Township Cumberland County	PAG02002116019	Golf Enterprises 4400 Deer Path Road Suite 201 Harrisburg, PA 17110	Conodoguinet Creek/WWF	Cumberland County Conservation District 3410 Allen Road Suite 4301 Carlisle, PA 17013-9101 (717) 240-7812

Facility Location: Municipality & County	*Permit No.*	*Applicant Name & Address*	*Receiving Water / Use*	*Contact Office & Phone No.*
Silver Spring Township Cumberland County	PAG02002116017	Exeter Property Group 140 Germantown Pike Suite 150 Plymouth Meeting, PA 19462	Hogestown Run/ CWF, MF	Cumberland County Conservation District 3410 Allen Road Suite 4301 Carlisle, PA 17013-9101 (717) 240-7812
Ephrata Township Lancaster County	PAG02003616064	Evangel Assembly of God Church 939 Linden Avenue Ephrata, PA 17522	UNT Conestoga River/WWF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 7117.299.5361, ext. 5
Lancaster City Lancaster County	PAG02003616068	Franklin & Marshall College PO Box 3003 Lancaster, PA 17604	Conestoga River/WWF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 7117.299.5361, ext. 5
Manheim Township Lancaster County	PAG02003616078	Seth Beaver 3001 Lititz Pike Lancaster, PA 17606	Bachman Run (Trib to Little Conestoga Creek)/TSF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 7117.299.5361, ext. 5
West Lampeter Township Lancaster County	PAG02003616079	Chris Glick 1518 Millport Road Lancaster, PA 17602	UNT Conestoga River/WWF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 7117.299.5361, ext. 5
Strasburg Township Lancaster County	PAG02003616089	Elam King 628 Bunker Hill Road Strasburg, PA 17579	Little Beaver Creek/TSF, MF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 7117.299.5361, ext. 5
Clay Township Lancaster County	PAG02003616104	EKM Entrerprises 25 Wissler Road Lititz, PA 17548	Middle Creek/ WWF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 7117.299.5361, ext. 5

Southwest Region: Regional Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water / Use*	*Contact Office and Phone No.*
Rayne Township	PAG02003216011	Ligonier Construction Company, Inc. P.O. Box 277 Laughlintown, PA 15655	McKee Run (CWF); UNT to Crooked Creek (CWF)	Indiana County Conservation District 625 Kolter Drive Suite 8 Indiana, PA 15701-3571 (724) 471-4751

General Permit Type—PAG-05

Facility Location Municipality & County	*Permit No.*	*Applicant Name & Address*	*Receiving Water / Use*	*Contact Office & Phone No.*
Springfield Township Fayette County	PAG056239 A-1	Speedy Meedy's Inc. 111 Woodvale Street Dunbar, PA 15431-1565	Unnamed Tributary of Indian Creek 19-E CWF	DEP Southwest Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000

General Permit Type—PAG-8

Facility Location: Municipality & County	*Permit No.*	*Applicant Name & Address*	*Site Name & Location*	*Contact Office & Phone No.*
Wilmington Water Pollution Control Facility New Castle County, Delaware	PAG089601	City of Wilmington Department of Public Works 800 French Street Wilmington, DE 19801	Wilmington Water Pollution Control Facility PO Box 9856 E 12th Street & Hay Road Wilmington, DE 19809	Central Office 717-787-8184
Delaware Township Northumberland County	PAG-08-4820	Lewisburg Area Joint Sewer Authority 697 River Road Lewisburg, PA 17837	Wesner Farm Delaware Township Northumberland County	DEP Northcentral Regional Office Clean Water Program 208 W Third Street Suite 101 Williamsport, PA 17701-6448 570.327.3636

General Permit Type—PAG-10

Facility Location Municipality & County	*Permit No.*	*Applicant Name & Address*	*Receiving Water / Use*	*Contact Office & Phone No.*
Owego South And Loomis Pipelines Brooklyn, Hartford, Lenox Susquehanna County	PAG102343	Williams Field Service Co. LLC Park Place Corp Center 2 2000 Commerce Drive Pittsburgh, PA 15275	Unnamed Tributary to Martins Creek, Tower Branch, and Martins Creek—4-F	DEP Northeast Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511

PUBLIC WATER SUPPLY PERMITS

The Department has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

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

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this document to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

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

Permit No. 2316504, Public Water Supply.

Applicant	**Chester Water Authority** 415 Welsh Street P.O. Box 457 Chester, PA 19013
Township	Concord
County	**Delaware**
Type of Facility	PWS
Consulting Engineer	Chester Water Authority 415 Welsh Street P.O. Box 457 Chester, PA 19013
Permit to Construct Issued	September 21, 2016

Permit No. 4616516, Public Water Supply.

Applicant	**Pennsylvania American Water Company** 800 West Hershey Park Drive Hershey, PA 17033
Township	Upper Providence
County	**Montgomery**
Type of Facility	PWS
Consulting Engineer	Ebert Engineering, Inc. P.O. Box 540 4092 Skippack Pike Suite 202 Skippack, PA 19474
Permit to Construct Issued	September 21, 2016

Permit No. 4616522, Public Water Supply.

Applicant	**Borough of East Greenville** 206 Main Street East Greenville, PA 18041
Borough	East Greenville
County	**Montgomery**
Type of Facility	PWS
Consulting Engineer	Cowan Associates, Inc. 120 Penn-Am Drive P.O. Box 949 Quakertown, PA 18951
Permit to Construct Issued	September 20, 2016

Operations Permit # 0916516 issued to: **North Penn Water Authority**, 300 Forty Foot Road, Lansdale, PA 19446, [(PWSID)] East Rockhill Township, **Bucks County** on September 21, 2016 for the temporary emergency use of an interconnection with Perkasie Regional Authority.

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Permit No. 2400126, Operations Permit Public Water Supply.

Applicant	**Valley Gorge Mobile Home Park** 316 Susquehanna St. White Haven, PA 18661
[Borough or Township]	White Haven Borough
County	**Luzerne**
Type of Facility	PWS
Consulting Engineer	NA
Permit to Operate Issued	9/20/2016

Permit No. 2406258, Operations Permit Public Water Supply.

Applicant	**Silver Springs Ranch, LLC** 5148 Nuangola Rd. Mountain Top, PA 18707
[Borough or Township]	Monroe Township
County	**Luzerne**
Type of Facility	Finished Bulk Water Hauling
Consulting Engineer	Thomas Pullar, PE EarthRes Group, Inc. P.O. Box 468 Pipersville, PA 18947
Permit to Operate Issued	9/19/2016

Permit No. 6616501MA, Public Water Supply.

Applicant	**Aqua Pennsylvania, Inc.** 1 Aqua Way White Haven, PA 18661
[Borough or Township]	Clinton Township
County	**Wyoming**
Type of Facility	PWS
Consulting Engineer	Mr. Chad Angle, PE GHD, Inc. 1240 N. Mountain Rd. Harrisburg, PA 17110
Permit to Construct Issued	9/14/2016

Permit No. 2450076, Operations Permit Public Water Supply.

Applicant	**Cresson Point Properties, LLC** **(Estates at Hamilton Hills)** P.O. Box 53 Ashfield, PA 18212
[Borough or Township]	Hamilton Township
County	**Monroe**
Type of Facility	PWS
Consulting Engineer	NA
Permit to Operate Issued	9/20/2016

Permit No. 5816505MA, Public Water Supply.

Applicant	**Pennsylvania American Water Company** 800 West Hershey Park Dr. Hershey, PA 17033
[Borough or Township]	Great Bend Township
County	**Susquehanna**
Type of Facility	PWS
Consulting Engineer	Jeremy Nelson, PE Pennsylvania American Water 2699 Stafford Ave. Scranton, PA 18505

Permit to Construct Issued	9/14/2016

Permit No. 2408001, Operations Permit Public Water Supply.

Applicant	**Hazleton City Authority** 400 East Arthur Gardner Parkway Hazleton, PA 18201-7359
[Borough or Township]	City of Hazleton
County	**Luzerne**
Type of Facility	PWS
Consulting Engineer	John Synoski, PE Hazleton City Authority 400 East Arthur Gardner Parkway Hazleton, PA 18201-7359
Permit to Operate Issued	9/26/2016

Permit No. 4816503, Public Water Supply.

Applicant	**Pennsylvania American Water Company** 800 W. Hersheypark Dr. Hershey, PA 17033
[Borough or Township]	Nazareth Borough
County	**Northampton**
Type of Facility	PWS
Consulting Engineer	Craig Darosh, PE Pennsylvania American Water Co. 4 Wellington Blvd., Suite 2 Wyomissing, PA 19610
Permit to Construct Issued	September 26, 2016

Permit No. 2359008, Operations Permit Public Water Supply.

Applicant	**Pennsylvania American Water Company** 800 West Hershey Park Dr. Hershey, PA 17033
[Borough or Township]	South Abington Township
County	**Lackawanna**
Type of Facility	PWS
Consulting Engineer	Mr. James Shambaugh, PE Gannett Fleming, Inc. P.O. Box 67100 Harrisburg, PA 17106-7100
Permit to Operate Issued	9/20/16

Application No. 3516507MA, Public Water Supply.

Applicant	**PA American Water (City Of Scranton)** 800 W. Hershey Park Drive Hershey, PA 17033
[Township or Borough]	City Of Scranton **Lackawanna County**
Responsible Official	Mr. David Kaufman Vice President-Engineering
Type of Facility	Public Water Supply
Consulting Engineer	Mr. Alfonso F. Rossi, PE PA American Water Company 4 Wellington Blvd. Wyomissing, PA 19610
Construction Permit Issued	May 9, 2016

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Operation Permit No. 4290005 issued to: **McConnellsburg Borough Water Authority (PWS ID No. 4290005)**, Todd Township, **Fulton County** on 9/23/2016 for facilities approved under Construction Permit No. 2915501.

Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

Permit No. 5515503—Operation—Public Water Supply.

Applicant	**Middleburg Municipal Authority**
Township/Borough	Middleburg Borough
County	**Snyder**
Responsible Official	Mr. Charles Zechman Middleburg Municipal Authority 13 North Main Street Middleburg, PA 17842
Type of Facility	Public Water Supply
Consulting Engineer	David Walters, P.E. Larson Design Group 1000 Commerce Park Drive Suite 201 Williamsport, PA 17701
Permit Issued	September 20, 2016
Description of Action	Operation of Well # 3 as an additional source of supply, with treatment including gas chlorine disinfection, blending to reduce sulfate and total dissolved solids concentrations, and 4-log virus inactivation via detention piping.

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

Operations Permit issued to: **Municipal Authority of Westmoreland County**, 124 Park & Pool Road, New Stanton, PA 15672, **(PWSID # 5260036)** South Huntingdon Township, **Westmoreland County** on September 22, 2016 for the operation of facilities approved under Construction Permit # 2615509MA.

Permit No. 6316508MA, Minor Amendment. Public Water Supply.

Applicant	**Tri-County Joint Municipal Authority** 26 Monongahela Avenue PO Box 758 Fredericktown, PA 15333
[Borough or Township]	East Bethlehem Township and Centerville Borough
County	**Washington**

Type of Facility	Vestaburg waterline project
Consulting Engineer	KLH Engineers, Inc. 5173 Campbells Run Road Pittsburgh, PA 15205
Permit to Construct Issued	September 26, 2016

Permit No. 6316509MA, Minor Amendment. Public Water Supply.

Applicant	**Tri-County Joint Municipal Authority** 26 Monongahela Avenue PO Box 758 Fredericktown, PA 15333
[Borough or Township]	Centerville Borough
County	**Washington**
Type of Facility	Diamond Avenue waterline project
Consulting Engineer	KLH Engineers, Inc. 5173 Campbells Run Road Pittsburgh, PA 15205
Permit to Construct Issued	September 26, 2016

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

Permit No. 3716501, Public Water Supply

Applicant	**Wampum Borough**
Township or Borough	Wampum Borough
County	**Lawrence**
Type of Facility	Public Water Supply
Consulting Engineer	Carl R. Petrus, P.E. Petrus Engineering 26 Nesbitt Road Suite 256 New Castle, PA 16105
Permit to Construct Issued	September 20, 2016

Permit No. 2470501-MA6, Public Water Supply

Applicant	**St. Marys Area Water Authority**
Township or Borough	City of St. Marys
County	**Elk**
Type of Facility	Public Water Supply
Consulting Engineer	Michael Sherrieb KLH Engineers, Inc. 5173 Campbells Run Road Pittsburgh, PA 15205
Permit to Construct Issued	September 23, 2016

Operation Permit issued to **Aqua Pennsylvania Inc., PWSID No. 6420018**, Mt. Jewett Borough, **McKean County**. Permit Number 4215503 issued September 23, 2016 for the operation of the Aqua Pennsylvania—Mt. Jewett Public Water Supply system. This permit is issued in response to an operation inspection conducted by Department of Environmental Protection personnel on September 7, 2016.

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 the Commonwealth.

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

WA65-584B, Water Allocations. **Municipal Authority of the Borough of Derry**, 620 North Chestnut Street, Derry, PA 15627, **Westmoreland County**. Rescission of the right to purchase 250,000 gallons of water per day from Highridge Water Authority.

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

WA 25-817A, Water Allocations. **North East Township**, P.O. Box 249, North East, PA 16428, North East Township, **Erie County**. Permit grants the Township the right to purchase 900,000 gallons per day as a 30-day peak monthly flow rate from the Borough of North East.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted Under the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5)

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

Plan Location:

Borough or Township	*Borough or Township Address*	*County*
Birdsboro Borough	202 E. Main St. Birdsboro, PA 19508	Berks

Plan Description: Approval of a revision to the official plan of Birdsboro Borough, Berks County. The project is known as the Birdsboro Power LLC Development. The plan provides for a new natural gas power plant to generate peak wastewater flows of 450,000 gallons per day and be served by the Birdsboro Borough's sewers and wastewater treatment plant. Prior to accepting wastewater from this project, the NPDES permit renewal application will have to be amended to include this proposed indirect discharger to the municipal sewer system. The Department's review of the plan revision has not identified any significant impacts resulting from this proposal. The proposed development is located along Armorcast Road, east of the junction with North Furnace Street. The DEP Code Number for this planning module is A3-06802-032-3 and the APS Id is 919874.

Southwest Regional Office, Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone 412-442-4000.

Plan Location: Commercial Mining Wastewater Treatment Plant at Archer Rd & Penn Hill Rd. intersection, Prosperity, PA 15329.

Borough or Township	*Borough or Township Address*	*County*
Morris Township	473 Sparta Road Prosperity, PA 15329	Washington

Plan Description: The approved plan provides for the installation of a Wastewater Treatment Plant to be located at the intersection of Archer Rd & Penn Hill Rd., Morris Township, Washington County. The facility is intended to treat 24,000 gallons per day of sanitary waste

from a proposed office and bathhouse. The proposed discharge is to an unnamed tributary of Tenmile Creek designated under Chapter 93 as a Trout Stock Fisheries. This approval was granted in part based on the Department's Water Quality Antidegradation Implementation Guidance policy. The approved sewage facility plan, evaluated all non-discharge alternatives and determined no environmentally sound and cost effective non-discharge alternative is available under subsection (b)(1)(i)(A).

The Department's review of the sewage facility plan 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 Consol Pennsylvania Coal Company, LLC.

SEWAGE FACILITIES ACT PLAN DISAPPROVAL

Plan Disapprovals Under the Pennsylvania Sewage Facilities Act

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

Plan Location:

Borough or Township	*Borough or Township Address*	*County*
East Lampeter Township	2250 Old Philadelphia Pike Lancaster PA 17602	Lancaster

Plan Description: The planning module for the Stephen S. Fisher, DEP Code No. A3-369404-2, APS Id 923726, consisting of construction of a second dwelling on a 10 acre lot is disapproved. The proposed development is located at 100 Hartman Bridge Road in East Lampeter Township. This plan is disapproved because the resolution of adoption did not specifically stipulate the use of composting toilets as a way to mitigate excess nitrate levels. In addition, the composting toilet planning checklist was not completed and signed by the applicant. The plot plan also did not include proper language regarding the use of composting toilets until public sewers are available.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Hoff VC HSCA Site, New Hanover Township, Montgomery County

Public Notice of proposed Consent Order and Agreement

The Department of Environmental Protection (Department), under the authority of the Pennsylvania Hazardous Sites Cleanup Act (HSCA), 35 P.S. § 6020.1113, has entered into a Consent Decree with Ethan Good, the Green Lane Trust, Good Oil Company and Shady Lane Estates, Ltd. (Good Parties). The Consent Decree will resolve the Department's response cost recovery claims related to its remediation of hazardous substances which have impacted the Hoff VC HSCA Site (Site). The Site includes residential and commercial properties located in the area of Hoffmansville Road, and Layfield Road in New Hanover Township, Montgomery County, PA.

During the 1970s and 1980s, Swann Oil Company (Swann Oil) used the property located at 334 Layfield Road in New Hanover Township, Montgomery County for the retail distribution of heating oil (Property). The Property is located in the Site. While operating the Property, Swann Oil used chlorinated solvents to clean its trucks. In 1991, Shady Lane Estates, Ltd., a business owned and managed by Ethan Good, purchased the Property. Good Oil Co., another company owned and operated by Mr. Good, leased the Property from Shady Lane Estates, Ltd. and operated an onsite retail fuel delivery business until sometime in 1998. In 2010, Shady Lane Estates, Ltd. transferred the Property to the Green Lane Trust, which is a bona fide family trust administered by Mr. Good.

In 2012, the Department investigated the Property as well as nearby residential and commercial wells. Samples of the wells on and in the vicinity of the Property had levels of volatile organic compounds (VOCs) in amounts which exceeded the 2 Maximum Contaminant Levels for safe drinking water established by the United States Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act, 42 U.S.C.A. §§ 300f et seq. The Department's samples of surface water, including an unnamed tributary to Swamp Creek, which traverses the Property, also had VOC contamination. The Department has determined that the Property is a source of hazardous substance contamination impacting the Site.

The past and present conditions on the Property and the Site constitute a "release" of hazardous substances as defined in Section 103 of HSCA, 35 P.S. § 6020.103. The prior historic releases during the Swann Oil Co.'s ownership and the potential ongoing release and threatened release of hazardous substances during the Good Parties' respective ownership and operation of the Property, caused the Department to incur "response costs" as this term is defined in Section 103 of HSCA, 35 P.S. § 6020.103.

The Department's response actions included the construction of a public waterline to connect impacted residents to a potable water supply as well as other investigative and remedial measures to abate the release and threatened release of hazardous substances in the Site area. The Department incurred Two Million, Two Hundred Seventy-Five Thousand, and Nineteen Dollars and Nine Cents ($2,275,019.09) in response costs for the installation of the public waterline. The Department will incur additional response costs to remove and remediate hazardous substances which remain on Property.

To resolve the Department's claim for response costs, the Good Parties agreed to the Court's entry of a judgment against them in the amount of Two Million, Two Hundred Seventy-Five Thousand, and Nineteen Dollars and Nine Cents ($2,275,019.09). The Good Parties agreed to secure this debt by granting the Department a first mortgage lien on the Property and they agreed to obtain additional property and general liability insurance coverage for the Property. The Department and the Good Parties memorialized their agreement in the form of a Consent Decree including standard terms and conditions common to all Department Consent Orders and Agreements.

This notice is provided under Section 1113 of HSCA, 35 P.S. § 6020.1113, which states that, "settlement shall become final upon the filing of the Department's response to significant written comments." The Consent Decree, which contains the specific terms of the agreement is available for public review and comment. The agreement can be examined from 8 a.m. to 4 p.m. at the Department's Southeast Regional Office, located at 2 East Main Street in Norristown, PA 19401, by contacting either Colin Wade (484) 250-5722 or Gina M. Thomas, Esquire at (484) 250-5930. Mr. Wade and Ms. Thomas may also be

contacted electronically at cowade@pa.gov and githomas@pa.gov, respectively. A public comment period on the Consent Order and Agreement will extend for 60 days from today's date. Persons may submit written comments regarding the agreement within 60 days from today's date, by submitting them to Mr. Wade at the above address.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995 PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.907).

Provisions of Sections 301—308 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P.S. §§ 6026.301—6026.308) require the Department to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, will also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the environmental cleanup program manager in the Department regional office under which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Reading Housing Authority/Oakbrook Boiler House, 500 McClellan Street, Reading, PA 19611, Reading City, **Berks County**. Element Environmental Solutions, Inc., 61 Willow Street, Adamstown, PA 19501, on behalf of Reading Housing Authority, 400 Hancock Boulevard, Reading, PA 19611, submitted a Remedial Investigation/Final Report concerning remediation of site soils and groundwater contaminated with # 6 fuel oil. The combined report is intended to document remediation of the site to meet the Residential Statewide Health and Site Specific Standards.

Harley-Davidson Motor Company, Inc., 1425 Eden Road, York, PA 17402, Springettsbury Township, **York County**. Groundwater Sciences Corporation, 2601 Market Place, Suite 310, Harrisburg, PA 17110 on behalf of Harley-Davidson Motor Company Operations, Inc., 1425 Eden Road, York, PA 17402, submitted a Remedial Investigation/Risk Assessment Report concerning remediation of site groundwater contaminated with VOCs and chlorinated solvents. The report is intended to document remediation of the site to meet the Site Specific Standard.

Max-Mile Car Care Center, 145 Guy Street, Hallam, PA 17406, Hallam Borough, **York County**. Reliance Environmental, Inc., 235 North Duke Street, Lancaster, PA 17602, on behalf of Jump Start Garage, 2739 Black Bear Road, Needmore, PA 17238, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil from a LUST. The report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

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

A Duie Pyle I-180 E MM 6.4 Diesel Fuel Cleanup, Delaware Township, **Northumberland County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857, on behalf of A Duie Pyle, 650 Westtown Road, West Chester, PA 19381, has submitted a Final Report concerning remediation of site soils contaminated with diesel fuel. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Former C Cor Property, College Township, **Centre County**. ARRIS International Plc, Royal Palm 1, Suite 610, 1000 South Pine Island Drive, Plantation, FL 33324, on behalf of Decibel Partners, LP, 60 Decibel Road, State College, PA 166801, has submitted a Combined Remedial Action/Risk Assessment/Final Report concerning remediation of site groundwater contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Site Specific Standard.

Former Westfield Tannery, Westfield Borough, **Tioga County**. SSM Group, Inc., 1047 N. Park Road, Reading, PA 19610, on behalf of Tioga County Development Corp, 114 Main Street, Wellsboro, PA 16901, has submitted a Final Report concerning remediation of site soil contaminated with Lead. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Gustafson 6H Well Pad, 606 Granville Road, Snyder Township, **Jefferson County**. EnviroTrac, Ltd., 176 Thorn Hill Road, Warrendale, PA 15086, on behalf of EXCO Resources (PA), LLC, 260 Executive Drive, Suite 100, Cranberry Township, PA 16066, submitted a Remedial Investigation/Final Report concerning the remediation of site soil contaminated with aluminum, barium, boron, iron, lithium, manganese, selenium, zinc, vanadium, ammonia as N, chloride, and strontium. The report is intended to document remediation of the site to meet a combination of the Site-Specific and Statewide Health 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.

Section 250.8 of 25 Pa. Code and administration of the Land Recycling and Environmental Remediation Standards Act (act) require the Department to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the environmental cleanup program manager in the Department regional office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

South Oakview Road & Lincoln Highway East, 2090 Lincoln Highway East, Lancaster, PA 17602, East Lampeter Township, **Lancaster County**. Liberty Environmental, Inc., 480 New Holland Avenue, Suite 8203, Lancaster, PA 17602, on behalf of Franchise Realty Interstate Corp., DBA as McDonald's Restaurant, 2090 Lincoln Highway East, Lancaster, PA 17602, and Elk Environmental Services, 1420 Clarion Street, Reading, PA 19601, submitted a Final Report concerning remediation of site soils contaminated with diesel fuel. The Final Report demonstrated attainment of the Residential Statewide Health Standard and was approved on September 22, 2016.

Stuckey Ford, 609 Broad Street, Hollidaysburg, PA, Blair Township, **Blair County**. P. Joseph Lehman, Inc., PO Box 419, Hollidaysburg, PA 16648, on behalf of Stuckey Ford, PO Box 489, Hollidaysburg, PA 16648, submitted a Remedial Investigation Report concerning site soils and groundwater contaminated with used motor and leaded gasoline from unregulated underground storage tanks. The Report was disapproved by the Department on September 23, 2016.

Worley & Obetz, Inc./Janet Trish Property, 5829 Waltersdorff Road, Spring Grove, PA 17362, North Codorus Township, **York County**. Letterle & Associates, Inc., 2022 Axemann Road, Suite 201, Bellefonte, PA 16823, on behalf of Worley & Obetz, Inc., 85 White Oak Road, Manheim, PA 17545-0429, and Janet Trish, 5829 Waltersdorff Road, Spring Grove, PA 17362, submitted a Final Report concerning remediation of site soil contaminated with # 2 fuel oil. The Final Report demonstrated attainment of the Residential Statewide Health Standard, and was approved by the Department on September 23, 2016.

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Gustafson 6H Well Pad, 606 Granville Road, Snyder Township, **Jefferson County**. EnviroTrac, Ltd., 176 Thorn Hill Road, Warrendale, PA 15086, on behalf of EXCO Resources (PA), LLC, 260 Executive Drive, Suite 100, Cranberry Township, PA 16066, submitted a Remedial Investigation/Final Report concerning the remediation of site soil contaminated with aluminum, barium, boron, iron, lithium, manganese, selenium, zinc, vanadium, ammonia as N, chloride, and strontium. The Report was disapproved by the Department on September 19, 2016.

Portion of 1525 Pittsburgh Avenue, 1525 Pittsburgh Avenue, City of Erie, **Erie County**. Partner Engineering & Science, Inc., 100 Deerfield Lane, Suite 200, Malvern, PA 19355, on behalf of AMERCO Real Estate Company, 2727 North Central Avenue, Phoenix, AZ 85004, submitted a Final Report concerning the remediation of site groundwater contaminated with vinyl chloride. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September 22, 2016.

Damascus Tube, 795 Reynolds Industrial Park Road, Pymatuning Township, **Mercer County**. KU Resources, Inc., 22 South Linden Street, Duquesne, PA 15110, on behalf of Greenville-Reynolds Development Corporation, 301 Arlington Drive, Greenville, PA 16125, submitted a Remedial Investigation Report/Risk Assessment Report/Cleanup Plan concerning the remediation of site soil contaminated with arsenic, lead, manganese, nickel, PCE, TCE and site groundwater contaminated with 1,1,-dichloroethane, 1,1-DCE, cis-1,2-DCE, PCE, 1,1,1-trichloroethane, 1,1,2-trichloroethane, TCE, and vinyl chloride. The Report/Plan was approved by the Department on September 23 2016.

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

Norfolk Southern Railway Company—New Brighton Former Derailment Site, 1st Avenue and adjacent to 4th Street and 2nd Avenue (railroad right-of-way and community park adjacent to Beaver River), Borough of New Brighton, **Beaver County**. AECOM Technical Services, Inc., 681 Anderson Drive, Foster Plaza, Suite 400, Pittsburgh, PA 15220 on behalf of Norfolk Southern Railway Company, 1200 Peachtree St., NE—Box 13, Atlanta, GA 30309 submitted a Final Report concerning the remediation of site soils and groundwater contaminated with methanol, benzene, toluene, ethylbenzene, and xylenes from train derailment. The Final report demonstrated attainment of a residential Statewide Health standard for groundwater and a nonresidential Statewide Health standard for soil between the rail tracks and was approved by the Department on September 19, 2016.

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, PO Box 69170, Harrisburg, PA 17106-9170.

New Applications Received

Munoz Trucking Corp., 40-48 Porete Avenue, North Arlington, NJ 07031. License No. PA-AH 0850. Effective Sep 26, 2016.

Renewal Applications Received

CYNTOX, LLC, 64 Beaver Street, New York, NY 10004. License No. PA-HC 0260. Effective Sep 26, 2016.

Transport Rollex Ltee, 910 Boulevard Lionel-Boulet, Varennes, QC J3X 1P7. License No. PA-AH 0544. Effective Sep 28, 2016.

Regulated Medical and Chemotherapeutic Waste Transporter Reissued

CYNTOX, LLC, 64 Beaver Street, New York, NY 10004. License No. PA-HC 0260. Effective Sep 27, 2016.

MUNICIPAL WASTE GENERAL PERMITS

Permit(s) Renewed Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and the Beneficial Use of Municipal Waste.

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

General Permit Renewal Number WMGM036A. WeCare Organics, LLC, 9293 Bonta Bridge Rd., Jordan, NY 13080. General Permit Number WMGR036A authorizes the blending of sewage sludge generated by municipal sewage collection and treatment systems or treatment works and lime material for use as a soil conditioner or soil amendment by land application on mine reclamation sites at the Blackwood Site, Route 125, Tremont, **Schuylkill County**. The general permit was renewed by Central Office on August 31, 2016.

Persons interested in reviewing the general permit may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

General Permit Renewal Number WMGM036B. WeCare Organics, LLC, 9293 Bonta Bridge Rd., Jordan, NY 13080. General Permit Number WMGR036B authorizes the blending of sewage sludge generated by municipal sewage collection and treatment systems or treatment works and lime material for use as a soil conditioner or soil amendment by land application on mine reclamation sites at the Deemer Estates Site, SR 3009, Bell Township, **Clearfield County**. The general permit was renewed by Central Office on August 31, 2016.

Persons interested in reviewing the general permit may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

General Permit Renewal Number WMGM036C. WeCare Organics, LLC, 9293 Bonta Bridge Rd., Jordan, NY 13080. General Permit Number WMGR036C authorizes the blending of sewage sludge generated by municipal sewage collection and treatment systems or treatment works and lime material for use as a soil conditioner or soil amendment by land application on mine reclamation sites at the Hartman Mine # 66 Site, Burnside Township, **Center County**. The general permit was renewed by Central Office on August 31, 2016.

Persons interested in reviewing the general permit may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

General Permit Renewal Number WMGM036D. WeCare Organics, LLC, 9293 Bonta Bridge Rd., Jordan, NY 13080. General Permit Number WMGR036D authorizes the blending of sewage sludge generated by municipal sewage collection and treatment systems or treatment works and lime material for use as a soil conditioner or soil amendment by land application on mine reclamation sites at the Woolridge Site, State Game Lands 100, Karthaus Township, **Clearfield County**. The general permit was renewed by Central Office on August 31, 2016.

Persons interested in reviewing the general permit may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

General Permit Renewal Number WMGM036E. WeCare Organics, LLC, 9293 Bonta Bridge Rd., Jordan, NY 13080. General Permit Number WMGR036E authorizes the blending of sewage sludge generated by municipal sewage collection and treatment systems or treatment works and lime material for use as a soil conditioner or soil amendment by land application on mine reclamation sites at the Pine Glen Site, Shortdog Lane, Moshannon, **Centre County**. The general permit was renewed by Central Office on August 31, 2016.

Persons interested in reviewing the general permit may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

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

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

Permit ID No. 301071. MAX Environmental Technologies, Inc., 1815 Washington Road, Pittsburgh, PA 15241-1498. MAX Environmental Technologies, Inc., Yukon Facility, 233 MAX Lane, Yukon, PA 15698. A major modification authorizing the vertical expansion of the residual waste landfill located in South Huntingdon Township, **Westmoreland County**, was issued by the Southwest Regional Office on September 21, 2016.

Permits renewed under the Solid Waste Management Act the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 100345 Delaware County Solid Waste Authority, 583 Longview Road, Boyertown, PA 19512-7955 The permit for Rolling Hills Landfill, which expires on January 6, 2017, was renewed until January 6, 2025. The permit renewal was issued on September 21, 2016 for Solid Waste Permit No. 100345 for the operation of the Rolling Hills Landfill in accordance with Article V of the Solid Waste Management Act, 35 P.S. Sections 6018.101, et seq.

Compliance with the terms and conditions set forth in the permit is mandatory. You have the right to file an appeal as to these terms and conditions.

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.

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

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2531.

GP3-40-017A: Kriger Construction, Incorporated (859 Enterprise Street, Dickson City, PA 18519) on September 20, 2016, for the construction and operation of a portable stone crushing plant at the facility located in Hanover Township, **Luzerne County**.

GP5-58-039: Williams Field Services Co., LLC (310 State Route 29, Tunkhannock, PA 18657) on September 20, 2016 a general operating permit renewed for the operation of natural gas compressor station at the facility located in Forest Lake Township, **Susquehanna County**.

GP9-40-017A: Kriger Construction, Incorporated (859 Enterprise Street, Dickson City, PA 18519) on September 20, 2016, for the installation and operation of I. C. Engines at the facility located in Hanover Township, **Luzerne County**.

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

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

GP14-59-222: Wellsboro Small Animal Hospital, P.C. (12043 Route 287, Middlebury Center, PA 16935) on September 23, 2016 to authorize the operation of a model IE43-PP Jr. Matthews International animal crematorium pursuant to the General Plan Approval and General Operating Permit for Human or Animal Crematories (BAQ-GPA/GP-14) at their facility in Middlebury Township, **Tioga County**.

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

Contact: Dave Balog, New Source Review Chief—Telephone: 814-332-6940.

GP14-33-207: Peaceful Pets Cremation Svcs. (314 North Findley St., Punxsutawney, PA 15767) on September 14, 2016, for the authority to operate one (1) Industrial Engineering animal crematory, model Power-Pak IE43 rated 100 lbs/hr (BAQ-GPA/GP-14) located at their facility in Young Township, **Jefferson County**.

GP5-43-331D: Lauren Mtn. Midstream/Lake Wilhelm Comp Station (Park Place Corporate Center 2, 2000 Commerce Dr., Pittsburgh, PA 15275) on September 21, 2016, for the authority to operate a 945 bhp Caterpillar G3512LE engine and oxidation catalyst, a 4.0 mmscfd dehydrator, a .375 mmbtu/hr reboiler, storage tanks, and facility fugitive emission. (BAQ-GPA/GP-5) located at their facility in Deer Creek Township, **Mercer County**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

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

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

09-0096I: Abington Reldan Metals, LLC (550 Old Bordentown Road, Fairless Hills, PA 19030) on September 22, 2016, for replacing Baghouse (Source ID C04B) associated with Thermal Destructor 4 at their facility located in Falls Township, **Bucks County**.

46-0040C: National Label Co., Inc. (2025 Joshua Road, Lafayette Hill, PA 19444) On September 27, 2016 for installation of an eight (8) color label gravure press and regenerative thermal oxidizer in Whitemarsh Township, **Montgomery County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

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

Contact: James A. Beach, New Source Review Chief—Telephone: 484-250-5920.

46-0166C: Harleysville Materials, LLC, (427 Whitehorse Pike, Berlin, NJ 080209-0619) On September 5, 2016 to extend the temporary operation of a diesel-fired 1,017 BHP electric generator engine located in Lower Salford Township, **Montgomery County**.

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

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

06-03117G: Custom Processing Services, Inc. (2 Birchmont Drive, Reading, PA 17606-3266) on September 19, 2016, for the construction and temporary operation of a micronizing mill controlled by a fabric collector and final filter, at the custom milling facility located in Exeter Township, **Berks County**. The plan approval was extended.

06-03117H: Custom Processing Services, Inc. (2 Birchmont Drive, Reading, PA 17606-3266) on September 19, 2016, for the construction and temporary operation of a fabric filter for nuisance dust control, as well as of a micronizing mill controlled by a fabric collector, at the custom milling facility located in Exeter Township, **Berks County**. The plan approval was extended.

36-05015F: Dart Container Corporation of PA. (60 East Main Street, Leola, PA 17201) on September 22, 2016, for the construction of three (3) water-based flexographic printing presses at the Leola Plant in Upper Leacock Township, **Lancaster County**. The plan approval was extended.

07-05003D: Norfolk Southern Railway Co. (200 North 4th Avenue, Altoona, PA 16601) on September 22, 2016, for the construction of one (1) natural gas-fired 1.56 megawatt (MW) reciprocating internal combustion engine and the installation of a catalytic oxidation unit to control CO, VOC and HAP emissions generated from the operation of the engine. The plan approval also authorizes the construction of approximately 181 small natural gas-fired space heaters to provide additional heating in areas where it is not economical to provide heat through the operation of the new engine. As part of the project, three (3) existing 80 MMBtus per hour coal fired boilers will be decommissioned. The Juniata Locomotive Shops are located in the City of Altoona, **Blair County**. The plan approval was extended.

06-05069Y: East Penn Manufacturing Co., Inc. (P.O. Box 147, Lyon Station, PA 19536) on September 22, 2016, for modifying the A-4 Facility production lines at the lead-acid battery manufacturing facility in Richmond Township, **Berks County**. The plan approval was extended.

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

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

19-00028A: White Pines Corp. (515 State Route 442, Millville, PA 17846) on September 13, 2016, to extend the authorization an additional 180 days until March 12, 2017, in order to continue the compliance evaluation and permit operation pending issuance of an operating permit for the facility in Pine Township, **Columbia County**. The extension authorization allows continued leachate pretreatment operation at the facility. The plan approval has been extended.

17-00063D: Pennsylvania Grain Processing, LLC (250 Technology Drive, Clearfield, PA 16830) on September 2, 2016, to extend the authorization an additional 180 days until March 4, 2017, in order to continue the compliance evaluation and permit operation pending issuance of an operating permit for the sources. The extension authorization allows continued operation of the grain storage silos located in Clearfield Borough, **Clearfield County**. The plan approval has been extended.

18-00030A: First Quality Tissue, LLC (904 Woods Avenue, Lock Haven, PA 17745) on September 23, 2016 to extend the authorization to operate paper making machines at their facility located in Castanea Township, **Clinton County** on a temporary basis to March 22, 2017. The plan approval has been extended.

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

Contact: Alan Binder, P.E., New Source Review Chief—Telephone: 412-442-4168.

PA-63-00549A: Arden Landfill, Inc. (200 Rangos Lane, Washington, PA 15301) on September 23, 2016, to extend the temporary operation period for the landfill gas renewable energy facility at the Arden Landfill located in Chartiers Township, **Washington County**. The new expiration date is February 28, 2017.

30-00218C: Bayles Energy, LLC (North Shore Place I, 358 North Shore Dr., Suite 201, Pittsburgh, PA 15212) On September 20, 2016, for the construction of a 22 MW natural-gas fired electric generating station located in Greene Township, **Greene County**, consisting of three (3) 9,708 bhp (7.2 MWs) 4 stroke lean burn Rolls Royce Bergen B-35:40V16AG2 natural gas-fired engine/generator sets, each equipped with both catalytic oxidation and selective catalytic reduction (SCR).

PA-63-00983A: Columbia Gas Transmission, LLC (1700 MacCorkle Avenue, SE Charleston, WV 25314-1518) on September 23, 2016, to grant plan approval extension for approximately 180 days to obtain State Only Operating Permit for the Redd Farm Compressor Station located in Amwell Township, **Washington County**.

26-00597A: Bullskin Stone & Lime, LLC (117 Marcia Street, Latrobe, PA 15650) On September 23, 2016 for the continued operation of a stationary nonmetallic mineral processing plant at the existing Bullskin No. 1 Mine located in Bullskin Township, **Fayette County**.

PA-03-00253A: Rosebud Mining Company (301 Market Street, Kittanning, PA 16201-9642) on September 21, 2016, to transfer the ownership from Western Allegheny Energy, LLC to Rosebud Mining Company and extend the period of temporary operation for the 800,000 tons per year Parkwood Mine Coal Preparation Plant in Plumcreek Township, **Armstrong County**. The new expiration date is February 28, 2017.

26-00588: Laurel Mountain Midstream Operating, LLC (1550 Coraopolis Heights Road, Suite 140, Moon Township, PA 15108) Extension effective September 28, 2016, to extend the period of temporary operation of the

three Caterpillar G3516B natural gas-fired compressor engines rated at 1,380 bhp each and controlled by oxidation catalysts, and a Solar Mars 100 gas-fired turbine rated at 15,525 bhp authorized under plan approval PA-26-00588 at Shamrock Compressor Station located in German Township, **Fayette County**.

26-00588A: Laurel Mountain Midstream Operating, LLC (1550 Coraopolis Heights Road, Suite 140, Moon Township, PA 15108) Extension effective September 28, 2016, to extend the period of temporary operation of the new dehydrator and emergency generator authorized under plan approval PA-26-00588A at Shamrock Compressor Station located in German Township, **Fayette County**. One Solar Titan 130 turbine rated at 19,553 HP and originally authorized to be installed at this facility under PA-26-00588A is no longer authorized as the 18-month period to commence construction specified under 25 Pa. Code § 127.13(b) has passed.

32-00429A: Reparex Fabricated Systems, Inc. (PO Box 705, Latrobe, PA 15650) On September 23, 2016, to allow continued operation of the reinforced plastic composite manufacturing facility located in Green Township, **Indiana County**.

65-00979A: Laurel Mountain Midstream Operating, LLC (Park Place Corporate Center 2, 2000 Commerce Drive, Pittsburgh, PA 15275) Extension effective September 28, 2016, to extend the period of temporary operation of the Caterpillar G3612LE lean burn natural gas-fired compressor engine rated at 3,550 bhp and controlled by an oxidation catalyst authorized under plan approval PA-65-00979A at the Herminie Compressor Station located in South Huntingdon Township, **Westmoreland County**.

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

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

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

40-00020: PA DPW/ White Haven Center (827 Oley Valley Road, White Haven, PA 18661-3043) The Department issued a renewal Title V Operating Permit on September 21, 2016, for a Residential Care facility in Foster Township, **Luzerne County**.

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

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

36-05140: Valley Proteins, Inc. (693 Wide Hollow Road, East Earl, PA 17519-9645) on September 16, 2016, for the rendering plant located in East Earl Township, **Lancaster County**. The Title V permit was renewed.

06-05040: East Penn Manufacturing Co. (PO Box 147, Lyon Station, PA 19536) on September 22, 2016, for the secondary lead smelting facility located in Richmond Township, **Berks County**. The Title V permit was renewed.

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

Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4150/5226.

03-00180: Dominion Transmission, Inc. (500 Dominion Blvd., Glen Allen, VA, 23060). In accordance with 25 Pa. Code §§ 127.424, 127.425 and 127.521, the Department of Environmental Protection (DEP) is providing notice that it has issued a renewal Title V Operating Permit (TV-03-00180) to Dominion Transmission, Inc. for the operation of the South Bend Compressor Station located in South Bend Township, **Armstrong County**.

The main sources of emissions at the facility include six 2,000 bhp stationary reciprocating internal combustion compressor engines, one 813 bhp stationary reciprocating internal combustion engine driving an emergency electric generator, a 8.0 mmbtu/hr salt bath heater, a 5.5 mmbtu/hr boiler, a 10,000 gallon produced fluids storage tank, a parts washer, and fugitive VOC emissions from facility valves, pumps, flanges, etc. All of the combustion emission sources are natural gas-fired.

The emission restrictions and testing, monitoring, recordkeeping, reporting and work practice conditions of the TVOP have been derived from the applicable requirements of 40 CFR Parts 52, 60, 61, 63, and 70, and Pa. Code Title 25, Article III, Chapters 121—145. The renewal Title V Operating Permit was issued final on September 23, 2016.

TVOP-32-00129: (500 Dominion Blvd.—2N, Glen Allen, VA 23060) on September 20, 2016 a Title V Operating Permit renewal to Dominion Transmission, Inc. for Rochester Mills Compressor Station located in North Mahoning Township, **Indiana County**.

03-00125: The Peoples Natural Gas Company (1201 Pitt St., Pittsburgh, PA 15221-2029). In accordance with 25 Pa. Code §§ 127.424, 127.425 and 127.521, the Department of Environmental Protection (DEP) is providing notice that it has issued a renewal Title V Operating Permit (TV-03-00125) to The Peoples Natural Gas Company, LLC (Peoples) for the operation of the Valley Compressor Station, located in Cowanshannock Township, **Armstrong County**.

The main sources of emissions at the facility include a 660 bhp Ingersoll-Rand Model # KVG-62 compressor engine, a 1,320 bhp Ingersoll-Rand model # KVS-48 compressor engine, a 600 bhp Cooper Bessemer model # GMV-6 compressor engine, a 400 bhp Cooper Bessemer model # GMV-4 compressor engine, and a CAT model # G3406TA emergency generator engine. The station also operates miscellaneous process equipment, a TEG Dehydration Boiler, a TED Dehydration Still, miscellaneous combustion equipment, two (2) 55-gallon parts washers, and a 2,000 gallon ethylene glycol 50/50 storage tank. The dehydration boiler is controlled by a thermal oxidizer.

The emission restrictions and testing, monitoring, recordkeeping, reporting and work practice conditions of the TVOP have been derived from the applicable requirements of 40 CFR Parts 52, 60, 61, 63, and 70, and Pa. Code Title 25, Article III, Chapters 121 through 145. The renewal Title V Operating Permit was issued final on September 23, 2016.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

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

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

15-00138: Aqua Pennsylvania, Inc. (762 West Lancaster Avenue, Bryn Mawr, PA 19010) On September 22,

2016, for operation of seven (7) units of diesel-fired emergency generators and one (1) unit of natural gas-fired boiler at their Pickering Water Treatment Plants located in Schuylkill Township, **Chester County**.

46-00108: Highway Materials, Inc. (1750 Walton Road, Blue Bell, PA 19422) On September 27, 2016 for renewal of the State Only Operating Permit for a stone crushing plant located in Marlborough Township, **Montgomery County**.

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

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

01-05019: Acme Composites (262 Church Street, Hanover, PA 17331-8991) on September 22, 2016, for the fiberglass automotive aftermarket accessories manufacturing facility located in Conewago Township, **Adams County**. The State-only permit was renewed.

06-03005: Akzo Nobel Coatings, Inc. (150 Columbia Street, Reading, PA 19601-1748) on September 19, 2016, for the powder coating manufacturing facility located in Reading City, **Berks County**. The State-only permit was renewed.

06-03072: Animal Rescue League of Berks County, Inc. (58 Kennel Road, Birdsboro, PA 19508-8302) on September 19, 2016, for the animal crematory at the facility located in Cumru Township, **Berks County**. The State-only permit was renewed.

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

Contact: Matt Williams, Facilities Permitting Chief at Telephone: 814-332-6940.

24-00083: Mersen USA, St. Marys—PA Corporation (215 Stackpole Street, Saint Marys, PA 15857-1401) on September 26, 2016 for renewal of the Title V Operating Permit. The facility is located in the City of Saint Marys, **Elk County**. The facility manufactures Carbon and Graphite Products. The facility's emitting sources include: Billet Unloading Station; Pulverizers; Mills; Crushers Furnaces; Blenders; Sizing Operations; Mixers; Ovens; Graphitizers; Dryers; Machining Operations; Press Jolters; Miscellaneous Sources controlled by baghouses which exhaust outside; Parts Cleaners; Vacuum Hoses; and, Weigh Stations. The facility is a major facility due to potential PM_{10} (Particulate matter particle size is less than or equal to ten micron) emissions, Carbon Monoxide (CO) emissions, and Sulfur Dioxide (SO_x) emissions more than 100 tons per year. Therefore, the facility is subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The facility is also subject to the Compliance Assurance Monitoring Rule (CAM) found in 40 CFR Part 64. Appropriate permit conditions to address the applicable CAM requirements were included in the previous permit. The facility provided the following potential emissions in the permit application: Particulate Matter (PM_{-25})—10.98 Tons per year (TPY); PM less than ten microns (PM_{-10})—18.40 TPY; Oxides of Sulfur (SO_x)—83.11 TPY; Carbon Monoxide (CO)—205. 91 TPY; Oxides of Nitrogen (NO_x)—11.65 TPY; Volatile Organic Compound (VOC)—7.59 TPY; and Hazardous Air Pollutants (HAP) Less than one ton per year.

Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104-4543, Contact: Edward Wiener, Chief, Source Registration at 215 685 9476.

The City of Philadelphia, Air Management Services (AMS) issued a Minor State Only Operating Permit for the following facility:

N16-000: Equinix LLC (401 N. Broad Street, Philadelphia, PA 19108), for the operation of a data center in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one (1) 800 kWs diesel fuel fired emergency generator (EG1), and two (2) 1,500 kWs diesel fuel fired emergency generators (EGA & EGB).

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

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

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

06-05112: WBLF Acquisitions Co., LLC (455 Poplar Neck Road, Birdsboro, PA 19508-8300) on September 19, 2016, for the Western Berks Landfill located in Cumru Township, **Berks County**. The Title V permit was administratively amended in order to incorporate the requirements of Plan Approval No. 06-05112C.

36-05017: Conestoga Wood Specialties Corp. (245 Reading Road, East Earl, PA 17519-0158) on September 19, 2016, for the wood cabinet manufacturing facility located in East Earl Township, **Lancaster County**. The Title V permit was administratively amended in order to incorporate the requirements of Plan Approval No. 36-05079E.

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

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

59-00003: LEDVANCE LLC (One Jackson Street, Wellsboro, PA 16901), issued an amendment of the Title V operating permit on September 16, 2016 for their facility located in Wellsboro Borough, **Tioga County**. This operating permit amendment is for the change of ownership of the facility from Osram Sylvania Inc.

De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.

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

Contact: Dave Balog, New Source Review Chief or Matt Williams, Facilities Permitting Chief—Telephone: 814-332-6340.

24-00165: Elkhorn—Whitetail Gas Processing (5422 Highland Road, Lamont, PA 16365) for its facility located in Jones Township, **Elk County**. The De minimis emission increase is for construction of a 4SRB Caterpillar G398TA engine with control. In addition, this source is exempt from plan approval as it complies with 25 Pa. Code § 127.14(a)(8). The Department hereby approves the De minimis emission increase. The following table is a list of the De minimis emission increases as required by 25 Pa. Code § 127.449(i). This list includes the De minimis emission increases since the facility Operating Permit issuance on December 22, 2011.

Date	*Source*	*PM_{10} (tons)*	*SO_x (tons)*	*NO_x (tons)*	*VOC (tons)*	*CO (tons)*
9-15-16	Caterpillar G398TA engine (Source 107) with control (C107)	0.466	0.03	0.74	0.60	2.41
Total Reported Increases		0.466	0.03	0.74	0.60	2.41
Allowable		0.6 ton/source 3 tons/facility	1.6 ton/source 8 tons/facility	1 ton/source 5 tons/facility	1 ton/source 5 tons/facility	4 tons/source 20 tons/facility

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; the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.20a). The final action on each application also constitutes action on the NPDES permit application and, if noted, the request for a Section 401 Water Quality Certification. Mining activity permits issued in response to applications will also address the application permitting requirements of the following statutes: the Air Quality Pollution Act (35 P.S. §§ 4001—4014); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1002).

Coal Permits Issued

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

56981301 and NPDES No. PA0215121. Quecreek Mining, Inc., (1576 Stoystown Road, PO Box 260, Friedens, PA 15541). To revise the permit for the Quecreek No. 1 Mine in Lincoln and Somerset Townships, **Somerset County** and related NPDES permit to permit second mining in open areas. No additional discharge. The application was considered administratively complete on March 18, 2016. Application received November 25, 2015. Permit issued September 15, 2016.

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

33-13-17 and NPDES Permit No. PA0259667. P. and N. Coal Company, Inc. (P.O. Box 332, Punxsutawney, PA 15767) Proposal to enter into a Government Financed Construction Contract on a 20.3 acre site in Rose & Clover Townships, **Jefferson County**. The proposal includes the incidental removal of coal and the reclamation of 9.9 acres of poorly revegetated and inadequately reclaimed highwall. Receiving streams: Rattlesnake Run. Application received: February 11, 2016. Contract Issued: September 20, 2016.

16060102. Terra Works, Inc. (49 South Sheridan Road, Clarion, PA 16214) Transfer of an existing bituminous surface mine from Glenn O. Hawbaker, Inc. in Beaver & Licking Townships, **Clarion County**, affecting 29.0 acres. Receiving streams: Unnamed tributaries to the Clarion River. Application received: January 6, 2016. Permit Issued: September 22, 2016.

16000101. Terra Works, Inc. (49 South Sheridan Road, Clarion, PA 16214) Transfer of an existing bituminous surface mine from Glenn O. Hawbaker, Inc. in Licking & Richland Townships, **Clarion County**, affecting 83.6 acres. Receiving streams: Two unnamed tributaries to the Clarion River. Application received: January 6, 2016. Permit Issued: September 22, 2016.

Noncoal Permits Issued

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

Permit No. 56150301, Keystone Lime Company, Inc., P.O. Box 278, Springs, PA 15562 commencement, operation and restoration of a large noncoal (industrial minerals) operation located in Addison and Elk Lick Townships, **Somerset County**, affecting 149.1 acres. Receiving streams: Christner Run, Zehner Run and Big Shade Run classified for the following use: high quality cold water fishes and cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: December 18, 2015. Permit issued: September 20, 2016.

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

42082805. HRI, Inc. (1750 West College Avenue, State College, PA 16801). Final bond release for a small industrial minerals surface mine in Lafayette Township, **McKean County**. Restoration of 5.0 acres completed. Receiving streams: Camp Run. Application Received: August 18, 2016. Final bond release approved: September 21, 2016.

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

Permit No. 58162801. Rockstar Quarries, LLC (75 Johnson Hill Lane, Wyalusing, PA 18853), commencement, operation and restoration of a quarry operation in Apolacon Township, **Susquehanna County** affecting 9.0 acres, receiving stream: no discharge to Choconut Creek. Application received: May 20, 2016. Permit issued: September 19, 2016.

Permit No. PAM116035. Rockstar Quarries, LLC (75 Johnson Hill Lane, Wyalusing, PA 18853), General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 58162801 in Apolacon Township, **Susquehanna County**, receiving stream: no discharge to Choconut Creek. Application received: May 20, 2016. Permit issued: September 19, 2016.

Permit No. 66150802. CK Stone, LLC (69 Vago Road, Tunkhannock, PA 18657), commencement, operation and restoration of a quarry operation in Nicholson Township, **Wyoming County** affecting 10.0 acres, receiving stream: no discharge to unnamed tributary to the South Branch

Tunkhannock Creek Watershed. Application received: September 30, 2015. Permit issued: September 20, 2016.

Permit No. PAM115034. CK Stone, LLC (69 Vago Road, Tunkhannock, PA 18657), General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 66150802 in Nicholson Township, **Wyoming County**, receiving stream: no discharge to unnamed tributary to the South Branch Tunkhannock Creek Watershed. Application received: September 30, 2015. Permit issued: September 20, 2016.

Permit No. 58162508. Center Street Rentals, LLC (58 Bridge Street, Tunkhannock, PA 18657), commencement, operation and restoration of a quarry operation in Lenox Township, **Susquehanna County** affecting 10.0 acres, receiving stream: no discharge to East Branch Tunkhannock Creek. Application received: June 23, 2016. Permit issued: September 20, 2016.

Permit No. PAM116026. Center Street Rentals, LLC (58 Bridge Street, Tunkhannock, PA 18657), NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 58162508 in Lenox Township, **Susquehanna County**, receiving stream: no discharge to East Branch Tunkhannock Creek. Application received: June 23, 2016. Permit issued: September 20, 2016.

Permit No. PAM111007R. Geary Enterprises Concrete, (326 Post Hill Road, Falls, PA 18615), renewal of General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 66880302 in Falls Township, **Wyoming County**, receiving stream: Buttermilk Creek. Application received: August 24, 2015. Renewal issued: September 22, 2016.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Issued

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

33164001. P. and N. Coal Company, Inc. (P.O. Box 332, Punxsutawney, PA 15767) Blasting activity permit for blasting on the Baxter GFCC in Rose & Clover Townships, **Jefferson County**. This blasting activity permit will expire on April 1, 2017. Permit Issued: September 20, 2016.

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

08164105. M & J Explosives, LLC (P.O. Box 1248, Carlisle, PA 17013). Blasting for a well pad located in Franklin Township, **Bradford County** with an expiration date of September 13, 2017. Permit issued: September 19, 2016.

57164101. M & J Explosives, LLC (P.O. Box 1248, Carlisle, PA 17013). Blasting for well pad located in Cherry Township, **Sullivan County** with an expiration date of September 13, 2017. Permit issued: September 19, 2016.

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

Permit No. 15164108. Rock Work, Inc., (1257 DeKalb Pike, Blue Bell, PA 19422), construction blasting for Hillendale Project in East Brandywine Township, **Chester County** with an expiration date of December 31, 2017. Permit issued: September 23, 2016.

Permit No. 23164103. Brubacher Excavating, Inc., (P.O. Box 528, Bowmansville, PA 17507), construction blasting for Promenade at Granite Run in Middletown Township, **Delaware County** with an expiration date of September 12, 2017. Permit issued: September 23, 2016.

Permit No. 58164111. Meshoppen Blasting, Inc., (P.O. Box 127, Meshoppen, PA 18630), construction blasting for SWN 92 Bolles Pad in Franklin Township, **Susquehanna County** with an expiration date of September 21, 2017. Permit issued: September 23, 2016.

Permit No. 64164106. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Garage on Boulder Point Road in Paupack Township, **Wayne County** with an expiration date of September 18, 2017. Permit issued: September 23, 2016.

Permit No. 64164107. John H. Brainard, (3978 SR 2073, Kingsley, PA 18826), construction blasting for Bill Arrigan house foundation in Preston Township, **Wayne County** with an expiration date of December 31, 2017. Permit issued: September 23, 2016.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

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

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law and Notice of Final Action for Certification under section 401 of the FWPCA.

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E41-676. Charles T. Nork, 1607 Quenshukney Road, Linden, PA 17744. Recreational structure in Piatt Township, **Lycoming County**, ACOE Baltimore District (Linden, PA Quadrangle Lat: 41° 11′ 45″; Long: -77° 10′ 32″).

Charles T. Nork has applied for a Small Projects—Joint Permit Application to construct, operate and maintain recreational structure in the floodway of the West Branch Susquehanna River in Piatt Township, Lycoming County. The project is proposing to construct an elevated recreational structure measuring 36′ by 36′ in the floodway of the West Branch of the Susquehanna River.

The project proposes to have the following impacts

ID	*Steam Name*	*Chapter 93 Classification*	*Temporary Impact area Length (LF)*	*Permanent Impact area Length (Sq Ft)*		*Latitude/ Longitude*
Structure	W.Br. Susq River	WWF, MF	0	1,296	41° 11′ 45″	77° 10′ 32″

The total estimated permanent floodway disturbance for the project is approximately 1,296 SF of permanent impacts. There are no proposed waterway impacts.

The proposed construction will not permanently impact cultural or archaeological resources, national/state/local parks, forests recreational areas, landmarks wildlife refuge, or historical sites. West Branch of the Susquehanna River is classified with a designated use of Warm Water Fishery (WWF).

Southwest Region: Waterways and Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E11-354, Borough of Ebensburg, 300 West High Street, Ebensburg, PA 15931, Ebensburg Borough, **Cambria County**, Pittsburgh ACOE District.

Has been given consent to:

1. Construct and maintain a 4.5 foot high dike with a 16 linear foot base width within a UNT to Howell's Run through which a 16 linear foot long 18 inch diameter smooth lined corrugated plastic pipe will be installed to convey this UNT's normal stream flows;

2. Construct and maintain a 7 linear foot concrete weir along the left descending bank of the aforementioned UNT, perpendicular to the aforementioned dike, to direct the 100 year design flows into a 4 foot wide by-pass channel that will be constructed to direct these flows back into the aforementioned UNT at a new location below and downstream of the intersection of Beech Street and Julian Street;

3. Construct and maintain a 50 foot long concrete energy dissipater within the floodway and along the aforementioned UNT to Howell's Run, in association with the aforementioned bypass channel;

4. Construct and maintain a 53 foot long R-5 rip-rap apron at an existing culvert outlet located underneath Julian Street within the aforementioned UNT to Howell's Run;

5. Restabilize 46 linear feet of stream, opposite the aforementioned concrete energy dissipater along the UNT to Howell's Run;

For the purpose of stabilizing the outlet of the existing culvert and to redirect flood flows to protect residential properties downstream. As mitigation for the project, 100 LF of stream channel will be planted with Red Osier Dogwood live stakes. The project is located near the intersection of Beech Street and Julian Street (Quadrangle: Ebensburg Latitude: 40° 29′ 32″; Longitude: -78° 43′ 42″) located in the Borough of Ebensburg, Cambria County. The project cumulatively impacts 112 linear feet of the UNT to Howell's Run (CWF).

Northwest Region: Waterways and Wetlands Program Manager, 230 Chestnut Street, Meadville, PA 16335.

E37-198, Plenary Walsh Keystone Partners, 2000 Cliff Mine Rd., Park West Two, 3rd Floor, Pittsburgh, PA 15275 in Mahoning Township, **Lawrence County**, ACOE Pittsburgh District.

To construct and maintain a 6′ diameter, 84′ long reinforced concrete pipe replacement for the existing S.R. 0224, Section P30 (West State Street) wetland crossing and associated impact to 0.026 acre of wetland (Edinburg, PA Quadrangle N: 41°, 00′, 29.1″; W: -80°, 28′, 6.84″)

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering and Wetlands, Rachel Carson State Office Building, Floor 3, 400 Market Street, P.O. Box 8460, Harrisburg, PA 17105-8460.

D26-001EA. Mr. Steve Leiendecker, Pennsylvania Game Commission, 4820 Route 711, Bolivar, PA 15923, Dunbar Township, **Fayette County**, USACOE Pittsburgh District.

Project proposes to remove the breached remains of Number 1 Dam on State Game Lands # 51 for the purpose of eliminating a threat to public safety and restoring the stream channel to a free-flowing condition.

The project is located across Dunbar Creek (HQ-CWF) (South Connellsville, PA Quadrangle, Latitude: 39.9534; Longitude: -79.5785).

D26-002EA. Mr. Steve Leiendecker, Pennsylvania Game Commission, 4820 Route 711, Bolivar, PA 15923, Dunbar Township, **Fayette County**, USACOE Pittsburgh District.

Project proposes to remove the breached remains of Number 2 Dam on State Game Lands # 51 for the purpose of eliminating a threat to public safety and restoring the stream channel to a free-flowing condition. The project is located across Dunbar Creek (HQ-CWF) (South Connellsville, PA Quadrangle, Latitude: 39.9517; Longitude: -79.5786).

D26-044EA. Mr. Steve Leiendecker, Pennsylvania Game Commission, 4820 Route 711, Bolivar, PA 15923, Dunbar Township, **Fayette County**, USACOE Pittsburgh District.

Project proposes to remove the breached remains of Number 3 Dam on State Game Lands # 51 for the purpose of eliminating a threat to public safety and restoring the stream channel to a free-flowing condition. The project is located across Dunbar Creek (HQ-CWF) (South Connellsville, PA Quadrangle, Latitude: 39.9489; Longitude: -79.5785).

D28-102EA. Raymond Zomok, Chief, Division of Design, Department of Conservation and Natural Resources, 8th Floor RCSOB, P.O. Box 8451, Harrisburg, PA 17105-8769, Lurgan Township, **Franklin County**, USACOE Baltimore District.

Project proposes to remove the Gunter Valley Dam for the purpose of eliminating a threat to public safety and restoring approximately 3,500 feet of stream channel to a free-flowing condition. In addition, two small downstream dams will be removed. The proposed restoration project includes construction of habitat enhancement structures in the stream channel through the former reservoir. The project is located across Trout Run (EV, MF) (Roxbury, PA Quadrangle, Latitude: 40.1338; Longitude: -77.6758).

EA67-016CO. Eugene E. Costello, 130 Pleasant View Drive, Etters, PA 17319, Newberry Township, **York County**, USACOE Baltimore District.

Project proposes to construct a non-jurisdictional dam impacting approximately 50 linear feet of stream channel. The dam is located across a tributary to Fishing Creek (TSF) (Steelton, PA Quadrangle; Latitude: 40.1505, Longitude: -76.8007).

Water Quality Certification under Section 401 of the Federal Clean Water Act for the Orion Project

Natural Gas Pipeline Project and Related Mitigation; FERC Docket No. CP16-4-000; PADEP File No. WQ02-002

On September 20, 2016, the DEP issued Section 401 Water Quality Certification to Tennessee Gas Pipe Line Company, LLC for the Orion Project. The Pennsylvania Department of Environmental Protection (PADEP) certifies that the construction, operation and maintenance of the Project complies with the applicable provisions of sections 301—303, 306 and 307 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311—1313, 1316 and 1317). The PADEP further certifies that the construction, operation and maintenance of the projects complies with Commonwealth water quality standards and that the construction, operation and maintenance of the projects does not violate applicable Commonwealth water quality standards provided that the construction, operation and maintenance of the projects complies with the conditions for this certification, including the criteria and conditions of the following permits:

1. *Discharge Permit*—Tennessee Gas Pipe Line Company, LLC shall obtain and comply with a PADEP National Pollutant Discharge Elimination System (NPDES) permit for the discharge of water from the hydrostatic testing of the pipeline pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1—691.1001) and all applicable implementing regulations (25 Pa. Code Chapter 92a).

2. *Erosion and Sediment Control Permit*—Tennessee Gas Pipe Line Company, LLC shall obtain and comply with PADEP's Chapter 102 Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17) and all applicable implementing regulations (25 Pa. Code Chapter 102).

3. *Water Obstruction and Encroachment Permits*—Tennessee Gas Pipe Line Company, LLC shall obtain and comply with a PADEP Chapter 105 Water Obstruction and Encroachment Permit for the construction, operation and maintenance of all water obstructions and encroachments associated with the project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.) and all applicable implementing regulations (25 Pa. Code Chapter 105).

4. *Water Quality Monitoring*—PADEP retains the right to specify additional studies or monitoring to ensure that the receiving water quality is not adversely impacted by any operational and construction process that may be employed by Tennessee Gas Pipe Line Company, LLC.

5. *Operation*—For each Project under this certification, Tennessee Gas Pipe Line Company, LLC shall at all times properly operate and maintain all Project facilities and systems of treatment and control (and related appurtenances) which are installed to achieve compliance with the terms and conditions of this Certification and all required permits. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Tennessee Gas Pipe Line Company, LLC.

6. *Inspection*—The Projects, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of PADEP to determine compliance with this Certification, including all required permits required, and Pennsylvania's Water Quality Standards. A copy of this Certification shall be available for inspection by the PADEP during such inspections of the Projects.

7. *Transfer of Projects*—If Tennessee Gas Pipe Line Company, LLC intends to transfer any legal or equitable interest in the Projects which is affected by this Certification, Tennessee Gas Pipe Line Company, LLC shall serve a copy of this Certification upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the PADEP Regional Office of such intent. Notice to PADEP shall include a transfer agreement signed by the existing and new owner containing a specific date for transfer of Certification responsibility, coverage, and liability between them.

8. *Correspondence*—All correspondence with and submittals to PADEP concerning this Certification shall be

addressed to the Department of Environmental Protection, Northeast Regional Office, Waterways and Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701-1915.

9. *Reservation of Rights*—PADEP may suspend or revoke this Certification if it determines that Tennessee Gas Pipe Line Company, LLC has not complied with the terms and conditions of this Certification. PADEP may require additional measures to achieve compliance with applicable law, subject to Tennessee Gas Pipe Line Company, LLC's applicable procedural and substantive rights.

10. *Other Laws*—Nothing in this Certification shall be construed to preclude the institution of any legal action or relieve Tennessee Gas Pipe Line Company, LLC from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal or state law or regulation.

11. *Severability*—The provisions of this Certification are severable and should any provision of this Certification be declared invalid or unenforceable, the remainder of the Certification shall not be affected thereby.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the board within 30 days. You do not need a lawyer to file an appeal with the board.

Important legal rights are at stake, however, so you should show this document to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the secretary to the board (717-787-3483) for more information.

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control permits have been issued.

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

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Southwest Region: Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

ESCGP-2 No.	*Applicant Name & Address*	*County*	*Municipality*	*Receiving Water/Use*
ESG0012515002(1)	Sunoco Pipeline, LP 525 Fritztown Road Sinking Spring, PA 19608	Washington County	Independence Township, Hopewell Township, Mount Pleasant Township, and Chartiers Township	Camp Run (HQ-WWF), Brashears Run (HQ-WWF), UNT to Indian Camp Run (HQ-WWF), Indian Camp Run (HQ-WWF), Sugarcamp Run (HQ-WWF), UNT to Sugarcamp Run (HQ-WWF), UNT to Hanen Run (HQ-WWF), Hanen Run (HQ-WWF), Opossum Hollow (HQ-WWF), UNT to Dunkle Run (HQ-WWF), UNT to Cross Creek (HQ-WWF), Cross Creek (HQ-WWF), UNT to Brush Run (HQ-WWF), UNT to Georges Run (WWF), Georges Run (WWF), UNT to Chartiers Run (WWF), Chartiers Run (WWF)

Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

ESCGP-2 # ESX10-081-0011(02)
Applicant Name XTO Energy Inc
Contact Person Stacey Vehovic
Address 395 Airport Rd
City, State, Zip Indiana, PA 15701
County Lycoming
Township(s) Penn
Receiving Stream(s)and Classification(s) Jakes Run (CWF)
Secondary—Little Muncy Ck (CWF)

ESCGP-2 # ESX29-081-16-0015
Applicant Name Seneca Resources Corp
Contact Person Douglas Kepler
Address 5800 Corporate Dr, Suite 300
City, State, Zip Pittsburgh, PA 15237
County Lycoming
Township(s) Eldred
Receiving Stream(s) and Classification(s) UNT to Mill Ck (WWF)
Secondary—Mill Ck (WWF)

ESCGP-2 # ESG29-105-15-0007(01)
Applicant Name JKLM Energy LLC
Contact Person Scott Blauvelt
Address 2200 Georgetown Dr, Suite 500
City, State, Zip Sewickley, PA 15143
County Potter
Township(s) Ulysses
Receiving Stream(s) and Classification(s) UNTs to Cushing Hollow (HQ-CWF)
Secondary—Cushing Hollow (HQ-CWF)

ESCGP-2 # ESG29-117-16-0032
Applicant Name Talisman Energy USA Inc
Contact Person Scott Puder
Address 337 Daniel Zenker Dr
City, State, Zip Horseheads, NY 14845
County Tioga
Township(s) Ward
Receiving Stream(s) and Classification(s) Fall Brook (CWF)

ESCGP-2 # ESG29-081-14-0030(01)
Applicant Name NFG Midstream Trout Run LLC
Contact Person Duane Wassum
Address 6363 Main St
City, State, Zip Williamsville, NY 14221
County Lycoming
Township(s) Lewis & Gamble
Receiving Stream(s) and Classification(s) UNT to Lycoming Ck (HQ-CWF); UNT to Mill Ck (EV)
Secondary—Lycoming Ck (EV); Mill Ck (EV)

ESCGP-2 # ESG29-081-16-0019
Applicant Name EXCO Resources (PA) LLC
Contact Person Brian Rushe
Address 260 Executive Dr, Suite 100
City, State, Zip Cranberry Twp, PA 16066
County Lycoming
Township(s) Mifflin
Receiving Stream(s) and Classification(s) Tarkiln Run (EV); UNT to Mud Run (EV)
Secondary—First Fork Larrys Ck (EV); Mud Run (EV)

SPECIAL NOTICES

Proposed State Water Quality Certification Required by Section 401 of the Clean Water Act for the Leach Xpress Project

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Rita Coleman, 412-442-4149.

WQ05-012, Columbia Gas Transmission, LLC (Applicant), 5151 San Felipe Street, # 2400; Houston, TX 77056. Leach Xpress Project (Project), in Richhill Township, **Greene County**, ACOE Pittsburgh District. Within Pennsylvania, the proposed project starts approximately 0.4 mile south of Majorsville, WV (Majorsville, PA Quadrangle N: 39°, 57′, 36″; W: -80°, 31′, 09″) and ends at 0.75 mile north west of the intersection of Fry Hill Road and Coal Rock Road (Majorsville, PA Quadrangle N: 39°, 56′, 22″; W: -80°, 31′, 09″).

On June 8, 2015, Applicant filed an application with the Federal Energy Regulatory Commission (FERC) under Section 7 of the Natural Gas Act (15 U.S.C.A. § 717f) seeking a certificate of public convenience and necessity to construct and operate its Project (FERC Docket No. CP15-514-000). The FERC Environmental Assessment for the Project, which was issued on September 1, 2016, may be viewed on FERC's web site at www.ferc.gov (search eLibrary; Docket Search; CP15-514-000).

On March 25, 2016, Applicant requested a State water quality certification from the Pennsylvania Department of Environmental Protection (PADEP), as required by Section 401 of the Clean Water Act (33 U.S.C.A. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in Pennsylvania through compliance with State water quality standards and associated State law requirements, which are consistent with the requirements of the Clean Water Act.

The Project consists of four new natural gas pipelines, totaling 160.67 miles, through West Virginia, Pennsylvania and Ohio. Within Pennsylvania, the Project, as proposed, includes approximately 1.74 mile of 36-inch pipeline, for the purpose of transporting natural gas from Majorsville, PA to the Pennsylvania-West Virginia state line. The Project, as proposed, will require approximately 29.83 acres of earth disturbance, and impacts to 868 linear feet of Unnamed Tributaries of Enlow Fork (WWF), Unnamed Tributaries of Dunkard Creek (WWF), and Dunkard Creek (WWF), 1.98 acre of floodway, 0.09 acre of temporary PEM wetland impacts.

PADEP anticipates issuing a State water quality certification to Applicant for the Project that will require compliance with the following State water quality permitting programs, criteria and conditions established pursuant to State law to ensure the Project does not violate applicable State water quality standards set forth in 25 Pa. Code Chapter 93:

1. *Discharge Permit*—Applicant shall obtain and comply with a PADEP National Pollutant Discharge Elimination System (NPDES) permit for the discharge of water from the hydrostatic testing of the pipeline pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1—691.1001), and all applicable implementing regulations (25 Pa. Code Chapter 92a).

2. *Erosion and Sediment Control Permit*—Applicant shall obtain and comply with PADEP's Chapter 102 Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration,

Production, Processing or Treatment issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17), and all applicable implementing regulations (25 Pa. Code Chapter 102).

3. *Water Obstruction and Encroachment Permits*—Applicant shall obtain and comply with a PADEP Chapter 105 Water Obstruction and Encroachment Permits for the construction, operation and maintenance of all water obstructions and encroachments associated with the project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.), and all applicable implementing regulations (25 Pa. Code Chapter 105).

4. *Water Quality Monitoring*—PADEP retains the right to specify additional studies or monitoring to ensure that the receiving water quality is not adversely impacted by any operational and construction process that may be employed by Applicant.

5. *Operation*—Applicant shall at all times properly operate and maintain all Project facilities and systems of treatment and control (and related appurtenances) which are installed to achieve compliance with the terms and conditions of this State Water Quality Certification and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

6. *Inspection*—The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of PADEP to determine compliance with this State Water Quality Certification, including all required State water quality permits and State water quality standards. A copy of this certification shall be available for inspection by the PADEP during such inspections of the Project.

7. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project which is affected by this State Water Quality Certification, Applicant shall serve a copy of this certification upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the PADEP Regional Office of such intent. Notice to PADEP shall include a transfer agreement signed by the existing and new owner containing a specific date for transfer of certification responsibility, coverage, and liability between them.

8. *Correspondence*—All correspondence with and submittals to PADEP concerning this State Water Quality Certification shall be addressed to the Department of Environmental Protection, Southwest Regional Office, Rita Coleman, 400 Waterfront Drive, Pittsburgh, PA 15222.

9. *Reservation of Rights*—PADEP may suspend or revoke this State Water Quality Certification if it determines that Applicant has not complied with the terms and conditions of this certification. PADEP may require additional measures to achieve compliance with applicable law, subject to Applicant's applicable procedural and substantive rights.

10. *Other Laws*—Nothing in this State Water Quality Certification shall be construed to preclude the institution of any legal action or relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal or State law or regulation.

11. *Severability*—The provisions of this State Water Quality Certification are severable and should any provision of this certification be declared invalid or unenforceable, the remainder of the certification shall not be affected thereby.

Prior to issuance of the final State water quality certification, PADEP will consider all relevant and timely comments, suggestions or objections submitted to PADEP within 30 days of this notice. Comments should be directed to Rita Graham at the above address or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

Application for an Erosion And Sediment Control General Permit for Earth Disturbance Activities Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities

National Fuel Gas Supply Corporation and Empire Pipeline, Inc., Northern Access 2016 Project

ESG00083160002—National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (Applicant), 1100 State Street, Erie, PA 16501. Northern Access 2016 Project (Project), in Sergeant, Keating, Annin, Eldred, Ceres, and Liberty Townships in **McKean County**, ACOE Pittsburgh District. The proposed Pennsylvania portion of the project starts at the interconnection/tie-in at the existing NFG Midstream Clermont, LLC, facility along SR 146 approximately 1 mile west of Clermont (Crosby, PA Quadrangle N: 41°42′04.84″; W: 78°29′59.98″) in Sergeant Township, McKean County extending generally north crossing through portions of Sergeant, Keating, Annin, Eldred, and Ceres Townships, McKean County, to where it will cross the New York border approximately 2 miles west of where SR 44 crosses the state line (Bullis Mills, PA Quadrangle N: 41°59′57.51″; W: 78°17′56.98″) in Ceres Township, McKean County.

Today's *Pennsylvania Bulletin* includes notices for a request for State Water Quality Certification (WQ42-001) required by Section 401 of the Clean Water Act and a Chapter 105 Joint Permit (E42-367) application under Pennsylvania's Dam Safety and Encroachments Act which are under review by the PADEP.

The Project, as proposed in Pennsylvania, includes approximately 28 mile long, 24-inch pipeline for the purpose of transporting natural gas from Sergeant Township, McKean County, PA to the New York border in Ceres Township, McKean County. Pipeline work also includes three mainline valve sites, cathodic protection, and numerous temporary and permanent access roads to support construction and permanent facility access. Numerous stream and wetland crossings will occur along the project route as described below. The project will utilize one temporary pipe storage yard and one contractor yard along SR 155 south of Port Allegheny Borough in Liberty Township, McKean County. The pipeline route has been co-located to parallel/overlap existing utility Right of Ways (ROW) for a total of 17.75 miles in PA.

The proposed project will require approximately 378 acres of earth disturbance and crossing of 141 streams (including floodways of streams not crossed by the pipeline) and 1 pond, totaling 10,663 linear feet (5,136 linear feet of permanent and 5,527 linear feet of temporary) of impacts to the following surface waters: Bloomster Hollow

(CWF) and tributaries; tributaries to Irons Hollow (CWF); Blacksmith Run (CWF) and tributaries; Cloverlot Hollow (CWF) and tributaries; Kent Hollow (CWF) and tributaries; Newell Creek (CWF) and tributaries; Oswayo Creek (CWF) and tributaries; Marvin Creek (CWF) and tributaries; Champlin Hollow (CWF) and tributaries; Open Brook (CWF); Allegheny River (CWF); Rock Run (CWF) and tributaries; Barden Brook (CWF) and tributaries; Potato Creek (TSF) and tributaries; tributaries to Cole Creek (CWF); McCrae Run (CWF) and tributaries; and Pierce Brook (CWF), 20.854 acres (9.837 acres of temporary and 11.017 acres of permanent) of impact to floodways, and 12.350 acres of (5.277 acres of temporary and 7.073 acres of permanent) wetland impacts.

For more detailed information regarding the McKean County Erosion and Sediment Control General Permit related to this proposed project, which is available in the DEP regional office, please contact Lori Boughton at 814-332-6879 to request a file review.

[Pa.B. Doc. No. 16-1724. Filed for public inspection October 7, 2016, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) web site at www.elibrary.dep.state.pa.us. The "Technical Guidance Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Technical Guidance Draft Documents" heading is the link to the Department's draft technical guidance documents.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Interim Final Technical Guidance Document

DEP ID: 800-0810-001. *Title*: Guidelines for Implementing Area of Review Regulatory Requirement for Unconventional Wells. *Description*: This interim final guidance informs unconventional well operators engaged in hydraulic fracturing activities how to comply with the requirements of The Clean Streams Law (35 P.S. §§ 691.1—691.1001), 58 Pa.C.S. (relating to oil and gas) regarding the 2012 Oil and Gas Act, 25 Pa. Code Chapter 78a (relating to unconventional wells) and other applicable laws. This interim final guidance has been developed to facilitate appropriate risk mitigation for unconventional well operators and includes a risk-based classification scheme for offset well locations and commensurate levels of monitoring; sections addressing communication incident management, reporting and resolution; and operational alternatives and technical considerations for different anticipated scenarios. This interim final guidance also provides an outline of the Department's well adoption permitting process.

Written Comments: Interested persons may submit written comments on this interim final guidance by December 7, 2016. Comments submitted by facsimile will not be accepted. Comments, including comments submitted by e-mail, must include the originator's name and address. Commentators are encouraged to submit comments using the Department's online eComment at www.ahs.dep.pa.gov/eComment. Written comments should be submitted to ecomment@pa.gov or the Technical Guidance Coordinator, Department of Environmental Protection, Policy Office, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063.

Contact: Seth Pelepko, (717) 772-2199, mipelepko@pa.gov.

Effective Date: October 8, 2016

Interim Final Technical Guidance Document

DEP ID: 800-0810-002. *Title*: Policy for the Replacement or Restoration of Private Water Supplies Impacted by Unconventional Operations. *Description*: This interim final guidance provides guidance to well operators for ensuring compliance with legal requirements related to restoration and replacement of private water supplies adversely impacted by unconventional operations. This interim final guidance is intended to memorialize existing Department policy relating to the restoration or replacement of private water supplies adversely impacted by unconventional operations with a water supply of adequate quantity and/or quality for the purposes served by impacted water supply sources under section 3218 of the 2012 Oil and Gas Act (58 Pa.C.S. § 3218 (relating to protection of water supplies)). The interim final guidance addresses the application of the presumption of liability under that section, provision of temporary water supplies as well as permanent restoration or replacement of water supplies.

Written Comments: Interested persons may submit written comments on this interim final guidance by December 7, 2016. Comments submitted by facsimile will not be accepted. Comments, including comments submitted by e-mail must include the originator's name and address. Commentators are encouraged to submit comments using the Department's online eComment at www.ahs.dep.pa.gov/eComment. Written comments may be submitted to ecomment@pa.gov or the Technical Guidance Coordinator, Department of Environmental Protection, Policy Office, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063.

Contact: Kurt Klapkowski, (717) 783-9893, kklapkowsk@pa.gov.

Effective Date: October 8, 2016

(*Editor's Note*: See 46 Pa.B. 6431 (October 8, 2016) for a final-form rulemaking relating to this notice.)

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1725. Filed for public inspection October 7, 2016, 9:00 a.m.]

Bid Opportunity

OSM 40(2198)201.1, Abandoned Mine Reclamation Project, East Avoca, Avoca Borough, Luzerne County. The principal items of work and approximate quantities include drilling drainage borehole 210 linear feet and furnishing and installing steel casing pipe 225 linear feet.

This bid issues on October 28, 2016, and bids will be opened on December 1, 2016, at 2 p.m. Bid documents, including drawings in PDF format and Auto-Cad Map 3D format, may be downloaded for free beginning on the issue date from the Department of Environmental Protection's web site at www.dep.pa.gov/ConstructionContracts. Bid documents and drawings can also be obtained upon payment of $22, plus $13 for postage, which includes sales tax, by calling (717) 787-7820. Auto-Cad Map 3D format drawings can also be purchased on a compact disc (CD) for an additional $5 per CD. Money will not be refunded. This project is financed by the Federal government under the authority given it by the Surface Mining Control and Reclamation Act of 1977 (act) (30 U.S.C.A. §§ 1201—1328) and is subject to the act and to the Federal grant for this project. Contact the Construction Contracts Section at (717) 787-7820 for more information on this bid. Note this is a Small Construction Business Program bid opportunity.

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1726. Filed for public inspection October 7, 2016, 9:00 a.m.]

Radiation Protection Advisory Committee Rescheduled Meeting

The October 13, 2016, meeting of the Radiation Protection Advisory Committee (Committee) has been rescheduled to Thursday, November 17, 2016, at 9 a.m. in the 14th Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning the next scheduled meeting of the Committee can be directed to Joseph Melnic at jmelnic@pa.gov or (717) 783-9730. The agenda and meeting materials for the November 17, 2016, meeting will be available through the Public Participation Center on the Department of Environmental Protection's (Department) web site at http://www.dep.state.pa.us (select "Public Participation").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Department at (717) 783-9730 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1727. Filed for public inspection October 7, 2016, 9:00 a.m.]

Small Water Systems Technical Assistance Center Board Meeting Cancellation

The October 11, 2016, meeting of the Small Water Systems Technical Assistance Center Board has been cancelled. The next regular meeting is scheduled for Monday, November 14, 2016, beginning at 9 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105-8467.

Questions concerning the cancellation of the October 11, 2016, meeting or the November 14, 2016, meeting should be directed to Dawn Hissner, Bureau of Safe Drinking Water at dhissner@pa.gov or (717) 772-2189. The agenda and meeting materials will be available through the Public Participation tab on the Department of Environmental Protection's (Department) web site at https://www.dep.pa.gov (select "Public Participation," then "Advisory Committees," then "Water Advisory Committees," then "Small Water Systems Technical Assistance Center").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Dawn Hissner at (717) 772-2189, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1728. Filed for public inspection October 7, 2016, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES

Lease Office Space to the Commonwealth
Luzerne County

Proposers are invited to submit proposals to the Department of General Services to provide the Department of Environmental Protection with 18,603 usable square feet of office space in Luzerne County. Downtown locations will be considered. For more information on SFP No. 94837, which is due on November 28, 2016, visit www.dgs.pa.gov or contact Erica Dreher, Bureau of Real Estate, (717) 317-5315, edreher@pa.gov.

CURTIS M. TOPPER,
Secretary

[Pa.B. Doc. No. 16-1729. Filed for public inspection October 7, 2016, 9:00 a.m.]

DEPARTMENT OF HEALTH

Ambulatory Surgical Facilities; Requests for Exceptions

The following ambulatory surgical facility (ASF) has filed requests for exceptions under 28 Pa. Code § 51.33 (relating to requests for exceptions) with the Department of Health (Department), which has authority to license ASFs under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b). The following requests for exception relate to regulations governing ASF licensure in 28 Pa. Code Chapters 51 and 551—571 (relating to general information; and ambulatory surgical facilities).

Facility Name	*Regulation*
Main Line Endoscopy Center, East	28 Pa. Code § 553.31 (relating to administrative responsibilities) 28 Pa. Code § 559.2 (relating to director of nursing)

The request listed previously is on file with the Department of Health (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@pa.gov. Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously. Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1730. Filed for public inspection October 7, 2016, 9:00 a.m.]

Health Policy Board Meeting Cancellation

The Health Policy Board meeting scheduled for Wednesday, October 12, 2016, in Room 812, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 has been cancelled.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape, Braille) should contact Erik Huet, Executive Policy Specialist, Office of Policy at (717) 547-3311 or for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1731. Filed for public inspection October 7, 2016, 9:00 a.m.]

Hospitals; Requests for Exceptions

The following hospital listed has filed a request for exception under 28 Pa. Code § 51.33 (relating to requests for exceptions) with the Department of Health (Department), which has authority to license hospitals under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b). The following request for exception relates to regulations governing hospital licensure in 28 Pa. Code Chapters 51 and 101—158 (relating to general information; and general and special hospitals), with the exception of 28 Pa. Code § 153.1 (relating to minimum standards). Exception requests related to 28 Pa. Code § 153.1 are listed separately in this notice.

Facility Name	*Regulation*
Tyrone Hospital	28 Pa. Code § 138.18(b) (relating to EPS studies)

The following hospitals are requesting exceptions under 28 Pa. Code § 153.1. Requests for exceptions under this section relate to minimum standards that hospitals must comply with under the *Guidelines for Design and Construction of Hospitals and Outpatient Facilities (Guidelines)*. The following list includes the citation to the section under the *Guidelines* that the hospital is seeking an exception, as well as the publication year of the applicable *Guidelines*.

Facility Name	*Guidelines Section*	*Relating to*	*Publication Year*
CHOP and the Children's Seashore House of Children's Hospital of Philadelphia	2.2-3.1.4.2(3)	Airborne infection isolation (AII) room	2014
Main Line Hospital Bryn Mawr Rehabilitation	2.6-2.2.2.2	Space requirements	2014
Washington Hospital	2.2-3.5.2.1(1)	Space requirements (AII procedure rooms)	2014
	2.2-3.5.3.1(2)	General (location—pre-procedure and recovery patient areas)	2014

All requests previously listed are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov. Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously. Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

KAREN M. MURPHY, PhD, RN,
Secretary of Health

[Pa.B. Doc. No. 16-1732. Filed for public inspection October 7, 2016, 9:00 a.m.]

Long-Term Care Nursing Facilities; Requests for Exceptions

The following long-term care nursing facilities are seeking exceptions to 28 Pa. Code § 211.9(g) (relating to pharmacy services):

Bonham Nursing Center
477 Bonnieville Road
Stillwater, PA 17878
FAC ID # 022802

Golden LivingCenter—Stroud
221 East Brown Street
East Stroudsburg, PA 18301
FAC ID # 194002

Little Flower Manor of the Diocese of Scranton
200 South Meade Street
Wilkes-Barre, PA 18702
FAC ID # 384202

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the 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 address or phone number listed previously, or for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1733. Filed for public inspection October 7, 2016, 9:00 a.m.]

Special Pharmaceutical Benefits Program Advisory Council Public Meeting

The Statewide Special Pharmaceutical Benefits Program (SPBP) Advisory Council, established by the Department of Health (Department) to aid in the carrying out of its Federal grant responsibilities under section 2616 of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C.A. § 300ff-26), will hold a public meeting on Thursday, October 27, 2016, from 10 a.m. to 3 p.m. at the Clarion Hotel and Conference Center Harrisburg West, 148 Sheraton Drive, New Cumberland, PA 17070.

The SPBP Advisory Council will provide program guidance and recommendations to the SPBP in regard to the following: drug formulary; covered lab services; drug utilization review; clinical programs; eligibility; and program management.

For additional information, contact John Haines, Special Pharmaceutical Benefits Program, Bureau of Communicable Diseases, Department of Health, Room 611, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120, (800) 922-9384.

Persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should also contact John Haines at the previously listed contact information, or for speech or hearing impaired persons contact V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

This meeting is subject to cancellation without prior notice.

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1734. Filed for public inspection October 7, 2016, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Bureau of Maintenance and Operations; Access Route Approval

Under 75 Pa.C.S. § 4908 (relating to operation of certain combinations on interstate and certain other highways), the Department of Transportation approved on September 15, 2016, the following access route for use by the types of truck combinations as indicated:

1. (X) 96″ wide twin trailers (28 1/2″ maximum length of each trailer).

2. (X) 102″ wide 53′ long trailer.

3. (X) 102″ wide 48′ long trailer.

4. (X) 102″ wide twin trailers (28 1/2″ feet maximum length—each).

5. (X) 102″ wide maxi-cube.

Route Identification	*Route Description*	*County*	*Length Miles*
PA 93	From I-80 to the West County Road intersection	Luzerne	1.5
West County Road # 40	From PA 93 to 355 West County Road	Luzerne	1.8

The County of Luzerne approved the access route within their respective jurisdiction.

Questions should be directed to George Harpster at (717) 783-6473.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 16-1735. Filed for public inspection October 7, 2016, 9:00 a.m.]

Bureau of Maintenance and Operations; Access Route Approval

Under 75 Pa.C.S. § 4908 (relating to operation of certain combinations on interstate and certain other highways), the Department of Transportation (Department) approved on September 21, 2016, the following access route for use by the types of truck combinations as indicated:

1. (X) 96″ wide twin trailers (28 1/2″ maximum length of each trailer).

2. (X) 102″ wide 53′ long trailer.

3. (X) 102″ wide 48′ long trailer.

4. (X) 102″ wide twin trailers (28 1/2″ feet maximum length—each).

5. (X) 102″ wide maxi-cube.

Route Identification	*Route Description*	*County*	*Length Miles*
SR 3017	From SR 100 (PA 100) to SR 6222 (Hamilton Boulevard)	Lehigh	0.30

The Department approved the access route within its respective jurisdiction.

Questions should be directed to George Harpster at (717) 783-6473.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 16-1736. Filed for public inspection October 7, 2016, 9:00 a.m.]

Bureau of Maintenance and Operations; Access Route Approval

Under 75 Pa.C.S. § 4908 (relating to operation of certain combinations on interstate and certain other highways), the Department of Transportation (Department) approved on September 21, 2016, the following access route for use by the types of truck combinations as indicated:

1. (X) 96″ wide twin trailers (28 1/2″ maximum length of each trailer).
2. (X) 102″ wide 53′ long trailer.
3. (X) 102″ wide 48′ long trailer.
4. (X) 102″ wide twin trailers (28 1/2″ feet maximum length—each).
5. (X) 102″ wide maxi-cube.

Route Identification	*Route Description*	*County*	*Length Miles*
SR 6100	From SR 6222 (Hamilton Boulevard) to SR 222 (US 222)	Lehigh	0.80

The Department approved the access route within their respective jurisdiction.

Questions should be directed to George Harpster at (717) 783-6473.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 16-1737. Filed for public inspection October 7, 2016, 9:00 a.m.]

Contemplated Sale of Land No Longer Needed for Transportation Purposes

The Department of Transportation (Department), under the Sale of Transportation Lands Act (71 P.S. §§ 1381.1—1381.3), intends to sell certain land owned by the Department.

The following property is available for sale by the Department.

City of Johnstown, Cambria County. The parcel contains 15,880 square feet of improved property situated between Strayer Street and Spickler Avenue. The estimated fair market value is $10,000.

Interested public agencies are invited to express their interest in purchasing the site within 30 calendar days from the date of publication of this notice to Thomas A. Prestash, PE, District Executive, Department of Transportation, Engineering District 9-0, 1620 North Juniata Street, Hollidaysburg, PA 16648.

Questions regarding this property may be directed to Joseph Tagliati, Property Manager, 1620 North Juniata Street, Hollidaysburg, PA 16648, (814) 696-7215.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 16-1738. Filed for public inspection October 7, 2016, 9:00 a.m.]

Transportation Advisory Committee Meeting

The Transportation Advisory Committee will hold a meeting on Thursday, October 13, 2016, from 10 a.m. to 12 p.m. in Conference Room 8N1, Commonwealth Keystone Building, Harrisburg, PA. For more information contact Ellen E. Sweeney, (717) 787-2913, ellsweeney@pa.gov.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 16-1739. Filed for public inspection October 7, 2016, 9:00 a.m.]

GAME COMMISSION

Chronic Wasting Disease—Cervid Parts Importation Ban # 10

Executive Order

Whereas, Chronic Wasting Disease (CWD) is an infectious and progressive neurological disease that is found in, and always proves fatal to, members of the family Cervidae (deer, elk or moose, and other susceptible species, collectively called cervids); and

Whereas, The specific cause of CWD is believed to be prions (abnormal infectious protein particles) that are known to be concentrated in the nervous system and lymphoid tissues of infected cervids; and

Whereas, There are no known treatments for CWD infection, no vaccines to protect against CWD infection, and no approved tests that can detect the presence of CWD in live cervids; and

Whereas, CWD has been designated a "dangerous transmissible disease" of animals by order of the Secretary of Agriculture under the provisions of the Domestic Animal Law (3 Pa.C.S. §§ 2301 et seq.) at 3 Pa.C.S. § 2321(d); and

Whereas, CWD is known to be transmissible from infected to uninfected cervids by contact with or ingestion of CWD-infected or contaminated cervid parts or materials; and

Whereas, CWD is of particular concern to the Commonwealth of Pennsylvania because it has the potential to have a detrimental impact on both Pennsylvania's wild and captive cervid populations; and

Whereas, the Pennsylvania Game Commission (PGC) has determined that importation of potentially infectious parts or materials from cervids harvested in CWD-endemic States or Canadian Provinces into the Commonwealth of Pennsylvania poses an unacceptable risk of further exposure of CWD to the state; and

Whereas, The Game and Wildlife Code (Code) (34 Pa.C.S. §§ 101 et seq.) and regulations promulgated

thereunder (58 Pa. Code §§ 131.1 et seq.) collectively provide broad authority to the PGC to regulate activities relating to the protection, preservation, and management of game and wildlife, including cervids; and

Whereas, 58 Pa. Code § 137.34 provides specific emergency authority to the Executive Director of the PGC to ban the importation of certain cervid parts from other states or nations to prevent the introduction or spread of CWD into the Commonwealth of Pennsylvania; and

Whereas, Previous executive orders concerning cervid parts importation restrictions were issued by the Commission on December 19, 2005, May 27, 2009, July 30, 2010, July 20, 2011, October 16, 2012, May 12, 2014, October 27, 2015, November 11, 2015 and July 22, 2016.

Now Therefore, I, R. Matthew Hough, Executive Director of the Pennsylvania Game Commission, pursuant to the authority vested in me by the Code and regulations promulgated thereunder, do hereby order and direct the following:

1. The importation of any high-risk parts or materials from cervids harvested in any CWD-endemic States or Canadian Provinces into the Commonwealth of Pennsylvania is hereby strictly prohibited.

2. For the purposes of this Order, CWD-endemic States or Canadian Provinces shall be defined as any States or Canadian Provinces where CWD has been detected in wild or captive cervid populations. At present, this includes the following specific States and Canadian Provinces: Alberta, Arkansas, Colorado, Illinois, Iowa, Kansas, Maryland (only Allegany and Washington Counties), Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York (only Madison and Oneida Counties), North Dakota, Ohio (only Holmes County), Oklahoma, Saskatchewan, South Dakota, Texas, Utah, Virginia (only Frederick, Shenandoah, Warren, and Clarke Counties), West Virginia (only Hampshire, Hardy and Morgan Counties), Wisconsin, and Wyoming.

3. For the purposes of this Order, the term cervid shall include any member of the family Cervidae (deer), specifically including the following species: black-tailed deer, caribou, elk, fallow deer, moose, mule deer, red deer, sika deer, white-tailed deer, and any hybrids thereof.

4. For the purposes of this Order, high-risk parts or materials shall be defined as any parts or materials, derived from cervids, which are known to accumulate abnormal prions. This includes any of the following:

a. Head (including brain, tonsils, eyes, and lymph nodes);

b. Spinal Cord/Backbone (vertebra);

c. Spleen;

d. Skull plate with attached antlers, if visible brain or spinal cord material is present;

e. Cape, if visible brain or spinal cord material is present;

f. Upper canine teeth, if root structure or other soft material is present;

g. Any object or article containing visible brain or spinal cord material; and

h. Brain-tanned hide.

5. This Order shall not be construed to limit the importation of the following cervid parts or materials into the Commonwealth of Pennsylvania:

a. Meat, without the backbone;

b. Skull plate with attached antlers, if no visible brain or spinal cord material is present;

c. Tanned hide or rawhide with no visible brain or spinal cord material present;

d. Cape, if no visible brain or spinal cord material is present;

e. Upper canine teeth, if no root structure or other soft material is present; and

f. Taxidermy mounts, if no visible brain or spinal cord material is present.

6. The requirements and restrictions of this Order are to be construed as separate from and in addition to any previous or future Executive Orders concerning response to CWD within the Commonwealth or the Establishment of Disease Management Area 2 Permits.

7. This Order shall not be construed in any manner to limit the PGC's authority to establish additional importation, exportation, possession, transportation or testing requirements on cervid parts or materials.

8. Nothing in this Order shall be construed to extend to the regulation of captive cervids held under 3 Pa.C.S. Chapter 27 (relating to the Domestic Animal Law) or the requirements of a lawful quarantine order issued by PDA.

9. The previous executive order concerning cervid parts importation restrictions issued on July 22, 2016 is hereby rescinded in its entirety and replaced by this Order.

10. This Order is effective immediately and shall remain in effect until rescinded or modified by subsequent order.

Given under my hand and seal of the Pennsylvania Game Commission on this 23rd day of September, 2016.

R. MATTHEW HOUGH,
Executive Director

[Pa.B. Doc. No. 16-1740. Filed for public inspection October 7, 2016, 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.

Reg. No.	Agency / Title	Close of the Public Comment Period	IRRC Comments Issued
4-97	Department of Community and Economic Development Local Earned Income Tax 46 Pa.B. 4179 (July 30, 2016)	8/29/16	9/28/16

Department of Community and Economic Development Regulation # 4-97 (IRRC # 3156)

Local Earned Income Tax

September 28, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the July 30, 2016 *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 Community and Economic Development (Department) to respond to all comments received from us or any other source.

1. Section 151.1. Definitions.—Clarity.

Out-of-state employer

This term is defined as "an employer that does not have a place of business in this Commonwealth." Does the regulation need to also address an out-of-state employer that does have a place of business in Pennsylvania? Do the definition and regulation adequately address Pennsylvania residents who work for an out-of-state employer at a place of business outside of Pennsylvania? We ask the Department to review this definition and explain how the regulation adequately covers all possible employment circumstances.

2. Section 151.5. Publication of a Policy and Procedure Manual.—Clarity.

This section discusses material that will be placed on the Department's website. We suggest including the website address so that the reader can easily locate the documents.

3. Section 151.11. Registration of employers.—Clarity.

Subsection (a)

This subsection references and reflects the statute at 53 P.S. § 6924.512(1). We note the statute includes a time limit of ". . .within 15 days after becoming an employer. . . ." The regulation should include the 15 day time limit.

Subsection (b)

The second sentence of this subsection states "On or after January 1, 2012. . . ." We question whether the date of January 1, 2012 is still needed today. The Department should review this subsection and consider deleting this date.

4. Section 151.21. Mandatory education for tax officers.—Clarity.

Both Subsections (a) and (b) require the person to "achieve a passing grade" on the respective certification exams. The regulation is not clear on what constitutes a passing grade. We recommend including in the regulation the specific grade required to pass the certification exams in both subsections.

5. Section 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.—Clarity.

Minimum number of persons

This section requires a tax officer to designate at least one person for every five counties to satisfy the mandatory education requirements. Can the tax officer designate itself so that the minimum would be one or is the tax officer required to designate a second person?

Example

The beginning of this section requires the tax officer to designate at least one person for every five counties to satisfy certain education requirements whereas the example requires at least 4 employees. Could there be a circumstance where the tax officer itself and three employees could satisfy this requirement in the example? We recommend reviewing the example to be sure it accurately reflects the stated requirement.

6. Section 151.23. Duties of a tax collection committee in selecting a tax officer.—Consistency with statute; Need; Economic impact; Clarity.

Subparagraph (1)(i)

The statute at 53 P.S. § 6924.508(f)(1) states, "The Department shall, *by regulation, establish the qualifications* and requirements *a tax officer must meet* prior to being appointed and must meet for continuing appointment." (Emphasis added.) We recommend deleting Subparagraph (1)(i) of the regulation because it relies on the Department's Policy and Procedure Manual to set qualifications for tax officers. To be consistent with the statute, the Department should establish the qualifications and requirements a tax officer must meet in the regulation.

Subparagraph (1)(ii)

There are two concerns with this subparagraph. First, this subparagraph requires a written statement prepared by an "accountant professional." The Pennsylvania Institute of Certified Public Accountants (PICPA) commented that the phrase "accountant professional" should be replaced by the phrase "Certified Public Accountant or Public Accountant." We agree.

Second, PICPA believes that the phrase "exists as a solvent entity" is inconsistent with the statute and the American Institute of Certified Public Accountants Code of Professional Conduct. We recommend that the Department review this phrase in consultation with PICPA to establish an acceptable standard.

Subparagraph (1)(iii)

This subparagraph requires a Statement on Standards for Attestation Engagements (SSAE) 16 audit "or other fiscal control audit." It is not clear what would meet the alternative of the "other fiscal control audit." We recommend deleting this phrase or, if needed, replacing it with a clear alternative standard.

Reappointment of a tax officer

The Pennsylvania State Association of Boroughs (PSAB) commented that Paragraphs (2), requiring at least five references, and (3), requiring an onsite visit, are not needed if the same tax officer is being reappointed by the tax collection committee. PSAB recommends bifurcating the appointing and reappointing requirements. The Department should consider amending the requirements in the circumstance that the tax committee reappoints the same tax officer.

7. Section 151.41. Rules for mediation.—Statutory authority, Legislative intent; Reasonableness.

$500 filing fee for mediation

Under Subparagraph (1)(iv), the Department proposes to charge a $500 filing fee for mediation. The $500 filing fee is also mentioned in Subparagraph (3)(i). The PSAB "adamantly opposes" the fee and questions the statutory authority for the fee. The Pennsylvania State Association of Township Supervisors also expressed concerns with the fee.

The statute provides that "Costs incurred by the department for mandatory mediation under this section shall be equitably assessed by the department against the parties to the mediation." 53 P.S. § 6924.505(k)(2)(viii). While the statute provides a mechanism for the Department to recover costs incurred, the Department has not established how a flat fee would meet the statute. Additionally, the Department has not established how a flat fee meets the statutory requirement to equitably assess its costs against the parties to the mediation. We recommend deleting the $500 flat fee from Subparagraphs (1)(iv) and (3)(i). The Department should also explain in the Preamble how it will otherwise equitably assess the costs against the parties.

Timeline

The statute at 53 P.S. § 6924.505(2)(iii) states, in part, that the "mediation efforts shall be completed no later than 30 days following *the notice* that the dispute has met the threshold requirement. . .*unless the time period is extended by mutual agreement* of the parties to the mediation." Emphasis added. Paragraphs (4) and (5) establish a timeline to complete the mediation "within 20 days but no later than 30 days following the Department's determination" and rely on a mediator appointed by the Office of General Counsel. We have three concerns.

First, the statute provides the ability to extend the time period by mutual agreement, but this is not included in Paragraphs (4) and (5). We recommend adding the option to extend the time period to Paragraphs (4) and (5).

Second, the Department provides written notice of its determination to all parties under Subparagraph (3)(iii), which by statute begins the 30 day period. However, Paragraphs (4) and (5) differ from the statute by stating "no later than 30 days following the Department's determination." To be consistent with the statute, Paragraphs (4) and (5) should state no longer than 30 days following the Department's written notice provided in Subparagraph (3)(iii).

Third, the Department should explain how the regulation will accomplish the statutory requirement to complete the mediation in 30 days, unless the time period is extended by mutual agreement.

8. Section 151.61. Withdrawal and establishment of a new tax collection committee.—Clarity.

The second sentence of Subsection (d) discusses election of the chairperson, vice chairperson and secretary and also discusses duly appointed voting delegates. The regulation is not clear regarding whether the Secretary is a duly appointed voting delegate. The Department should amend this subsection to clarify whether the secretary is a voting delegate or not.

9. Miscellaneous Clarity

• Paragraph 151.41(3) refers to "the threshold conditions for mandatory mediation." We recommend adding a cross-reference in Paragraph (3) to Subparagraph (1)(iii) to clarify the threshold conditions to be met.

• Section 151.51 consists of a single paragraph, but includes the phrase "unless otherwise specified in this section." We recommend deleting this phrase.

GEORGE D. BEDWICK,
Chairperson

[Pa.B. Doc. No. 16-1741. Filed for public inspection October 7, 2016, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulation. It is scheduled to be considered on the date noted. The Commission's public meetings are held at 333 Market Street, 14th Floor, Harrisburg, PA at 10 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy or it can be viewed on the Commission's web site at www.irrc.state.pa.us.

Reg. No.	*Agency / Title*	*Received*	*Public Meeting*
16A-5125	State Board of Nursing General Revisions	9/26/16	11/17/16

GEORGE D. BEDWICK,
Chairperson

[Pa.B. Doc. No. 16-1742. Filed for public inspection October 7, 2016, 9:00 a.m.]

INSURANCE DEPARTMENT

Alleged Violation of Insurance Laws; Gerald Wayne Snyder, Jr.; Doc. No. SC16-09-012

Notice is hereby given of the Order to Show Cause issued on September 27, 2016, by the Deputy Insurance Commissioner in the previously-referenced matter. Violation of the following is alleged: sections 611-A(1), (15) and (20) and 678-A(b) of The Insurance Department Act of 1921 (40 P.S. §§ 310.11(1), (15) and (20) and 310.78(b)).

Respondent shall file a written answer to the Order to Show Cause within 30 days of the date of issue. If respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S. §§ 501—508 (relating to Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure) and other relevant procedural provisions of law.

Answers, motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed in writing with the Hearings Administrator, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the previously-referenced administrative hearing, and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Donna Fleischauer, Agency ADA Coordinator at (717) 705-4194.

TERESA D. MILLER,
Insurance Commissioner

[Pa.B. Doc. No. 16-1743. Filed for public inspection October 7, 2016, 9:00 a.m.]

Appeal of ARFA Real Estate Holdings, LLC under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File No. 16-0014(F); Doc. No. UT16-09-009

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedures) and any other relevant provisions of law.

A prehearing telephone conference shall be held on November 13, 2016 at 9:30 a.m. A date for a hearing shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene, notices of appearance or notices of intervention, if any, must be filed on or before October 31, 2016, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before November 10, 2016.

TERESA D. MILLER,
Insurance Commissioner

[Pa.B. Doc. No. 16-1744. Filed for public inspection October 14, 2016, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has requested a hearing as authorized by the act of June 17, 1998 (P.L. 464, No. 68) (Act 68) in connection with the termination of the insured's automobile insurance policy. The hearing will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearing will be held in the Insurance Department's Administrative Hearings Office in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Stephanie Wolfgang; File No. 16-119-200541; Safe Auto Insurance Company; Doc. No. P16-09-010; November 2, 2016, 9:30 a.m.

Parties may appear with or without counsel and offer relevant testimony and other relevant evidence, or both. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, should contact Donna R. Fleischauer, Human Resources Director at (717) 705-4194.

TERESA D. MILLER,
Insurance Commissioner

[Pa.B. Doc. No. 16-1745. Filed for public inspection October 7, 2016, 9:00 a.m.]

OFFICE OF THE BUDGET

Commonwealth Financing Authority Certification for Fiscal year 2016-2017

I, Randy C. Albright, Secretary of the Budget, hereby certify in accordance with, and as required by, section 1543(e) of the Act of April 1, 2004 (P.L. 163, No. 22), 64 Pa.C.S. § 1543(e), and section 1753.1-E of the Act of April 9, 1929 (P.L. 343, No. 176), that:

(1) sufficient surplus revenue will exist in the General Fund for Commonwealth Fiscal Years 2017-2018 and 2018-2019 to pay any liabilities which will be payable by the Commonwealth from the General Fund during those Fiscal Years if the Commonwealth Financing Authority incurs an additional $250,000,000 of indebtedness; and,

(2) the aggregate amount of liabilities which will be incurred by the Commonwealth for its Fiscal Years 2016-2017, 2017-2018 and 2018-2019 payable from the General Fund as a result of the activities of the Commonwealth Financing Authority are $95,614,000, $95,622,000 and $95,617,000 respectively.

RANDY C. ALBRIGHT,
Secretary

[Pa.B. Doc. No. 16-1746. Filed for public inspection October 7, 2016, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Holding Company Level Transfer

A-2016-2568664. AccessLine Communications Corporation, Oak Hill Capital Partners III, LP, Oak Hill Capital Management Partners III, LP and Madison Dearborn Capital Partners VII-A, LP, Madison Dearborn Capital Partners VII-C, LP, Madison Dearborn Capital Partners VII Executive-A, LP. Joint application of AccessLine Communications Corporation, Oak Hill Capital Partners III, LP, Oak Hill Capital Management Partners III, LP and Madison Dearborn Capital Partners VII-A, LP, Madison Dearborn Capital Partners VII-C, LP, Madison Dearborn Capital Partners VII Executive-A, LP, for approval of a holding company level transfer of AccessLine Communications Corporation and for certain financing arrangements.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before October 24, 2016. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.pa.gov and at the applicant's business address.

Applicants: AccessLine Communications Corporation; Oak Hill Capital Partners III, LP; Oak Hill Capital Management Partners III, LP; Madison Dearborn Capital Partners VII-A, LP; Madison Dearborn Capital Partners VII-C, LP; Madison Dearborn Capital Partners VII Executive-A, LP

Through and By:

Oak Hill and AccessLine: Glenn S. Richards, Esquire, Christine A. Reilly, Esquire, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street, NW, Washington, DC 20036

MDP: John Povilaitis, Esquire, Brian C. Wauhop, Esquire, Buchanan Ingersoll & Rooney, PC, 409 North Second Street, Suite 500, Harrisburg, PA 17101-1357; and Yaron Dori, Esquire, Michael Beder, Esquire, Ani Gevorkian, Esquire, Covington & Burling LLP, One City Center, 850 Tenth Street, NW, Washington, DC 20001

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 16-1747. Filed for public inspection October 7, 2016, 9:00 a.m.]

Implementation of Act 11 of 2012

Public Meeting held
September 15, 2016

Commissioners Present: Gladys M. Brown, Chairperson; Andrew G. Place, Vice Chairperson; John F. Coleman, Jr.; Robert F. Powelson; David W. Sweet

Implementation of Act 11 of 2012; M-2012-2293611

Supplemental Implementation Order

By the Commission:

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which, inter alia, amended Chapter 13 of the Pennsylvania Public Utility (Code) by incorporating a new Subchapter B, Sections 1350 through 1360 of the Code, which deals with distribution (and collection) systems and allows certain utilities to petition the Commission to implement an additional rate mechanism, known as a distribution system improvement charge (DSIC) to recover the costs related to the repair, replacement or improvement of eligible distribution property. See 66 Pa.C.S. §§ 1350—1360.

By a Tentative Supplemental Order entered November 5, 2015, in the proceeding in Implementation of Act 11 of 2012, Docket Number M-2012-2293611 ("November 5th Tentative Supplemental Implementation Order" or "TSIO"), the Commission acknowledged that various discrete issues regarding the implementation of the DSIC surcharge mechanism that were not fully addressed in previous DSIC-related orders had arisen. Accordingly, via TSIO, the Commission solicited comments so as to take further steps to adopt procedures regarding additional implementation issues that have developed over time.

Background

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which, inter alia, amended Chapter 13 of the Pennsylvania Public Utility (Code) so as to allow water and wastewater utilities, electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to implement a DSIC surcharge mechanism which would allow them to offset the additional depreciation and to recover the prudent capital costs associated with certain non-revenue producing, non-expense reducing capital expenditures related to the repair, replacement or improvement of eligible distribution property.

Specifically, Act 11 was passed in order to reduce the historical regulatory lag of recovering the costs related to capital infrastructure expenditures by providing ratemaking flexibility for utilities seeking timely recovery of prudently incurred costs related to the repair or replacement of distribution infrastructure between rate cases and before new base rates have become effective. In particular, Act 11 incorporated new statutory provisions in Chapter 13, based on the existing DSIC that has been used for over 15 years in the water utility industry,[1] to accelerate the pace of water pipeline replacement and improvements. Under Act 11, the DSIC mechanism is also now available to EDCs, NGDCs, wastewater utilities, and city natural gas operations and will allow those utilities to recover the reasonable and prudently incurred costs related to the acceleration of the repair, improvement and replacement of utility infrastructure on a timelier basis, subject to reconciliation, audit and other consumer protections.[2]

On May 11, 2012, the Commission in Implementation of Act 11 of 2012 entered a Tentative Implementation Order (May 11th Tentative Implementation Order) at Docket Number M-2012-2293611, soliciting comments on proposed procedures and guidelines necessary to implement Act 11, including a DSIC process for investor-owned energy utilities, city natural gas distribution operations, and wastewater utilities and to facilitate a transition from the Section 1307(g) water DSIC procedures to Act 11 DSIC procedures. After reviewing the comments filed in response to the May 11th Tentative Implementation Order, the Commission issued the August 2nd Final Implementation Order at the above-referenced docket, which established the procedures and guidelines necessary to implement Act 11 and included a Model Tariff for DSIC filings.

Subsequently, to date, the Commission has approved sixteen petitions to implement a DSIC surcharge mechanism under the Act 11 legislation. Petitions were filed and approved for six EDCs, seven NGDCs, one city natural gas distribution operation, and two wastewater companies.[3] However, since those utilities have initiated their DSIC mechanisms, various implementation issues that were not specifically addressed in our August 2nd Final Implementation Order have arisen.

Hence, the Commission issued its November 5th Tentative Supplemental Implementation Order, in order to solicit comments on the manner it should resolve additional implementation issues regarding the DSIC mechanisms that had arose upon the Commission approving various DSIC Orders of eligible jurisdictional utilities.[4] The Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Energy Association of Pennsylvania (EAP), Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power (collectively referred to as "the FE Companies" or "FE"), PP&L Electric Utilities Corporation (PPL), Pennsylvania American Water Company (PAWC), Aqua Pennsylvania, Inc. (Aqua), York Water Company (York Water) filed comments to the TSIO. The Commission has reviewed the filed comments and also held in person meetings with various stakeholders to fully discuss all of the issues. Per this Order, the Commission is addressing and resolving the additional DSIC-related implementation issues.

Discussion

The DSIC mechanism allows a utility to add to customer rates the recovery of the fixed costs (i.e., depreciation and pretax return) for (1) any eligible plant associated with a repair, replacement or improvement that was not previously reflected in the utility's rates and rate base and (2) has been placed into service as a repair, replacement or improvement during the three-month period ending one month (i.e., quarterly with a one month lag) prior to the effective date of the DSIC mechanism. See 66 Pa.C.S. § 1357(a)(1)(ii). Thereafter, in order to continue to recover the fixed costs of eligible property that is placed into service and associated with an acceleration of its repair, replacement or improvement program through its DSIC mechanism, the utility must provide quarterly DSIC updates that reflect the eligible property that has been placed in service during the three-month period ending one month prior to the effective date of the DSIC update. See 66 Pa.C.S. § 1357(a)(2). Accordingly, the utility is permitted to recover on an ongoing basis (i.e., every three months) the fixed costs of eligible property placed into service that is associated with a repair, replacement or improvement.

Section 1358(d) of the Code provides that the Commission may establish procedures to adjust the DSIC rate, when applicable, by order or regulation. See generally 66 Pa.C.S. § 1358(d)(2). As more fully explained below, the Commission sought comments and is addressing the following additional issue areas regarding the implementation, operation and computation of the DSIC:

- requiring quarterly financial reports for all utilities that use the DSIC mechanism;
- filing and computation issues for when the DSIC is reset to zero;
- treatment of over/under collections, or E-factor, after the DSIC is reset to zero;
- computation issues for determining the DSIC rate cap; and
- requirement to file an LTIIP by water utilities that use the DSIC.

A. *Uniform Financial Earnings Reports Requirement*

1. *Quarterly Financial Earnings Reports*

In the TSIO, the Commission proposed that all jurisdictional utilities that have implemented a DSIC mechanism, including those utilities that are not required to file earnings reports under 52 Pa. Code § 71.3, should begin to file quarterly earnings reports with the Commission regardless of the amount of their overall operating revenues.

Comments

No party filed objections to this proposal.

Resolution

66 Pa.C.S. § 1358 directs the Commission to use financial earning reports to monitor the rates of return

[1] The separate DSIC provisions in Section 1307(g) providing for a sliding scale of rates for water utilities have been deleted in lieu of the general DSIC provisions established in Act 11.

[2] See generally 66 Pa.C.S. § 1350 et seq.

[3] At present, Petitions to implement a DSIC mechanism have been approved by the Commission for the following companies: PPL Electric Utilities (PPL), PECO, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power, Columbia Gas of Pennsylvania (Columbia), Peoples Natural Gas Company—Equitable Division (PNGC—Equitable), Peoples Natural Gas Company, LLC (Peoples Gas), People's TWP, UGI—Penn Natural Gas, UGI—Central Penn Gas, PECO—Gas, Philadelphia Gas Works (PGW), Little Washington Wastewater Company (LWWC) and Pennsylvania American Wastewater Company (PAWC).

[4] We note that certain DSIC issues and related accounting parameters are implicated in the implementation of the newly enacted Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329, Act 12 of 2016, HB 1326, that involves the acquisition of water and/or wastewater utility systems that are owned by municipalities or municipal authorities. These issues are being addressed in the related Section 1329 implementation proceeding at Docket No. M-2016-2543193. See generally Implementation of Section 1329 of the Public Utility Code, Docket No. M-2016-2543193, Tentative Order entered July 21, 2016.

for companies that have implemented a DSIC mechanism to determine if the utility has experienced earnings above its allowed rate of return or "overearnings." See 66 Pa.C.S. § 1358(b)(3). In practice, the Commission compares the filed return on equity (ROE)[5] figure from schedule D-2 of the financial earnings report to the allowable equity return rate for the computation of the DSIC rate to determine if the utility can continue to recover under its DSIC mechanism the fixed costs of the eligible property that is reflected in its next quarterly DSIC update or if its DSIC rate must be adjusted. See generally 66 Pa.C.S. § 1358(b)(3). Pursuant to the statutory directive in Act 11, the DSIC rate is then reset to zero if, in any quarter, the data reflected in the utility's most recent quarterly financial earnings report show that the utility will earn an overall rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC mechanism. See 66 Pa.C.S. § 1358(b)(3).

The Commission regulations at 52 Pa. Code § 71.3 set forth different filing report requirements for certain fixed utilities based upon overall revenues. See 52 Pa. Code § 71.3. Currently, some utilities file twelve-month financial earnings reports on a quarterly basis and some file one twelve-month financial earnings report on an annual basis. See 52 Pa. Code § 71.3(a)(b). Id. The Commission notes that the jurisdictional utilities that are required to file only an annual financial report for the previous 12-month calendar year in accordance with 52 Pa. Code § 71.3(b) do not submit their respective annual financial report to the Commission until March 31st of the following year, within ninety days after the end of the 12-month period ending December 31st. As a result, if that utility has experienced any overearnings for some portion of the preceding year, under the current financial earnings reporting regimen, these utilities will continue to recover the fixed costs of eligible property under their DSIC mechanisms throughout the year. The same scenario could also apply to utilities that have annual intrastate gross revenues in excess of $1M but that are not even required to file earnings reports with the Commission.

Consequently, certain utilities with DSIC mechanisms would continue to reap the benefit of their DSIC mechanism even though they may have experienced overearnings. As Section 1358(b)(3) of the Code directs, a utility's DSIC rate should be reset to zero at the time they begin to experience an overearning; thus, permitting a utility to continue to reap the benefit of its DSIC mechanism even though it has experienced overearnings is contrary to the consumer protection embedded within the Act 11 statute and also unfair to consumers and those utilities that are required to file quarterly financial earnings reports. Accordingly, the Commission directs that all jurisdictional utilities that have implemented a DSIC mechanism, including those utilities that are not required to file earnings reports under 52 Pa. Code § 71.3 because their annual revenues do not exceed $1 million, begin to file quarterly earnings reports with the Commission. This new quarterly filing earnings report requirement for all jurisdictional utilities having a DSIC mechanism will commence with the March 31, 2017 quarterly filing going forward.

[5] In particular, the allowable cost of equity for the computation of the DSIC rate shall either be the equity return rate in the utility's most recent fully litigated base rate proceeding or, if that proceeding was over two years ago, the Commission uses the equity return rate used in the quarterly earnings report it prepares which sets forth the achieved return on equity for each company, the last allowed return for that utility, a market return as determined through the analysis of the barometer group data and the most recent returns allowed, per industry, by the Pennsylvania Public Utility Commission and by other regulatory bodies. This report is referred to as the Quarterly Report on the Earnings of Jurisdictional Utilities.

2. *Exemption from Filing an Earnings Report During the Pendency of a Base Rate Case*

In the TSIO, the Commission requested comment on eliminating the exemption under 52 Pa. Code § 71.4(c), which exempts a utility from filing a quarterly financial earnings report when the utility has a pending general rate increase (base rate case) under 66 Pa.C.S. § 1308(d) or 1310 (relating to voluntary changes in rates; rates fixed on complaint; investigation of costs of production; and temporary rates) for companies with an active and positive DSIC rate.

Comments

The EAP, the First Energy Companies, Aqua and PAWC stated they are opposed to eliminating the 71.4(c) exemption. The OCA and the OSBA both support the elimination of the quarterly earnings report exemption under 52 Pa. Code § 71.4.

Resolution

We acknowledge the commentators' observations that utilities provide detailed information on future earnings in base rate cases as evidence to verify that the utility is under-earning and to support the request for a general rate increase and requiring them to file quarterly "high-level" earnings reports during the pendency of a rate case is redundant, unnecessary and burdensome. Thus, we agree with the EAP, the First Energy Companies' and PAWC's comments regarding the quarterly earnings report exemption under 52 Pa. Code § 71.4(c). The Commission declines to eliminate this exemption and thus, utilities with an active and positive DSIC rate do not have to file quarterly earnings reports during the pendency of a base rate case.

B. *Customer Protections—DSIC Rate Reset to Zero*

In the TSIO, the Commission proposed procedures on the manner in which a utility should reset its DSIC rate to zero when it meets the circumstances set forth in 66 Pa.C.S. § 1358(b)(1)—(3). Specifically, the DSIC rate is required to be reset to zero on the effective date of new base rates that provide for the prospective recovery of the annual fixed costs of eligible property that were previously recovered under the utility's DSIC mechanism. 66 Pa.C.S. § 1358(b)(1). Additionally, if a utility's quarterly financial earnings report reflects an overearning for that particular quarter, the utility is required to reset its DSIC rate to zero. 66 Pa.C.S. § 1358(b)(3).

1. *DSIC Rate Reset to Zero*

a. *DSIC Rate Reset to Zero Upon Effective Date of New Base Rates*

In the TSIO, the Commission proposed that utilities requesting a general rate increase under Section 1308(d) of the Code incorporate a reference to the DSIC rate being reset to zero within the tariff supplement initiating the general rate increase request.

Comments

EAP agreed that the tariff supplement to initiate a Section 1308(d) general rate increase should also state that the DSIC will be reset to zero upon the effective date of the new rates. EAP Comments at 4. PPL supports this proposal and recommends that it be adopted. PPL Comments at 5. Additionally, the First Energy Companies stated that they did not oppose the Commission's proposition of providing advance notice in the tariff supplement as to when its DSIC rate will be reset to zero. FE Comments at 4. Both Aqua and York Water state that they agree that a utility should incorporate a reference to

resetting its DSIC rate to zero in the tariff supplement requesting an increase in base rates under Section 1308(d) of the Code. Aqua Comments at 6; York Water Comments at 2.

Resolution

The Commission notes that no party opposed this proposal. Further, the Commission determines that incorporating a reference that the DSIC rate will be reset to zero within the tariff supplement requesting a general rate increase provides sufficient advance notice of the DSIC reset upon the effective date of new base rates. Generally, when a utility requests a general rate increase under Section 1308(d) of the Code, the Commission suspends the filed tariff supplement by operation of law and sends it to the Office of Administrative Law Judge (OALJ) for hearings and investigation on the lawfulness of the rate. Thereafter, upon the conclusion of the base rate case proceeding before the OALJ, the utility is directed via an order to file a compliance tariff supplement pursuant to Section 1308(a) to effectuate the proposed rate increase. Accordingly, the Commission directs that as a part of a Section 1308(a)-compliance tariff, utilities should incorporate a reference to the DSIC rate being reset to zero simultaneously with the effective date of the new base rates.

In those [rare] instances where a utility files for a non-general rate increase, which is a rate increase that is less than three percent of total gross intrastate revenue, and it is not subjected to the suspension and investigation process, the Commission directs the utility to incorporate a reference to resetting the DSIC rate within the 1308(a) tariff supplement reflecting the non-general rate increase. This obviates the need to file a subsequent Section 1308(a) tariff supplement to reset the DSIC rate to zero upon the effective date of the non-general base rates.

b. *Stay-Out Period After Effective Date of New Base Rates*

When a utility with a DSIC mechanism files for a general rate increase under Section 1308(d) of the Code, 66 Pa.C.S. § 1308(d), and new base rates become effective, the utility is required to reset its DSIC rate to zero as of the effective date of the new base rates. 66 Pa.C.S. § 1358(b)(1). After resetting the DSIC rate to zero following the effective date of new base rates, only the fixed costs of new eligible property set forth in the quarterly DSIC update that was not previously reflected in base rates or recovered in the utility's rates (i.e., previously recovered under the DSIC mechanism) may be recovered through the DSIC mechanism. 66 Pa.C.S. § 1358(b)(2). Thus, in order for a utility to begin to recover again the fixed costs of eligible property placed in service that is associated with a repair, replacement or improvement after the DSIC rate has been reset to zero because of new base rates, it must submit a quarterly DSIC update that reflects only eligible property that meets the above criteria (has not been previously reflected in the utility's rates or rate base). See generally 66 Pa.C.S. §§ 1357(a)(2), 1357(d)(3) and 1358(b)(2). The Commission refers to this as a "stay-out" period because the utility cannot utilize its DSIC mechanism until the costs associated with new eligible property and incorporated within the DSIC quarterly update reflects costs that have not been accounted for or recovered in the utility's rates or rate base.

The Commission sought comment on what should be the criterion to determine whether the prospective recovery amount has been surpassed which would trigger the elapsing of the stay-out period. The Commission proposed that in each base rate case, the actual rate filing as well as the final order must specify the total aggregate dollar amount associated with the prospective eligible property placed in service for the forecast year.

Comments

The OSBA agrees with the Commission's proposal but requests clarification on whether the aggregate dollar amount refers to gross plant or net plant totals. OSBA Comments at 3. The OSBA states that the Commission should clarify that it is referring to net plant, rather than gross plant, and notes that any settlement of a base rate case will need to specify that amount. Id. The OCA proffered two clarifications: (1) only the fixed costs of new, additional investment will be eligible for recovery in a positive DSIC rate and (2) the final order establishing new base rates should specify the total aggregate dollar amount that is associated with the DSIC-eligible property that is used to set rates. OCA Comments at 7.

The OCA explains that both of these clarifications recognize that the base rate used to determine revenue requirement can be a contested issue in the rate case that is resolved through settlement or litigation. OCA Comments at 8. The OCA states that if the Commission adopts its clarification, it will support the Commission's proposal for resuming a positive DSIC rate after a base rate case, because, in OCA's view, these proposals will help the parties and Commission to monitor and ensure that costs recovered in base rates are not also recovered in the DSIC rate. Id. The OCA states that these proposal are consistent with the base rate case settlements where the Commission has approved terms specifying that the DSIC "stay-out" would continue until eligible property account balances exceed the levels agreed upon for purposes of the settlement. Id. Lastly, the OCA also supports the Commission's proposal that utilities continue to file DSIC quarterly updates, even during the entirety of the stay-out period. Id.

The FE Companies state that they are not opposed to the Commission's proposal that the total dollar amount of eligible property placed in service as determined in the rate case final order should be the criterion to determine when the stay-out provision after a base rate case has elapsed. FE Companies at 5. However, the FE Companies state opposition to the requirement that utilities should continue to file quarterly DSIC updates reflecting the eligible property placed into service that was associated with a repair replacement or improvement during the stay-out period even though they are unable to recover. Id. The EAP states no opposition to the Commission's proposal adopting the level of DSIC eligible property as the criterion for determining the length of the stay-out period. EAP Comments at 6. Nevertheless, EAP notes that none of its member companies seeks to "double-recover" costs and, therefore, does not see a need for a utility to continue to provide DSIC quarterly update information during the stay-out period. Id.

Additionally, Aqua states that it disagrees with the Commission's recommendation that utilities should continue to file quarterly DSIC updates during the stay-out period. Aqua Comments at 7. Aqua states that the continuous filing of DSIC quarterly update is not necessary to monitor or verify when the criterion was reached to determine if the stay-out period has been surpassed. Id. Aqua proposes that when a utility company has come to the end of its FPFTY and files its first quarterly DSIC update, the utility company should include a statement acknowledging the satisfaction of the stipulation criterion for reinstating the DSIC rate. Id.

York Water states that the amounts identified in rates should be the total amounts projected to be spent in DSIC-eligible accounts rather than specifically identifying replacement versus new infrastructure in those accounts. York Comments at 2. Additionally, York Water states that it disagrees with this proposal and suggests various options that it asserts accomplish the same goal. York Water Comments at 2.

Resolution

The Commission believes that the length of the "stay-out" period should be able to be determined based upon whether the applicable total aggregate costs, or gross plant, associated with the DSIC-eligible property that is used to set base rates has been exceeded. The base rates established in a general rate case are designed to recover all prudent costs for capital, labor, materials, and input services used in the production function. The calculation of rates is developed on the device of a "test year," which is a 12-month period that is to be representative of operating conditions when the rates being established will be in effect. The test year can consist of a future test year or a fully projected future test year (FPFTY) as its baseline for setting new base rates. See 66 Pa.C.S. § 315. As such, a utility requesting to establish new base rates pursuant to a filing under Section 1308(d) of the Code, is seeking to recover the costs of all DSIC-eligible plant in service, plus the DSIC-eligible plant that is projected to be in service either within 9 to 21 months depending on if the utility has used a future test year or a FPFTY to calculate its rates. In other words, if a utility has used a future test year or a FPFTY as the basis for the projection of the costs of all the DSIC-eligible plant that it will place in service, the new base rates should provide for the prospective recovery of the annual costs of all the DSIC-eligible property placed into service and that was previously being recovered under the utility's DISC mechanism.

The Commission determines that if a utility has surpassed the prospective recovery amount associated with all of the DSIC-eligible plant placed in service and which was previously reflected in the utility's base rates or projected to be in service as a result of using a future test year or FPFTY, it is then eligible to begin to recover again the fixed costs associated with any new repair, replacement or improvement of DSIC-eligible property reflected in that quarterly DSIC update. The Commission directs that the total aggregate costs that are associated with the DSIC-eligible property projected to be in service and used to set the base rates for the utility should be specified in the final order issued in the proceeding to establish the utility's new rates, whether the final order results from a litigated proceeding or "black-box" settlement. The Commission recognizes the importance of including this criterion in the final order establishing the new base rates. The Commission notes the OSBA's request for clarification on this issue and states that we are referring to gross plant, rather than net plant, and notes that any settlement of a base rate case should specify that amount correlating to gross plant. Accordingly, the utility should specify the total aggregate cost, that is, the gross plant cost before any depreciation or amortization, that is associated with the eligible property (i.e., new or additional investment) that is to be placed in service, as this is a portion of the baseline for setting the new base rates.

The primary purpose of a DSIC update is to reflect the additional eligible property that has been placed in service during the prior quarter and for which the utility is seeking cost recovery for under its DSIC mechanism. Thus, as set forth in the Code, in order to continue to recover the fixed costs of eligible property that is placed into service and associated with a repair, replacement or improvement through its DSIC mechanism, the utility must provide quarterly DSIC updates that reflect the eligible property that has been placed in service during the three-month period ending one month prior to the effective date of the DSIC update. See 66 Pa.C.S. §§ 1357(a)(2) and 1357(c)(3). As noted above, the Commission, utilities and interested parties will use the DSIC quarterly updates to determine whether the prospective recovery amount in the final order setting the utility's rates has been surpassed so as to indicate when the stay-out period has elapsed and the utility may again continue to recover the fixed costs of eligible property reflected in the quarterly DSIC update. Hence, quarterly DSIC updates are integral to the utility identifying the relevant eligible property and the proper calculation of the fixed costs associated with that eligible property. See 66 Pa.C.S. § 1357(d)(2). In order to accurately track the criterion, the Commission directs that utilities should continue to file quarterly DSIC updates reflecting the eligible property placed into service that was associated with a repair, replacement or improvement during the stay-out period even though they are unable to recover such costs. The Commission believes that the continuous filing of DSIC updates will help it to monitor and verify when the criterion has been met that indicates when the stay-out period has elapsed and the utility may again continue to recover the fixed costs of eligible property so as not to allow for the double-recovery of the fixed costs of eligible property under its DSIC mechanism.

c. *Resetting DSIC Rate to Zero Due to Overearnings*

In the TSIO, the Commission noted that there is a lag period between the filing dates of the quarterly earnings report and the filing dates of the quarterly DSIC updates. Certain jurisdictional fixed utilities are required to file quarterly reports for the 12-month period ending on March 31st, June 30th, September 30th and December 31st of each year. The first three 12-month period quarterly financial earnings reports for the year, the March 31st, June 30th, September 30th reports, are due to be filed within sixty (60) days of the end of the 12-month reporting period while the fourth quarter 12-month period quarterly financial earnings report, the December 31st report, is due within ninety (90) days of the quarter ending December 31st of each year.

However, quarterly DSIC updates become effective on April 1st, July 1st, October 1st and January 1st of each year. Thus, if the data reflected in the utility's most recent quarterly financial earnings report show that it has experienced an overearnings for that quarter, presumably its DSIC rate will be reset to zero until the following quarter or three months reflected in that next quarterly DSIC update. 66 Pa.C.S. § 1358(b)(3). Accordingly, in the TSIO, the Commission proposed that because of this lag time between the utility addressing the overearnings indicated in its quarterly financial earnings report and resetting its DSIC rate to zero, utilities should file a tariff supplement reflecting a zero DSIC rate simultaneously with the filing of their next quarterly DSIC update, effective upon ten-day's notice, if the utility is overearning.

Comments

PPL expressed support for this proposal and recommended that the Commission adopt it. PPL Comments at 5. York Water states that it concurs that the tariff

supplement to reset the DSIC rate to zero because of overearnings should be filed simultaneously with the next quarterly DSIC update. York Water Comments at 2. The OCA also summarily agreed with the Commission's proposal on this issue. However, to deal with the lag time between the quarterly DSIC updates and the filing of the financial earnings report, the OCA recommended that the tariff supplement to reset the DSIC rate become effective on one day's notice or, in the alternative, recommended that the Commission change the deadline for filing the annual financial report for the twelve months ending December 31 to 60 or 75 days.

Resolution

As mentioned above, the Commission has directed that all utilities with a DSIC mechanism should begin to file their 12-month financial earnings reports on a quarterly basis—March 31st, June 30th, September 30th and December 31st. However, the Commission notes it has also directed the utilities with a DSIC mechanism to schedule the effective dates of their proposed DSIC updates, and the corresponding period for eligible plant additions that will be reflected in each update, to align quarterly with the months of April, July, October, and January (April 1st, July 1st, October 1st and January 1st). Consequently, there is a lag time between the utility addressing the overearnings indicated in the quarterly financial earnings report and resetting its DSIC rate to zero. Historically, it seems utilities have not reset the DSIC rate to zero to address the overearnings until the following Act 11 quarterly DSIC update was filed. This seems plausible as it may be likely that the utility does not already have an indication or knowledge that it has experienced overearnings until the time it files its quarterly financial earnings report.

However, to be consistent with the consumer protection goals of Section 1358(b)(2) of the Code, the utility should immediately address the overearnings and reset its DSIC rate to zero as this is a protection to ensure that consumers are not charged a DSIC when the utility is overearning. Consequently, we are modifying the initial proposal that was in the TSIO on this issue. To effectuate fully this valid consumer protection provision, the Commission directs utilities that determine they are overearning to file a tariff supplement reflecting a zero DSIC rate effective upon one-day's notice immediately after filing or simultaneously with the filing of the quarterly financial earnings report indicating that the utility is overearning, instead of waiting until the utility files the next quarterly DSIC update resetting the rate to zero in order to address the overearnings. Thus, in order to facilitate this reset to zero, the Commission directs that utilities with a DSIC mechanism incorporate an interim tariff rate adjustment clause in the earnings report section of their respective DSIC tariffs. See Model Tariff as Appendix A.

d. *Cumulative Nature of DSIC Mechanism after Resetting DSIC Rate to Zero Due to Overearnings*

As indicated above, for investor-owned utilities, a reset of the DSIC rate to zero is required if, in any quarter, data filed with the Commission in the utility's most recent annual or quarterly earnings report show that the utility will earn a ROR that would exceed the allowable ROR used to calculate its fixed costs under the DSIC. See 66 Pa.C.S. § 1358(b)(3). The Commission acknowledges that an ongoing, uninterrupted DSIC mechanism appears to be cumulative in its effect. Thus, the utility is continually able to recover the fixed costs of all eligible property less depreciation that it has placed into service that is associated with a repair, replacement or improvement that is reflected in its quarterly DSIC update and that has not previously been reflected in the utility's rate base pursuant to a base rate proceeding. See generally 66 Pa.C.S. § 1357(d)(2). However, the Commission had questions regarding whether the cumulative nature of the DSIC mechanism is affected when a utility's overearnings lasts more than two or more successive quarters and then ceases. The Commission sought comments on whether the utility may recover the current fixed costs associated with its cumulative investment in eligible property less depreciation in a future quarter in which the utility is no longer in an overearning status? The Commission also sought comment on whether it should require the utility to file a tariff supplement under Section 1308 of the Code to address successive overearnings in order for the utility to continue to use its DSIC mechanism to recover the fixed costs of the eligible property it has placed in service.

Comments

York Water states that it agrees with the Commission's proposal that the DSIC recovery for quarters subsequent to the period of overearnings may include the cumulative cost impact of DSIC-eligible costs since the last rate case. York Water Comments at 3. The EAP opposes the Commission's suggestion regarding the decision of when and why to file a rate case generally rests with the utility. EAP Comments at 6. EAP notes that the Code already provides a means for the Commission to initiate a proceeding if it believes a utility is consistently overearning. Id. The FE Companies support the Commission's proposal that the utility should be permitted to recover current fixed costs of all eligible property after an overearning period ceases. FE Companies Comments at 6. The FE Companies also state that tariff supplements to address successive overearnings should be permitted but not required. FE Companies Comments at 7.

The OCA states that it recognizes that the entirety of the fixed costs of DSIC-eligible property that was placed into service does not disappear during the time the utility is not permitted to charge a positive DSIC due to overearning. OCA Comments at 9. Thus, it does not oppose the Commission's proposal to allow depreciated recovery of cumulative investment if only the net depreciated book value of the prior plant is recovered in the DSIC once the overearnings cease. Id. The OCA states that various factors would have to be thoroughly considered before directing a utility to file for a rate adjustment pursuant to Section 1308(a) of the Code. Id. The OSBA supports the proposal that when a DSIC rate is reset to zero after an overearning quarter, but subsequently goes back into effect after due to under earnings, the new DSIC rate will include a return of and on the investment made during the period it was reset to zero, but it will not include the unrecovered costs incurred during that period. OSBA Comments at 3. However, the OSBA also states that any previous inadvertent DSIC recovery should be credited to ratepayers. Id.

Resolution

It is commonly accepted that during the successive overearnings period, a utility with a DSIC mechanism is prohibited from recovering the current fixed costs of the eligible property that it has placed into service during the overearnings period. As well, a utility cannot recover the costs of any DSIC-eligible plant it had placed into service prior to the time that the successive overearnings period began to occur. The DSIC is no longer positive but has been reset to zero. However, since the DSIC mechanism is cumulative in nature even if overearnings persist for two or more successive quarters going forward, the Commis-

sion determines that after a period (i.e., a quarter) of overearning or even after multiple periods of overearning, the utility can recover the cumulative fixed costs, less depreciation, for all of the DSIC-eligible property it had placed in service since the last base rate case in the next quarterly DSIC update filed after overearnings. Thus, the quarterly DSIC update that is filed immediately after the overearnings period would include the new eligible property that had been placed in service during the three month period ending one month prior to the effective date of the DSIC plus the total depreciated cost of any DSIC-eligible plant that was placed in service but was not previously reflected in the utility rates or projected to be in service and used to set the base rates for the utility.

The Commission determines that a utility should be able to recover the cumulative investment costs of all eligible property less depreciation after a successive overearnings period ceases, including the cumulative net depreciated book value fixed cost of DSIC-eligible plant that was placed into service but was not previously reflected in the utility's or projected to be in service and used to set the base rates for the utility. Thus, the Commission determines that the utility may recover the fixed costs associated with its cumulative investment in eligible property less depreciation in the future quarter in which the utility is no longer in an overearning status. However, there would be no recovery through the 1307(e) reconciliation process of the otherwise DSIC eligible costs that were incurred during the period the utility experienced overearnings.

Finally, there appears to be an underlying issue with regard to the fact that a utility is experiencing successive quarters of overearnings. If a utility is experiencing an overearning over a successive and consecutive period of time, this suggests that the utility's existing rates are allowing the utility to recover its costs and expenses and are more than sufficient to provide a fair return to investors and the utility. In the TSIO, the Commission expressed a concern regarding a utility experiencing multiple and successive overearnings as it relates to the viability of its DSIC mechanism. Nevertheless, the Commission acknowledges that the impact of the utility's overearning is minimized by the consumer protection statutory provision that requires the DSIC rate to be reset to zero. Essentially, prohibiting the utility from charging customers a DSIC rate and from recovering the fixed costs of the eligible property it has placed in service during the overearnings period. Moreover, the Commission takes note of the EAP's statement that the Code already provides a means for the Commission to initiate a proceeding if it believes a utility is consistently overearning. We agree with this. Therefore, there is no need for us to direct in this instant Order that a utility with a DSIC mechanism that is experiencing multiple and successive overearnings must initiate a rate adjustment via a Section 1308(a) filing in order to address its overearning situation.

2. *Residual E-Factor Portion of the DSIC Rate Upon a Reset of the DSIC Rate*

A DSIC rate is reset to zero when one of the following occurs: (1) upon the effective date of new base rates that provide for the prospective recovery of the fixed cost of eligible property that has been placed in service or (2) when the utility experiences overearnings in a particular quarter. When the DSIC rate is reset to zero the utility cannot continue to recover under its DSIC mechanism the fixed costs of any eligible property that has been placed in service. However, there is a residual E-factor amounts that reflect an over collection or under collection upon a reconciliation of projected sales and projected revenue from the prior three-month DSIC period. In the TSIO, the Commission sought comment on whether a utility should have the ability to recover or refund the ongoing E-Factor and/or the residual E-factor amounts when the DSIC rate is reset to zero.

Comments

EAP agrees that the utility tariff should clearly provide that the recovery/refund of any over/under collections will continue even if the DSIC rate has been reset to zero either because the utility is overearning or new base rates have been established. EAP Comments at 7. The FE Companies state that they do not oppose filing tariff supplements to resolve residual over or under collections. FE Comments at 7. Also the FE Companies suggests that the Commission propose specific tariff language for such revisions, and provide an additional period for review and comment. Id. York Water states that it agrees with the Commission that utilities should be able to continue to collect or refund the residual over/under collection or E-factor amount. York Water Comments at 4.

The OCA states that the point of the Act 11 reset provision is to avoid the utility recovering amounts through the DSIC when its base rates are already causing overearnings. OCA Comments at 11. The OCA states is it consistent with this purpose to reduce the DSIC rate below zero to reflect an over collection and would also avoid the utility carrying the over collection and increasing the interest it has to pay to ratepayers. Id. The OCA further states that when it comes to an under collection, it would not be consistent with the purpose of the reset provision to charge a positive DSIC rate as the utility is overearning, and ratepayers do not need to fund infrastructure investment through the DSIC that includes the under collected amounts. Id. Accordingly, the OCA states that the utility should not be permitted to carry forward and accrue interest on the under collection after the overearnings period. Id. The OSBA supports the proposal that utilities can still collect or credit the residual over/under collection balance when the DSIC rate is reset to zero. The OSBA states that resetting the DSIC rate to zero should essentially mean that the going forward of C-Factor component of the DSIC rate is set to zero. The OSBA further states that prior period over or under collections, for periods when a positive DSIC was in effect, should continue to be passed through to ratepayers.

Resolution

The Commission must determine what happens to any residual over/under collections that would have been recovered by the utility under its DSIC mechanism if the DSIC rate had not been reset to zero. Let us first look at the E-factor which is a component of the DSIC rate calculation.

Currently, the formula for calculation of the DSIC rate that was set forth in the Model Tariff attached to the August 2nd Final Implementation Order and adopted by those utilities that have implemented a Commission-approved DISC mechanism is as follows:

$$DSIC = \frac{(DSI * PTRR)+Dep+e}{PQR}$$

Nevertheless, there are two primary components to the DSIC rate calculation. The first component of the DSIC rate calculation is the C-Factor which is represented in the following manner:

$$\frac{(DSI * PTRR)+Dep}{PQR}$$

and represents the current fixed costs of the eligible property. The second component of the DSIC rate calculation is the E-Factor that reflects an error correction of prior period over or under collections and is reflected in the following manner:

$$\frac{e}{PQR}$$

Thus, these two separate components are added together and makeup the DSIC rate calculation and the Commission now determines the DSIC rate calculation should be as follows:

$$DSIC = \frac{(DSI * PTRR)+Dep}{PQR} + \frac{e}{PQR}$$

The C-Factor calculation, which is the basic DSIC rate, is determined four times per year while the E-Factor, which reconciles over and under collections, is only determined once per year. Since the fixed costs associated with the repair, replacement or improvement of eligible property will be reflected in the base rates established after the Section 1308(d) base rate proceeding has concluded, the C-Factor truly "zeros" out upon the effective date of the new base rates.

The E-factor reflects the residual over or under collection from the prior periods the DSIC was billed to customers. The Commission believes that utilities can still collect or credit the residual over/under collection balance when the DSIC rate is reset to zero. Since the over or under collection relates to the prior recovery of approved costs, it appears reasonable that the utility should be required to refund any overcollection to customers and be entitled to recover any under collections for the prior time period. As to any accrued interest, the utility is being permitted to accrue interest on over collections per the statute, but not for any under collection amount. 66 Pa.C.S. § 1358(e)(3). Once the utility determines the specific amount of the residual over or under collection amount, since it most likely would not have the actual amount until sometime after the DSIC rate has been reset to zero, it should then file a tariff supplement to address that residual amount. Accordingly, utilities with ongoing DSIC mechanisms should file a tariff supplement that revises their DSIC tariffs so that language is incorporated therein that allows the utility to file interim revisions to resolve the residual over/under collection or E-factor amount after the DSIC rate is reset to zero. See Appendix A, Revised Model Tariff.

C. *Annual Reconciliation and Quarterly Reconciliation*

The Commission notes that Act 11 states that a utility may recover the difference between revenue and costs from the annual reconciliation based on a reconciliation period consisting of the twelve months ending December 31st of each year in the normal manner which is a one-year period beginning April 1st and quarterly thereafter or may be permitted to quarterly reconciliation. See 66 Pa.C.S. § 1358(e)(1)(ii). Therefore, in order to give effect to this statutory provision and permit a utility seeking to recover an under-collection from customers or refund an overcollection amount to customers in a single quarter for the quarterly period commencing April 1st, this option should be clearly delineated in its tariff. See Appendix A, Revised Model Tariff.

D. *Computation of the DSIC Rate Cap*

Section 1358(a)(1) of the Code, 66 Pa.C.S. § 1358(a)(1) and (2), provides a cap for the DSIC rate. Specifically, the DSIC rate cap may not exceed 5% of amounts billed (wastewater utility) or 5% of distribution rates billed (electric and natural gas utilities); however, upon petition, the Commission may grant a waiver of the 5% limit if necessary to ensure and maintain safe and reliable service. 66 Pa.C.S. § 1358(a)(1). Thus, in order to accommodate the acceleration of much-needed infrastructure improvements certain utilities may request that the Commission waive the 5% rate cap.

Clearly, the Commission has the statutory authority to increase the cap above 5% upon petition. However, the statute does not specify the calculation of the DSIC rate cap and whether utilities may be permitted to exclude the E-factor annual reconciliation component from the computation of the rate DSIC cap. For example, if a utility experiences an under collection E-Factor for the reconciliation period, this under-collection E-Factor will reduce the amount of dollars allowed to be recovered for new DSIC eligible plant during the subsequent DSIC application period of April through March. Under collections result from the utility overstating their projected revenues when calculating the quarterly DSIC updates. This over projection of revenues could result from a mild winter (for gas and electric utilities); or a very wet summer (i.e., less watering) or drought conditions causing water usage restrictions (for water utilities). If a utility experiences an under-collection, which reduces the dollars available for current DSIC cost recovery, the utilities are unable to realize the full benefit of the original intent of the law, which was to accelerate the replacement of DSIC eligible property up to a capped percentage of distribution revenue without having to file a base rate case. Therefore, in the TSIO, the Commission sought comment on whether it is feasible and in the public interest to allow this to occur and whether it has the statutory authority to do such.

Comments

EAP states that it does not believe that the legal issue of whether the Commission possesses the statutory authority to exclude the E-factor component from the DSIC rate cap is ripe for resolution in this Order. EAP Comments at 8. The FE Companies state that they are unaware of a statutory provision that would allow the Commission to exclude the E-factor from the C-factor and still comply with the rate description set forth in Section 1358(e) of the Code, which addresses the E-factor and the C-factor uniformly. FE Companies Comments at 8. The FE Companies conclude that the five percent DSIC cap should apply to the entire rate without exclusion of over or under collection contained in the E-factor. Id. PPL recommends that the E-factor reconciliation component be excluded from the computation of the DSIC rate cap. PPL Comments at 12. PPL states that the E-factor is related to the over/under collection of DSIC eligible costs for the prior recovery period. Id. PPL asserts that the E-factor component from the prior recovery period should be excluded from the DSIC rate cap for the current recovery period because it relates to the time period in which the utility was authorized to charge and collect the designated DSIC rate. Id.

PAWC asserts that the Commission has the necessary statutory authority to exclude the E-factor from the DSIC rate cap. PAWC Comments at 7. PAWC advocates for the exclusion of the E-factor from the calculation of the rate cap by stating that it is not actually included in the DSIC

mechanism. Id. PAWC further states that the public interest will be served by excluding the E-factor as there is a positive and negative E-factor. Id. York Water asserts that the E-factor should be excluded from the calculation of the rate cap because it applies to previous periods and not to the current period's charges. York Water Comments at 5. York states the E-factor works both ways, as a positive or negative number, it is in the public interest to exclude it. Id. Additionally, York Water states that the E-factor is a separate mechanism reconciled separately showing results of previous DSIC periods. Id.

Aqua states that the Commission has the authority to exclude the E-factor in the calculation of the DSIC cap. Aqua Comments at 8. Aqua asserts that the Commission has been granted latitude in Section 1358(d) of the Code, 66 Pa.C.S. § 1358(d), to prescribe the specific procedures to be followed to approve the DSIC mechanism. Aqua Comments at 9. Aqua also states because the calculation of the DSIC rate cap is not specified in the statutory language, it is within the Commission's authority to determine the details of the calculation. Id.

The OCA states that the Code clearly prohibits exclusion of the E-factor component from the calculation of the DSIC rate cap. OCA Comments at 11. The OCA states that the amount billed to customers is the bottom line amount of the customer's distribution bill (water and gas) and total bill (water and wastewater) as set forth in 66 Pa.C.S. § 1358(a)(1) and (2). Id. The OCA states that the DSIC rate, by definition, is a distribution rate. Thus the OCA concludes that every component of the DSIC rate, including the E-factor component, is a distribution rate. Id. The OSBA states that it is not in the public interest and does not even address the statutory authority question. OSBA Comments at 4. The OSBA explains that excluding the E-factor from the DSIC rate cap would create an incentive for utilities to load forecasts so that they can recover more costs than permissible under the five percent DSIC rate cap. Id. The OSBA states that this would essentially allow utilities to "game" their DSIC filings to ensure under collections in order to circumvent the DSIC rate cap. Id. The OSBA further states that the DSIC rate cap is a basic consumer protection embedded in the Code and no waiver of the inclusion of the E-factor, as a component of the overall DISC rate cap, is included within the Code. OSBA Comments at 5.

Resolution

One discrete issue raised in this proceeding is whether the Commission has the authority to exclude the E-factor reconciliation component from the computation of the DSIC cap.[6] Clearly, Act 11 gives the Commission authority to waive the cap upon petition of a utility. The question at hand is whether the Commission has the authority to completely exclude the E-factor from the calculation of the DSIC rate cap without a utility first justifying it pursuant to the standards in 66 Pa.C.S. § 1358(a)(1). This section of Act 11 provides that a rate cap can be waived if it will ". . . ensure and maintain adequate, efficient, safe, reliable, and reasonable service."

The Office of Consumer Advocate (OCA) submits that "[e]xclusion of the E-factor from calculation of the rate-cap has the same effect as a direct waiver of the DSIC rate cap—to increase the rates above the statutory 5% or 7.5%." (OCA Comments at 12). The FirstEnergy Companies point out that the E-factor and the C-factor are both described together in 66 Pa.C.S. § 1358(e). Further, the FirstEnergy Companies state they are unaware of a statutory provision that would allow the Commission to exclude the E-factor from the C-factor and still comply with Section 1358. (FirstEnergy Companies Comments at 7-8).

The Commission agrees with the comments presented by OCA and the FirstEnergy Companies. Act 11 does not empower the Commission to universally disaggregate the E-factor from the DSIC calculation. Rather, Act 11 only grants the Commission the authority to waive the DSIC rate cap upon petition of an individual utility. The form of this waiver may come in the exclusion of the E-factor, in an increase of the rate cap to a new percentage, or in whatever form that a utility validly claims is necessary to ensure safe and reliable service. Such waivers must be made on a case-by-case basis and substantiated within the context of a utility's petition. Accordingly, the Commission determines that the E-factor is not a severable component and should not be excluded from the calculation of the DSIC rate cap.

E. *Water Utility Long-Term Infrastructure Plans*

Section 1360(a) provides that the Commission may accept a prior long-term infrastructure plan filed by a water utility or may require submission of a new LTIIP pursuant to Section 1360(b). Presently, the Commission has not established a due date for water utilities with previously approved DSICs to file long-term infrastructure improvement plans as it considered the substantial progress made in the water industry over the past 15 years in accelerating the rate of main replacements and other infrastructure improvements. However, in the TSIO, the Commission tentatively proposed that it was now time for water utilities to file LTIIPs with the Commission in order to ensure that all utilities that are eligible to implement a DSIC are following uniform rules and procedures regarding Commission-approved DSIC mechanisms. The Commission also gave a tentative schedule for all jurisdictional water utilities to file LTIIPs pursuant to Act 11. The Commission sought comments from water utilities regarding its tentative proposal.

Comments

PAWC states that directing water companies to file an LTIIP after more than eighteen years after the passage of the water DSIC legislation is counterintuitive. PAWC Comments at 8. PAWC notes that the water companies have accelerated infrastructure improvement and much-needed repairs for several years without an LTIIP. Id. Thus, PAWC requests that only those water companies that had not already implemented a DSIC mechanism under the prior legislation, now repealed Section 1307(g), should be required to file an LTIIP (in order to implement a DSIC mechanism pursuant to Act 11). Id.

Additionally, Aqua states that the General Assembly specifically exempted water utilities from filing LTIIPs and that it does not believe that an added layer of reporting through the LTIIP is necessary for water companies that have been utilizing a DSIC mechanism for many years simply for the purpose of uniformity. Aqua Comments at 9.

Further, York Water asserts that the LTIIP is a prerequisite for utilities in order to determine that it had an outline or plan to actually do qualified repairs, replacements and improvements before the Commission allowed

[6] The E-factor component of the DSIC allows for the correction of prior period DSIC over/under-collections.

it to implement a DSIC mechanism. York Water Comments at 5. York Water states that water utilities that already have implemented a DSIC, pre-Act 11 enactment, have already filed the actual qualified projects as they have been undertaken and are already collecting the DSIC, making the LTIIP unnecessary for water utilities. Id.

The OCA states that it supports standardizing the requirements of water utilities with the Act 11 legislation and statutory requirements. The OCA further states that the September 30, 2016 deadline for submittal of an LTIIP set forth in the TSIO should only apply to the six water companies that chose to implement a DSIC mechanism under the 1997 legislation. All other water companies seeking to implement a DSIC mechanism for the first time would have to follow the rule and procedures of Act 11.

Resolution

It is understood that Act 11 was enacted to allow EDCs, NGDCs, wastewater utilities, and city natural gas operations to implement a DSIC mechanism as had been done for water utilities previously. So all of these categories of jurisdictional utility types can now recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of utility infrastructure pursuant to a Commission-approved DSIC mechanism. The Commission acknowledged that in order to qualify for DSIC recovery, under Act 11, a utility is required to submit a LTIIP for Commission approval. See 66 Pa.C.S. § 1352(a). This statutory provision ensures that the DSIC repairs, improvements, and replacements to eligible property are being made consistent with the schedule set forth in the LTIIP that has carefully examined the utility's current distribution infrastructure, including its elements, age, and performance and that also reflects reasonable and prudent planning of expenditures over the course of many years to replace and improve aging infrastructure in order to maintain the safe, adequate, and reliable service required by law. See 66 Pa.C.S. § 1501.

The Commission's ultimate goal is to ensure that all utilities that have implemented a Commission-approved DSIC mechanism are following uniform rules and procedures. As we previously stated in the TSIO, the Commission believes it is now time for water utilities to begin to comply with many of the requirements of Act 11, including filing an LTIIP with the Commission. Therefore, the Commission directs the water utilities that have implemented a DSIC mechanism under the now repealed 1997 legislation to file an LTIIP pursuant to Act 11 within 180 days of the entry of this Order. The Commission will issue a Secretarial letter setting forth a staggered schedule for those water utilities with active DSICs implemented pursuant to the pre-Act 11 legislation to comply with the above 180-day filing mandate.

As we directed in the August 2nd Final Implementation Order, the long term infrastructure plan should include a review of all distribution plant, including its inventory, age, functionalities, reliability and performance. The LTIIP should also include a general description of the location of the eligible property and a reasonable estimate of the quantity of eligible property to be improved. See 66 Pa.C.S. § 1352(a)(3) and (a)(4). Additionally, the LTIIP should include a schedule for the planned repair and replacement of eligible property. See 66 Pa.C.S. § 1352(a)(2).

The Commission notes that the water utilities have already taken substantial steps to address their aging infrastructure, nevertheless, there is an expectation that the LTIIP should reflect how the DSIC will maintain or augment acceleration of infrastructure replacement and prudent capital investment over the water utility's historic level of capital improvement going forward. Lastly, the Commission is empowered to order a new or revised plan if the utility's proposed LTIIP is not adequate. See 66 Pa.C.S. § 1352(a)(7). All of these LTIIP requirements are now applicable to water companies and we suggest that the water utilities reacquaint themselves with our August 2nd Final Implementation Order which lays out the manner in which the LTIIP will be processed and reviewed by the Commission.

Conclusion

The enactment of Act 11 provides utilities with an additional rate mechanism to recover the capitalized costs related to repair, improvement and replacement utility infrastructure. A DSIC mechanism reduces regulatory lag, improves access to capital at lower rates, and accelerates infrastructure improvement and replacement. The purpose of this Supplemental Implementation Order is to address fully the discrete issues that had arisen regarding the implementation of the DSIC surcharge mechanism at this point in time but were not fully addressed in previous DSIC-related orders and to finalize procedures and guidelines for those various issues. The Commission will review the tariff filings and claims made under this Supplemental DSIC Implementation Order and will, after notice and opportunity to be heard, adjudicate any disputes as they arise. On the other hand, the requirement that water utilities file a LTIIP shall be effective as set forth in the below ordering paragraph; *Therefore*,

It Is Ordered That:

1. A copy of this Final Supplemental Implementation Order shall be published in the *Pennsylvania Bulletin* and posted on the Commission's website at www.puc.pa.gov.

2. All jurisdictional utilities with a Commission-approved DSIC mechanism shall file a tariff in compliance with the Model Tariff attached as Appendix A within forty-five (45) days of entry of this Order.

3. All water utilities that have implemented a DSIC mechanism pursuant to the repealed 1307(g) must file a LTIIP within one hundred and eighty (180) days of the entry of this Order in accordance with the schedule set forth in the Commission's subsequently-issued Secretarial letter.

4. A copy of this Final Supplemental Implementation Order be served on all jurisdictional water and wastewater companies, electric distribution companies, natural gas distribution companies and Philadelphia Gas Works, and the statutory advocates.

ROSEMARY CHIAVETTA,
Secretary

Appendix A

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling ___ Rev. Page ___

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

In addition to the net charges provided for in this Tariff, a charge of ___% will apply consistent with the Commission Order dated _____ at Docket No. _____, approving the DSIC.

[NOTE: THIS MODEL TARIFF IS EXPRESSED IN TERMS OF "DISTRIBUTION SYSTEMS." FOR WASTEWATER UTILITIES, THIS REFERS TO THEIR COLLECTION SYSTEMS.]

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling ___ Rev. Page ___

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

1. General Description

A. Purpose: To recover the reasonable and prudent costs incurred to repair, improve, or replace eligible property which is completed and placed in service and recorded in the individual accounts, as noted below, between base rate cases and to provide the Utility with the resources to accelerate the replacement of aging infrastructure, to comply with evolving regulatory requirements and to develop and implement solutions to regional supply problems.

The costs of extending facilities to serve new customers are not recoverable through the DSIC.

[**NOTE FOR WATER/WASTEWATER:** Utility projects receiving PENNVEST funding or using PENNVEST surcharges are not DSIC-eligible property to the extent of the PENNVEST funding or surcharge.]

B. Eligible Property: The DSIC-eligible property[7] will consist of the following: [CHOOSE UTILITY TYPE]

[ELECTRIC DISTRIBUTION COMPANIES]
- Poles and towers (account 364);
- Overhead conductors (account 365) and underground conduit and conductors (accounts 366 and 367);
- Line transformers (account 368) and substation equipment (account 362);
- Any fixture or device related to eligible property listed above including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers;
- Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities; and
- Other related capitalized costs.

[NATURAL GAS DISTRIBUTION COMPANIES AND CITY NATURAL GAS DISTRIBUTION OPERATIONS]
- Piping (account 376);
- Couplings (account 376);
- Gas services lines (account 380) and insulated and non-insulated fittings

[1 Whether a project is DSIC eligible is not controlled by the account number. The listing of projects and inclusion of account numbers in the model tariff is illustrative to emphasize that DSIC tariffs must reflect account numbers. The lists of property and account numbers in the model tariff are neither finite nor exclusive.

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling ___ Rev. Page ___

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

(account 378);
- Valves (account 376);
- Excess flow valves (account 376);
- Risers (account 376);
- Meter bars (account 382);
- Meters (account 381);
- Unreimbursed costs related to highway relocation projects where a natural gas distribution company or city natural gas distribution operation must relocate its facilities; and
- Other related capitalized costs.

[WATER UTILITIES]
- Services (account 333000), meters (account 334100) and hydrants (account 335000) installed as in-kind replacements for customers;
- Mains and valves (account 331800) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or are required to be upgraded to meet under 52 Pa Code § 65 (relating to water service);
- Main extensions (account 331800) installed to eliminate dead ends and to implement solutions to regional water supply problems that present a significant health and safety concern for customers currently receiving service from the water utility;
- Main cleaning and relining (account 331800) projects; and
- Unreimbursed costs related to highway relocation projects where a water utility must relocate its facilities; and
- Other related capitalized costs.

[WASTEWATER UTILITIES]
- Collection sewers (account 360), collecting mains (account 360), and service laterals (account 361), including sewer taps, curbstops, and lateral cleanouts installed as in-kind replacements for customers;
- Collection mains (account 361) and valves (account 367) for gravity and pressure systems and related facilities such as manholes, grinder pumps, air and vacuum release chambers, cleanouts, main line flow meters, valve vaults, and lift stations installed as replacements or upgrades for existing facilities that have worn out, are in deteriorated condition, or are required to be upgraded by law, regulation, or order;
- Collection main extensions (account 381) installed to implement solutions to wastewater problems that present a significant health and safety concern for customers currently receiving service from the wastewater utility;

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling ___ Rev. Page ___

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

- Collection main rehabilitation (account 360) including inflow and infiltration projects;
- Unreimbursed costs related to highway relocation projects where a wastewater utility must relocate its facilities; and
- Other related capitalized costs.

C. Effective Date: The DSIC will become effective (**EFFECTIVE DATE**).

2. Computation of the DSIC

A. Calculation: The initial DSIC, effective (**EFFECTIVE DATE**), shall be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Utility's rates or rate base and will have been placed in service between **(THREE-MONTH PERIOD ENDING ONE MONTH PRIOR TO EFFECTIVE DATE)**. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

Effective Date of Change	Date to which DSIC-Eligible Plant Additions Reflected
	(CHART TO BE FILLED IN BY UTILITY)

[THE FOLLOWING PARAGRAPHS PERTAIN TO WATER, WASTEWATER, ELECTRIC DISTRIBUTION, AND NATURAL GAS DISTRIBUTION UTILITIES ONLY. FOR CITY NATURAL GAS DISTRIBUTION OPERATIONS, SEE BELOW.]

B. Determination of Fixed Costs: The fixed costs of eligible distribution system improvements projects will consist of depreciation and pre-tax return, calculated as follows:

1. Depreciation: The depreciation expense shall be calculated by applying the annual accrual rates employed in the Utility's most recent base rate case for the plant accounts in

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

which each retirement unit of DSIC-eligible property is recorded to the original cost of DSIC-eligible property.

2. Pre-tax return: The pre-tax return shall be calculated using the statutory state and federal income tax rates, the Utility's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Utility's last fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission.

C. Application of DSIC: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for distribution service [**WATER and WASTEWATER UTILITIES ONLY:** for service] under the Utility's otherwise applicable rates and charges, excluding amounts billed for [**WATER UTILITIES ONLY:** public fire protection service] and the State Tax Adjustment Surcharge (STAS). To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's projected revenue for distribution service (including all applicable clauses and riders) for the quarterly period during which the charge will be collected, exclusive of [**WATER UTILITIES ONLY:** revenues from public fire protection service and] the STAS.

D. Formula: The formula for calculation of the DSIC is as follows:

$$DSIC = \frac{(DSI * PTRR) + Dep}{PQR} + \frac{e}{PQR}$$

Where:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation.
PTRR = Pre-tax return rate applicable to DSIC-eligible property.
Dep = Depreciation expense related to DSIC-eligible property.
e = Amount calculated (+/-) under the annual reconciliation feature or Commission audit, as described below.

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling Rev. Page

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from existing customers plus netted revenue from any customers which will be gained or lost by the beginning of the applicable service period.
[NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.]
[NOTE: The DSIC calculation does not factor in the plant of acquired troubled companies or the revenue of customers acquired from troubled companies until such plant and customer rates have been part of a base rate case by the acquiring utility.]

[FOR CITY NATURAL GAS DISTRIBUTION OPERATIONS ONLY]

B. Recoverable Costs: The recoverable costs shall be amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage, and issuance costs.

C. Application of DSIC: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for distribution service under the Utility's otherwise applicable rates and charges. To calculate the DSIC, one-fourth of the annual recoverable costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's projected revenue for distribution services (including all applicable clauses and riders) for the quarterly period during which the charge will be collected.

D. Formula: The formula for calculation of the DSIC is as follows:

$$DSIC = \frac{DSI}{PQR} + \frac{e}{PQR}$$

Where:

DSI = Recoverable costs (defined in Section B. directly above)
e = the amount calculated under the annual reconciliation feature or Commission audit, as described below.

Issued: (ISSUED DATE) **Effective: (EFFECTIVE DATE)**
Page 6 of Appendix A to 8/11/2016 First Final Supplemental Implementation Order at M-2012-2293611

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling ___ Rev. Page ___

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) including any revenue from existing customers plus netted revenue from any customers which will be gained or lost by the beginning of the applicable service period. **[NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.]**

3. Quarterly Updates: Supporting data for each quarterly update will be filed with the Commission and served upon the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the update.

4. Customer Safeguards

A. Cap: The DSIC is capped at 5.0% of the amount billed to customers for distribution service (including all applicable clauses and riders) as determined on an annualized basis.

[Note: Several water utilities have Commission-approved DSICs that are capped at 7.5% of the amount billed for service.]

B. Audit/Reconciliation: The DSIC is subject to audit at intervals determined by the Commission. Any cost determined by the Commission not to comply with any provision of 66 Pa C.S. §§ 1350, *et seq.*, shall be credited to customer accounts. The DSIC is subject to annual reconciliation based on a reconciliation period consisting of the twelve months ending December 31 of each year or the utility may elect to subject the DSIC to quarterly reconciliation but only upon request and approval by the Commission. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e), over a one-year period commencing on April 1 of each year, or in the next quarter if permitted by the Commission. If DSIC revenues exceed DSIC-eligible costs, such over-collections will be refunded with interest. Interest on over-collections and credits will be calculated at the residential mortgage lending specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P.S. §§ 101, *et seq.*) and will be refunded in the same manner as an over-collection. The utility is not permitted to accrue interest on under collections.

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling ___ Rev. Page ___

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

C. New Base Rates: The DSIC will be reset at zero upon application of new base rates to customer billings that provide for prospective recovery of the annual costs that had previously been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions that have not previously been reflected in the Utility's rates or rate base will be reflected in the quarterly updates of the DSIC.

D. Customer Notice: Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.

E. All customer classes: The DSIC shall be applied equally to all customer classes.

F. Earning Reports: The DSIC will also be reset at zero if, in any quarter, data filed with the Commission in the Utility's then most recent Annual or Quarterly Earnings reports show that the Utility would earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC as described in the pre-tax return section. The utility shall file a tariff supplement implementing the reset to zero due to overearning on one-day's notice and such supplement shall be filed simultaneously with the filing of the most recent Annual or Quarterly Earnings reports indicating that the Utility has earned a rate of return that would exceed the allowable rate of return used to calculate its fixed costs. **[NOTE: THIS PARAGRAPH IS NOT APPLICABLE TO CITY NATURAL GAS DISTRIBUTION OPERATIONS UTILITIES.]**

~~**G. Public Fire Protection**: The DSIC of a water utility will not apply to public fire protection customers.~~

G. Residual E-Factor Recovery Upon Reset To Zero: The utility shall file with the Commission interim rate revisions to resolve the residual over/under collection or E-factor amount after the DSIC rate has been reset to zero. The utility can collect or credit the residual over/under collection balance when the DSIC rate is reset to zero. The utility shall refund any overcollection to customers and is entitled to recover any undercollections as set forth in Section 4.B. Once the utility determines the specific amount of the residual over or under collection amount after the DSIC rate is reset to zero, the utility shall file a tariff supplement with supporting data to address that residual amount. The tariff supplement shall be served upon the Commission's Bureau of Investigation and Enforcement, the Bureau of Audits, the Office of Consumer Advocate, and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the supplement.

Issued: (ISSUED DATE) **Effective: (EFFECTIVE DATE)**
Page 8 of Appendix A to 8/11/2016 First Final Supplemental Implementation Order at M-2012-2293611

Supplement No. ___ to
Tariff (UTILITY TYPE)-PA P.U.C. No. _____
_____ Revised Page ___
[UTILITY NAME] Canceling ___ Rev. Page ___

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

H. **Public Fire Protection**: The DSIC of a water utility will not apply to public fire protection customers.

Issued: (ISSUED DATE) **Effective: (EFFECTIVE DATE)**
Page 9 of Appendix A to 8/11/2016 First Final Supplemental Implementation Order at M-2012-2293611

[Pa.B. Doc. No. 16-1748. Filed for public inspection October 7, 2016, 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 24, 2016. 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-2016-2563872. Call-A-Car, Inc. (1163 Miller Road, Lake Ariel, Wayne County, PA 18436) for the right to begin to transport, as a common carrier, by motor vehicle, persons in paratransit service, from points in the Counties of Lackawanna, Luzerne, Pike and Wayne, to points in Pennsylvania, and return.

Applications of the following for the approval of the right and privilege to *discontinue/abandon* operating as *common carriers* by motor vehicle and for cancellation of the certificate of public convenience as described under each application.

A-2016-2564547. Ken Robinson Limousine Service, LLC (10511 Valley Forge Circle, King of Prussia, Montgomery County, PA 19406) for the discontinuance of service and cancellation of the certificate as a common carrier, by motor vehicle, persons in limousine service, between points in the Counties of Montgomery, Delaware, Chester and Bucks, and from points in said counties to points in Pennsylvania, and return; excluding that service which is under the jurisdiction of the Philadelphia Parking Authority.

A-2016-2567654. Northeast Town Car Service Corp. (RR 4 Box 4450, Hazleton, Luzerne County, PA 18202) for the discontinuance of service and cancellation of its certificate, as a common carrier, by motor vehicle, at A-00122992, authorizing the transportation of persons, in paratransit service, between points in the City of Hazleton, Luzerne County, and within an airline distance of 35 statute miles of the limits of said city, to points in Pennsylvania and return, excluding the right to transport from points in the County of Schuylkill.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 16-1749. Filed for public inspection October 7, 2016, 9:00 a.m.]

Service of Notice of Motor Carrier Formal Complaints

Formal Complaints have been issued by the Pennsylvania Public Utility Commission. Answers must be filed in accordance with 52 Pa. Code (relating to public utilities). Answers are due October 24, 2016, and must be made with the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy to the First Deputy Chief Prosecutor, Pennsylvania Public Utility Commission.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. FEB, LLC; Docket No. C-2016-2561023

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to FEB, LLC, (respondent) is under suspension effective July 19, 2016 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 300 Park Ave., Apt. 313, Wilkes-Barre, PA 18702.

3. That respondent was issued a Certificate of Public Convenience by this Commission on March 25, 2015, at A-6316546.

4. That respondent has failed to maintain evidence of Liability insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is $500 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of $500 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-6316546 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars ($500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I

expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/23/2016

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. BMS Towing, Inc.; Docket No. C-2016-2561261

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to BMS Towing, Inc., (respondent) is under suspension effective August 02, 2016 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 16 Wayne Ave., Jeannette, PA 15644.

3. That respondent was issued a Certificate of Public Convenience by this Commission on March 25, 2014, at A-8916303.

4. That respondent has failed to maintain evidence of both Cargo insurance and Liability insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is $500 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of $500 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public

Convenience held by respondent at A-8916303 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars ($500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/23/2016

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. Bless Carriers, LLC; Docket No. C-2016-2564771

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to Bless Carriers, LLC, (respondent) is under suspension effective August 07, 2016 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 1356 Sunset Street, Trainer, PA 19061.

3. That respondent was issued a Certificate of Public Convenience by this Commission on January 22, 2013, at A-8915222.

4. That respondent has failed to maintain evidence of Liability insurance and Cargo insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is $500 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of $500 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-8915222 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars ($500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 9/13/2016

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 16-1750. Filed for public inspection Ooctober 7, 2016, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Proposals

The Philadelphia Regional Port Authority will accept sealed proposals for Project No. 16-111.S, RFP, CM Services for the Old Delaware Avenue Reconstruction Project until 2 p.m. on Tuesday, November 8, 2016. Information (including mandatory preproposal information) can be obtained from www.philaport.com under "Our Port" then "Procurement" or call (215) 426-2600.

JEFF THEOBOLD,
Executive Director

[Pa.B. Doc. No. 16-1751. Filed for public inspection October 7, 2016, 9:00 a.m.]

STATE ATHLETIC COMMISSION

Public Meetings for 2017

The State Athletic Commission (Commission) of the Department of State announces its schedule for regular meetings to be held at least once every 2 months in 2017 under 5 Pa.C.S. § 103 (relating to duties of commission). All meetings will be held at 11 a.m. in Room 303, North Office Building, Harrisburg, PA 17120. These meetings are open to the public and are scheduled as follows:

February 22, 2017
April 26, 2017
June 28, 2017
August 30, 2017
October 25, 2017
December 20, 2017

Individuals with questions regarding these meetings should contact the Commission at (717) 787-5720.

GREGORY P. SIRB,
Executive Director

[Pa.B. Doc. No. 16-1752. Filed for public inspection October 7, 2016, 9:00 a.m.]

STATE HORSE RACING COMMISSION

Amended Schedule of Therapeutic Medications; Correction

An error occurred in the notice published at 46 Pa.B. 6204, 6206 (October 1, 2016). The document number line was inadvertently omitted. The correct document line is as follows. The remainder of the notice is accurate as published.

[Pa.B. Doc. No. 16-1705. Filed for public inspection September 30, 2016, 9:00 a.m.]

THOMAS F. CHUCKAS, Jr.,
Director
Bureau of Thoroughbred Horse Racing

[Pa.B. Doc. No. 16-1753. Filed for public inspection October 7, 2016, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September Meeting

As part of its regular business meeting held on September 8, 2016, in Cooperstown, NY, the Susquehanna River Basin Commission (Commission) took the following actions: 1) approved or tabled the applications of certain water resources projects; and 2) took additional actions, as set forth in the following Supplementary Information.

The business meeting was held on September 8, 2016. Refer to the notice published at 81 FR 64812 (September 21, 2016) for additional information on the proposed rulemaking, including public hearing dates and locations. Comments on the proposed consumptive use mitigation policy may be submitted to the Commission on or before January 6, 2017.

For further information contact Jason E. Oyler, General Counsel, (717) 238-0423, Ext. 1312, fax (717) 238-2436, joyler@srbc.net. Regular mail inquiries may be sent to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788, or submitted electronically at http://www.srbc.net/pubinfo/publicparticipation/PublicComments.aspx?type=5&cat=20. Also see the Commission web site at www.srbc.net.

Supplementary Information

In addition to the actions taken on projects identified in the previous summary and the listings as follows, the following items were also presented or acted upon at the business meeting: 1) rescission of the Commission's Information Technology Services Fee; 2) approval/ratification of a contract and several grants; 3) release of proposed rulemaking to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions and release of a consumptive use mitigation policy; 4) a report on delegated settlements with the following project sponsors, under SRBC Resolution 2014-15: Lackawanna Energy Center, in the amount of $2,000 and Troy Borough Municipal Authority, in the amount of $5,000; 5) approval to extend the term of an emergency certificate with Furman Foods, Inc. to November 30, 2016; and 6) continuance of the Show Cause proceeding granted to Montage Mountain Resorts, LP, to the December 2016 Commission meeting.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: Bloomfield Borough Water Authority, Centre Township, Perry County, PA. Groundwater withdrawal of up to 0.180 mgd (30-day average) from Well 3.

2. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Township, Susquehanna County, PA. Renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20120904).

3. Project Sponsor and Facility: Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, PA. Groundwater withdrawal of up to 0.201 mgd (30-day average) from Well 1.

4. Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, PA. Groundwater withdrawal of up to 0.106 mgd (30-day average) from Well 3.

5. Project Sponsor and Facility: Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, PA. Groundwater withdrawal of up to 0.130 mgd (30-day average) from Well 4.

6. Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, PA. Groundwater withdrawal of up to 0.187 mgd (30-day average) from Well 8.

7. Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, PA. Groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 9.

8. Project Sponsor and Facility: Geisinger Health System, Mahoning Township, Montour County, PA. Modification to increase consumptive water use by an additional 0.319 mgd (peak day), for a total consumptive water use of up to 0.499 mgd (peak day) (Docket No. 19910103).

9. Project Sponsor: Pennsylvania American Water Company. Project Facility: Nittany Water System, Walker Township, Centre County, PA. Groundwater withdrawal of up to 0.262 mgd (30-day average) from Nittany Well 1.

10. Project Sponsor and Facility: Republic Services of Pennsylvania, LLC, Windsor and Lower Windsor Townships, York County, PA. Renewal of groundwater withdrawal of up to 0.350 mgd (30-day average) from groundwater remediation wells (Docket No. 19860903).

11. Project Sponsor and Facility: SWN Production Company, LLC, Herrick Township, Bradford County, PA. Groundwater withdrawal of up to 0.101 mgd (30-day average) from the Fields Supply Well.

12. Project Sponsor and Facility: Talisman Energy USA, Inc. (Susquehanna River), Sheshequin Township, Bradford County, PA. Renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20120912).

13. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Chiques Creek), West Hempfield Township, Lancaster County, PA. Surface water withdrawal of up to 2.880 mgd (peak day).

14. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, PA. Surface water withdrawal of up to 0.360 mgd (peak day).

15. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, PA. Consumptive water use of up to 0.100 mgd (peak day).

16. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, PA. Surface water withdrawal of up to 0.360 mgd (peak day).

17. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, PA. Consumptive water use of up to 0.100 mgd (peak day).

18. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Deep Creek), Hegins Township, Schuylkill County, PA. Surface water withdrawal of up to 2.880 mgd (peak day).

19. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Fishing Creek), Sugarloaf Township, Columbia County, PA. Surface water withdrawal of up to 2.592 mgd (peak day).

20. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Pequea Creek), Martic Township, Lancaster County, PA. Surface water withdrawal of up to 2.880 mgd (peak day).

21. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Roaring Creek), Franklin Township, Columbia County, PA. Surface water withdrawal of up to 2.880 mgd (peak day).

22. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, PA. Surface water withdrawal of up to 2.592 mgd (peak day).

23. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, PA. Consumptive water use of up to 0.100 mgd (peak day).

24. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, PA. Surface water withdrawal of up to 0.360 mgd (peak day).

25. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, PA. Consumptive water use of up to 0.100 mgd (peak day).

26. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Swatara Creek), East Hanover Township, Lebanon County, PA. Surface water withdrawal of up to 2.880 mgd (peak day).

Project Applications Tabled

The Commission tabled action on the following project applications:

1. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Muddy Run Pumped Storage Project, Drumore and Martic Townships, Lancaster County, PA. Application for an existing hydroelectric facility.

2. Project Sponsor and Facility: Gilberton Power Company, West Mahanoy Township, Schuylkill County, PA. Application for renewal of consumptive water use of up to 1.510 mgd (peak day) (Docket No. 19851202).

3. Project Sponsor and Facility: Gilberton Power Company, West Mahanoy Township, Schuylkill County, PA. Application for groundwater withdrawal of up to 1.870 mgd (30-day average) from the Gilberton Mine Pool.

4. Project Sponsor and Facility: Manbel Devco I, LP, Manheim Township, Lancaster County, PA. Application for groundwater withdrawal of up to 4.320 mgd (30-day average) from the Belmont Quarry.

5. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise

(Susquehanna River-2), Montour Township, Columbia County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

6. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-2), Montour Township, Columbia County, PA. Application for consumptive water use of up to 0.100 mgd (peak day).

7. Project Sponsor and Facility: Village of Windsor, Broome County, NY. Application for groundwater withdrawal of up to 0.380 mgd (30-day average) from Well 2.

8. Project Sponsor and Facility: West Manchester Township Authority, West Manchester Township, York County, PA. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 7.

Project Application Withdrawn by Project Sponsor

The following project sponsor withdrew its project application:

1. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Little Fishing Creek), Mount Pleasant Township, Columbia County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

Authority: Pub.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808.

Dated: September 27, 2016.

ANDREW D. DEHOFF,
Executive Director

[Pa.B. Doc. No. 16-1754. Filed for public inspection October 7, 2016, 9:00 a.m.]

Public Hearings

The Susquehanna River Basin Commission (Commission) will hold four public hearings to hear testimony on a proposed consumptive water use mitigation policy as described in the Supplementary Information section of this notice. This policy was released in conjunction with the proposed rulemaking published at 81 FR 64812 (September 21, 2016). For more information on the proposed policy, visit the Commission's web site at www.srbc.net.

In addition to the four public hearings, the Commission will be holding two informational webinars explaining the proposed policy, in conjunction with the proposed rulemaking, on October 11, 2016, and October 17, 2016. Instructions for registration for the webinars will be posted on the Commission's web site. Comments on the proposed policy may be submitted to the Commission on or before January 6, 2017.

The location and schedule of the four public hearings on the proposed policy are:

1. November 3, 2016, 2 p.m. to 5 p.m. or at the conclusion of public testimony, whichever is sooner; Harrisburg—Pennsylvania State Capitol (East Wing, Room 8E-B), Commonwealth Avenue, Harrisburg, PA 17120.

2. November 9, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Binghamton—DoubleTree by Hilton Hotel Binghamton (South Riverside Room), 225 Water Street, Binghamton, NY 13901.

3. November 10, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Williamsport—Holiday Inn Williamsport (Gallery Room), 100 Pine Street, Williamsport, PA 17701.

4. December 8, 2016, 1 p.m. to 3 p.m. or at the conclusion of public testimony, whichever is sooner; Annapolis—Loews Annapolis Hotel (Powerhouse-Point Lookout), 126 West Street, Annapolis, MD 21401.

For further information contact Jason Oyler, Esq., General Counsel, (717) 238-0423, Ext. 1312, fax (717) 238-2436.

Supplementary Information

The Commission established regulatory requirements for consumptive water use in 18 CFR Part 806 (relating to review and approval of projects), including general provisions, application procedures, standards for review and terms of approval. The regulations provide for mitigation by project sponsors for their consumptive water use during low flow periods and identify several options for mitigation while reserving discretion for the Commission to determine if the manner of mitigation proposed is acceptable. In consideration that mitigation is based on the elimination of manmade impacts caused by consumptive water use during low flows and the return to natural flow conditions, and recent work in quantifying and characterizing consumptive water use and mitigation requirements in the basin, the Commission has refined its strategy for meeting mitigation needs. This policy, as posted on the Commission's Public Participation Center webpage at www.srbc.net/pubinfo/publicparticipation.htm introduces the Commission's consumptive water use mitigation strategy and procedures that should be followed both by the agency and project sponsors.

The proposed policy is intended to provide insight regarding the determination of an acceptable manner of mitigation to be provided by project sponsors for regulated consumptive water use. It also describes contemporary consumptive water use mitigation principles and the criteria utilized by the Commission in its review of proposed mitigation plans submitted as part of a consumptive water use application.

The proposed policy applies to the review of all consumptive water use applications filed with the Commission, including applications for new projects, project modifications proposing to increase consumptive water use, project renewals, and pre-compact consumptive water use if located in a water critical area. It is also applicable on a case by case basis in limited circumstances. It has been developed to provide insight to the regulated community and also to the Commission's Project Review Program and any other staff involved in regulatory requirements of the Commission. It may also be used by the public to gain information and insight on the Commission's approach to consumptive water use mitigation.

Opportunity to Appear and Comment

Interested parties may appear at the hearings to offer comments to the Commission on the proposed policy. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearings. Guidelines for public hearings will be posted on the Commission's previously listed web site prior to the hearings for review. The presiding officer reserves the right to modify or supplement the guidelines

at the hearings. Individuals who wish to testify are asked to notify the Commission in advance, if possible, in writing. Written comments or notification may be mailed to Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788, or submitted electronically through the Commission's previously listed Public Participation Center webpage. Comments mailed or electronically submitted must be received by the Commission on or before January 7, 2017, to be considered.

Authority: Pub.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808.

Dated: September 28, 2016.

ANDREW D. DEHOFF,
Executive Director

(*Editor's Note*: See 46 Pa.B. 6431 (October 8, 2016) for a proposed rulemaking relating to this notice.)

[Pa.B. Doc. No. 16-1755. Filed for public inspection October 7, 2016, 9:00 a.m.]

THADDEUS STEVENS COLLEGE OF TECHNOLOGY

Request for Bids

Thaddeus Stevens College of Technology is soliciting bids for a used/reconditioned lift truck for its warehouse. Bid documents (16-1078) can be obtained from Carrie Harmon, Thaddeus Stevens College, 750 East King Street, Lancaster, PA 17602, (717) 299-7787, harmon@stevenscollege.edu.

DR. WILLIAM E. GRISCOM,
President

[Pa.B. Doc. No. 16-1756. Filed for public inspection October 7, 2016, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 78 AND 78a]

Environmental Protection Performance Standards at Oil and Gas Well Sites

The Environmental Quality Board (Board) amends Chapter 78 (relating to oil and gas wells) and adds Chapter 78a (relating to unconventional wells) to read as set forth in Annex A. This final-form rulemaking relates to surface activities associated with the development of unconventional wells. The goal of this final-form rulemaking is to set performance standards for surface activities associated with the development of unconventional wells and to prevent and minimize spills and releases to the environment to ensure protection of the waters of the Commonwealth, public health and safety, and the environment.

This final-form rulemaking represents the first update to rules governing surface activities associated with the development of unconventional wells. This final-form rulemaking adds Chapter 78a to establish the requirements for unconventional well development and amends Chapter 78 to delete any conflicting requirements that remained in that chapter for unconventional wells.

Major areas of this final-form rulemaking in Chapter 78a include public resource impact screening, water supply replacement standards, waste management and disposal, and establishing identification and select monitoring of wells located proximal to hydraulic fracturing activities. Other new regulations include standards for well development impoundments, a process for the closure or waste permitting for wastewater impoundments, onsite wastewater processing, site restoration, standards for borrow pits, and reporting and remediating spills and releases.

Chapter 78a also contains requirements for the containment of regulated substances, oil and gas gathering pipelines, well development pipelines and water management plans (WMP).

On February 3, 2016, the Board adopted the pre-Act 52 regulations containing two separate chapters—one for conventional oil and gas wells (Chapter 78) and the other for unconventional wells (Chapter 78a).

The Department of Environmental Protection (Department) delivered the pre-Act 52 final-form regulations to IRRC and the House and Senate Environmental Resources and Energy Committees on March 3, 2016. On April 12, 2016, the House and Senate Environmental Resources and Energy Committees voted to disapprove the pre-Act 52 final-form regulations and notified IRRC and the Board. On April 21, 2016, IRRC held a public hearing to consider the pre-Act 52 final-form regulations and approved it in a 3-2 vote. On May 3, 2016, the House Environmental Resources and Energy Committee voted to report a concurrent resolution to disapprove the pre-Act 52 final-form regulations approved by IRRC to the General Assembly. The concurrent resolution was not passed by the General Assembly within 30 calendar days or 10 legislative days from the reporting of the concurrent resolution.

The act of June 23, 2016 (P.L. 379, No. 52 (Act 52)) abrogated the pre-Act 52 final-form regulations "insofar as such regulations pertain to conventional oil and gas wells."

The Department delivered the pre-Act 52 final-form regulations to the Office of Attorney General for form and legality review on June 27, 2016. In accordance with the Regulatory Review Act (71 P.S. §§ 745.1—745.14) and the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506), the Office of Attorney General directed the Department to make changes to the pre-Act 52 final-form regulations to comply with Act 52. Specifically, the Office of Attorney General directed the Department to comply with Act 52 by removing all amendments or additions to the final-form regulations in Chapter 78 regarding conventional oil and gas wells prior to resubmission to the Office of Attorney General for review. Additionally, the Office of Attorney General directed the Department to retain all deletions and modifications within the pre-Act 52 final-form regulations of Chapter 78 that related to the unconventional oil and gas industry and to ensure that the requirements in the final-form rulemaking in Chapter 78a supersede any conflicting requirements in Chapter 78. The Office of Attorney General also objected to several typographical errors and sought corrections and clarifications to the following provisions: the definition of "mine influenced water" in § 78a.1 (relating to definitions) and §§ 78a.13(a), 78a.17(b), 78a.65(b)(8), 78a.67(c)(2), 78a.75(a), 78a.75a(a), 78a.83(a)(2), 78a.83b(a)(1), 78a.87(b), 78a.88(c), (d), (d)(1) and (2), 78a.91(a) and 78a.101.

On July 26, 2016, the Department resubmitted this final-form rulemaking to the Office of Attorney General for review. In accordance with the Office of Attorney General's direction, the Department removed all amendments or additions to Chapter 78 regarding conventional oil and gas wells and retained the deletions and modifications in Chapter 78 that related solely to the unconventional wells. This revised final-form rulemaking also contains clarifications and corrections to respond to other issues identified by the Office of Attorney General, including the addition of § 78a.2 (relating to applicability) to clarify that Chapter 78a supersedes Chapter 78 for unconventional wells to avoid any potential conflict between the requirements in Chapter 78 and Chapter 78a regarding unconventional wells. Later on July 26, 2016, the Office of Attorney General approved this revised final-form rulemaking for form and legality under the Commonwealth Attorneys Act. The final-form rulemaking in Annex A is the revised final-form rulemaking as approved by the Office of Attorney General. This preamble was revised to reflect the final-form rulemaking as approved by the Office of Attorney General in conformance with Act 52.

The Joint Committee on Documents met on August 18, 2016, and voted to direct the Legislative Reference Bureau (Bureau) to publish this final-form rulemaking.

A. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th

Floor, 400 Market Street, P.O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2199; or Elizabeth Davis, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory Authority*

This final-form rulemaking is being made under the authority of 58 Pa.C.S. §§ 3202, 3215(e), 3218(a), 3218.2(a)(4), 3218.4(c) and 3274, section 5 of The Clean Streams Law (35 P.S. § 691.5), section 105 of the Solid Waste Management Act (SWMA) (35 P.S. § 6018.105), section 5 of the Dam Safety and Encroachments Act (32 P.S. § 693.5), section 104 of the Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P.S. § 6026.104), sections 301 and 302 of the Radiation Protection Act (35 P.S. §§ 7110.301 and 7110.302), section 3 of the Unconventional Well Report Act (58 P.S. § 1003), section 13.2 of the act of July 10, 2014 (P.L. 1053, No. 126) (Act 126) adding section 1741.1-E of The Fiscal Code (72 P.S. § 1741.1-E) and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-17 and 510-20).

D. *Background and Summary*

This final-form rulemaking amends the oil and gas well regulations and adds additional controls to the surface activities associated with the development of unconventional well sites.

This final-form rulemaking is needed to ensure that surface activities regarding the development of unconventional wells are conducted in a manner that protects the health, safety and environment of citizens in this Commonwealth consistent with the environmental laws that provide authority for this final-form rulemaking. The surface activities requirements in Chapter 78, Subchapter C (relating to environmental protection performance standards) were last updated in 2001, prior to the significant expansion of natural gas development utilizing enhanced drilling techniques to target the Marcellus Shale formation. This final-form rulemaking is needed for several specific reasons, including: (1) statutory changes and new environmental protection standards for unconventional wells resulting from the passage of 58 Pa.C.S. Chapter 32 (relating to development) (2012 Oil and Gas Act) including: direction to promulgate specific regulations; (2) new technologies associated with extracting natural gas from unconventional formations; (3) changes in the Department's other regulatory programs; (4) environmental protection gaps in the Department's existing regulatory program currently addressed through policy or other means; and (5) recommendations from State Review of Oil and Natural Gas Environmental Regulations (STRONGER) regarding the potential risk of hydraulic fracturing communication.

Because unconventional well drilling occurs in over 60% of this Commonwealth and pipeline activities occur throughout this entire Commonwealth, all of its citizens will benefit from more robust and comprehensive regulations. The regulated community will benefit from this final-form rulemaking because it streamlines authorizations and approval processes and establishes performance based requirements that will avoid or minimize environmental impacts which can be costly to remediate. Many of the environmental performance standards in this final-form rulemaking are either a codification of current statutory or permit requirements, or are already standard industry practices. As a whole, this final-form rulemaking will strengthen measures aimed at reducing the potential impacts that oil and gas activities may have on the environment.

The Department also notes that there are several areas in this final-form rulemaking where current policies and practices are codified into regulation. This should provide significant benefits for several reasons. First, by having these policies expressed in regulation, all parties—the public, unconventional operators, Department staff, service companies, and the like—will be able to have a transparent, up-front, black-and-white understanding of the standards of performance that apply to oil and gas development in this Commonwealth. Having these policies and practices codified into Chapter 78a will establish binding norms as regulations have the force and effect of law and enjoy a general presumption of reasonableness. When a policy or practice has been in effect for a significant amount of time, it may be appropriate to move to codify it into regulation. Significant examples of these subjects abound in this final-form rulemaking:

- Section 78a.17(a) (relating to permit expiration and renewal), which codifies the Department's interpretation of the phrase "pursued with due diligence" in section 3211(i) of the 2012 Oil and Gas Act (relating to well permits).

- Section 78a.51 (relating to protection of water supplies), which codifies the Department's interpretation of water supply replacement quality standards under section 3218(a) of the 2012 Oil and Gas Act (relating to protection of water supplies).

- Section 78a.55 (relating to control and disposal planning; emergency response for unconventional wells), which codifies the Department's current position regarding the development and maintenance of Preparedness, Prevention and Contingency (PPC) plans for well sites.

- Sections 78a.56 and 78a.57 (relating to temporary storage; and control, storage and disposal of production fluids), which codify the Department's current policies regarding management of waste on unconventional well sites and the interpretation of section 3273.1(a) of the 2012 Oil and Gas Act (relating to relationship to solid waste and surface mining).

- Section 78a.58 (relating to onsite processing), which codifies the Department's current approval process for onsite waste processing.

- Section 78a.59c (relating to centralized impoundments), which codifies the Department's position regarding the proper regulation of offsite waste management operations.

- Section 78a.65 (relating to site restoration), which codifies the Department's positions regarding well site restoration under Chapter 102 (relating to erosion and sediment control) and section 3216 of the 2012 Oil and Gas Act (relating to well site restoration).

- Section 78a.66 (relating to reporting and remediating spills and releases), which codifies the Department's interpretation of existing requirements for reporting and remediating releases.

- Section 78a.67 (relating to borrow pits), which codifies the Department's interpretation of the borrow pit exemption outlined in section 3273.1(b) of the 2012 Oil and Gas Act.

• Section 78a.122 (relating to well record and completion report), which codifies the Department's current well record and completion report requirements in accordance with section 3222 of the 2012 Oil and Gas Act (relating to well reporting requirements) and section 3 of the Unconventional Well Reporting Act.

Having these policies, practices, interpretations and procedures codified into regulations in a single location—as opposed to scattered throughout factsheets, application and approval forms and instructions, statements of policy and technical guidance documents, Department letters and webpages—will provide transparency and allow all parties to understand the requirements that apply to this industry.

Bifurcation

As part of this final-form rulemaking, in response to comments and Act 126, the Department split Chapter 78 into two separate chapters—one for conventional oil and gas wells (Chapter 78) and the other for unconventional wells (Chapter 78a). The purpose of this bifurcation was to clarify the different requirements for conventional and unconventional wells. The Department believes that having two completely separate chapters should serve to eliminate any confusion about what requirements apply to conventional and unconventional wells. In addition, having separate chapters allows the Department to craft regulations to match the environmental risks posed by each segment of the industry (compare, for example, § 78.56 (relating to pits and tanks for temporary containment) and § 78a.56, which contain significantly different requirements for temporary storage at conventional and unconventional well sites, respectively). To clearly summarize these regulations, the Department will discuss each chapter in Sections E and F.

(*Department Note*: All amendments or additions to Chapter 78 regarding conventional oil and gas wells were removed from this final-form rulemaking in accordance with the direction of the Office of Attorney General to comply with Act 52. The amendments in Chapter 78 are limited to deletions of the provisions regarding unconventional wells.)

Public outreach

The Department engaged in significant discourse with the Oil and Gas Technical Advisory Board (TAB) and other groups during the development of the proposed and final-form rulemakings. The initial public discussion of what became this final-form rulemaking occurred at TAB's January 21, 2010, meeting, where the Department presented an overview of subjects to be addressed in this final-form rulemaking. At TAB's April 12, 2011, and October 21, 2011, meetings, the Department again discussed topics to be included in this final-form rulemaking as well as providing TAB with updates on the Department's development of the draft proposed rulemaking.

On February 16, 2012, the Department presented TAB with a detailed conceptual summary of the proposed amendments addressing surface activities to Chapter 78. After the enactment of the 2012 Oil and Gas Act, this detailed summary was revised and discussed again with TAB on August 15, 2012.

The Department met with other industry representative groups on several occasions during the development of the draft proposed rulemaking, including: the Marcellus Shale Coalition, which is mostly comprised of businesses representing unconventional drillers; the Pennsylvania Independent Oil and Gas Association, which represents unconventional and conventional drillers; and Pennsylvania Independent Petroleum Producers, which represents conventional oil industry, the Pennsylvania chapter of the American Petroleum Institute, and individual operators and midstream companies. In addition, the Department held regular meetings with industry representatives quarterly throughout the entire pendency of this final-form rulemaking. This final-form rulemaking generally and specific individual topics addressed by this final-form rulemaking were standard agenda items at these meetings.

Local government organizations were also involved in discussions of the proposed rulemaking, including then-Lycoming County Commissioner Jeff C. Wheeland, the Pennsylvania State Association of Township Supervisors and the Pennsylvania State Association of Boroughs.

The Department also involved several environmental organizations in the development of the proposed rulemaking, including the Chesapeake Bay Foundation, the Western Pennsylvania Conservancy, The Nature Conservancy and the Pennsylvania Environmental Council. In addition, the Department held regular meetings with environmental organization representatives (including Clean Water Action and the Delaware Riverkeeper) quarterly throughout the entire pendency of this final-form rulemaking. This final-form rulemaking generally and specific individual topics addressed by this final-form rulemaking were standard agenda items at these meetings.

The Department also consulted with other State agencies during the development of the proposed and draft final-form regulations, including the Department of Transportation, the Department of Conservation and Natural Resources, the Fish and Boat Commission, the Game Commission and the Pennsylvania Historical and Museum Commission.

A draft of the proposed rulemaking was shared with TAB members in December 2012, and a revised version of the draft proposed rulemaking was discussed at the TAB meeting on February 20, 2013. In response to TAB's comments, the Department again revised the draft proposed rulemaking and presented it to TAB on April 23, 2013, for formal consideration. At the April 23, 2013, meeting, TAB voted unanimously, with one member absent, to recommend that the Board publish the proposed rulemaking for public comment.

Following the April 2013 TAB meeting, the Department continued discussions on the topics in the proposed rulemaking at TAB's June 12, 2013, meeting. At that meeting, TAB subcommittees were established and future meetings scheduled. On two occasions, those TAB subcommittees met to consider public resource impact permit screening, water supply replacement, the general topic of waste management and the area of review requirements—July 17 and 18, 2013 (Greensburg, PA) and August 14 and 15, 2013 (State College, PA). Participants in those meetings included associations representing the conventional and unconventional industries, consultants, attorneys, environmental groups and members of the public.

Following publication of the proposed rulemaking at 43 Pa.B. 7377 (December 14, 2013) for public comment and the close of the 90-day public comment period, the Department discussed the comments received as well as the draft final-form regulations with TAB at its June 26, 2014, meeting. At the September 25, 2014, TAB meeting, the Department discussed splitting the regulations into two individual chapters and significant changes to the

regulations, especially to the extent those changes concerned conventional operators.

In terms of this final-form rulemaking, the Department discussed the draft final-form regulations announced under the Advanced Notice of Final Rulemaking (ANFR) process with TAB at meetings on March 20, 2015, and April 23, 2015. Following the close of the ANFR public comment period, the Department released the pre-Act 52 final-form regulations, which it discussed with TAB on September 2, 2015. TAB suggested changes to that document, so the Department considered those requests and further amended the pre-Act 52 final-form regulations and discussed those changes with TAB members during a webinar held on September 18, 2015. Additional changes to the pre-Act 52 regulations resulted from suggestions made during that webinar. The Department presented the pre-Act 52 final-form regulations to TAB at its October 27, 2015, meeting. On October 27, 2015, TAB voted unanimously to move the pre-Act 52 final-form regulations to the Board without expressing support or disapproval and indicated they would be presenting a report on the pre-Act 52 final-form regulations to the Board. On January 6, 2016, TAB submitted a report on the pre-Act 52 final-form regulations to the Board. A copy of this report is available on the Department's web site or from the contact persons listed in Section B.

The Department also discussed the draft final-form regulations with the Conventional Oil and Gas Advisory Committee (COGAC) in 2015. The Department formed COGAC in March 2015 to have an advisory body that was focused solely on the issues confronting the conventional oil and gas industry. The Department discussed the comments received on the proposed rulemaking and the ANFR final-form regulations with COGAC on March 26, 2015. Following the close of the ANFR public comment period, the Department released the pre-Act 52 final-form regulations, which it discussed with COGAC on August 27, 2015. COGAC suggested changes to that document, so the Department considered those requests and further amended the pre-Act 52 final-form regulations and discussed those changes with COGAC members during a webinar held on September 18, 2015. Additional changes to the draft pre-Act 52 final-form regulations resulted from suggestions made during that webinar. The Department presented the pre-Act 52 final-form regulations to COGAC at its October 29, 2015, meeting. At that meeting, COGAC adopted a resolution recommending the Board disapproval of the pre-Act 52 final-form regulations as it applied to conventional operators. At a meeting on December 22, 2015, COGAC adopted comments to the Board on the pre-Act 52 final-form regulations urging disapproval. A copy of that document is available on the Department's web site or from the contact persons listed in Section B.

On January 6, 2016, the Department submitted the pre-Act 52 final-form regulations to the Board for review and consideration. At its meeting on February 3, 2016, the Board approved the pre-Act 52 regulations by a vote of 15-4. The Department delivered the pre-Act 52 final-form regulations to IRRC and the House and Senate Environmental Resources and Energy Committees on March 3, 2016. On April 12, 2016, the House and Senate Environmental Resources and Energy Committees voted to disapprove the pre-Act 52 final-form regulations and notified IRRC and the Board. On April 21, 2016, IRRC held a public hearing to consider the pre-Act 52 regulations and approved it in a 3-2 vote. On May 3, 2016, the House Environmental Resources and Energy Committee voted to report a concurrent resolution to disapprove the pre-Act 52 final-form regulations approved by IRRC to the General Assembly. The concurrent resolution was not passed by the General Assembly within 30 calendar days or 10 legislative days from the reporting of the concurrent resolution.

On June 23, 2016, Act 52 was enacted establishing the Pennsylvania Grade Crude Development Advisory Council and abrogating the rulemaking concerning standards at oil and gas well sites approved by the Board in 2016 prior to the effective date of Act 52 "insofar as such regulations pertain to conventional oil and gas wells."

The Department delivered the pre-Act 52 final-form regulations to the Office of Attorney General for form and legality review on June 27, 2016. In accordance with the Regulatory Review Act and the Commonwealth Attorneys Act, the Office of Attorney General directed the Department to make changes to the pre-Act 52 final-form regulations to comply with Act 52. Specifically, the Office of Attorney General directed the Department to comply with Act 52 by removing all amendments or additions to the final-form regulations in Chapter 78 regarding conventional oil and gas wells prior to resubmission to the Office of Attorney General for review. Additionally, the Office of Attorney General directed the Department to retain all deletions and modifications within the pre-Act 52 final-form regulations of Chapter 78 that relate to the unconventional oil and gas industry and to ensure that the requirements in the final-form rulemaking in Chapter 78a supersede any conflicting requirements in Chapter 78. The Office of Attorney General also objected to several typographical errors and sought corrections and clarifications to the following provisions: the definition of "mine influenced water" in § 78a.1, §§ 78a.13(a), 78a.17(b), 78a.65(b)(8), 78a.67(c)(2), 78a.75(a), 78a.75a(a), 78a.83(a)(2), 78a.83b(a)(1), 78a.87(b), 78a.88(c), (d), (d)(1) and (2), 78a.91(a) and 78a.101.

On July 26, 2016, the Department resubmitted this final-form rulemaking to the Office of Attorney General for review. In accordance with the Office of Attorney General's direction, the Department removed all amendments or additions to Chapter 78 regarding conventional oil and gas wells and retained the deletions and modifications in Chapter 78 that related solely to the unconventional wells. This revised final-form rulemaking also contains clarifications and corrections to respond to other issues identified by the Office of Attorney General, including the addition of § 78a.2 to clarify that Chapter 78a supersedes Chapter 78 for unconventional wells to avoid any potential conflict between the requirements in Chapter 78 and Chapter 78a regarding unconventional wells. Later on July 26, 2016, the Office of Attorney General approved this revised final-form rulemaking for form and legality under the Commonwealth Attorneys Act. The final-form rulemaking in Annex A is the revised final-form rulemaking as approved by the Office of Attorney General. This preamble was revised to reflect the final-form rulemaking as approved by the Office of Attorney General in conformance with Act 52.

The Joint Committee on Documents met on August 18, 2016, and voted to direct the Bureau to publish this final-form rulemaking.

E. *Summary of Regulatory Requirements*

As noted in Section D, in response to comments and Act 126, this final-form rulemaking contains new Chapter 78a for unconventional wells and amendments to Chapter 78 to delete conflicting requirements for unconventional wells to clarify that Chapter 78a supersedes Chapter 78

regarding unconventional wells. To clearly summarize these regulations, the Department will discuss each chapter in turn.

There are many sections in Chapter 78a that were not amended by this final-form rulemaking, but were carried over from existing Chapter 78 because they apply equally to conventional and unconventional well operations. Excellent examples of both of these nonsubstantive changes are the well plugging regulations in §§ 78a.91—78a.98 (relating to plugging). The only changes to these sections in Chapter 78a are to correct statutory citations necessitated by the passage of the 2012 Oil and Gas Act. These sections are repeated in their entirety in Chapter 78a, with proper cross-references to other sections in Chapter 78a.

Chapter 78. Oil and gas wells

§ 78.1. Definitions

The definitions of "nonvertical unconventional well" and "vertical unconventional well" are deleted from this section.

§ 78.19. Permit application fee schedule

This section is amended to delete unconventional well permit application fees.

§ 78.55. Control and disposal planning

This section is amended to delete subsection (f), which related exclusively to emergency response planning for unconventional wells.

§ 78.72. Use of safety devices—blow-out prevention equipment

Subsections (a)(1) and (j) are deleted as the blow-out prevention provisions only applied to unconventional wells. This section is renumbered accordingly.

§ 78.121. Production reporting

Subsection (a) is amended to delete reporting requirements for unconventional wells. The final sentence of the section regarding electronic reporting of production data is renumbered as subsection (b).

Chapter 78a. Unconventional wells

§ 78a.1. Definitions

This final-form rulemaking contains new or revised definitions for "ABACT—antidegradation best available combination of technologies," "abandoned water well," "accredited laboratory," "Act 2," "anti-icing," "approximate original conditions," "barrel," "body of water," "borrow pit," "building," "centralized impoundment," "certified mail," "common areas of a school's property," "condensate," "deicing," "floodplain," "freeboard," "gathering pipeline," "inactive well," "limit of disturbance," "modular aboveground storage structure," "oil and gas operations," "other critical communities," "PCSM—post-construction stormwater management," "PCSM plan," "PNDI—Pennsylvania Natural Diversity Inventory," "PNDI receipt," "PPC plan—Preparedness, Prevention and Contingency plan," "pit," "playground," "pre-wetting," "primary containment," "process or processing," "public resource agency," "regional groundwater table," "regulated substance," "residual waste," "secondary containment," "stormwater," "threatened or endangered species," "WMP—water management plan," "watercourse," "waters of the Commonwealth," "well development impoundment," "well development pipelines" "wellhead protection area" and "wetland."

Under statutory changes in the 2012 Oil and Gas Act, this final-form rulemaking provides new definitions for "act," "owner," "public water supply," "water purveyor," "water source" and "well operator or operator."

The definition of "mine influenced water" was ameded in this final-form rulemaking at the direction of the Office of Attorney General to address concerns that the definition in the pre-Act 52 final-form regulations did not establish a binding norm. The language in this final-form rulemaking matches the standards established in § 105.3(a)(3) (relating to scope).

§ 78a.2. Applicability

This section is added to clarify that Chapter 78a applies to unconventional wells and that Chapter 78a supersedes any regulations in Chapter 78 that might appear to apply to unconventional wells. This change was made at the direction of the Office of Attorney General.

§ 78a.15. Application requirements

The revisions to subsection (a) require well permit applications to be submitted electronically through the Department's web site.

Subsection (b.1) establishes that if the proposed limit of disturbance is within 100 feet measured horizontally from any watercourse or any high quality or exceptional value body of water or any wetland greater than 1 acre in size, the applicant shall demonstrate that the well site location will protect that watercourse or bodies of water. This provision is needed to ensure protection of waters of the Commonwealth—especially in light of the Supreme Court's decision in *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (*Robinson Twp.*) enjoining the application of the setbacks in section 3215(b) of the 2012 Oil and Gas Act (relating to well location restrictions). Operators can demonstrate that they will be protective of waters of the Commonwealth in several ways, including obtaining other permits or providing appropriate plans.

Subsection (c) is added to address statutory changes in the 2012 Oil and Gas Act that require the Department to review a well permit applicant's parent and subsidiary corporations' compliance history for operations in this Commonwealth.

Subsection (d) is added to address well permit applicants to consult with the Pennsylvania Natural Heritage Program regarding the presence of State or Federal threatened or endangered species where the proposed well site or access road will be located and outlines a process to address any adverse impacts. Many well permit applicants address impacts to threatened or endangered species when fulfilling their permitting obligations under Chapter 102. For that reason, subsection (e) is added to specify that compliance with §§ 102.5 and 102.6(a)(2) (relating to permit requirements; and permit applications and fees) is deemed to comply with the requirements to address threatened or endangered species as part of the well permit application process.

Subsection (f) outlines a process for the Department to consider the impacts to public resources when making a determination on a well permit in accordance with the Department's constitutional and statutory obligations to protect public resources. Subsection (f) requires well permit applicants to identify when the proposed well site or access road may impact a listed public resource, notify applicable public resource agencies, and provide the Department and the public resource agencies with a description of the functions and uses of the public resources and avoidance or mitigation measures to be taken, if any. This section also provides applicable public resource agencies the opportunity to submit comments to the Department,

including any recommendations to avoid or minimize impacts, during a 30-day time frame. The Department notes that these provisions do not necessarily amount to setbacks, and are intended to protect the use and function of the particular public resource.

Subsection (g) provides the criteria the Department will consider when deciding whether to impose conditions on a well permit necessary to prevent a probable harmful impact to public resources.

Antidegradation requirements in Chapter 93 (relating to water quality standards) are reflected in subsection (h). This subsection requires a well permit applicant proposing to drill a well that involves 1 to 5 acres of earth disturbance over the life of the project that is located in a special protection watershed to submit an erosion and sediment control plan with the well permit application. These provisions seek to codify an existing component of the well permit application and are necessary to ensure that the Department meets its antidegradation requirements in Chapter 93.

§ 78a.17. Permit expiration and renewal

This section codifies the Department's interpretation of the permit requirements established by section 3211(i) of the 2012 Oil and Gas Act. Permits will expire unless drilling is started within 1 year of permit issuance. If drilling is started within 1 year, operators shall pursue drilling "with due diligence" or the permit will expire. Subsection (a) sets that expiration at 16 months from permit issuance unless an extension for good cause is obtained. Operators can also apply for a single 2-year renewal under subsection (b), and any new buildings or water wells installed after the initial permit was issued must be included on the renewal plat but do not block renewal of the permit.

§ 78a.18. Disposal and enhanced recovery well permits

Because disposal and enhanced recovery wells are by definition "conventional wells," this section refers operators to the requirements in § 78.18 (relating to disposal and enhanced recovery well permits). This section might come into play when an operator chooses to convert an unconventional well regulated by Chapter 78a into a disposal or enhanced recovery well regulated under Chapter 78.

§ 78a.51. Protection of water supplies

The amendments clarify that the presumption of liability established in section 3218(c) of the 2012 Oil and Gas Act does not apply to pollution resulting from well site construction activities. Subsection (c) also mirrors the statutory language stating that the presumption applies whenever impacts occur "as a result of completion, drilling, stimulation or alteration of the unconventional well."

The 2012 Oil and Gas Act established a new provision that specifies a restored or replaced water supplies must meet the standards in the Pennsylvania Safe Drinking Water Act (SDWA) (35 P.S. §§ 721.1—721.17) or be comparable to the quality of the water supply before it was affected if that water was of a higher quality than those standards. This section amended to reflect this statutory language.

§ 78a.52. Predrilling or prealteration survey

The amendments to subsection (d) establish a new process for submitting predrill sample results to the Department and applicable water users. Under this process, an operator electing to preserve its defenses under section 3218(d)(2)(i) of the 2012 Oil and Gas Act shall submit all sample results taken as part of a survey to the Department within 10 business days of receipt of all the sample results taken as part of that survey. The current practice is to require submission with 10 days of receipt of each individual sample result, leading to piecemeal submissions. A copy of sample results shall be provided to water users within 10 business days of receipt of the sample results.

Subsection (g) reflects new 2012 Oil and Gas Act requirements that unconventional well operators provide written notice to water supply owners that the presumption established in section 3218(c) of the 2012 Oil and Gas Act may be void if the landowner or water purveyor refuses to allow the operator access to conduct a predrilling or prealteration survey and provided that the operator submits proof of the notice to the Department.

§ 78a.52a. Area of review

This section requires operators to identify abandoned, orphan, active and inactive wells within 1,000 feet of the vertical and horizontal wellbore prior to hydraulic fracturing. The identification process requires operators to review the Department's orphan and abandoned well database, review farm line maps and submit a questionnaire to landowners whose property lies within the prescribed area of review prior to drilling in cases where hydraulic fracturing activities are anticipated at the well site. Other available databases and historical sources should also be consulted. The section outlines how operators can conduct this identification, including consulting with the Department's database, farm line maps and submitting a questionnaire to surface landowners. The results of this survey shall be provided to the Department, and under subsection (f) the Department can require additional information or measures as are necessary to protect the waters of the Commonwealth.

§ 78a.53. Erosion and sediment control and stormwater management

The amendments to this section cross-reference the requirements of Chapter 102. This section also specifies that best management practices (BMP) for erosion and sediment control for oil and gas activities are contained in several guidance documents developed by the Department.

§ 78a.55. Control and disposal planning; emergency response for unconventional wells

This section requires all oil and gas well operators to develop and implement a site-specific PPC plan for oil and gas operations. This requirement clarifies existing requirements in § 91.34 (relating to activities utilizing pollutants) and § 102.5(l). Additionally, site-specific PPC plans are needed to address site-specific conditions, including local emergency contact information.

There may be instances when the operator finds that a PPC plan prepared for one well site is applicable to another site. Each individual plan shall be analyzed prior to making this determination. It is not the intent of this final-form rulemaking to require that each PPC plan be separately developed and different for each well site. The Department understands that many of the practices covered in the PPC plan are the same for a given operator. It is also not the intent of this final-form rulemaking to require that all PPC plans be revised annually. In many cases, if conditions at the site do not change, there will not be a need to make revisions to the PPC plan.

The amendments also provide that a PPC plan developed in conformance with the *Guidelines for the Develop-*

ment and Implementation of Environmental Emergency Response Plans, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 400-2200-001, as amended and updated, will be deemed to meet the requirements of this section.

§ 78a.56. Temporary storage

As an initial matter, this section's heading is changed from "pits and tanks for temporary containment" to "temporary storage" to clarify the difference between temporary storage requirements and long-term containment requirements in § 78a.57 and §§ 78a.64 and 78a.64a (relating to secondary containment around oil and condensate tanks; secondary containment). The equipment covered by this section shall be removed in accordance with the requirements of § 78a.65 within 9 months of completion of drilling, accounting for the "temporary" nature of this storage.

For unconventional operators, final-form § 78a.56 bans the use of pits for temporary waste storage at well sites. The Department has determined that it is appropriate to remove this practice because it is not commonly used by unconventional operators. Additionally, the typical type and scope of use by unconventional operators is generally incompatible with technical standards for temporary pits prescribed under § 78.56.

Subsection (a)(2) specifies that modular aboveground storage structures may be used to temporarily contain regulated substances upon prior Department approval and notice prior to installation. Modular aboveground storage structures of less than or equal to 20,000 gallons capacity may be used without prior Department approval. The Department will maintain a list of approved modular structures on its web site, although a siting review will still be required for each modular aboveground storage structure.

This final-form rulemaking also includes new monitoring requirements for tanks at unconventional well sites or, in the alternative, valve and access lid requirements for tanks. Additionally, this section establishes new signage requirements for tanks.

§ 78a.57. Control, storage and disposal of production fluids

The amendments to this section prohibit the use of open top structures and pits to store brine and other production fluids generated during the production operations of a well. Existing production pits shall be reported to the Department by April 8, 2017, and properly closed by October 10, 2017. Subsection (a) also codifies the Department's interpretation of the SWMA exemption in section 3273.1 of the 2012 Oil and Gas Act. Only wastes generated at a well site or entirely for beneficial reuse at well site may be stored at that well site without a SWMA permit.

If new, refurbished or replaced tanks are used to store these fluids, these tanks must be equipped with secondary containment. This section also establishes new performance and technical standards for tanks storing brines and other production fluids generated during production operations. Subsection (e) outlines requirements for use of underground or partially buried storage tanks that are used to store brine and other fluids produced during operation of the well.

Subsections (f) and (g) codify the requirement in section 3218.4(b) of the 2012 Oil and Gas Act (relating to corrosion control requirements) that "permanent aboveground and underground tanks must comply with the applicable corrosion control requirements in the department's storage tank regulations" by cross-referencing the applicable storage tank regulations in Chapter 245 (relating to administration of the Storage Tank and Spill Prevention Program). Because the Oil and Gas Program does not certify storage tank inspectors, that provision of the storage tank regulation is not explicitly excepted from the cross-reference.

Subsection (h) establishes a monthly tank inspection requirement, similar to the monthly maintenance "walk-around" inspections currently required by the storage tank program (see §§ 245.513(b)(2) and 245.613(b) (relating to preventive maintenance and housekeeping requirements; and monitoring standards)).

§ 78a.58. Onsite processing

The amendments establish provisions regarding wastewater processing at well sites, codifying the Department's current approval process for onsite oil and gas waste processing. Subsection (a) allows operators to process fluids generated by oil and gas wells at the well site when the fluids were generated or at the well site when all of the fluid is intended to be beneficially used to develop, drill or stimulate a well upon Department approval. Subsection (b) lists specific activities that do not require Department approval, including mixing fluids with freshwater, aerating fluids or filtering solids from fluids. These activities shall be conducted within secondary containment. Subsection (d) requires an operator processing oil and gas fluids onsite to develop a radiation protection action plan which specifies procedures for monitoring and responding to radioactive material or technologically enhanced naturally occurring radioactive materials (TENORM) produced by the treatment process. This subsection also requires procedures for training, notification, recordkeeping and reporting to be implemented. Subsection (e) specifies that drill cuttings may only be processed at the well site where those drill cuttings were generated, if approved by the Department. Subsection (g) allows for using approved processing facilities at subsequent well sites.

§ 78a.59a. Impoundment embankments

This section contains design and construction standards for well development impoundments, including construction and stabilization requirements for embankments.

§ 78a.59b. Well development impoundments

This section creates registration, performance, and safety and security requirements for well development impoundments. An impervious liner must be used and the bottom of the well development impoundment is required to be 20 inches above the seasonal high groundwater table. Operators shall document the depth of the seasonal high groundwater table, and the manner that it was ascertained. Also, this final-form rulemaking establishes that existing and new well development impoundments shall be registered with the Department and need to be restored within 9 months of completion of hydraulic fracturing of the last well serviced by the impoundment. An extension for restoration may be approved under § 78a.65(c). Land owners may request to the Department in writing that the impoundment embankments not be restored provided that the synthetic liner is removed. Finally, this section contains a process for storing mine influenced water (MIW) in well development impoundments to ensure that it will not result in pollution to waters of the Commonwealth.

§ 78a.59c. Centralized impoundments

By April 8, 2017, operators of existing centralized impoundments authorized by a Dam Permit for a Centralized Impoundment Dam for Oil and Gas Operations permit (DEP # 8000-PM-OOGM0084) shall elect to submit a closure plan to the Department or seek a permit for the facility under Subpart D, Article IX (relating to residual waste management). Subpart D, Article IX contains the requirements for managing residual waste properly, and these requirements apply to residual waste that is generated by any type of industrial, mining or agricultural operation. Operators of existing centralized impoundments shall obtain a waste permit or close the impoundment by October 8, 2019. Any new proposed wastewater storage impoundments shall obtain a permit from the Department's Waste Management Program prior to construction and operation. Subsection (b) establishes requirements for the closure plan and is modeled on facility closure plan requirements in the residual waste regulations.

§ 78a.60. Discharge requirements

The amendments to this section specify that operators discharging tophole water by land application shall document compliance with the regulatory requirements, including those under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), make the records available to the Department upon request and submit the relevant information in the well site restoration report. In addition, the amendments add fill or dredged material to this section. Finally, subsection (b)(7) contains limitations on discharges in proximity to watercourses or in the floodplain.

§ 78a.61. Disposal of drill cuttings

This section addresses disposal of drill cuttings on well sites. A distinction is made between cuttings generated above the surface casing seat, which are generally subject to less stringent disposal requirements, and cuttings from below the surface casing seat, which shall be disposed of in accordance with § 78a.62 or § 78a.63 (relating to disposal of residual waste—pits; and disposal of residual waste—land application). The section contains limitations on disposal in proximity to watercourses or in the floodplain. For land application, subsection (b)(9) states that loading and application rate of drill cuttings may not exceed a maximum of drill cuttings to soil ratio of 1:1. For all practical purposes, this limitation means that drill cuttings cannot be disposed of on unconventional well sites.

Under subsection (d), an operator may use solidifiers, dusting, unlined pits, attenuation or other alternative practices with Department approval. The Department will maintain a list of approved solidifiers on its web site, and use of an approved solidifier does not require separate Department review or approval.

Subsection (f) requires notice to the Department prior to disposal of drill cuttings, and notice to the surface landowner of the location and nature of the disposal within 10 business days after completion of disposal.

§ 78a.62. Disposal of residual waste—pits

§ 78a.63. Disposal of residual waste—land application

These sections establish that residual waste, including contaminated drill cuttings, may not be disposed of at an unconventional well site in a pit or through land application unless the operator obtains an individual permit to do so from the Department.

§ 78a.64. Secondary containment around oil and condensate tanks

This section reflects Federal spill prevention, control and countermeasure requirements under the Oil Pollution Act of 1990 (33 U.S.C.A. §§ 2701—2762), and requires secondary containment when a tank or tanks with greater than 1,320 gallons capacity are used on a well site to store oil or condensate. Subsection (e) requires existing condensate tanks to meet the requirements of this section when the tank is replaced, refurbished or repaired, or by October 9, 2018, whichever is sooner.

§ 78a.64a. Secondary containment

This new section requires that unconventional well sites be designed and constructed using containment systems and practices that prevent spills to the ground surface and off the well site in accordance with 2012 Oil and Gas Act requirements. This section specifies when these systems and practices shall be employed. This section specifies secondary containment requirements. Additionally, this section contains provisions regarding subsurface containment systems.

§ 78a.65. Site restoration

This section clarifies the well site restoration requirements, including when restoration is required if there are multiple wells drilled on a single well site and what constitutes a restoration after drilling. The section addresses the interplay between the Chapter 102 requirements and the restoration requirements in section 3216 of the 2012 Oil and Gas Act, which requires well site restoration both post-drilling and post-plugging.

This section largely restates the restoration requirements in section 3216 of the 2012 Oil and Gas Act and incorporates the Department's interpretation of these requirements as outlined in the "Policy for Erosion and Sediment Control and Stormwater Management for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities," Document No. 800-2100-008, which was finalized on December 29, 2012. Subsection (1) allows operators broad discretion to ensure wells and well sites can be operated safely while also complying with the site restoration requirements in the 2012 Oil and Gas Act.

For post-drilling, the regulation requires restoration of the well site within 9 months after completion of drilling of all permitted wells on the site or within 9 months of the expiration of all existing well permits on the site, whichever is later. For post-plugging, it requires restoration within 9 months after plugging the final well on a well site. The restoration time frames are consistent with requirements in the 2012 Oil and Gas Act.

Operators may request an extension of the restoration time frame because the extension will result in less earth disturbance, increased water reuse or more efficient development of the resources, or if restoration cannot be achieved due to adverse weather conditions or a lack of essential fuel, equipment or labor.

In addition to post-plugging and post-drilling, a well site shall be restored within 9 months after expiration of the drilling permit if the site is constructed and the well is not drilled.

"Areas not restored" do not fall within the provisions in § 102.8(n) (relating to PCSM requirements) and therefore must meet the requirements, among others, of § 102.8(g). Areas not restored include areas where there are permanent structures or impervious surfaces, therefore runoff

produced from these areas must be tributary to permanent post-construction stormwater management (PCSM) BMPs to ensure the runoff will be managed in accordance with the requirements of § 102.8.

Operators do not need to develop written restoration plans for all well sites and this final-form rulemaking requires development of written restoration plans only for well sites which require permit coverage under § 102.5(c).

Drilling supplies and equipment not needed for production may only be stored on the well site if written consent of the landowner is obtained, which is consistent with the requirements in section 3216 of the 2012 Oil and Gas Act.

After restoration, a site restoration report shall be provided to the Department and the surface landowner. Waste disposal information must be included in the site restoration report.

Subsection (g) allows for the satisfaction of the restoration requirements if written consent of the landowner is given provided that the operator develops and implements a site restoration plan that complies with subsections (a) and (b)(2)—(7) and all PCSM requirements in Chapter 102.

§ 78a.66. Reporting and remediating spills and releases

This section clarifies the requirements regarding reporting and remediating spills and releases of regulated substances on or adjacent to well sites and access roads. Subsection (b) establishes two instances when a spill or release shall be reported to the Department: (1) a spill or release of a regulated substance causing or threatening pollution of the waters of the Commonwealth, in the manner required under § 91.33 (relating to incidents causing or threatening pollution); and (2) a spill or release of 5 gallons or more of a regulated substance over a 24-hour period that is not completely contained by secondary containment. These reports shall be made by telephone as soon as practicable but no later than 2 hours after the spill or release was discovered. This section addresses what information must be included in the release report and interim remedial actions that should be taken in the short term following discovery of the spill or release.

This section also clarifies that the operator or responsible party shall remediate an area affected by a spill or release and outlines two different remediation options. Spills of less than 42 gallons to the surface that do not pollute or threaten to pollute waters of the Commonwealth may be remediated by removing the soil visibly impacted by the spill or release and properly managing the impacted soil in accordance with the Department's waste management regulations. Spills or releases of more than 42 gallons to the surface or that pollute or threaten to pollute waters of the Commonwealth shall be remediated to demonstrate attainment of an Act 2 cleanup standard in accordance with the process in subsection (c).

§ 78a.67. Borrow pits

This section provides requirements for noncoal borrow areas for oil and gas well development, including performance, registration and restoration requirements. The section implements the requirements established by section 3273.1(b) of the 2012 Oil and Gas Act, which exempts any borrow area where minerals are extracted solely for the purpose of oil and gas well development, including access road construction from the Noncoal Surface Mining Conservation and Reclamation Act (NSMCRA) (52 P.S. §§ 3301—3326), or a regulation promulgated under the NSMCRA, so long as the owner or operator of the well meets certain conditions. Those conditions are outlined in this section, and include the borrow pit servicing an oil and gas well site where a well is permitted under section 3211 of the 2012 Oil and Gas Act or registered under section 3213 of the 2012 Oil and Gas Act (relating to well registration and identification) and meeting any applicable bonding requirements for wells serviced by the borrow pit. Also, well owners and operators shall operate, maintain and reclaim the borrow pit in accordance with the performance standards in Chapter 77, Subchapter I (relating to environmental protection performance standards).

Subsection (b) requires owners and operators to register the location of existing borrow pits with the Department by December 7, 2016. Subsection (d) requires an inspection of any existing borrow pits by April 6, 2017, and proper restoration or upgrade by October 10, 2017, for any substandard borrow pits.

The section also requires borrow pit restoration or permitting under the NSMCRA within 9 months after completion of drilling the final well on a well site serviced by the borrow pit or 9 months after the expiration of all well permits on well sites serviced by the borrow pit, whichever occurs later.

§ 78a.68. Oil and gas gathering pipelines

This section contains requirements regarding the construction and installation of gathering pipelines, including a limit on the extent of associated earth disturbance, flagging requirements and topsoil/subsoil standards. This final-form rulemaking requires that equipment refueling and staging areas must be out of floodways and least 50 feet away from a body of water, although materials staging within the floodway or within 50 feet of a water body may occur if first approved in writing by the Department. This final-form rulemaking requires that all buried metallic gathering pipelines shall be installed and placed in operation in accordance with 49 CFR Part 192, Subpart I or Part 195, Subpart H (relating to requirements for corrosion control; and corrosion control), codifying the requirements of section 3218.4(a) of the 2012 Oil and Gas Act.

§ 78a.68a. Horizontal directional drilling for oil and gas pipelines

This section contains requirements for horizontal directional drilling (HDD) associated with gathering and transmission pipelines, including planning, notification, construction and monitoring requirements. This section contains cross-references to other applicable regulatory requirements in Chapter 102 and Chapter 105 (relating to dam safety and waterway management). This section establishes that Department approval is required prior to using drilling fluid other than bentonite and water. The Department maintains a list of approved additives on its web site and any person using one of the approved additives does not require additional approval from the Department.

Additionally, this section specifies that HDD activities may not result in a discharge of drilling fluids to waters of the Commonwealth. This final-form rulemaking requires that bodies of water and watercourses over and adjacent to HDD activities be monitored for any signs of drilling fluid discharges.

In the event of a discharge, this section outlines the steps that an operator shall take to report and address that discharge. This section also proposes that any water supply complaints received by the operator be reported to the Department within 24 hours. This final-form rule-

making requires that bodies of water and watercourses over and adjacent to HDD activities be monitored for any signs of drilling fluid discharges.

This final-form rulemaking includes a requirement for a PPC plan for HDD with a site-specific contingency plan that describes the measures to be taken to control, contain and collect any discharge of drilling fluids and minimize impacts to waters of the Commonwealth. The Department believes that due to the heightened potential for pollution to waters of the Commonwealth that HDD creates, a separate PPC plan is required for this specific activity. A separate PPC plan is not required for HDD activities provided that the PPC plan developed under § 78a.55 meets the requirements in § 78a.68a (relating to horizontal directional drilling for oil and gas pipelines).

§ 78a.68b. Well development pipelines for oil and gas operations

This section contains the requirements for well development pipelines associated with oil and gas operations, including installation, construction, flagging, pressure testing, inspection operation, recordkeeping and removal requirements. This section also contains cross-references to applicable regulatory requirements in Chapters 102 and 105.

This final-form rulemaking requires that well development pipelines that transport flowback water and other wastewaters be installed aboveground. Subsection (c) specifies that well development pipelines may not be installed through existing stream culverts, storm drain pipes or under bridges that cross streams without approval by the Department under § 105.151 (relating to permit applications for construction or modification of culverts and bridges).

This final-form rulemaking requires certain safety measures with well development pipelines used to transport fluids other than fresh ground water, surface water and water from water purveyors or approved sources. They shall be pressure tested prior to being first placed into service and after the pipeline is moved, repaired or altered. Well development pipelines must have shut off valves, check valves or other methods of segmenting the pipeline placed at designated intervals that prevent the discharge of more than 1,000 barrels of fluid. They may not have joints or couplings on the segments that cross waterways unless secondary containment is provided. Highly visible flagging, markers or signs need to be placed at regular intervals along the well development pipeline. They cannot be used to transport flammable materials.

Well development pipelines shall be removed when the well site is restored. This final-form rulemaking requires operators to obtain Department approval for well development pipelines in service for more than 1 year.

This final-form rulemaking requires that the operator maintain certain records regarding well development pipelines, including the location, type of fluids transported, the approximate time of installation, pressure test results, defects and repairs. The records need to be retained for 1 year after their removal and be made available to the Department upon request.

§ 78a.69. Water management plans

WMPs are a requirement for unconventional wells in section 3211(m) of the 2012 Oil and Gas Act. This section codifies existing requirements to protect quality and quantity of water sources in the Commonwealth, including freshwater resources, from adverse impacts to the watershed considered as a whole from potentially inappropriate withdrawals of water. Further, this final-form rulemaking protects water quality and quantity by ensuring water is available to other users of the same water source and protects and maintains the designated and existing uses of the water source. This final-form rulemaking mirrors most of the requirements of the Susquehanna River Basin Commission and the Delaware River Basin Commission to ensure that requirements are consistent Statewide, regardless of which river basin an operator withdraws water from. This section also outlines the circumstances under which the Department may deny a WMP application or suspend, revoke or terminate an approved WMP.

§ 78a.70. Road-spreading of brine for dust control and road stabilization

§ 78a.70a. Pre-wetting, anti-icing and de-icing

These sections establish that brines and production fluids from unconventional wells may not be used for dust suppression and road stabilization, or for pre-wetting, anti-icing and de-icing.

§ 78a.73. General provision for well construction and operation

Subsection (c) establishes requirements for monitoring wells during hydraulic fracturing. First, operators of active, inactive, abandoned and plugged and abandoned wells that are vertically proximate to the stimulation perforations shall be notified at least 30 days prior to the start of drilling. Orphan and abandoned wells that are vertically proximate to the stimulation perforations shall be monitored by the operator stimulating the well. Wells that penetrate within defined vertical separation distances, or that have an "unknown true vertical depth" have the potential to serve as preferential pathways allowing pollution of the waters of the Commonwealth.

Operators shall notify the Department of any changes to wells being monitored and shall take action to prevent pollution or discharges to the surface. Operators also shall notify the Department if they observe any treatment pressure or volume changes indicative of abnormal fracture propagation at the well being stimulated or if the operator is otherwise made aware of a confirmed well communication incident associated with their stimulation activities.

Finally, this final-form rulemaking codifies the Department's current position that an operator that alters an abandoned and orphaned well by hydraulic fracturing shall plug that well.

§ 78a.121. Production reporting

This section requires unconventional operators to report production on a monthly basis in accordance with section 3 of the Unconventional Well Report Act. Additionally, this section requires unconventional operators to report their waste production on a monthly basis within 45 days of the end of the month, including the specific facility or well site where the waste was managed.

§ 78a.122. Well record and completion report

This section addresses new well report and stimulation record requirements, including 2012 Oil and Gas Act requirements. For the well record, new requirements include whether methane was encountered other than in a target formation, the country of origin and manufacture of tubular steel products used in the construction of the well (section 3222(b.1)(2)(ii) of the 2012 Oil and Gas Act) and the borrow pit used for well site development, if any.

For the well completion report, the additional information includes: the trade name, vendor and a brief descriptor of the intended use or function of each chemical additive in the stimulation fluid; a list of the chemicals intentionally added to the stimulation fluid, by name and chemical abstract service number; and the maximum concentration, in percent by mass, of each chemical intentionally added to the stimulation fluid (section 3222(b.1)(1)(i)—(iii) of the 2012 Oil and Gas Act), the well development impoundment, if any, used to complete the well and a certification that the monitoring plan required under § 78a.52a (relating to area of review) was conducted as outlined in the area of review report.

§ 78a.123. Logs and additional data

This final-form rulemaking addresses 2012 Oil and Gas Act requirements and clarifies when industry logs and data collected during drilling activities need to submitted to the Department, either by being required (standard logs) or requested (nonstandard logs and additional data requested prior to drilling).

§ 78a.309

Section 78.309 (relating to phased deposit of collateral) was not carried over to Chapter 78a in response to new bonding requirements in the 2012 Oil and Gas Act.

F. *Changes from Proposed to Final-Form Rulemaking; Summary of Major Comments and Responses*

The public comment period on the proposed rulemaking was open for 90 days, beginning with publication of the proposed rulemaking at 43 Pa.B. 7377 and ending on March 14, 2014, as extended at 44 Pa.B. 648 (February 1, 2014). The Board also held nine public hearings on the proposed rulemaking:

- January 9, 2014, in West Chester, PA
- January 13, 2014, in Williamsport, PA
- January 15, 2014, in Meadville, PA
- January 16, 2014, in Mechanicsburg, PA
- January 22, 2014, in Washington, PA
- January 23, 2014, in Indiana, PA
- January 27, 2014, in Tunkhannock, PA
- February 10, 2014, in Troy, PA
- February 12, 2014, in Warren, PA

The Department received 23,213 public comments on the proposed rulemaking, including a significant number of form letter comments/petitions. In addition, around 300 individuals testified at the 9 public hearings. IRRC also submitted comments on the proposed rulemaking.

Based on the review of those comments, the Department developed draft final-form rulemaking and used the ANFR procedure published at 45 Pa.B. 1615 (April 4, 2015). The public comment period on the ANFR was open for 45 days, until May 19, 2015, and the Department held three public hearings on the draft final-form regulations:

- April 29, 2015, in Washington, PA
- April 30, 2015, in Warren, PA
- May 4, 2015, in Williamsport, PA

The Department received 4,947 comments on the draft final-form regulations. Of those, 302 were unique comments and the balance was form letter comments. In addition, 129 individuals provided testimony on the ANFR at the 3 public hearings.

The major comments received on the proposed rulemaking and the draft final-form regulations, and the Department's responses, are summarized as follows. It is worth noting at the outset that on nearly every issue raised by the proposed rulemaking and the draft final-form regulations, the range of comments spanned from the provision being unreasonable, too restrictive and unnecessary, to the provision being not protective or restrictive enough but critical for the protection of public health and the environment.

Banning hydraulic fracturing

The Department received many comments on the proposed rulemaking and the ANFR suggesting that the Commonwealth should ban the practice of hydraulic fracturing or put a moratorium in place until various objectives could be achieved. The Department does not have the statutory authority to ban hydraulic fracking within this Commonwealth. Banning hydraulic fracturing would require an act of the General Assembly.

Well drilling can be done in a safe and environmentally sound way, provided applicable laws are adhered to by the regulated community. The amendments in Chapter 78a are intended to further strengthen these standards to ensure this Commonwealth's environment and the health of its citizens is properly protected. The Department believes the revisions to Chapter 78a are comprehensive, enforceable, consistent with applicable statutes, and provide appropriate protections for public health and safety and the environment. The Department will continue to study the efficacy of its regulatory programs and make improvements to the regulations as necessary.

Issues outside of the scope of this final-form rulemaking

The Department received many comments that were outside the scope of this final-form rulemaking. For example, several commentators suggested that the Department should significantly increase the bonds required of operators under authority granted by section 3225 of the 2012 Oil and Gas Act (relating to bonding). While the Board does have authority to alter bond amounts through regulation, that topic was not considered in this final-form rulemaking and so no changes were made to those sections in this final-form rulemaking. Similarly, many commentators raised air quality issues related to oil and gas operations. Air emissions from oil and gas operations are regulated under Subpart C, Article III (relating to air resources), not Chapters 78 and 78a. Revisions to Subpart C, Article III are beyond the scope of this final-form rulemaking. However, air emissions from the oil and gas sector are regulated through a series of measures including the best available technology which includes equipment, devices, methods and techniques that will prevent, reduce or control emissions of air contaminants, including hazardous air pollutants, to the maximum degree possible.

Noise mitigation requirements

The Department considered including noise mitigation requirements in this final-form rulemaking. Based on public comment to the proposed rulemaking raising concerns over noise issues at unconventional well sites, the Department developed § 78a.41, regarding noise mitigation, to address noise issues at unconventional well sites and published that provision as part of the ANFR.

Since that time, the Department has determined that the consideration of noise and possible mitigation is a concern not only with regard to unconventional gas production, but is an issue raised by other activities regulated by the Department (for example, mining). Be-

cause of this, additional cross-program collaboration and coordination will be required. In addition, there are a number of extremely complex technical issues that have to be resolved to develop a reasonable but effective noise mitigation program. This complexity is demonstrated in the scope and breadth of the comments submitted on the ANFR, both supporting and opposing the draft regulatory provisions. Finally, the science surrounding noise issues is continuing to develop, particularly with regard to impacts to human health and sensitive wildlife populations. Any reasonable and effective regulation regarding noise issues will need to take those developments into account.

For these reasons, the Department removed draft § 78a.41 from this final-form rulemaking to consider standards and enforcement that will maximize consistency and efficiency, where possible, among Department programs, while addressing the complex technical issues presented by noise at well sites. In its place, the Office of Oil and Gas Management intends to develop a noise mitigation "best practices manual" with input from a wide range of experts on noise issues as well as the public. If rulemaking is appropriate to address noise issues at well sites, the Department will develop regulations at a later date. Exclusion of noise mitigation requirements is the least burdensome, acceptable alternative at this time.

Centralized tank storage

Based on public comment to the proposed rulemaking raising concerns over the lack of permitting options for centralized off-site tank storage, the Department developed draft § 78.57 (relating to wells in a hydrogen sulfide area) and § 78a.57, regarding centralized tank storage, to provide for the option of centralized tank storage off of the well site under the oil and gas regulations. These sections were developed with significant input and review from the Department's waste management and storage tank programs to ensure that the draft final-form regulations were protective of public health and safety and the environment. The Department also felt that these sections were appropriate for inclusion in the draft final-form regulations to give operators an environmentally-protective option for offsite wastewater management given the Department's decision to eliminate the use of centralized impoundments without residual waste permits in § 78a.59c of the draft final-form regulations. These sections were published as part of the ANFR.

There was widespread opposition to these new sections across the spectrum of commentators, for various reasons. In keeping with the Department's interpretation of section 3273.1(a) of the 2012 Oil and Gas Act (relating to relationship to solid waste and surface mining), and the decision to eliminate the use of centralized impoundments without residual waste permits in § 78a.59c of the draft final-form rulemaking, the Department removed draft § 78a.57 from this final-form rulemaking. Operators wishing to manage oil and gas wastewater off of a well site, or on a well site but not consisting entirely of waste generated at that well site or waste that will be beneficially reused at that well site shall obtain a permit to do so under the Department's residual waste regulations rather than operating under Chapter 78 or Chapter 78a.

Transparency and public information

In regard to public access to oil and gas well information, the Department currently has more than a dozen interactive reports on its web site that provide information such as: permits issued; operator well inventories; inspection, violation and enforcement information; spud information; and target, oldest and producing formations associated with each well. Users are able to run these reports based upon specific parameters such as region, county, municipality, operator, date range, and the like. Additionally, the Department has an Oil & Gas Mapping application on its web site that allows users to geographically locate oil and gas wells using various map layers and aerial photography. The mapping application allows users to search for wells based upon numerous parameters. The mapping application also provides the additional functionality of displaying electronic copies of actual documents such as well permits/applications, inspection reports and operator's responses to violations. The Department will continue to expand both the amount of oil and gas well information available on its web site, and the ability to readily locate, retrieve and export that information.

Regulatory Review Act compliance

Commentators raised issues with the process used to develop and support the rulemaking under the Regulatory Review Act. The Department complied with the requirements of the Regulatory Review Act and other applicable Pennsylvania statutes. The revisions to Chapter 78a are consistent with the Pennsylvania Constitution and applicable statutes, and provide reasonable protections for public health and safety and the environment. The Department conducted the requisite analyses in developing the proposed and final-form rulemakings. These analyses are reflected in the Regulatory Analysis Form, preamble and other rulemaking documents. Among other things, the Department considered the potential costs, benefits, need, impacts on small businesses, alternatives and other potential impacts of the rulemaking. This final-form rulemaking represents the Department's revisions to the rulemaking after careful consideration of all comments received during the rulemaking process and of the additional public input.

A subset of these concerns related to forms and guidance documents necessary to implement this final-form rulemaking and lack of availability of those documents for review concurrently with review of the proposed rulemaking and the ANFR. The Department will make forms and guidance documents available prior to adoption of this final-form rulemaking to address this concern. The Department notes that forms and guidance can only be based on the performance standards and requirements established by this final-form rulemaking and do not impose binding obligations independent of that authority. Therefore, development of those documents without a firm understanding of exactly what the requirements of this final-form rulemaking is impractical.

§ 78a.1. Definitions

Several definitions were added to this section, including "ABACT—antidegradation best available combination of technologies," "abandoned water well," "accredited laboratory," "barrel," "building," "certified mail," "common areas of a school's property," "floodplain," "inactive well," "limit of disturbance," "modular aboveground storage structure," "other critical communities," "PCSM—post-construction stormwater management," "PNDI—Pennsylvania Natural Diversity Inventory," "PNDI receipt," "playground," "primary containment," "public resource agency," "residual waste," "secondary containment," "threatened or endangered species," "waters of the Commonwealth" and "wellhead protection area." These definitions were added to provide clarity to the substantive sections of this final-form rulemaking or to address provisions added to this final-form rulemaking. An example of the latter would be "common areas of a school's property" and "playground,"

as those terms were added to the list of public resources to be considered under § 78a.15(f) (relating to application requirements).

Two definitions were changed to better reflect the substantive sections of this final-form rulemaking and in response to comments: "centralized impoundment" (to better reflect the changes to § 78a.59c); and "oil and gas operations" (to eliminate well location assessment and seismic activities from the definition in response to comments). The definition of "pit" was changed to reflect the ban on the use of pits at unconventional well sites.

Initially, "well location assessment" and "seismic operations" were included in the definition of "oil and gas operations." The Department received many comments requesting clarification of the term suggesting that these items were not appropriate for inclusion in the definition. In many cases, the operator is not even the entity conducting these activities. The Department amended the definition of "oil and gas operations" by deleting those two terms.

The definition of "mine influenced water" was amended in this final-form rulemaking to address concerns that the definition approved by the Board on February 3, 2016, and IRRC on April 21, 2016, did not establish a binding norm. The new language matches the standards established in § 105.3(a)(3). This change was made at the direction of the Office of Attorney General during its review of the final-form regulations for form and legality.

Finally, several definitions were deleted as they became unnecessary due to changes in the substantive provisions or the bifurcation of the regulations into two separate chapters. Deleted definitions include "certified laboratory," "conventional formation" (§ 78a.1), "conventional well" (§ 78a.1), "containment system," "nonvertical unconventional well" (§ 78.1), "vertical unconventional well" (§ 78.1) and "WMP—water management plan" (§ 78.1).

§ 78a.2. Applicability

This final-form rulemaking adds this section to clarify that Chapter 78a applies to unconventional wells and that Chapter 78a supersedes any regulations in Chapter 78 that might appear to apply to unconventional wells. This section was added at the direction of the Office of Attorney General during its review of the pre-Act 52 final-form regulations for form and legality.

§ 78a.15. Application requirements

Protecting waters of the Commonwealth

Section 78a.15(b.1) is added to this final-form rulemaking. This subsection establishes that if the proposed limit of disturbance is within 100 feet measured horizontally from any watercourse or any high quality or exceptional value body of water or any wetland greater than 1 acre in size, the applicant shall demonstrate that the well site location will protect those water course or bodies of water. These provisions are needed to ensure protection of waters of the Commonwealth—especially in light of the Supreme Court's decision in *Robinson Twp.*, which enjoined the application of the water quality protection setbacks in section 3215(b) of the 2012 Oil and Gas Act. Under The Clean Streams Law (35 P.S. §§ 691.1—691.1001), the Department has an obligation to develop regulations when it finds that an activity may create a danger to waters of the Commonwealth. These provisions are necessary to avoid pollution. Additionally, this demonstration is currently part of the well permit application for both conventional and unconventional wells. Accordingly, these provisions seek to codify an existing practice.

The Department received significant public comment on this provision. Some commentators argued that the buffer distance was too short while others argued that the Department does not have the authority to establish a buffer of any distance. Regarding the question of authority, the Department disagrees. The Department has broad authority under The Clean Streams Law to establish regulations to protect waters of the Commonwealth. Regarding the buffer distance, the Department believes that 100 feet is appropriate. Moreover, these provisions are similar to other requirements in 25 Pa. Code (relating to environmental protection) and are consistent with the riparian buffer requirements in Chapter 102.

As documented in the final-form rulemaking "Erosion and Sediment Control and Stormwater Management" amending Chapter 102 published at 40 Pa.B. 4861 (August 21, 2010), there is substantial scientific support for a 100-foot buffer from streams. One study is *Streamside Forest Buffer Width Needed To Protect Stream Water Quality, Habitat and Organisms: A Literature Review*, Bernard W. Sweeney and J. Denis Newbold, *Journal of the American Water Resources Association*, June 2014, which cites over 251 scientific articles and papers as sources for the paper which states that "overall, buffers ≥30 m wide [approximately 100 feet] are needed to protect the physical, chemical, and biological integrity of small streams." For these reasons, the Department determined that 100 feet was a reasonable and appropriate area for additional review to ensure protection of waters of the Commonwealth.

Subsection (d) was amended in this final-form rulemaking to more accurately codify the Department's current policy regarding impacts to threatened or endangered species, "Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation," Doc. No. 021-0200-001. Subsection (e) is amended to codify the Department's policy that PNDI clearances obtained less than 2 years prior for existing well sites as part of erosion and sediment control permitting can serve as the PNDI clearance for a subsequent well permit application.

Subsection (f) outlines a process for the Department to consider the impacts to public resources when making a determination on a well permit in accordance with the Department's constitutional and statutory obligations to protect public resources. This public resource impact screening subsection, along with water supply replacement, waste management and area of review provisions, formed one of four "pillars" of this final-form rulemaking. Not surprisingly, this subsection generated significant comments across the entire spectrum of issues. The significant comments, and changes to this final-form rulemaking as a result of those comments, are outlined as follows.

Authority

The public resource impact screening process in § 78a.15(f) and (g) is needed because the Department has an obligation to protect public resources under Article I, Section 27 of the Pennsylvania Constitution, The Administrative Code of 1929 (71 P.S. §§ 51—732), the 2012 Oil and Gas Act, The Clean Streams Law, the Dam Safety and Encroachments Act, the SWMA (35 P.S. §§ 6018.101—6018.1003) and other statutes. Moreover, the Department shares responsibility for the protection of natural resources with other Commonwealth agencies and municipalities that also have trustee duties under Article I, Section 27 of the Pennsylvania Constitution, as well as Federal agencies. To meet these constitutional and statu-

tory obligations, § 78a.15 establishes a process for the Department to identify, consider and protect public resources from the potential impacts of a proposed well and to coordinate with applicable public resource agencies.

Public resource consideration has been a required component of the well permit application process since the Oil and Gas Act was first enacted in 1984 (58 P.S. §§ 601.101—601.605) (repealed) (1984 Oil and Gas Act). The 1984 Oil and Gas Act was repealed by the act of February 14, 2012 (P.L. 87, No. 13) (Act 13). The provisions in this final-form rulemaking are needed to provide a clear process for identifying potentially impacted public resources, notifying applicable public resource agencies, soliciting any recommended mitigation measures and supplying the Department with sufficient information to determine whether permit conditions are necessary to avoid a potentially harmful impact to public resources.

If the limit of disturbance associated with a proposed oil or gas well site is located within a certain distance of a listed public resource as provided in § 78a.15(f)(1), the well permit operator shall provide additional information in the well permit application and notify applicable public resource agencies 30 days prior to submitting the well permit application. Under § 78a.15(f)(2), the public resource agencies have 30 days to provide written comments to the Department and the applicant on the functions and uses of the public resource and any recommended mitigation measures. The applicant is then afforded an opportunity to provide a response to those comments. The Department then evaluates the potential impacts and assesses the need for conditions in the well permit using the criteria in § 78a.15(g). Section 78a.15(g) is added to provide needed clarity regarding implementation of these obligations and to comply with section 3215(e) of the 2012 Oil and Gas Act, which specifically directs the Board to develop these criteria by regulation.

The right of the people of this Commonwealth to clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of the environment as expressly provided by Article I, Section 27 of the Pennsylvania Constitution is fundamental to the quality of life of the people of this Commonwealth. Additionally, public natural resources held in trust by the Commonwealth for the benefit of the people are a major economic contributor to Pennsylvania through tourism, outdoor fish and game sports, and recreation. The public resource impact screening provisions in this final-form rulemaking provide needed clarity and clear standards for the Department to carry out its trustee obligations in administering the 2012 Oil and Gas Act program and will ensure the continued availability and benefits of these public resources throughout this Commonwealth.

Despite the Department's duties and obligations as previously described, industry commentators argued that the Department does not have the statutory authority to promulgate regulations regarding public resources under § 78a.15(f) and (g) because the Pennsylvania Supreme Court enjoined section 3215(c) and (e) of the 2012 Oil and Gas Act in *Robinson Twp*. The Department asserts that section 3215(c) and (e) of the 2012 Oil and Gas Act was not enjoined or otherwise invalidated by *Robinson Twp.* and that neither the plurality nor the concurring opinions in *Robinson Twp.* read in their totality overturn the public resource protection requirements as part of the well permitting process. During the development of the proposed and final-form rulemakings this issue was being litigated in Commonwealth Court. See *Pennsylvania Independent Oil & Gas Association v. Commonwealth* (321 M.D. 2015). On September 1, 2016, the Commonwealth Court entered judgment in favor of the Department. The Court found that the Department's authority to consider the impacts of a proposed oil and gas well on public resources under section 3215(c) of the 2012 Oil and Gas Act was not invalidated by the Pennsylvania Supreme Court's decision in *Robinson Twp*. The Court agreed with the Department's argument that the Supreme Court enjoined the application of section 3215(c) of the 2012 Oil and Gas Act only to the extent it implements provisions in section 3215(b) of the 2012 Oil and Gas Act. The Court decided that the Department had the authority to consider public resources as part of the well permit review process solely under the authority of section 3215(c) of the 2012 Oil and Gas Act.

On September 29, 2016, the Commonwealth Court's opinion was appealed to the Pennsylvania Supreme Court. As of the date of this final-form rulemaking this matter is still pending before the Pennsylvania Supreme Court.

The Department's interpretation of *Robinson Twp.* and the outline of the authority for these provisions is as follows. The Pennsylvania Supreme Court's decision in *Robinson Twp.* invalidated section 3215(b)(4) and (d) of the 2012 Oil and Gas Act and sections 3303 and 3304 of the 2012 Oil and Gas Act (relating to oil and gas operations regulated by environmental acts; and uniformity of local ordinances) as unconstitutional. As for section 3215(c) and (e) of the 2012 Oil and Gas Act, the Pennsylvania Supreme Court held: "Sections 3215(c) and (e) . . . are not severable *to the extent that these provisions implement or enforce those Sections of [the 2012 Oil and Gas Act] which we have found invalid* and, in this respect, their application or enforcement is also enjoined." 83 A.3d 901 at 1000 (emphasis added).

Sections 3215(b) and (d), 3303 and 3304 of the 2012 Oil and Gas Act address: protection of surface water quality; comment and appeal rights of municipalities and storage operators; pre-emption of local ordinances; and uniformity of local ordinances, respectively. Section 3215(c) of the 2012 Oil and Gas Act is a separate, independent, free-standing provision that does not implement or enforce these invalidated provisions. Rather, section 3215(c) of the 2012 Oil and Gas Act requires the Department to consider the impacts of a proposed well on "public resources" including, but not limited to: publicly owned parks, forests, game lands and wildlife areas; National and State scenic rivers; National natural landmarks; habitats of threatened and endangered species and other critical communities; historical and archeological sites; and sources used for public drinking supplies.

Section 3215(e) of the 2012 Oil and Gas Act operates in tandem with section 3215(c) of the 2012 Oil and Gas Act. Under section 3215(e) of the 2012 Oil and Gas Act, the Board is directed to develop regulations to establish criteria for the Department to consider when conditioning well permits based on impacts to public resources identified under section 3215(c) of the 2012 Oil and Gas Act.

The Department believes that section 3215(c) and (e) of the 2012 Oil and Gas Act does not implement or enforce section 3215(b), 3215(d), 3303 or 3304 of the 2012 Oil and Gas Act and, therefore, remain valid and enforceable.

For these reasons, in addition to the authority previously discussed, the Department has argued that it retains a specific statutory obligation to protect public resources under section 3215(c) and (e) of the 2012 Oil and Gas Act.

However, even if those subsections were invalidated as some commentators assert the provision under the 1984 Oil and Gas Act mandating protection of public resources would then remain in effect. See section 205(c) of the 1984 Oil and Gas Act (58 P.S. § 601.205(c)) (repealed). Thus, the Board has authority under either the 2012 Oil and Gas Act or the prior 1984 Oil and Gas Act to promulgate regulations for the consideration of impacts to protect public resources when issuing an oil or gas well permit.

Additionally, other provisions of the 2012 Oil and Gas Act also support the requirements in § 78a.15 of this final-form rulemaking. The General Assembly recognized the constitutional obligation to protect public resources in section 3202 of the 2012 Oil and Gas Act (relating to declaration of purpose of chapter), which provides that the purpose of the 2012 Oil and Gas Act is to "[p]rotect the natural resources, environmental rights and values secured by the Constitution of Pennsylvania." Under section 3274 of the 2012 Oil and Gas Act (relating to regulations), the Board has the authority to promulgate regulations necessary to implement the 2012 Oil and Gas Act. The public resource protection provisions in § 78a.15 provide a reasonable and appropriate process for the Department to implement the constitutional and statutory requirements previously discussed.

Further, the General Assembly has enacted several other statutes that provide the Department with the broad power and duty to protect public natural resources consistent with the mandates of Article I, Section 27 of the Pennsylvania Constitution, including The Clean Streams Law, the SWMA, the Dam Safety and Encroachment Act, Act 2 (35 P.S. §§ 6026.101—6026.908) and The Administrative Code of 1929. These statutes also provide authority for this rulemaking.

Additionally, the General Assembly has enacted statutes that provide authority for other Commonwealth agencies to protect public natural resources, and the Department coordinates with those agencies to fulfill its constitutional and statutory duties to protect public natural resources. The public resource protection provisions included in Chapter 78a facilitate the Department's compliance with this obligation.

Finally, the public screening requirements provided in this final-form rulemaking establish a standardized and transparent process for the Department to identify, consider and protect public resources from the impacts of a proposed well and to coordinate with other public resource agencies with constitutional and statutory duties to conserve and maintain these resources, in a manner that demonstrates compliance with Article I, Section 27 of the Pennsylvania Constitution under the most recent court decisions interpreting the three-part test in *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973).

The public resource protection requirements in § 78a.15 establish a process for the Department to consider and protect public resources from the impacts of a proposed well and coordinate with public resource agencies. As such, these provisions are authorized by law and are necessary for the Commonwealth to fulfill its constitutional and statutory obligations.

Distances

Demonstrating once again how divergent opinions on the proposed rulemaking and draft pre-Act 52 final-form regulations could be, many commentators expressed concern over the distances in § 78a.15(f). Some commentators felt that the distances should be expanded. Others believed that the measuring the distance from the limit of disturbance rather than the vertical wellbore was inappropriate because the statute only refers to impacts from the well.

The distances to certain public resources identified in § 78a.15(f)(1) of this final-form rulemaking are consistent with those used by the Department to consider public resources in well application forms since the oil and gas permitting program was established under the 1984 Oil and Gas Act. The Department has found these distances to be effective for purposes of identifying and considering potential impacts to public resources. However, given the increased size of well sites constructed when enhanced development techniques such as hydraulic fracturing are used, § 78a.15(f)(2) require these distances to be measured from the limit of disturbance of the well site rather than from the well itself, as was the prior practice.

Setbacks

Many commentators believed that the distances in § 78a.15(f) comprised setbacks and that specifically there should be a 1-mile setback from schools, nursing homes and day care facilities.

The provisions in this final-form rulemaking, however, are not setbacks. The distances in these provisions define an area that requires coordination with public resource agencies and additional consideration during the permit review process. These provisions do not prohibit drilling activities within these defined areas and were never intended to do so.

In section 3215(a) of the 2012 Oil and Gas Act, the General Assembly established setbacks prohibiting the drilling of oil and gas wells within certain distances from buildings and drinking water wells. For a conventional well, this distance is 200 feet; for an unconventional well, this distance is 500 feet. Additionally, unconventional wells may not be drilled within 1,000 feet of a public water supply. To the extent the commentators suggests that the General Assembly should extend these setbacks from certain facilities, such as schools, nursing homes or day care facilities, that change must be made through an amendment to the 2012 Oil and Gas Act.

Too much power given to the public resources agencies

A related set of commentators felt that even though § 78a.15(f) does not establish setbacks, it still gives "too much power" to the public resource agencies. The Department has an obligation to protect public resources under Article I, Section 27 of the Pennsylvania Constitution, The Administrative Code of 1929, the 2012 Oil and Gas Act, The Clean Streams Law, the Dam Safety and Encroachments Act, the SWMA and other statutes.

The Department has a specific statutory obligation to consider the impacts to public resources under section 3215(c) of the 2012 Oil and Gas Act. Additionally, the General Assembly established a plenary role for the Department in matters of regulating oil and gas activities which may impact public resources. Section 3202 of the 2012 Oil and Gas Act states that the purpose of the act is to "[p]rotect the natural resources, environmental rights and values secured by the Constitution of Pennsylvania." Under section 3274 of the 2012 Oil and Gas Act, the Board has the authority to promulgate regulations necessary to implement the 2012 Oil and Gas Act.

Moreover, the Department shares responsibility for the protection of natural resources with other Commonwealth agencies and municipalities that also have trustee duties under Article I, Section 27 of the Pennsylvania Constitu-

tion, as well as Federal agencies. For example, the Department of Conservation and Natural Resources is required by statute to manage State parks and State forests, as well as to survey and maintain an inventory of ecological resources of the Commonwealth. Similarly, the Fish and Boat Commission and the Game Commission have responsibility for managing various fish and wildlife resources within this Commonwealth. Federal agencies also have jurisdiction over certain water resources, as well as Federally protected fish and wildlife resources. Further, public resources agencies have particular knowledge and expertise concerning the public resources they are responsible for managing.

Section 78a.15(f) establishes a straightforward process for well applicants to notify public resources agencies and provide those public resources agencies the opportunity to submit comments to the Department on functions and uses of the applicable public resources and any mitigation measures recommended to avoid, minimize or otherwise mitigate probable harmful impacts.

By requiring the applicant and the Department to consider recommendations from public resource agencies, this final-form rulemaking ensures that the Department meets its constitutional and statutory obligations to consider public resources when making determinations on well permits. Importantly, these provisions function to provide the Department with information necessary to enable the Department to conduct its evaluation of the potential impacts, to review the information in the context of the criteria in § 78a.15(g) and to determine whether permit conditions are necessary to prevent a probable harmful impact.

Public resources to be considered in § 78a.15(f)

A related set of comments concerned the list of public resources that trigger the impact screening process, with the thrust of the comments being that the list was too narrowly drawn and should be expanded to include other resources. Other commentators argued that the list of public resources does not mirror what is in the statute and therefore should be narrowed.

Under section 3215(c) of the 2012 Oil and Gas Act, the Department has the obligation to consider the impacts of a proposed well on public resources "including, but not limited to" certain enumerated resources when making a determination on a well permit. Accordingly, given the authority in section 3215(c) of the 2012 Oil and Gas Act as well as the Department's constitutional and statutory obligations to protect public resources, the Department has the authority to expand the list of public resources to include public resources similar to those listed.

Section 78a.15(f)(1) of this final-form rulemaking includes the public resources listed in section 3215(c) of the 2012 Oil and Gas Act. Based on comments received, "common areas of a school's property," "playgrounds" and "wellhead protection areas" were added because these resources are similar in nature to the other listed public resources. Playgrounds and school common areas are frequently used by the public for outdoor recreation, similar to parks. Wellhead protection areas are associated with sources used for public drinking supplies, another listed resource. In further response to comments, the "wellhead protection area" public resource has been clarified by including a cross-reference to § 109.713 (relating to wellhead protection program) and limiting the areas to those classified as zones 1 and 2. Additionally, definitions of "common areas of a school's property" and "playground" have been added to § 78a.1.

Notwithstanding the enumeration of specific public resources in this final-form rulemaking, the Department will consider the potential impacts to other public resources identified during the permitting process.

To the extent that commentators questioned what constitutes an impact, § 78a.15(f)(2) and (3) outlines the process for coordinating with public resource agencies and the information that a well permit applicant shall include in the well permit application to address potential impacts. The purpose of these paragraphs is to identify the public resources that may be impacted by well drilling and to outline a process to ensure the Department has sufficient information to evaluate when determining whether permit conditions are necessary to prevent a probable harmful impact to the functions and uses of those public resources using the criteria in § 78a.15(g). Accordingly, within the context of these provisions, an impact is a probable harmful effect to the functions and uses of the public resource.

A more specific set of comments recommended adding schools, hospitals, day care centers, nursing homes and other similar facilities to the list of public resources.

These facilities have not been added to the list of public resources included in § 78a.15(f)(1) of this final-form rulemaking. These types of facilities are not similar in nature to the other listed public resources (that is, parks, forests, game lands, wildlife areas, species of special concern, scenic rivers, natural landmarks, historical or archeological sites, and public drinking water supplies).

To the extent that commentators were suggesting that additional protections are needed for these facilities, Chapter 78a, as well as other regulations, permits and policies implemented by the Department under the Commonwealth's environmental laws establish a comprehensive regulatory scheme for oil and gas well development activities to ensure protection of public health, safety and the environment.

A similar set of comments suggested that the Department add other waters of the Commonwealth to the list of public resources. Section 78a.15(f) has not been expanded in this manner because protection of these waters is achieved through other provisions in Chapter 78a, as well as implementation of other water permitting programs administered by the Department through other environmental laws and regulations. Specifically, § 78a.15(b.1) requires additional consideration during the well permit application review process for any watercourse or any high quality or exceptional value body of water or any wetland one acre or greater in size. Importantly, Chapter 78a contains many provisions, including the requirements related to erosion and sediment control, surface water discharges, waste management, onsite processing, protection of water supplies, water management planning, secondary containment, well construction and site restoration that ensure protection of waters of the Commonwealth.

Cover all oil and gas operations

Another group of comments stated that the public resource impact screening process should apply to all oil and gas operations, not merely drilling a well. The Department declined to make this change in this final-form rulemaking.

Section 78a.15 establishes the well permit application process and is limited to activities associated with well construction and development. The requirements of these sections are designed to address the impacts within the limit of disturbance of the well site. Other activities

associated with the oil and gas operations are regulated through various other provisions in Chapter 78a, or other laws implemented by the Department.

Definition of "other critical communities" exceeds the Department's legal authority

Regarding § 78a.15(f)(1)(iv), some commentators believed that the definition of "other critical communities" exceeded the Department's legal authority.

The Department has an obligation to protect public resources under Article I, Section 27 of the Pennsylvania Constitution, The Administrative Code of 1929, the 2012 Oil and Gas Act, The Clean Streams Law, the Dam Safety and Encroachments Act, the SWMA and other statutes. Specifically, under section 3215(c)(4) of the 2012 Oil and Gas Act, the Department has a legal obligation when reviewing a well permit application to consider the impacts to public resources including "other critical communities." The phrase "other critical communities" is defined in this final-form rulemaking to mean species of special concern identified through the PNDI consistent with the Department's past practices and policies. Under section 3274 of the 2012 Oil and Gas Act, the Board has the authority to promulgate regulations necessary to implement the 2012 Oil and Gas Act.

The Department's well permit application materials and its "Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation," Doc. No. 021-0200-001, establish a process that has been and continues to be in use by well permit applicants to identify and consider species of special concern. This final-form rulemaking codifies this process and is consistent with the Department's long-standing use of PNDI to fulfill its responsibility to consider impacts on species of special concern when issuing permits under various environmental statutes.

In response to comments, this final-form rulemaking amends the definition of "other critical communities" in § 78a.1 to clarify that this term applies only to those species of special concern that appear on a PNDI receipt. Also in response to comments, the Department deleted the provisions in the draft final-form regulations regarding specific areas within the geographical area occupied by a threatened or endangered species and significant nonspecies resources. These changes were to ensure that this final-form rulemaking accurately reflects the existing PNDI process.

The process for consideration of public resources in § 78a.15 makes appropriate use of information available in the PNDI database from the public resources agencies with the authority, knowledge and expertise to identify and protect species of special concern. Section 78a.15(f) outlines a reasonable and appropriate process that provides important information to the Department to evaluate potential impacts and to assess the need for additional conditions in the well permit using the criteria in § 78a.15(g).

Notification to schools and evacuation provisions in operators PPC plan

A school with a common area within 200 feet of the limit of disturbance of a proposed well site will receive notice from the well permit applicant. To the extent that the commentator suggested that additional requirements are needed for emergency response, § 78a.55 contains comprehensive emergency response requirements for unconventional well sites. Plans are available to the public and county emergency management agencies.

Replace wellhead protection zone/area and wellhead protection plan with source water protection zone and source water protection plan

In response to comments that the wellhead protection area in § 78a.15(f)(1)(vii) has been clarified by adding a cross-reference to § 109.713 and limiting public resource coordination to proposed wells in zone 1 and 2 wellhead protection areas.

Several commentators suggested that "Source Water Protection Zone" and "Source Water Protection Plan" should replace wellhead protection zone and wellhead protection plan every place it appears in these chapters, allowing the inclusion of water suppliers relying on surface water sources in the notification process. The Department disagrees and declined to make this change. The wellhead protection program is established under § 109.713 and allows for an objective and identifiable area to set objective limits on the resource impact screen. The Department acknowledges that surface water sources should be protected and believes that Chapter 78a and other Department regulations and statutes provide adequate protection.

Public resource agency notification and comment period

Many commentators expressed concerns over the amount of time given in § 78a.15(f) for consultation between permit applicants and public resource agencies. Some felt that 30 days was too long and others felt that 30 days was not long enough. The Department has an obligation to protect public resources under Article I, Section 27 of the Pennsylvania Constitution, The Administrative Code of 1929, the 2012 Oil and Gas Act, The Clean Streams Law, the Dam Safety and Encroachments Act, the SWMA and other statutes. Moreover, the Department shares responsibility for the protection of natural resources with other Commonwealth agencies and municipalities that also have trustee duties under Article I, Section 27 of the Pennsylvania Constitution, as well as Federal agencies. The Department has a specific statutory obligation to consider the impacts to public resources under section 3215(c) of the 2012 Oil and Gas Act. Additionally, the General Assembly established a plenary role for the Department in matters of regulating oil and gas activities which may impact public resources. Section 3202 of the 2012 Oil and Gas Act states that the purpose of the act is to "[p]rotect the natural resources, environmental rights and values secured by the Constitution of Pennsylvania." Under section 3274 of the 2012 Oil and Gas Act, the Board has the authority to promulgate regulations necessary to implement the 2012 Oil and Gas Act. Coordination by the applicant with other public resource agencies with statutory authority over certain public resources is necessary and appropriate to ensure the Department fulfills its constitutional and statutory obligations.

Section 78a.15(f)(2) has been revised to increase the time provided to public resource agencies to provide comments to the Department on the impacts to public resources from 15 days to 30 days. This additional time allows municipalities that only meet on a monthly basis the opportunity to respond to a request from an applicant. The additional time also provides public resource agencies with a greater ability to review and to provide meaningful comments and recommendations to the applicant without unduly delaying the permitting process.

The operator should not be made to speculate on the functions and uses of public resources

Section 78a.15(f) establishes a process for the applicant to obtain information from an appropriate public resource

agency regarding potential impacts to public resources from the proposed oil or gas well drilling. This process ensures that the Department has sufficient information to evaluate whether permit conditions are necessary using the criteria in § 78a.15(g).

If a public resource agency does not provide any comments or recommendations when notified of a proposed oil or gas well, the Department will consider information provided by the applicant on potential impacts and proposed avoidance or mitigation measures, as well as other information available to the Department, to determine whether any well permit conditions are appropriate.

Define/clarify "discrete area"

The Department declines to define "discrete area" at this time because defining that area is an intensely site-specific determination not easily captured in regulatory language. If the need for further clarification becomes apparent during implementation of this provision, the Department will develop guidance to address any issues identified.

Criteria upon which permit conditions can be established

Section 78a.15(g) has been amended to clarify the criteria the Department will consider when deciding whether to condition an oil or gas well permit based on impacts to public resources.

Placing the burden on the Department to show that permit conditions are necessary to protect against probable harms is profoundly improper

Section 78a.15(g) has been revised to delete language regarding the Department's burden of proof upon appeal of a condition necessary to protect a public resource. Section 3215(e) of the 2012 Oil and Gas Act states that the Department has the burden of proving that a well permit condition imposed to protect a public resource is necessary to protect against a probable harmful impact of the public resource.

Section 78a.15(g) provides that the Department may condition a well permit if it determines that the proposed well site or access road poses a probable harmful impact to a public resource. Section 3215(e) of the 2012 Oil and Gas Act requires the Department to consider the impact of the permit condition on the applicant's ability to exercise its property rights to ensure optimal development of the resources, and provides a mechanism by which the operator may appeal the Department's determination.

Antidegradation

Section 78a.15(h) requires a well permit applicant proposing to drill a well that involves 1 to 5 acres of earth disturbance over the life of the project that is located in a special protection watershed to submit an erosion and sediment control plan with the well permit application. These provisions seek to codify an existing component of the well permit application and are necessary to ensure that the Department's meets its antidegradation requirements in Chapter 93.

§ 78a.18. Disposal and enhanced recovery well permits

Several commentators noted that it is possible for an unconventional well to undergo a change in service and be converted to a disposal or enhanced recovery well. Because these wells are by definition conventional wells, the Department added a cross-reference in § 78a.18 (relating to disposal and enhanced recovery well permits) to § 78.18.

The Department received many comments on this section of the nature of banning underground injection of oil and gas wastewater or making amendments to the substantive subsurface requirements of the section. The proposed amendments to the underground injection control (UIC) well provisions of Chapter 78 were not intended to represent a sweeping overhaul of the UIC program in this Commonwealth but rather to clarify that all containment practices and onsite processing associated with disposal and enhanced recovery wells had to comply with the requirements of Chapter 78. For that reason, broad amendments to the current UIC program are beyond the scope of this final-form rulemaking.

The Department also notes that the Commonwealth does not have primacy for the UIC program in this Commonwealth; that authority lies with the United States Environmental Protection Agency (EPA), Region III. The EPA program regulations are authorized by the Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-26) and are designed to protect all underground sources of drinking water from all waste injection activities.

§ 78a.51. Protection of water supplies

In this final-form rulemaking, § 78a.51(d)(2) provides that a restored or replaced water supply will be deemed adequate if it meets the standards established under the SDWA or "is comparable to the quality of water that existed prior to pollution if the water quality was better than these standards." This provision is needed to clarify the Department's interpretation of the water supply replacement standard established in section 3218(a) of the 2012 Oil and Gas Act. This water supply replacement standard was newly added to as part of the 2012 Oil and Gas Act.

Many commentators argued that use of "exceeded" in section 3218(a) of the 2012 Oil and Gas Act should be interpreted to describe a water supply that does not meet SDWA standards instead of using "exceeded" to describe a water supply that had water quality better than SDWA standards. The impact of this interpretation would be that water supplies where water quality was documented prior to being affected by oil and gas activities as being higher quality than required by the SDWA would only require restoration to SDWA standards. Additionally, water supplies that did not meet SDWA standards prior to being impacted by oil and gas operations would only require restoration to the previous poor quality. The Department disagrees with this interpretation.

This final-form rulemaking requires water supplies to be restored to SDWA standards or better. The SDWA standards are based on scientific fact as far as what is, and is not, in a water supply to determine if it is safe for human consumption. If the water quality has been documented prior to being affected by oil and gas operations, that documented water quality, even if it is of a higher quality than SDWA standards, shall be re-established by the operator. Otherwise, the Department will be allowing operators to degrade a natural resource relied upon as a water supply source. In regard to water supplies that did not meet SDWA standards prior to being impacted by oil and gas operations, the Department would be derelict in its duties if it allowed operators to provide replacement drinking water that by its own standards is not fit to drink simply because the pre-existing water supply was poor. The operator may choose the size and scope of their predrill water supply survey to help bolster their defense of what the pre-existing water quality truly was. Given the need to provide replacement water based on the positive impact determination, the additional cost borne

by operators is limited to the incremental cost of providing SDWA standards water as compared to the previous poor quality, not the difference between providing no water at all and meeting the previous poor quality.

Section 78a.51(c) provides that the presumption established in section 3218(c) of the 2012 Oil and Gas Act does not apply to pollution resulting from well site construction. This provision is needed to clarify the Department's interpretation of the scope of the presumption in the statute. Several commentators argued that the presumption should apply to well site construction. The presumption encompasses situations in which the water supply is within 2,500 feet of the unconventional well bore, and the pollution takes place within 12 months of drilling, alteration or stimulation of an unconventional well and situations in which the water supply is within 1,000 feet of the conventional well bore, and the pollution takes place within 6 months of drilling or alteration of a conventional well. The Department does not have regulatory authority to expand the scope of the statutory presumption to include well pad development. If the Department finds that the pollution or diminution was caused by the well site construction, drilling, alteration or other oil and gas operations, or if it presumes the well operator is responsible for pollution under section 3218(c) of the 2012 Oil and Gas Act, the Department will require the operator to provide a temporary water supply to the landowner or water purveyor until the water supply is permanently restored or replaced.

Section 78a.51(a) specifies that a water supply owner may notify the Department and request an investigation if suffering pollution or diminution of a water supply. This provision is needed to clarify the scope of water supply complaints. Many commentators argued that the Department does not have authority to expand water supply pollution or diminution investigations to include oil and gas operations. While section 3218(b) of the 2012 Oil and Gas Act states that a landowner or water purveyor suffering pollution or diminution of a water supply as a result of the drilling, alteration or operation of an oil or gas well may so notify the Department and request that an investigation be conducted, the Department also has a responsibility to investigate all possible water supply impacts under The Clean Streams Law, including those caused by oil and gas operations. Therefore, the Department included oil and gas operations in the scope of reasons an affected landowner, water purveyor or affected person may request a water supply investigation from the Department.

Some commentators have suggested the Department specifically notify neighboring land owners or land management agencies, or both, if a claim of water pollution or diminution has been made to the Department. The Department declined to make this suggested change because the Department administers a robust program to prevent and respond to complaints and spills and releases associated with oil and gas activities. When the Department concludes that a water supply may be impacted by a spill, the Department routinely provides notice to those persons potentially impacted and gathers additional information to aid further investigation if warranted. The investigation may include sampling water supplies that are potentially impacted by a spill (if permission is obtained from the water supply owner) based on the circumstances of the spill, including the physical and hydrogeologic environment and the type and size of the spill. Each investigation related to a spill varies depending on the circumstances involved. For that reason, the Department determined that the suggested change was not appropriate to be added to this final-form rulemaking at this time.

Many commentators argued that the Department should lessen the 10-day time frame afforded to it in section 3218(b) of the 2012 Oil and Gas Act to investigate a water supply since impacts to water supplies are both spatial and temporal. While the Department cannot change the statutory language, it is committed to investigate all claims of water supply pollution or diminution in a timely manner. This commitment can be found in Department policy *Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 820-4000-001, revised January 17, 2015.

§ 78a.52. Predrilling or prealteration survey

Section 3218(c) of the 2012 Oil and Gas Act establishes a presumption of liability for an operator who impacts a water supply located within a certain distance from the wellbore and within a certain time frame. Section 3218(d)(1)(i) of the 2012 Oil and Gas Act allows an operator to rebut the presumption by proving that "the pollution existed prior to the drilling or alteration activity as determined by a predrilling or prealteration survey." The Department received significant public comment that the regulation should include a specific list of potential contaminants that shall be analyzed for in each predrilling or prealteration survey.

The Department believes that the General Assembly chose to place the onus of not conducting a predrill survey on the backs of operators, who might not be able to rebut a presumption of liability if a water supply is not sampled prior to drilling or a particular substance is not tested for by the operator. By failing to establish predrill water quality, the operator opens itself up to liability for any failure to meet drinking water standards in any water supply located within the presumption's radius for any substance found in the water supply. Therefore, presumption is more protective of water supplies than a prescribed list of contaminates to be sampled for with a predrill water sample. The Department will require water supplies impacted by oil and gas operations to be restored to SDWA standards or better, based upon the predrill water supply survey results.

This final-form rulemaking allows an operator to submit a copy of all predrill sample results taken as part of a survey to the Department by electronic means. Prior to this final-form rulemaking, operators were required to submit each individual's sample by mail as it was completed, which was much less efficient for operators and the Department due to the comprehensive nature of the analysis and the way analyses are completed. The Department received significant public comment regarding the time frames under which this information was required to be submitted. This final-form rulemaking allows all sample results pertaining to the well of concern to be submitted to the Department by the operator 10 days prior to the start of drilling of the well in a single coordinated report. The Department believes that this change allows this portion of this final-form rulemaking to strike an appropriate balance between being reasonable and protective of public health and safety and the environment. The Department does not believe that it is appropriate to accept sample results as predrill samples after oil and gas activity has begun.

Availability of data to the public

Many commentators argued that the Department should make all predrill sample results available to the public. The Department does not provide predrill data to the public, unless all identifying information is redacted, to protect the privacy and rights of the property owners.

§ 78a.52a. Area of review

§ 78a.73. General provision for well construction and operation

Because the requirements in § 78a.52a and § 78a.73 (relating to general provision for well construction and operation) are so intertwined, the Department will address changes to these sections and the comments received on them together.

Pre-hydraulic fracturing surveys

The Department estimates that there are approximately 300,000 abandoned wells across this Commonwealth. A serious risk to waters of the Commonwealth is posed when an operator inadvertently alters an abandoned well by inducing hydraulic or pressure communication during the hydraulic fracturing process. Altering an abandoned well by subjecting it to pressures and reservoir sections it was not necessarily built to isolate can and has led to a number of issues, including methane migration and water supply impacts. Even in instances when water supplies are not affected, communication with any adjacent oil or gas well has the potential to lead to well control incidents that may pose serious safety hazards.

In addition, STRONGER reviewed the Commonwealth's oil and gas program in 2010 and 2013. Although generally complementary of the Commonwealth's program, among other suggestions the reviews did urge the Department to "require operators to evaluate and mitigate potential risk of hydraulic fracturing communication with active, abandoned or orphan wells and other potential conduits that penetrate target formation or confining formations above (STRONGER Guidelines Section 9.2.1.)." 2013 STRONGER Report, pages 51 and 52. It is important to note that the STRONGER recommendation on this topic did not make any distinction between hydraulically fracturing a conventional or unconventional well.

Section 78a.52a of this final-form rulemaking require operators to identify abandoned, orphan, active and inactive wells within 1,000 feet of the vertical and horizontal wellbore prior to hydraulic fracturing. The review distance is set at 500 feet for vertical oil wells in § 78.52a. The identification process requires operators to review the Department's orphan and abandoned well database, review farm line maps and submit a questionnaire to landowners whose property lies within the prescribed area of review prior to drilling in cases where hydraulic fracturing activities are anticipated at the well site. Other available databases and historical sources shall also be consulted.

Section 78a.73 indicates which subset of the identified wells shall be monitored based on vertical proximity to the stimulated interval. Wells that penetrate within defined vertical separation distances have the potential to serve as preferential pathways allowing pollution of the waters of the Commonwealth. Monitoring protocols will be based on the level of risk posed by individual well sites within the area of review and represent a mechanism for minimizing or altogether eliminating the potential for any lasting environmental impacts or other safety hazards.

Section 78a.52a also accounts for scenarios where access to well sites may be limited or previously unidentified geologic features may affect hydraulic fracturing activities through the introduction of provisions that require operators to monitor treatment pressures and volumes during stimulation activities. Monitoring allows practical operational flexibility with regard to the mechanisms available for the identification of fracture propagation possibly representative of a communication event.

When communication incidents are not observed immediately, the extent of the environmental impacts may be more severe. Remediation activities, such as stream diversions, the installation and maintenance of treatment systems, and repairs to affected wells or plugging activities are costly and may require operators to finance projects over the course of several years. For example, workover reports submitted to the Department in association with an ongoing stray gas migration case in northeastern Pennsylvania document well repairs amounting to tens of thousands of dollars a day. Depending on when a communication is noted, future wells may be drilled that are not considerate of open communication pathways. These wells may have to be abandoned prematurely or certain fracture stages may have to remain unstimulated, thus reducing the economic value of the new well and the efficiency of resource recovery. This final-form rulemaking strikes a reasonable balance between the costs of conducting the area of review survey and monitoring offset wells and the benefit associated with avoiding communication incidents. This benefit will be realized by operators and the citizens of this Commonwealth.

To further elaborate on one notable consequence of communication incidents, it is important to note that hundreds of documented stray gas migration investigations have taken place during the modern era of oil and gas development in this Commonwealth, that is, between 1984 and the present day. Prior to passage of the 1984 Oil and Gas Act, it is difficult to speculate at what frequency these incidents occurred. A subset of these incidents has been directly attributed to communications with abandoned wells during hydraulic fracturing. In association with a certain number of the total recorded stray gas migration incidents in this Commonwealth, water supplies have been impacted for periods extending over several years. In some cases, property damage has resulted and lives have been lost due to the characteristics of methane gas under certain conditions.

Final-form § 78a.52a, which requires operators to document due diligence in a consistent manner and report unanticipated communication incidents that occur in a systematic way, will have far-reaching benefits and minimal costs. Addressing this particular issue has been supported by the STRONGER organization, and comports with the 2012 Oil and Gas Act, which intends that oil and gas wells be constructed in a way to prevent gas and other fluids from entering sources of fresh groundwater.

§ 78a.53. Erosion and sediment control and stormwater management

The Department added cross-references to this final-form rulemaking to two additional Departmental guidance documents addressing issues regarding erosion and sediment control.

§ 78.55. Control and disposal planning

In this final-form rulemaking, § 78.55 is amended to delete subsection (f), which related exclusively to emergency response planning for unconventional wells. This is

the only change to this section retained in this final-form rulemaking at the direction of the Office of Attorney General during its review of the pre-Act 52 final-form regulations for form and legality.

§ 78a.55. Control and disposal planning; emergency response for unconventional wells

Section 78a.55 of this final-form rulemaking requires all well operators to develop and implement a site-specific PPC plan for oil and gas operations. This change is needed clarify requirements in §§ 91.34 and 102.5(l). Additionally, site-specific PPC plans are needed to address the conditions present at each individual site, including local emergency contact information.

There may be instances when the operator finds that a PPC plan prepared for one well site is applicable to another site. For example, conventional well sites that are all located in a single municipality with similar equipment present on each site might be able to "share" a single PPC plan that still nonetheless addresses the concerns facing each site. Each individual plan shall be analyzed prior to making a determination. It is not the intent of this final-form rulemaking to require each PPC plan be separately developed and different for each well site. The Department understands that many of the practices covered in the PPC plan are the same for a given operator. It is also not the intent of this final-form rulemaking to require that all PPC plans are revised annually. In many cases, if conditions at the site do not change, there will be no need to make revisions to the PPC plan.

Commentators expressed concerns about § 78a.55(a) which simply reiterates the requirements already existing in §§ 91.34 and 102.5(l). Since § 78a.55(a) does not establish any new requirements, this subsection does not present any new burden on operators, yet referencing these requirements in Chapter 78a has value in reminding operators of those obligations. Operators may develop a single integrated PPC plan to satisfy the requirements of § 78.55(b). PPC plans satisfying the requirements of § 91.34 alone may not also satisfy the requirements of § 102.5(l). PPC plans are required for production and storage of pollutants as well as for pipelines and processing. This final-form rulemaking does not exempt the requirements of either § 91.34 or § 102.5(l) for unconventional activities. The purpose of § 78a.55 as it relates to PPC planning is largely to cross-reference existing requirements in other regulatory chapters implemented by the Department.

For these reasons, the Department has retained the requirement to develop and implement site-specific PPC plans in this final-form rulemaking.

It appears that commentators incorrectly assumed that every single site where an impoundment, production, processing, transportation, storage, use, application or disposal of pollutants occur must have the PPC plan posted onsite at all times. This final-form rulemaking does not require persons to post PPC plans at these sites at all times. This final-form rulemaking does not require a PPC plan for the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants to be maintained on the site at all.

Instead, § 78a.55(e) requires well operators to maintain a copy of the PPC plan at the well site during drilling and completion activities only. This requirement is needed because the site is active during drilling and completion activities and there is an increased risk of a spill, release or other incident. In the event of an incident, the purpose of the onsite PPC plan is to allow the operator to quickly minimize any impact. The Department recommends well operators to maintain the PPC plan on the site whenever active operations are occurring on the well site, including during alteration and plugging activities.

Section 78a.55(e) also requires well operators to provide the PPC plan to the Department, the Fish and Boat Commission or the landowner upon request. The requirement to provide the PPC plan to the Fish and Boat Commission upon request is needed because the Fish and Boat Commission has jurisdictional responsibilities over waters of the Commonwealth. The PPC plan enables the Fish and Board Commission investigate areas of concern that fall under its jurisdiction. The Department has determined that this is reasonable and appropriate to ensure compliance with all applicable laws. Additionally, the requirement to provide landowner a copy of the PPC plan upon request in needed because landowners have a vested interested in the contents of the PPC plan and should have access to the plan. Therefore, it is in the best interest of the landowner to be provided a copy of the PPC plan so they understand the activities and potential pollutants and how they will be controlled in the event of a spill or release.

§ 78a.56. Temporary storage

Section 78a.56 regulates temporary storage of regulated substances used or produced at the well site during drilling, altering, completing, recompleting, servicing and plugging the well. The purpose of this section is to ensure that temporary storage at the well site during these activities protects public health, safety and the environment. This section is needed to minimize spills and releases into the environment.

Many commentators expressed concern with the use of pits at unconventional well sites. Section 78a.56 of this final-form rulemaking bans the use of pits for temporary waste storage at unconventional well sites. The Department has determined that it is appropriate to remove this practice because it is not commonly used by unconventional operators. Additionally, the typical type and scope of use by unconventional operators is generally incompatible with technical standards for temporary pits prescribed under § 78.56.

Many unconventional operators have moved to utilizing modular aboveground storage structures to store water and wastewater on well sites. These structures come in many shapes, sizes and designs. The permit-by-rule structure contemplated by § 78a.56 for temporary storage on the well site does not provide adequate protection to public health and safety or the environment due to the variability of the designs of these structures. Section 78a.56 seeks to codify current requirements of Department review and approval of modular aboveground storage structures prior to their use to store regulated substances on a well site. In addition, § 78a.56 will result in more efficient implementation of current requirements by including a requirement for the Department to publish approved structures on its web site. This requirement will eliminate the need for the Department to conduct multiple evaluations of the same design and allows for a single Statewide approval. It is important to note that the Statewide approval will be applicable to the design of the structure only. Section 78a.56(a)(3) requires the operator to obtain siting approval from the Department for site-specific installation of all modular aboveground storage structures for each individual well site where use of the modular aboveground storage structure is proposed. The Department evaluates proposed modular aboveground

storage structures on a case by case basis to determine whether the proposed structure will provide equivalent or superior protection. The Department reviews not only modular designs but also site-specific construction and topographic conditions. The Department's web site will list approved modular structures but authorization of the process will still be required to ensure proper siting of the facility. This provision was originally proposed to include all modular aboveground storage structures, but in response to comments the Department amended the requirement to apply to only those structures which exceed 20,000 gallons of total capacity.

In the proposed rulemaking, § 78.56(a)(5)—(7) addressed security requirements for pits, tanks and approved storage structures and required operators to equip all tank valves and access lids to regulated substances with reasonable measures to prevent unauthorized access by third parties such as locks, open end plugs, removable handles, retractable ladders or other measures that prevent access by third parties. In addition, for unconventional well sites, a fence was required to completely surround all pits to prevent unauthorized acts of third parties and damage caused by wildlife unless an individual was continuously present at the well site. Finally, operators of unconventional well sites were required to display a sign on or near the tank or other approved storage structure identifying the contents and an appropriate warning of the contents such as flammable, corrosive or a similar warning.

The Department received significant public comment from unconventional operators that the requirements to install fences around all pits or provide continuous presence on unconventional well sites was inappropriate and would not be effective. As previously noted, the Department revised § 78a.56 to disallow the use of pits on unconventional well sites and accordingly deleted the requirement to install fencing around pits on unconventional well sites. The Department also retained the requirement to maintain signs on tanks or other approved storage structures to prevent confusion when multiple storage structures are located in close proximity on a well site, and to assist emergency response personnel in properly identifying risks at well sites.

§ 78a.57. Control, storage and disposal of production fluids

Section 78a.57 in this final-form rulemaking contains requirements that apply to permanent storage of production fluids. The purpose of this section is to ensure that storage during the production of well, when there is less activity occurring at the well site, provides protection of public health, safety and the environment. This section is needed to minimize spills and releases to the environment.

In the proposed rulemaking, § 78.57(e) banned further use of underground storage tanks and would have required unconventional operators to remove all underground storage tanks within 3 years of the effective date of the final regulations. The Department received significant public comment on this provision from unconventional operators arguing that it was inappropriate, overly burdensome and exorbitantly expensive. As a result of public comment, the Department amended § 78a.57(e) in this final-form rulemaking to allow the use of buried tanks by unconventional well site operators and does not require removal of existing buried tanks. Underground storage tanks warrant extra scrutiny because they are not as easily inspected and can provide a more direct conduit for contamination into groundwater and therefore provisions in this final-form rulemaking require the location of all existing and any new underground storage tanks at well sites to be reported to the Department.

Corrosion control

Section 78a.57(f) implements section 3218.4(b) of the 2012 Oil and Gas Act, which requires that permanent aboveground and underground tanks comply with the applicable corrosion control requirements in the Department's storage tank regulations. Some commentators argued that these provisions should not apply because storage tanks on well sites are not permanent. In the context of tanks regulated under § 78a.56, the Department agrees because those tanks are used only during drilling and completion of the well and are subject to the well site restoration time frames. However, in the context of tanks regulated under § 78a.57 for the storage of production fluids, the Department disagrees. These tanks are in place on the well site for the duration of the productive life of the well which can be decades or in some cases centuries. If tanks that are in service for this duration are not considered permanent, then no tank would ever be considered permanent under this interpretation. Accordingly, the tanks regulated by § 78a.57 are permanent and subject to the corrosion control requirements in section 3218.4(b) of the 2012 Oil and Gas Act.

Commentators also argued that because the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104) specifically exempts underground and aboveground storage tanks located at oil and gas well sites from regulation, there are no applicable corrosion control requirements in the Department's storage tank regulations. Therefore, regulations specifying that operators shall comply with corrosion control requirements in §§ 245.432 and 245.531—245.534 are inappropriate and not authorized by section 3218.4(b) of the 2012 Oil and Gas Act. The Department disagrees with this interpretation. Section 3218.4(b) of the 2012 Oil and Gas Act expressly requires permanent aboveground tanks to comply with the applicable corrosion control requirements in the Department's storage tank regulations. Additionally, section 3218.4(b) of the 2012 Oil and Gas Act was enacted after the Storage Tank and Spill Prevention Act.

The Department notes that this final-form rulemaking does not require retroactive application of the corrosion control requirements. Only new, refurbished or replaced aboveground and underground storage tanks must comply with the applicable corrosion control requirements. In addition, the Department also explicitly deleted the requirement to use Department certified inspectors to conduct inspections of interior linings or coatings as not "applicable," which will alleviate some burden on oil and gas operators. Finally, the Department notes that operators may choose to use nonmetallic tanks which can often be less expensive than a steel equivalent and do not require any additional cost to ensure protection from corrosion.

Secondary containment

Section 78a.57(c) of this final-form rulemaking requires secondary containment for aboveground tanks that contain brine and other fluids produced during operation of the well. Since well sites in the production phase are not typically inspected by the Department with the same frequency as those in the well development, restoration and plugging phases, and do not have continuous operator presence, the Department feels it is necessary to require secondary containment for aboveground tanks

used to store brine and other fluids produced during operation of the well to prevent undetected releases into the environment.

Releases of brine from aboveground tanks used for production fluids are uncontrolled and usually undetected as they occur. Secondary containment around aboveground tanks will prevent these releases from entering the environment until they are detected.

To reduce the burden on operators, this final-form rulemaking does not require retroactive application of the secondary containment requirements. The Department does not require secondary containment to be installed until a tank or one tank in a series of tanks is added, refurbished or replaced. Finally, commentators raised the concern of a larger footprint created by secondary containment where available area may be an issue. This concern is addressed by allowing the use of double-walled tanks capable of detecting a leak in the primary containment to fulfill the requirements in this subsection.

§ 78a.58. Onsite processing

Section 78a.58 codifies existing practices to allow onsite waste processing to occur provided all of the waste processed on the site is either generated at the site or will be beneficially reused at the site after approval is obtained from the Department. The purpose of this provision is to encourage recycling and reuse in hydraulic fracturing operations. These provisions are needed to ensure that processing activities are conducted in a way that protects public health, safety and the environment. Additionally, the purpose of these provisions is to minimize spills and releases to the environment.

This final-form rulemaking also seeks to streamline this process by including a requirement for the Department to publish approved processes on its web site. This requirement will eliminate the need for the Department to conduct multiple evaluations of the same process and allows for a single Statewide approval. Once a process receives approval, operators wishing to utilize that process would be required only to register use and provide notification to the Department 3 days prior to initiating processing. These sections also include exemptions from the requirement to obtain approval and register with the Department prior to conducting the following processes: blending wastewater with fresh water, aeration and filtering solids from fluids. The Department does not believe that specific Department oversight is necessary for these processes.

The Department received significant public comment on this section indicating that allowing operators to conduct waste processing on well sites is inappropriate and not protective of public health and safety or the environment. The Department disagrees and believes that it is appropriate to allow waste processing on a well site to facilitate beneficial reuse of waste and efficient operations, so long as appropriate protections are in place as required by these amendments.

The Department received comments that requiring an operator to wait for solid waste remaining after the processing or handling of fluids under § 78a.58 be characterized under § 287.54 (relating to chemical analysis of waste) before the solid waste leaves the well site requires too much time (27 days) to store it onsite until the sample analysis is received. The Department requires that a waste characterization be conducted in accordance with § 287.54. The Department believes that this is an appropriate cross-reference, as § 78a.58(h) only concerns those wastes that will be leaving the well site where they were generated. Once the waste leaves the well site, the exemptions under section 3273.1 of the 2012 Oil and Gas Act no longer apply and the waste management program regulations govern testing and handling of the waste.

Commentators also noted that waste processing often generates high concentrations of TENORM. The Department's 2015 TENORM Study Report presented several observations and recommendations regarding radioactive material associated with the oil and gas industry. Although the study outlines recommendations for further study, it concluded there is little potential for harm to workers or the public from radiation exposure due to oil and gas development. While the study concluded that there is little potential harm to workers or the public from radiation exposure due to oil and gas development, the study observed that there is potential for worker and public exposure from the processing and potential spilling of wastewater from oil and gas operations. There is also the potential to produce loads of TENORM waste with radium-226/-228 concentrations greater than 270 pCi/g, which is the threshold for United States Department of Transportation regulations regarding the labelling, shipping and transport of Class 7 hazmat radioactive material.

The Department remains committed to protecting the public from unnecessary exposure to radiation and is actively pursuing the recommendations of the 2015 TENORM Study Report. The Department added § 78a.58(d) to this final-form rulemaking. This new subsection requires an operator processing fluids onsite to develop a radiation protection action plan which specifies procedures for monitoring and responding to radioactive material produced by the treatment process (for example, sludges or filter cake). This section also requires procedures for training, notification, recordkeeping and reporting to be implemented. This will ensure that workers, members of the public and the environment are adequately protected from radioactive material that may be found in fluids processed on the well site.

Other commentators indicated that this section is overly burdensome and does not go far enough to support processing, recycling and beneficial reuse of fluids and other waste materials at well sites. It is the intent of this section to support waste processing on a well site to facilitate beneficial reuse of waste and efficient operations; however, certain activities present enough of an environmental hazard that the Department should have the opportunity to review and approve those activities prior to implementation.

§ 78a.59a. Impoundment embankments

§ 78a.59b. Well development impoundments

In this final-form rulemaking, §§ 78a.59a and 78.59b (relating to impoundment embankments; and well development impoundments) establish construction standards for well development impoundments. Currently, oil and gas operators use impoundments to store freshwater and other fluids approved by the Department for use in drilling and hydraulic fracturing activities that do not trigger the permitting requirements in § 105.3(a)(2) and (3) and are unregulated by the Department. The provisions in these sections seek to outline the necessary requirements to ensure that those facilities that do not meet the Chapter 105 permitting requirements have structural integrity and do not pose a threat to waters of the Commonwealth. This is necessary because the scope and type of use of well development impoundments by the oil and gas industry are significantly different than the

scope and type of use by other industries. The Department has observed the use of these impoundments to hold up to 16 million gallons of freshwater and other approved fluids varying in quality that are usually not indigenous to the local watershed where these facilities are constructed. For this reason, the escape of that water may pose a threat of pollution to waters of the Commonwealth.

The Department's structural standards and measures in §§ 78a.59a and 78.59b are intended to prevent leaking of well development impoundments in the groundwater and surrounding surface waters. Failure to construct well development impoundments in a structurally sound manor would allow for the potential for a catastrophic failure of the impoundment that may cause serious harm to public health and to the environment.

Section 78a.59b(d) and (f) specifies that an impervious liner must be used and the bottom of the well development impoundments must be placed be at least 20 inches above the seasonal high groundwater table to prevent groundwater infiltration. The Department received comments stating that well development impoundments should be required to follow Chapter 105. The Department disagrees because these regulations only pertain to dams that are not regulated under Chapter 105 because they do not meet the height and volume thresholds. The Department also received comments saying that the regulations for well development impoundments unfairly target the oil and gas industry. The Department disagrees and believes that adherence to § 78a.59a provides for the structural integrity of the impoundment to provide adequate public safety and that § 78a.59b provides reasonable assurances that the water placed in the impoundments does not pose an environmental hazard. Failure to construct well development impoundments in a structurally sound manner would allow for the potential for a catastrophic failure of the impoundment that may cause serious harm to public health and to the environment.

This final-form rulemaking also establishes registration of existing and future well development impoundments with the Department electronically through its web site. This is needed to allow the Department to inspect the well development impoundments, especially those that do not require an erosion and sediment control permit under Chapter 102.

Also, this final-form rulemaking establishes that well development impoundments need to be restored within 9 months of completion of hydraulic fracturing of the last well serviced by the impoundment. An extension for restoration may be approved under § 78a.65(c). While extensions for well development impoundments are not directly addressed in Act 13, the Department believes it is reasonable to tie the restoration requirements associated with well sites to well development impoundments because well development impoundments are contingent on the existence of well sites being developed and should not exist in perpetuity on their own. The Department believes that the sites used for well development impoundments need to be returned to preconstruction contours and support the prior land uses that existed to the extent practicable. Land owners may request to the Department in writing that the impoundment embankments not be restored provided that the synthetic liner is removed.

Technical adjustments

Several changes to this section in this final-form rulemaking include technical adjustments of the requirements. In § 78a.59a(a)(5), soil classification sampling rates are adjusted from one sample per 1,000 cubic yards to one sample per 10,000 cubic yards which is a more appropriate sampling rate. A requirement is also added to § 78a.59a(a)(5) to describe and identify soils used for embankment construction in accordance with ASTM D-2488—09A (Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)).

Soil compaction standards are included in § 78a.59a(a)(8)(iv) of this final-form rulemaking, with reference to several ASTM test methods. The Department also added language in § 78a.59a(b) allowing an operator to request a variance from the specific technical requirements in these sections upon demonstration that the alternate practice provides equivalent or superior protection to the requirements of the section.

Mine influenced water

In § 78a.59b(h), this final-form rulemaking allows operators to request to store MIW in well development impoundments. This provision seeks to codify the existing practices outlined in the Department's white paper "Establishment of a Process for Evaluating the Proposed Use of Mine Influenced Water (MIW) for Natural Gas Extraction." Further, the purpose of these provisions is to promote the voluntary use of MIW by the oil and gas industry.

Some commentators were concerned about the potential to allow operators to store MIW in well development impoundments. These commentators asserted that the quality of MIW varies greatly throughout this Commonwealth and the term includes MIW that has been treated, which may be very high quality. The Department disagreed with these commentators because § 78a.59b(h) specifies that before MIW is allowed to be stored in a well development impoundment, the Department will review and approve the storage based on a variety of factors including the quality of the MIW and the risks of storage of the water. MIW that does not meet the Department's water quality standards to be stored in a well development impoundment may not be stored in a well development impoundment absent additional protections and evaluation. The Department believes that allowing the use of MIW for well development has a positive impact on the environment by finding a beneficial use for MIW that also reduces the consumption of freshwater from the Commonwealth's waterways. In some cases, use of MIW by the oil and gas industry can provide funding for treatment systems to continue operating. Encouraging the use of alternative water sources, including recycled water, MIW and treated wastewater, has been supported by the STRONGER organization to provide additional sources of water for operators to use for well development purposes.

Security issues (fences)

Section 78a.59b(e) of this final-form rulemaking requires that a fence must completely surround a well development impoundment to prevent unauthorized acts of third parties and damage caused by wildlife unless an individual is continuously present at the impoundment. There were comments from operators who were concerned that no matter what type of fence they erect around an impoundment, it could never absolutely prevent entry. This provision is needed due to the size and depth of many well development impoundments plus the slickness of the installed liner. Additionally, this provision is needed to prevent unintended entry by landowners or other members of the public. Fences are also needed to deter wildlife from damaging the structural integrity of these facilities. Well development impoundment liners can easily be damaged by large animals and even smaller ones with claws trying to escape after falling in.

§ 78a.59c. Centralized impoundments

This final-form rulemaking requires all centralized impoundments to comply with permitting requirements in Subpart D, Article IX, or close by October 8, 2019. When initially proposed, this section included provisions to codify the Department's existing centralized impoundment permit program by providing technical specifications for construction and operation of centralized waste storage impoundments. The Department received significant public comment on this provision.

Commentators argued that the standards set for centralized impoundments for oil and gas operations were less stringent than other Department regulations that address closure of impoundments (for example, Chapter 289 (relating to residual waste disposal impoundments)). The Department believes that centralized impoundments should be regulated in the same manner as other waste transfer facilities in this Commonwealth. Therefore, the Department determined that all future centralized wastewater impoundments will be regulated by the Department's Waste Management Program. This section will require oil and gas operators to comply with the residual waste management regulations which contain requirements for managing residual waste properly, and these requirements apply to residual waste that is generated by any type of industrial, mining or agricultural operation. This change will ensure that the Department does not impose disparate requirements or disproportionate costs on one particular economic or extractive sector.

§ 78a.60. Discharge requirements

This final-form rulemaking continues to allow operators to discharge tophole water or water in a pit as a result of precipitation onto a vegetated area capable of absorbing the water and filtering solids. Commentators argued the Department should ban the discharge of tophole water for a number of reasons. This final-form rulemaking allows the discharge of tophole water or water in a pit from precipitation only if it includes no additives, drilling muds, regulated substances or drilling fluids other than gases or fresh water. In addition, the water must meet certain water quality standards and be discharged to an undisturbed, vegetated area capable of absorbing tophole water and filtering solids in the discharge. Tophole water or water in a pit as a result of precipitation may not be discharged to waters of the Commonwealth except in accordance with Chapters 91—93 and 95. Land application of water in accordance with this section is not expected to cause any significant environmental impact. This provision has been in effect since Chapter 78 was initially promulgated in 1989 and the Department continues to believe that it is an environmentally sound method of dealing with this material.

§ 78a.61. Disposal of drill cuttings

Comments were received urging the Department to ban the use of all pits and to ban onsite waste disposal. The Department amended this final-form rulemaking to ban the use of pits for temporary waste storage at unconventional well sites. The Department determined that it is appropriate to prohibit this practice because it is not commonly used by unconventional operators due to the volume and nature of wastes generated at unconventional well sites. Additionally, the typical type and scope of use by unconventional operators is generally incompatible with technical standards for temporary pits prescribed under § 78.56. As a result, unconventional operators will no longer be permitted to dispose of residual waste including contaminated drill cuttings in a pit at the well, unless the pit is authorized by a permit obtained from the Department.

The Department clarified that the cutoff for addressing drill cuttings under subsections (a) and (b) versus under subsection (c) is the cuttings above and below the surface casing seat. The former have less restrictive yet still protective disposal requirements. A requirement to give the surface landowner notice of the location of disposal was added to subsection (e). Some commentators believed that rather than require notice, the Department should require landowner consent before allowing for disposal of drill cuttings. The Department disagrees that the regulations should include a requirement for landowner permission or consent. Prior to entering into a lease agreement with the well operator, the landowner may discuss and agree upon the terms and conditions that relate to the type of operations that will occur on the property. Additionally, the Department believes that the provisions of § 78a.61 (relating to disposal of drill cuttings) are sufficiently protective that an operator meeting those requirements should not be required to obtain prior consent. The Department does believe that transparency and notice are important concerns, however, and has added language to § 78a.61 requiring operators to provide notice to surface landowners of the location of cuttings disposal or land application.

§ 78a.62. Disposal of residual waste—pits

The primary change to § 78a.62 was to take the prohibition on disposal of residual waste generated by unconventional operations in a pit that was proposed in § 78.62(a)(1) (relating to disposal of residual waste—pits) and replace it with a ban unless the operator can obtain an individual permit for the activity. Given that other generators of residual waste can obtain permits for proper disposal of residual waste, the Department did not feel that an outright ban would withstand scrutiny.

§ 78a.63. Disposal of residual waste—land application

The primary change to § 78a.63 was to take the prohibition on disposal of residual waste generated by unconventional operations through land application that was proposed in § 78.63(a)(1) and replace it with a ban unless the operator can obtain an individual permit for the activity. Given that other generators of residual waste can obtain permits for proper disposal of residual waste, the Department did not feel that an outright ban would withstand scrutiny.

§ 78a.63a. Alternative waste management

This is a catch-all section added in this final-form rulemaking indicating that an operator may seek Department approval to manage waste in a manner other than that outlined in §§ 78a.56—78a.63, provided the operator can demonstrate that the practice provides equivalent or superior protection to the requirements in these sections. The concept is embedded in several sections of this final-form rulemaking, but the Department believes that this catch-all provision will serve as a backstop to those provisions.

§ 78a.64. Secondary containment around oil and condensate tanks

Section 78.64 (relating to containment around oil tanks) requires secondary containment that meets Federal requirements under 40 CFR Part 112 (relating to oil pollution prevention) to be implemented around oil tanks to prevent the discharge of oil into waters of the Commonwealth. The Department has expanded this require-

ment to include tanks that contain condensate (light liquid hydrocarbons) because the EPA considers condensate that is liquid at atmospheric pressures and temperatures to be "oil." This final-form rulemaking change will apply to unconventional wells that produce condensate in § 78a.64.

The Department received comments both for and against the Department's deletion of language requiring secondary containment for singular tanks with a capacity of at least 660 gallons in § 78a.64. The Department revised the language in § 78a.64 in this final-form rulemaking from 660 gallons to 1,320 gallons to be consistent with Federal Spill Prevention, Control and Countermeasure Plan regulations in 40 CFR Part 112. Making this change matches the Commonwealth's requirements to the National standards for regulation of oil and condensate storage.

The Department received comments stating that "containment" was used in various contexts throughout the draft final-form regulations and was confusing. As a result, the Department added definitions for "primary containment" and "secondary containment" in § 78a.1. These terms are used in the throughout this final-form rulemaking when referring to specific types of containment.

Section 78a.64 requires that all tanks that store hydrocarbons have secondary containment by October 9, 2016, or at the time the tank is replaced, refurbished or repaired, whichever is sooner.

§ 78a.64a. Secondary containment

Section 3218.1 of the 2012 Oil and Gas Act (relating to notification to public drinking water systems) establishes the requirement for secondary containment systems and practices for unconventional well sites. As a result, the Department adds § 78a.64a in this final-form rulemaking to implement these statutory requirements for unconventional well sites.

Secondary containment at unconventional well sites shall be used on the well site when any equipment used for any phase of drilling, casing, cementing, hydraulic fracturing or flowback operations is brought onto a well site and when regulated substances are brought onto or generated at the well site. This final-form rulemaking requires that all regulated substances, except fuel in equipment or vehicles, be managed within secondary containment. The Department received comments pointing out that section 3218.2(c) of the 2012 Oil and Gas Act (relating to containment for unconventional wells) lists six specific substances that must be stored in secondary containment and that this new section broadens the scope of that statutory list to include all regulated substances, including solid wastes and other regulated substances in equipment or vehicles. The commentators asked how this expansion is consistent with the intent of the General Assembly and the 2012 Oil and Gas Act and the need for this requirement. The Department acknowledges that section 3218.2(c) of the 2012 Oil and Gas Act does list six materials that require use of containment systems when stored on an unconventional well site but disagrees with the comment because section 402(a) of The Clean Streams Law (35 P.S. § 691.402(a)) states that whenever the Department finds that any activity creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid pollution, the Department may, by rule or regulation, establish the conditions under which the activity shall be conducted. Additionally, the Department believes that it is the intent of the General Assembly to require regulated substances be stored in secondary containment by use of the language "[u]nconventional well sites shall be designed and constructed to prevent spills to the ground surface or spills off the well site" in section 3218.2(a) of the 2012 Oil and Gas Act. It has been well documented through studies and the Department's experience that the primary cause for pollution to the environment by oil and gas operations on well sites are unauthorized releases of regulated substances onto the ground. Secondary containment of all regulated substances is necessary to significantly reduce the potential for pollution on well sites.

This final-form rulemaking establishes that chemical compatibility and maximum permeability standards must be met for materials used for secondary containment at unconventional well sites. The Department received comments stating that the ASTM D5747 standard in the proposed rulemaking for testing chemical compatibility is both time consuming and expensive. Also, that it is a standard for landfill liners and may not be practicable to allow for other materials to be used that meet the maximum permeability standard. The Department changed language in this final-form rulemaking to allow for chemical compatibility testing to be determined by a method approved by the Department. This will allow for the proper and most practicable testing methodology to be used based upon the material used for secondary containment at an unconventional well site.

Secondary containment open to the atmosphere must be able to hold the volume of the largest aboveground primary container plus an additional 10% for precipitation. Removal of precipitation from secondary containment is required once the 10% of excess capacity is diminished. Stormwater that comes into contact with regulated substances stored within the secondary containment needs to be managed as residual waste. Double walled tanks capable of detecting leaks from primary containment are also allowed to be used. The Department received comments that section 3218.2(d) of the 2012 Oil and Gas Act does not require secondary containment systems. The Department interprets that section to mean that the container that additives, chemicals, oils or fuels are stored in is considered to be primary containment. Therefore, the containment capacity referred to that must be able to hold the contents of the largest container plus 10% for precipitation is secondary containment. Any other interpretation of section 3218.2(d) of the 2012 Oil and Gas Act would render the final phrase of the subsection (". . .unless the container is equipped with individual secondary containment") irrelevant. Therefore, it is clearly the intent of the General Assembly that secondary containment is required by the 2012 Oil and Gas Act. The Department received comments saying that stormwater that has not been discharged or discarded from secondary containment is not residual waste. The Department disagrees because stormwater in secondary containment that also contains regulated substances is considered to be residual waste, as defined in § 287.1 (relating to definitions), whether or not the stormwater has been discharged or discarded and shall be handled and disposed of accordingly.

Secondary containment shall be inspected weekly to ensure integrity. Repairs to damaged or compromised secondary containment shall be done as soon as practicable. Secondary containment inspection and maintenance records shall be maintained and made available at the well site until the well site is restored. The Department received comments stating that for many operators it is not practical to store hard copies of inspection

reports and maintenance records at the well site. As a result, the Department should allow for operators to provide these reports electronically to the Department upon request instead. The Department believes that because containment systems will be employed during drilling, casing, cementing, hydraulic fracturing and flowback operations, it is reasonable to make inspection reports and maintenance records available at the well site, because the site is normally manned during these operations. The Department is not requiring that the hard copies shall be stored onsite, but that operators shall be capable of these reports being made available upon request (physically or electronically) at the site at the time of the request. The Department needs these reports at the time of the inspection to determine that operators are doing their due diligence with secondary containment inspection and maintenance.

Language pertaining to subsurface containment systems in the proposed rulemaking has been deleted after receiving comments that they should not be allowed. The Department concurred that subsurface containment systems are too impractical to be employed as a secondary containment system because they are difficult to inspect and they would require remedial steps to address the contaminated material within them whenever a spill would occur.

§ 78a.65. Site restoration

Permanent changes to the surface of the land resulting from earth disturbance activities have the potential to cause pollution. In many watersheds throughout this Commonwealth, flooding problems from precipitation events, including smaller storms, have increased over time due to changes in land use and ineffective stormwater management. This additional flooding is a result of an increased volume of stormwater runoff being discharged throughout the watershed. This increase in stormwater volume is the direct result of more extensive impervious surface areas, combined with substantial tracts of natural landscape being converted to lawns on highly compacted soil or agricultural activities. The problems are not limited to flooding. Stormwater runoff carries significant quantities of pollutants washed from the impervious and altered land surfaces. The mix of potential pollutants ranges from sediment to varying quantities of nutrients, organic chemicals, petroleum hydrocarbons and other constituents that cause water quality degradation.

Improperly managed stormwater causes increased flooding, water quality degradation, stream channel erosion, reduced groundwater recharge and loss of aquatic species. These and other impacts can be effectively avoided or minimized through better site design that minimizes the volume of stormwater generated and also requires treatment. PCSM requirements are already in § 102.8 and are needed to prevent pollution from improperly managed stormwater, and require utilization of stormwater management techniques that achieve stormwater runoff volume reduction, pollutant reduction, groundwater recharge and stormwater runoff rate control for all runoff events. The requirements of § 78a.65 are not more or less stringent than § 102.8, but are a reasonable approach to adapting the requirements of this section where needed for the industry detailed as follows.

Section 78a.65 was essentially re-written after the first public comment period because as the Department considered all comments suggesting more stringent site restoration requirements as well as those against parts of the site restoration section, or the section in its entirety, it became exceptionally difficult to read through as the significantly edited language sacrificed readability with excessive strikethrough, underlining, all capitalized text, and the like. The Department decided there needed to be a clean write-up of the restoration requirements to be understood. However, substantively, the actual changes to the site restoration section do not deviate greatly from the proposed rulemaking.

Several commentators were of the opinion that the proposed restoration requirements included in this final-form rulemaking were not stringent enough and should require more than restoration to approximate original conditions. These commentators wanted to see the restoration requirements require operators to re-establish prior existing biological communities and ecosystems as well as re-establish the entire site to its exact pre-existing conditions. This position proposed making § 78a.65 more stringent than § 102.8. The Department does not believe that it is necessary to include technical performance standards including requirements for type and density of perennial vegetation, soil characteristics and drainage patterns in this section because those issues are already appropriately addressed by the requirements. Projects meeting the requirements will not pose a threat of significant environmental harm. Projects that trigger the Chapter 102 requirements for an erosion and sediment control permit shall submit a Site Restoration/Post-Construction Stormwater Management Plan to the Department for review and approval prior to construction of the site. Additionally, this section requires operators to submit a well site restoration report to the Department 60 days after restoration. When this report is submitted, the Department conducts an inspection to ensure that the restoration requirements have been met.

This section largely restates the restoration requirements in section 3216 of the 2012 Oil and Gas Act and incorporates the Department's interpretation of these requirements as outlined in the *Policy for Erosion and Sediment Control and Stormwater Management for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 800-2100-008, which was finalized on December 29, 2012. It is unreasonable to interpret the restoration requirements in the 2012 Oil and Gas Act to require restoration of the well site to a different standard depending upon whether or not a restoration extension has been granted. The Department included the phrase "to the extent practicable" in the definition of "approximate original conditions" in § 78a.1 in recognition of the fact that restoration to original contours may not always be feasible. Section 78a.65(a)(1) allows operators broad discretion to ensure wells and well sites can be operated safely while also complying with the site restoration requirements in the 2012 Oil and Gas Act.

Restoration timeline/2-year extension

The restoration time frame is consistent with requirements in the 2012 Oil and Gas Act. Operators may request an extension of the restoration time frame because the extension will result in less earth disturbance, increased water reuse or more efficient development of the resources, or if restoration cannot be achieved due to adverse weather conditions or a lack of essential fuel, equipment or labor.

For post-drilling, this final-form rulemaking requires restoration of the well site within 9 months after completion of drilling of all permitted wells on the site or within

9 months of the expiration of all existing well permits on the site, whichever is later. For post-plugging, it requires restoration within 9 months after plugging the final well on a well site. The restoration time frames are consistent with requirements in the 2012 Oil and Gas Act.

Currently, a well site shall be restored within 30 days after expiration of the drilling permit, if the site is constructed and the well is not drilled. This was originally retained in the draft final-form regulations. Several comments were received from operators arguing this to be a burdensome requirement. While this may have been an appropriate time frame to restore a conventional well site, the size of an unconventional well site makes it very difficult to achieve this restoration time frame. The Department recognizes this and has changed the time frame to 9 months to be consistent with other restoration requirements.

Some operator's comments expressed concern that restoration within 9 months may not work in every situation. Under this final-form rulemaking, operators may request an extension of the restoration time frame because the extension will result in less earth disturbance, increased water reuse or more efficient development of the resources or if restoration cannot be achieved due to adverse weather conditions or a lack of essential fuel, equipment or labor. This allows the operator some flexibility while still being protective of public health and safety and the environment.

PCSM requirements

The amendments to § 78a.65 in the draft final-form regulations addressed comments on this section that expressed continuing confusion regarding what constitutes "restoration" as the term is used in Chapters 78 and 102, and what the associated requirements are. The changes to this section in this final-form rulemaking clarify these issues and, in particular, distinguish between areas not restored and other areas. "Areas not restored" do not fall within the provisions in § 102.8(n) and therefore must meet the requirements, among others, of § 102.8(g). Areas not restored include areas where there are permanent structures or impervious surfaces, therefore runoff produced from these areas must be tributary to permanent PCSM BMPs to ensure the runoff will be managed in accordance with the requirements of § 102.8.

Landowner consent for storing equipment not needed for production (agreements versus lease)

Drilling supplies and equipment not needed for production may only be stored on the well site if written consent of the landowner is obtained. Several operators expressed concern that this requirement should not be necessary if they have an executed lease with the landowner allowing for the storage of equipment. The Department disagrees as the need for landowner consent is consistent with the requirements in section 3216 of the 2012 Oil and Gas Act. The requirement for consent allows the landowner to know what is being stored on their property, where a blanket allowance under a lease agreement may not afford transparency.

Waste disposal information in restoration report

The Department acknowledges that the current waste reporting requirements may capture some of the same information required on the restoration report but still believes that waste disposal information should be included in the site restoration report. Details regarding the type of waste, as well as volume, leachate analysis and physical location are not captured in the waste reporting requirements. This information is critical for the landowner to be aware of where waste is located so it can be avoided in the event of future earth moving activities on the landowner's property.

§ 78a.66. Reporting and remediating spills and releases

Spills or releases from containment of regulated substances at oil and gas well sites pose a substantial risk to the environment and public health, including impacts to water resources. Oil and gas operators of both conventional and unconventional wells have an obligation to report and properly remediate spills and releases in a timely manner.

Several commentators felt that it was inappropriate to require cleanups of spills and releases under Act 2 because the 2012 Oil and Gas Act is not one of the environmental statutes referenced in Act 2. Act 2 provides a procedure to remediate and receive relief of environmental liability regarding a release of a regulated substance addressed under various environmental statutes, including The Clean Streams Law, the SWMA and the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101—6020.1305). Many substances that are spilled at sites regulated under the 2012 Oil and Gas Act are regulated as waste under the SWMA or as pollutants under The Clean Streams Law (see, for example, section 3273 of the 2012 Oil and Gas Act (relating to effect on department authority) and section 3273.1 of the 2012 Oil and Gas Act). If these wastes and pollutants are regulated substances as defined under Act 2 and have contaminated soils and groundwater, they must be addressed under Act 2, regardless of the nature of the activity that resulted in contamination.

Some commentators felt that reporting requirements in § 78a.66(b)(2) went beyond the scope of what is required in § 91.33. The Department believes that subsection (b)(2) in this final-form rulemaking will serve as guidance for the responsible party to provide enough information, to the extent known, necessary for the Department to properly assess the reported spill incident, so the appropriate initial response can be employed by the Department.

Many commentators were concerned that the public and other government agencies were not made aware of all spills and releases that occur at unconventional well sites. The regulations require that operators report releases within 2 hours of discovery to the Department electronically through its web site. This information will then be loaded directly into a spill and release database. The Department will utilize this database to create an electronic spill and release reporting and tracking system available for the public and government entities to receive up-to-date information concerning spills and releases and remedial actions at oil and gas operations. The system will be similar to the Department's eNOTICE system, which allows users to get information about their communities and the facilities they are interested in delivered directly by e-mail.

Section 78a.66 cross-references § 91.33, which requires the operator or other responsible party to take necessary corrective actions, upon discovery of the spill or release, to prevent the substance from polluting or threatening to pollute the waters of the Commonwealth, damage to property or impacts to downstream users of waters of the Commonwealth. This concern was expressed in numerous comments over the possible pollution of private water wells due to oil and gas activity. To help address this, the operator or other responsible party will be required to

identify water supplies that have been polluted or for which there is potential for pollution as a result of a spill or release at a conventional or unconventional well site. If a water supply is determined to have been polluted, it shall be restored or replaced in accordance with § 78a.51.

The spill or release area shall then be remediated appropriately through Act 2 standards and processes. One of the primary reasons the Department requires remediation of spills to an Act 2 standard is because the operator is typically not the owner of the land where the regulated substance is spilled or released. It is simply unreasonable to leave behind contaminants at levels that may pose a health risk as a result of oil and gas operations on another person's property.

The Department's Act 2 standards explicitly reflect the risks various compounds and elements pose to human health and the environment, and have been applied successfully to thousands of successful remediation projects over the past 19 years. This final-form rulemaking specifically provides flexibility to oil and gas operators to address small spills and releases, fully-contained releases and larger spills and releases in a flexible and straightforward manner.

Several commentators raised issues with the "alternative process" included in the proposed rulemaking, which allowed operators to meet an Act 2 standard without necessarily following the notice and review provisions under Act 2. In response to those comments, the Department deleted the alterative process from this final-form rulemaking. All cleanups will either be small enough to address through excavation or follow the process outlined in these sections and Act 2.

There were a few comments from operators who expressed concern over time constraints of report submittals that are in § 78a.66 for various portions of the remediation process. It is both reasonable and appropriate to require operators to carry out remedial actions promptly and not let contamination linger in the environment. The time frames established in this final-form rulemaking are modeled on the time frames established for corrective actions for releases from storage tanks in Chapter 245. The storage tank corrective action process was established in 1993 and has been used successfully for thousands of storage tank cleanups, both before and after the passage of Act 2 in 1995. The tank regulations were updated in 2001 to harmonize the regulations with Act 2 and the Act 2 implementing regulations in Chapter 250 (relating to administration of Land Recycling Program). These time frames are appropriate and have built-in flexibility to address the unique considerations posed by each remedial site. Finally, the Department notes that the time frames establish requirements for the steps that will lead to completion of the corrective action but do not establish a time frame by which demonstration of attainment of an Act 2 standard must be made. The Department recognizes that each site poses unique challenges and a one-size-fits-all completion date requirement is not appropriate.

§ 78a.67. Borrow pits

As a result of concerns that the requirement to restore a borrow pit within 30 days of well permit expiration was impractical, the Department revised the restoration requirements in § 78a.67 to require borrow pits to be restored 9 months after completion of drilling the final well on a well site serviced by the borrow pit instead of 9 months after completion of drilling all permitted wells on the well site or 30 calendar days after the expiration of all existing well permits on well sites. This is in accordance with other restoration requirements that were similarly addressed in §§ 78a.59a and 78a.65. The main concern is the fact that an activity may be finished after the growing season, in fall or winter and will not be able to achieve any vegetative growth for stabilization until the next growing season. The Department believes 9 months is a reasonable time frame to ensure the operator has an opportunity to achieve this requirement.

§ 78a.68. Oil and gas gathering pipelines

This final-form rulemaking requires the use of highly visible flagging, markers or signs to be used to identify the shared boundaries of the limit of disturbance, wetlands and locations of threatened or endangered species habitat prior to land clearing. The Department received comments for and against these provisions. The Department believes it is vital to delineate special area boundaries in the field, that is, limit of disturbance, jurisdictional streams and wetlands as well as endangered species habitat otherwise unseen or not readily visible to the untrained eye, to reduce the likelihood of unintentional disturbance during clearing and grubbing or other earthmoving activities. The Department considered not requiring these sensitive areas to be clearly marked in the field during oil and gas operations. However, the Department determined that the risk of damage to sensitive areas not easily seen from large earthmoving equipment and straying beyond the permitted limit of disturbance is too great to not include this provision in this final-form rulemaking. This requirement will greatly reduce potential impacts to these resources and it not only benefits any resources that are not impacted it also benefits any permittee that may have impacted these resources inadvertently and become subject to a compliance and enforcement case by the Department. Therefore, this is the least burdensome, acceptable alternative.

This final-form rulemaking protects topsoil by requiring segregation of topsoil and subsoil during its excavation, storage and backfilling. The Department considered not requiring topsoil segregation because a number of comments were submitted suggesting this requirement should be deleted from this final-form rulemaking. However, the Department determined that the negative effects of not segregating topsoil would exceed the benefits of keeping this requirement and, therefore, this is the least burdensome yet acceptable alternative. Segregation of topsoil in all areas and phases is critical to successful restoration of pipeline right of ways. The practice of segregating topsoil favors industry by reducing the need, cost and the additional impact from importing topsoil to restore healthy vegetation after construction to establish permanent stabilization.

This final-form rulemaking requires native and imported topsoil used for pipeline right of way restoration must be of equal or greater quality of the original topsoil to ensure the land is capable of supporting the uses that existed prior to earth disturbance. Some comments were against allowing any importation of topsoil. The Department considered not requiring importation of topsoil; however, this is the least burdensome yet acceptable alternative because topsoil used for restoring the pipeline right of way is of a quality capable of supporting the preexisting uses of the land.

This final-form rulemaking requires that equipment refueling and staging areas must be out of floodways and at least 50 feet away from a body of water. The proposed setback for refueling and material staging areas from water bodies is appropriate and consistent with other

regulatory requirements in Chapter 105. Commentators stated that the Department should allow for exceptions to the 50-foot distance restriction for material staging areas. The Department agreed and, as a result, § 78a.68(f) (relating to oil and gas gathering pipelines) has been amended to allow for materials staging within the floodway or within 50 feet of a water body if first approved in writing by the Department. Due to the consideration and allowance for exceptions, with prior approved by the Department in writing, the Department believes this is the least burdensome, acceptable alternative.

This final-form rulemaking requires all buried metallic gathering pipelines to be installed and placed in accordance with 49 CFR Part 192, Subpart I or Part 195, Subpart H. Some comments received questioned the Department's statutory authority to incorporate Federal standards for pipelines into the rulemaking. Section 3218.4(a) of the 2012 Oil and Gas Act provides that "[a]ll buried metallic pipelines shall be installed and placed in operation in accordance with 49 CFR Pt. 192 Subpt. I (relating to requirements for corrosion control)." Section 78a.68(g) reflects this requirement. The incorporation of 49 CFR Part 195, Subpart H is included because that subpart also outlines standards for protecting pipelines against corrosion, specifically steel pipelines transporting hazardous liquids such as condensate from natural gas operations. The reference to 49 CFR Part 195, Subpart H is consistent with the intent of section 3218.4(a) of the 2012 Oil and Gas Act to set forth standards for the installation and placement of metallic pipelines, including related corrosion control requirements. Since it is imperative to ensure that buried metallic gathering lines do not leak and result in pollution, this is the least burdensome yet acceptable alternative, as no other known alternatives achieve the same assurance of the reduced likelihood of buried metallic gathering line pipes from leaking and it is a statutory requirement.

§ 78a.68a. Horizontal directional drilling for oil and gas pipelines

This final-form rulemaking reinforces that HDD for oil and gas pipelines is subject to Chapters 102 and 105 and that certain requirements specific to this section must be met. The Department received many comments in favor of this language. The Department also received comments stating that the language in § 78a.68a is redundant since the activity is already regulated under Chapters 102 and 105. The Department considered not including language pertaining to HDD for oil and gas pipelines in Chapter 78; however, the intent of the section is to provide clarity to existing requirements and address issues that frequently arise during HDD activities conducted by the oil and gas industry. Therefore, this is the least burdensome, acceptable alternative.

This final-form rulemaking includes a requirement for a PPC plan for HDD with a site-specific contingency plan that describes the measures to be taken to control, contain and collect any discharge of drilling fluids and minimize impacts to waters of the Commonwealth. The Department considered not including this requirement; however, due to the heightened potential for pollution to waters of the Commonwealth that HDD creates, a separate PPC plan is required for this specific activity. A separate PPC plan is not required for HDD activities provided that the PPC plan developed under § 78a.55 meets the requirements in section § 78a.68a.

HDD activities over and adjacent to bodies of water and watercourses shall be monitored for any signs of drilling fluid discharges as required in this final-form rulemaking. Many inadvertent returns of HDD fluids express themselves hundreds of feet from the actual bore hole. Therefore, monitoring bodies of water and watercourses during HDD activities will detect impacts as soon as they occur. The Department considered not including this requirement; however, the alternative would be to not monitor for inadvertent returns which would present a significant opportunity for these instances to pollute waters of the Commonwealth without effectively seeking a solution to the problem. Therefore, this requirement is the least burdensome, acceptable alternative.

This final-form rulemaking includes a requirement to immediately notify the Department of an HDD drilling fluid discharge or loss of drilling fluid circulation. This is consistent with the reporting requirements in § 91.33 which is the least burdensome, acceptable alternative because this final-form rulemaking cannot be less stringent than this requirement.

HDD drilling fluid additives other than bentonite and water must be approved by the Department prior to use. All approved HDD fluid additives will be listed on the Department's web site to eliminate the need for preapproval prior to each use. This will ensure that HDD operators know which additives are preapproved for use without having to wait for the Department to review and approve a drilling additive. The Department considered not including this requirement; however, the Department believes this is the least burdensome, acceptable alternative because it should not be considered overly burdensome for operators to check the list provided by the Department to determine acceptable substances to be used for this activity.

§ 78a.68b. Well development pipelines for oil and gas operations

Well development pipelines that transport flowback water and other wastewaters shall be installed aboveground, as required in this final-form rulemaking. The Department received comments saying that the Department should allow all well development pipelines to be buried. The Department considered not including this requirement, but determined this is the least burdensome, acceptable alternative because buried pipelines cannot be easily inspected for leaks or damage while aboveground pipelines can be visually inspected daily when in use and if leaks or defects are observed, repairs or other effective corrective measures can be taken expeditiously, thereby reducing or avoiding the impact of an accidental pollutional event. Under the definition of "well development pipeline" in § 78a.1, if a pipeline is not used solely to move wastewater (for example, as a low-pressure gathering line) or the pipeline does not lose its utility after the well site it serviced has been restored under § 78a.65, then it does not meet the definition and does not need to meet the requirements of this section.

This final-form rulemaking specifies that well development pipelines may not be installed through existing stream culverts, storm drain pipes or under bridges that cross streams without approval by the Department under § 105.151. The Department received comments against this requirement. The Department considered not including this requirement, but determined this is the least burdensome, acceptable alternative because most culverts, storm drains and bridges that cross streams are designed and sized taking the maximum anticipated flow of water into consideration. Placing well development

pipelines in/under them displaces their capacity to carry their designed load, which could lead to localized flooding as a result.

This final-form rulemaking requires certain safety measures with well development pipelines used to transport fluids other than fresh ground water, surface water and water from water purveyors or approved sources. These pipelines shall be pressure tested prior to being placed into service and after the pipeline is moved, repaired or altered. They must have shut off valves, check valves or other methods of segmenting the pipeline placed at designated intervals that prevent the discharge of more than 1,000 barrels of fluid. They may not have joints or couplings on segments that cross waterways unless secondary containment is provided. They cannot be used to transport flammable materials. The STRONGER organization recommends that state programs should address the integrity of pipelines for transporting and managing hydraulic fracturing fluids off the well pad. The Department received comments that endorsed these provisions and comments that were against their implementation. The Department considered not including these requirements; however, the Department believes this is the least burdensome, acceptable alternative because these safety measures are necessary to protect the environment by providing mechanisms that help identify their locations, isolate sections that are compromised, minimizes direct leaks into waterways and eliminates the risk of fires. Without these requirements there would be many more opportunities for pollution to occur to waters of the Commonwealth than if they are kept in this final-form rulemaking.

This final-form rulemaking requires well development pipelines to be removed when the well site is restored. The Department received comments requesting that these pipelines should be allowed to remain to transport and reuse production water from the well site. Well development pipelines are meant to be temporary and used for the sole purpose of well development activities at a well site. Well development pipelines need to be removed when the well site get restored in accordance with § 78a.65. The Department considered not including this requirement, however, permanent pipelines used for transportation of fluids are beyond the scope of this final-form rulemaking.

This final-form rulemaking requires the operator to maintain certain records regarding well development pipelines, including their location, type of fluids transported, the approximate time of installation, pressure test results, defects and repairs. The records need to be retained for 1 year after their removal and be made available to the Department upon request. The Department received a comment that well development records should be retained by operators for 2 years after their removal. The Department believes 1 year is a sufficient amount of time for record retention due to the temporary nature of these pipelines. The Department considered the additional year of record retention but determined that there was not a significant benefit to this, therefore the requirement in the rulemaking is the least burdensome, acceptable alternative.

This final-form rulemaking requires operators to obtain Department approval for well development pipelines in service for more than 1 year. The Department believes that a well development pipeline that is in service for over 1 year becomes more than a temporary use and wants to know about its location and use.

§ 78a.69. Water management plans

Commentators urged the Department to include conventional operations in the requirement to develop WMPs. WMPs are a requirement of section 3211(m) of the 2012 Oil and Gas Act, which by its terms only applies to unconventional wells. This section codifies existing requirements to protect quality and quantity of water sources in the Commonwealth, including freshwater resources, from adverse impacts to the watershed considered as a whole from potentially inappropriate withdrawals of water. This final-form rulemaking mirrors most of the requirements of the Susquehanna River Basin Commission and the Delaware River Basin Commission to ensure that requirements are consistent Statewide, regardless of from which river basin an operator withdraws water. This section of this final-form rulemaking only applies to unconventional operations. The Department does not believe that the scope of water use by the conventional oil and gas industry warrants a requirement to develop WMPs as a matter of regulation. If a conventional operator will be employing high-volume slickwater hydraulic fracturing to develop a well, the Department may require a WMP as a permit condition to meet the obligations under The Clean Streams Law to protect the waters of the Commonwealth.

§ 78a.70. Road-spreading of brine for dust control and road stabilization

Commentators recommended the complete prohibition of spreading of brine on roads for dust control. The Department considered a complete prohibition of the road spreading of brine and determined that unconventional brines may not be spread on roads for any reason. This section was amended in this final-form rulemaking to clearly ban the use of brines and produced fluids from unconventional wells for dust control and road stabilization.

§ 78a.70a. Pre-wetting, anti-icing and de-icing

Commentators recommended the complete prohibition of brine being used to de-ice roads. The Department considered a complete prohibition of the road spreading of brine for pre-wetting, anti-icing and de-icing and determined that unconventional brines may not be spread on roads for any reason. This section was amended in this final-form rulemaking to clearly ban the use of brines and produced fluids from unconventional wells for pre-wetting, anti-icing and de-icing.

§ 78.121. Production reporting

§ 78a.121. Production reporting

This final-form rulemaking requires unconventional operators to report their waste production on a monthly basis within 45 days of the end of the month. The Department received significant comments on this provision from unconventional operators. Operators noted that the act of October 22, 2014 (P.L. 2853, No. 173) (Act 173) which required monthly production reporting did not include waste reporting within its scope and therefore inclusion of this requirement is inappropriate. The monthly waste reporting requirement under § 78a.121(b) (relating to production reporting) is not reliant on Act 173, therefore the legislative intent of Act 173 is not relevant to § 78a.121(b). The statutory authority for § 78a.121(b) is under provisions of the SWMA, particularly section 608(2) of the SWMA (35 P.S. § 6018.608(2)), which requires that the Department shall "[r]equire any person or municipality engaged in the storage, transportation, processing, treatment, beneficial use or disposal of any solid waste to establish and maintain such records

and make such reports and furnish such information as the department may prescribe."

Monthly waste reporting is not due until 45 days after the end of the month in which waste was generated and managed. This should provide sufficient time for operators to receive and compile the information necessary to provide a monthly waste production report to the Department.

The Department also disagrees with the characterization of extra burden posed by more frequent reporting. While the data shall be gathered more frequently, the current data reporting requirements would still require the operator to compile and report the same data at the end of the 6-month period. Operators shall account for and report all wastes generated in the 6-month period already, the only end difference in terms of overall reporting should be that the Department would possess data segregated by month after October 8, 2016. The end totals of waste generated and facilities where that waste was managed should be exactly the same at the end of the term as it is today.

Data analyses conducted by the Department, which compared 2013 and 2014 calendar year records from facilities that receive oil and gas waste for processing or disposal and from data reported by oil and gas operators in the Department's oil and gas electronic reporting database, revealed that there are significant discrepancies in both the quantities of waste reported by oil and gas operators and also in the way the wastes are classified. More recent analyses have indicated that oil and gas operator reporting is improving; however, the same issues still exist. The current biannual reporting requirement is not conducive to correcting reporting discrepancies because the Department does not become aware of a reporting issue until a substantial amount of time has passed from when the waste was originally sent for processing or disposal. Monthly reporting promotes quicker recognition of reporting inaccuracies that can be rectified in a more reasonable time frame.

The Department believes that the monthly time frame with reporting due 45 days after the end of the month is clearly feasible for operators. Because the current 6-month reporting requirement includes data from June in the August report and December in the February report, operators are already compiling 2 months reporting data in that 45-day window or they are out of compliance with the current regulation.

Commentators also argued that this new provision singles out the oil and gas industry with overly burdensome requirements that are not applied to other industries. The Department disagrees. The Department believes that responsible operators are aware of and track their waste generation, transportation, treatment, storage and disposal, and operating without awareness is not a BMP and is unacceptable in this Commonwealth. As a final note, the Department believes that the monthly reporting requirement strikes the appropriate balance between burden and benefit compared to other regulatory alternatives, such as keeping the current flawed 6-month reporting system or imposing a load-by-load manifest system as is currently required for hazardous wastes.

In this final-form rulemaking, § 78.121(a) is amended to delete reporting requirements for unconventional wells. The final sentence of the existing section as carried over to this final-form rulemaking, regarding electronic reporting of production data, is renumbered as subsection (b). These changes were retained because they solely affected unconventional wells.

§ 78a.122. Well record and completion report

The primary amendment to this section relates to area of review requirements. The certification by the operator that the monitoring plan required under § 78a.52a was conducted as outlined in the area of review report was moved from the well record to the well completion report. This amendment is appropriate given that monitoring occurs during hydraulic fracturing of the well as opposed to drilling, so the completion report is the proper report to contain this certification.

The Department received several comments requesting clarification of when a well is "complete," as the completion report is due within 30 days of completion of the well, when the well is capable of production. A well is "capable of production" after "completion of the well." Section 3203 of the 2012 Oil and Gas Act (relating to definitions) defines "completion of a well" as "[t]he date after treatment, if any, that the well is properly equipped for production of oil or gas, or, if the well is dry, the date that the well is abandoned." The Department considers a well to be "properly equipped for production of oil or gas" under the following circumstances:

For wells not intended to have the producing interval cased or stimulated prior to production (that is, natural wells), the well is properly equipped for production when the well has been drilled to total depth.

For wells intended to have the producing interval cased, but not stimulated, prior to production, the well is properly equipped for production when the last perforation is placed.

For wells intended to be stimulated prior to production, the well is properly equipped for production upon commencement of flow back.

§ 78a.123. Logs and additional data

This section requires the submission of three types of information—standard drilling logs, specialty information and specific requests for additional data to be collected during drilling. After reviewing section 3222 of the 2012 Oil and Gas Act, the Department clarified in subsections (a) and (d) in this final-form rulemaking. The most significant change is that the Department is requiring submission of standard drilling logs for all wells in subsection (a), rather than requesting the logs for each individual well site when permits are issued.

The comments received on this section mainly concerned the confidentiality of logs submitted under subsection (a) and the time frames for submission and the perceived time frames for submission under section 3222 of the 2012 Oil and Gas Act. Section 3222(d) of the 2012 Oil and Gas Act states:

> Data required under subsection (b)(5) and drill cuttings required under subsection (c) shall be retained by the well operator and filed with the department no more than three years after completion of the well. Upon request, the department shall extend the deadline up to five years from the date of completion of the well.

Subsection (a) of this final-form rulemaking requires submittal of electrical, radioactive and other standard industry logs within 90 days of completion of drilling. Those logs are referenced in section 3222(b)(4) of the 2012 Oil and Gas Act, and so are not subject to section 3222(d) of the 2012 Oil and Gas Act. This final-form rulemaking retains the 3-year and 5-year periods in section 3222(d) of the 2012 Oil and Gas Act for information in section 3222(b)(5) and (c) of the 2012 Oil and Gas Act. The

Department believes that data confidentiality is already preserved for an adequate period of time based on the existing language of 2012 Oil and Gas Act.

All comments received on the proposed rulemaking and related issues have been addressed in this final-form rulemaking.

G. *Benefits, Costs and Compliance*

Benefits

The residents of this Commonwealth and the regulated community will benefit from this final-form rulemaking. The process for identifying and considering the impacts to public resources will ensure that any probable harmful impacts to public resources will be avoided or mitigated while providing for the optimal development of natural gas resources. The regulations that require operators to conduct an area of review survey and appropriately monitor wells with the risk of being impacted by hydraulic fracturing activities will minimize potential impacts to waters of the Commonwealth. The containment systems and practices requirements for unconventional well sites will minimize spills and releases of regulated substances at well sites and ensure that any spills or releases are properly contained. The amendments to the reporting and remediation requirements for releases will ensure Statewide consistency for reporting and remediating spills and releases.

New planning, notification, construction, operation, testing and monitoring requirements for pits, tanks, modular aboveground storage structures, well development impoundments and pipelines will help prevent releases or spills that may otherwise result without these additional precautions. Additionally, the monitoring and fencing requirements for pits and impoundments and unconventional tank valve and access lid requirements for tanks ensure protection from unauthorized acts of third parties and damage from wildlife. Further, the requirements regarding wastewater processing at well sites will encourage the beneficial use of wastewater for drilling and hydraulic fracturing activities.

This final-form rulemaking contains several new notification requirements which will enable Department staff to effectively and efficiently coordinate inspections at critical stages of modular aboveground storage facility installation, onsite residual waste processing and HDD activities. Additionally, requiring electronic submission for well permits, notifications and predrill surveys will enhance efficiency for both the industry and the Department. As new areas of this Commonwealth are developed for natural gas, the regulations will avoid many potential health, safety and environmental issues as well as provide a consistent and efficient approach to natural gas development in this Commonwealth.

Compliance costs

Unconventional operators' costs

Assumptions

When initially proposing this final-form rulemaking, the Department estimated based on data available at the time that there will be approximately 2,600 unconventional wells permitted each year for the next 3 years.

On average, about one of every two permitted unconventional wells are drilled.

In addition, the Department estimated that there were an average of three unconventional wells per well site.

Since considerable time has passed since the proposed rulemaking was published, the Department was able re-evaluate the rate at which unconventional wells are permitted and drilled in this Commonwealth and include data for 2013, 2014 and the first three quarters of 2015.

The Department's records also show that there are currently 3,387 unconventional well pads with at least 1 well drilled and a total of 9,486 total unconventional wells located within this Commonwealth. This equates to an average of 2.8 wells per pad. In the future, it is estimated that less well sites will be built as there could be as many as 22 wells on a pad, based on data available to the Department.

The cost analysis for this final-form rulemaking must be factored on a well site basis, not on a per well basis. Many of the processes proposed for regulation in this final-form rulemaking include activities integral to the operation of several wells and even several well pads.

Year	*Unconventional Wells Permitted*	*Unconventional Wells Drilled*
2010	3,364	1,599
2011	3,560	1,960
2012	2,649	1,351
2013	2,965	1,207
2014	3,182	1,327
2015*	1,919*	756*

*Data extrapolated from first 3 quarters (1,439 wells permitted, 567 wells drilled as of September 8, 2015)

Based on the data shown in the previous table which represents the most recent 5-year period, it is clear that the Department's estimate was relatively accurate. The number of wells permitted exceeded the Department's estimate but the percentage of permitted wells that have been drilled is approximately 46% since 2010 and 41% since 2013, which is lower than the Department's original estimate. The Department does not believe that the new data supports a change to its original estimate of 2,600 wells permitted per year and 1,300 wells drilled per year as a reasonable conservative estimate of the potential unconventional well drilling activity over the next 3 years.

The Department believes that the number of unconventional wells per well site will rise in time but has retained the estimate of three wells per well site for the purposes of this estimate because it is reflective of current conditions and what is expected over the next 3 years.

2,600 wells permitted × 50% of wells drilled = 1,300 wells drilled each year

1,300 wells drilled each year ÷ 3 wells per well site = 434 well sites built each year

Cost estimates

The Department reached out to oil and gas operators, subcontractors and industry groups to derive the cost estimates of this final-form rulemaking.

Identification of public resources (§ 78a.15)

The requirements in this section ensure that the Department meets its constitutional and statutory obligations to protect public resources.

The Department received significant public comment on these provisions from unconventional gas well operators regarding the cost of implementing the public resource screening process requirements in § 78a.15(f) and (g). Commentators disagreed with the Department's estimates

of cost for permit conditions mitigation measure to protect public resources. Commentators also argued that there will be considerable expenses related to personnel time, expert consultants needed for surveys and project delays in associated with the responses from public resource agencies. The Department acknowledges that there is some cost associated with implementing these requirements. The total cost of this provision will vary on a case-by-case basis. This cost is dependent on several variables including, the number of well sites that are within the prescribed distances or areas listed, the type and scope of operations within prescribed distances or areas, the type of public resource, the functions and uses of the public resource, specific probable harmful impacts encountered and several other variables and the available mitigation measure to avoid, mitigate or otherwise minimize impacts. Because so many significant variables exist, the cost estimate for implementation of the entire provision will vary. For that reason, the Department provides the following estimate for specific steps which allow for an estimate to be made.

The first step in the process is identification. The Department believes this process would be required for all new well sites. First an electronic review can be conducted with the Pennsylvania Conservation Explorer's online planning tool. This tool will allow operators to identify the location of the majority of public resources which require consideration under this final-form rulemaking. This tool also will allow the operator to identify potential impacts to threatened and endangered species, which also must be addressed under § 78a.15(d). Since the tool may not have data to identify all the public resources listed in § 78a.15(f)(1), operators will also need to conduct a field survey of the proposed well site area to identify public resources. This field survey will likely include identification of schools and playgrounds 200 feet from the limit of disturbance of the well site. The Department estimates the cost of this field survey to be $2,000 and the cost of the electronic survey to be $40. Even though use of the online tool is currently required to comply with requirements protecting threatened and endangered species, the Department has included the cost in this estimate nonetheless.

$2,000 × 434 = $868,000

$40 × 434 = $17,360

$868,000 + $17,360 = $885,360

The second step of the process is consultation with the public resource agency. This process is only applicable to well sites which are within the prescribed distances or areas listed in § 78a.15(f)(1). The Department estimates that 30% of well sites will fall within these distances or areas. Operators will be required evaluate the functions and uses of the public resource, determine any probable harmful impacts to the public resource and develop any needed mitigation measures to avoid probable harmful impact. Operators shall also notify potentially impacted pubic resource agencies of the impact and provide those public resource agencies the same information provided to the Department. Cost of the provision is dependent on the number of well sites impacted as well as the complexity of evaluating the functions and uses of the public resource. The Department estimates the postage will cost $20 per notification to public resource agencies.

$20 × 434 × 30% = $2,604

Due to the complexity of the variables in this process, the estimate for the cost of evaluating the functions and uses of the public resource and determining whether there is a probable harmful impact will vary. In some cases, functions and uses of the public resource and any probable harmful impacts may be immediately obvious and others may be far more complex and may include multiple public resources.

The final step in the process is mitigation. The cost estimate for mitigation will vary. In some circumstances, an operator may be able to plan the location of the well site using the planning tool previously discussed to avoid public resources resulting in zero cost. Any cost associated with mitigation measures is dependent on many variables and may be situation specific in some cases. While the Department is unable to provide a specific estimate for the implementation of this entire provision, it should be noted that this cost may be substantial depending on the location of the well site.

$885,360 + $2,604 = $887,964

The total cost of this provision is $887,964 (not including consultation and mitigation).

Protection of water supplies (§ 78a.51)

This section provides the Department's interpretation of the water supply restoration and replacement in section 3218(a) of the 2012 Oil and Gas Act. This section seeks only to provide clarity to existing statutory requirements. Accordingly, the estimated new cost incurred by unconventional operators is $0.

The total new cost of this provision is $0.

Area of review and monitoring plans (§§ 78a.52a and 78a.73)

$8,720

$8,720 × 1,300 wells = $11,336,000

The total cost of this provision is $11,336,000.

The Department's 2013 Regulatory Analysis estimated the compliance cost at $2,000 per new well. That Department estimate was made before the introduction of significant new requirements in 2015, including:

- Researching the depth of identified wells.
- Development of monitoring methods for identified wells, including visual monitoring under accompanying § 78.73 (relating to general provisions for well construction and operation).
- Gathering surface evidence concerning the condition of identified wells.
- Gathering GPS, that is, coordinate data for identified wells.
- Introduction of a provision of advanced notice to adjacent operators under accompanying § 78.73.
- The assembly of the previously listed data in an area of review report and monitoring plan and the submission of the report at least 30 days prior to the start of drilling the well at well sites where hydraulic fracturing activities are anticipated.

With the additional items, the cost of compliance is expected to exceed $2,000 per well.

However, it is important to emphasize that industry commentators have indicated the majority of the work required as part of the area of review is already performed by operators in an effort to not only reduce potential environmental liability, but also to protect the investment associated with the drilling and stimulation of a new well, which represents millions of dollars for a typical unconventional well.

Further, it should be emphasized that the costs associated with the review of historical data will be negligible, as most unconventional companies already have subscriptions to well-location databases. EDWIN, which is one of the primary databases used for retrieving records related to oil and gas wells in this Commonwealth, costs $500 per year for a full subscription. For a company drilling 25 wells a year this results in a cost of $20 per well along with search and retrieval costs. Many other sources of information are free.

Most unconventional companies hire professional engineering firms to complete surveying activities. Estimates for the generation of plats, which are already required for well drilling permits, are expected to range between $4,000 and $5,000, with an average cost of $4,600. These costs were gathered by speaking with companies that routinely perform this work for the unconventional industry. Assumptions include 2 days of field work and 1 day of office work to compile the data necessary for submission. It should be noted that current Commonwealth statutes only require that survey data be collected by a "responsible surveyor or engineer," and that existing law under section 3213(a.1) of the 2012 Oil and Gas Act has required operators to identify all abandoned assets discovered on their leases to the Department for many years. It is noted that one company providing information did ask that the Department consider the additional burdens being placed on the industry and expressed concerns that more oil and gas activities would be shifting to neighboring states as a result of this final-form rulemaking. The individual had asked that limits be placed on offset wells requiring identification in the area of review (active only) and indicated that landowners in drilling units have reacted in a confrontational manner with members of his staff in the past.

The Department has experience monitoring well vents in its plugging program. Costs are anticipated to remain under $500 per day per offset well; although the number of wells requiring continuous monitoring is not expected to be very high on a case-by-case basis, as monitoring candidates must not only penetrate the zone expected to be influenced by hydraulic fracturing, but also represent a high enough risk that continuous monitoring is deemed warranted. In many cases avoidance mitigation measures, plumbing a tank to the well of concern or inspecting offset well sites periodically may be all that is necessary. For at least a fraction of the wells drilled, no offset wells will penetrate the zone of concern and monitoring costs will be negligible. This cost item is expected to range from negligible amounts to a maximum of $7,500 per well site, with an average cost of $3,500.

There are nominal costs associated with a certified mailing program that assumed 100 landowners are contacted in association with a well site at a cost of $6 per mailing.

Although the Department contends that the work specified in this section of this final-form rulemaking is already being conducted by responsible unconventional operators in this Commonwealth and implementation will merely result in a marginal incremental cost for reporting, its cost analysis based on speaking with qualified professionals and its own experience contracting services in its well plugging program projects that total costs for an unconventional well operator employing standard industry practices could conceivably average around $9,000 per well site.

For comparison, the Department recently analyzed costs associated with several unconventional well hydraulic fracturing communication incidents documented in this Commonwealth. The circumstances surrounding these incidents varied: two involved communications between a well that was being stimulated and a nearby well being drilled; another involved communication between two stimulated wells that had not been flowed back and a well that was being hydraulically fractured on the same pad; and the last involved communication with a previously unknown and inadequately plugged conventional well. Costs associated with unconventional wells tend to be derived from a more complicated set of variables that not only must factor in the equipment being used and subsequently placed on standby at the time of the incident (for example, costs range from $10,000 to $50,000 per day); but also lost revenues in association with delayed production and the need to meet gas-market commitments by established deadlines that may prompt reconfiguring existing well network flow-to-pipeline parameters or purchasing gas on the open market, or both. These costs are potentially further compounded by any environmental issues that shall be addressed (for example, water well sampling/monitoring and analytical costs and consultant costs for data analysis and interpretation), logging and downhole camera costs to inform any well work that shall be completed, plugging costs of any unconventional wells affected beyond repair and any improperly plugged legacy wells, material costs (for example, loss of drilling muds that are normally rented) and accelerated expenditures to prepare a new site. Cost estimates for the first two incidents ranged from $90,000 to $800,000. Total costs for the second scenario, which involved plugging two drilled unconventional wells that had not been brought back into production, are estimated at $13 million to $16 million. Total costs for the third scenario were in excess of $1 million. The Department acknowledges that in certain cases, even with the implementation of this final-form rulemaking and the application of best practices, that some percentage of communication incidents will still take place. However, it adds that this regulatory concept is being addressed and acknowledged by a number of other regulatory programs, the STRONGER organization and the American Petroleum Institute, a globally recognized industry trade organization. It is also significant to note that a single severe hydraulic fracturing communication incident is capable of exceeding the estimated annual cost of implementation for an entire unconventional industry.

Site-specific PPC plan (§ 78a.55)

This final-form rulemaking requires all unconventional operators to develop and implement a site-specific PPC plan under § 78a.55. The Department received significant public comment from operators on this section. Commentators expressed concerns about § 78a.55(a) which simply reiterates the requirements already existing in §§ 91.34 and 102.5(l). Because § 78a.55(a) does not establish any new requirements, the Department does not believe that this subsection presents any new burden on operators and no cost was attributed with these provisions.

The Department initially estimated that the new cost of this requirement would be between $86,800 and $130,200. Upon further evaluation, the Department revised this estimate. The requirement for operators to develop a control and disposal plan or PPC plan has been in existence under § 78.55 since 1989 when Chapter 78 was first adopted. A plan that does not address the specific needs of a site could not and should not be considered to meet the requirements of § 78.55. Therefore, for operators to ensure that they were in compliance with the planning requirements in § 78.55, they must have been

evaluating their PPC or control and disposal plans against site-specific conditions since 1989. In addition, it is not the intent of this final-form rulemaking nor is it required under this final-form rulemaking that each PPC plan developed for a different well site must be unique. Therefore, the Department does not believe its initial estimates are accurate. Instead, the Department estimates the new cost associated with this requirement to be negligible because operators have been required to develop these plans since 1989.

It is not the intent of this final-form rulemaking to ensure that all PPC plans are revised annually. There are no specific review and update time frames included in this final-form rulemaking. This final-form rulemaking requires revisions to the plan in the event that practices change. Therefore, if conditions at the site do not change, there will be no need to make revisions to the PPC plan. In addition, operators have been required to revise their plans under these same conditions since Chapter 78 was initially adopted in 1989. Therefore, there is no new cost attributed to this provision.

Finally, this final-form rulemaking does not include a requirement that every single site where activities including the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants shall have the PPC plan posted onsite at all times. This final-form rulemaking does not include this requirement or anything resembling this requirement. In fact, this final-form rulemaking does not require the PPC plan to be maintained on the site at all. The Department believes that it is prudent for operators to maintain the PPC plan on the site when the site is active, including drilling, alteration, plugging or other activities when there is an increased risk of a spill, release or other incident, but it is not required by § 78a.55. Therefore, there is no new cost attributed to this requirement.

The total new cost of this provision is $0 (negligible).

Providing copies of the PPC plan to the Fish and Boat Commission and the landowner (§ 78a.55(f))

This final-form rulemaking includes a requirement for operators to provide copies of the site-specific PPC plan to the Fish and Boat Commission and the landowner upon request. The cost associated with this requirement depends on the number of plans that are requested. If no plans are requested, there is no cost associated with this requirement. If the landowner and the Fish and Boat Commission request the plan for every well site, the Department estimates the cost to be $21,700.

434 × $25 × 2 = $21,700.

The total new annual cost of this provision is estimated to be $21,700.

Banning use of pits (§ 78a.56)

This final-form rulemaking disallows the use of pits for temporary storage of waste at unconventional well sites. The Department does not believe that this provision will result in any significant cost because pits are rarely used for this purpose at unconventional well sites.

This final-form rulemaking requires pits at unconventional well sites to be restored by April 8, 2017. The Department does not anticipate that this section will result in any significant new cost because pits are rarely used at unconventional well sites and because pits regulated under § 78.56 are already required to be restored within 9 months of completion of drilling of the well serviced by the site.

The estimated new cost of this provision is $0.

Fencing around unconventional well site pits (§ 78a.56(a)(5))

When initially proposed this paragraph required unconventional operators to install fencing around pits on well sites. This final-form rulemaking does not allow unconventional operators to utilized waste pits on their well site. Since this provision does not exist, there is not associated cost.

The total cost of this provision is $0.

Determination of seasonal high groundwater table for pits and labor to inspect and test the integrity of the liner (§§ 78a.56(a) and 78a.62)

When initially proposed these sections required unconventional operators to make a determination of the depth to seasonal high groundwater table and inspect liners for pits on well sites. This final-form rulemaking does not allow unconventional operators to utilized waste pits on their well site. Since this provision does not exist, there is not associated cost.

The total cost of this provision is $0.

Tank valves and access lids equipped to prevent unauthorized access by third parties (§§ 78a.56(a)(7) and 78a.57(h))

If the well site has 24-hour security presence, the operator satisfies the requirements of these sections. This calculation assumes that all well sites will not have 24-hour security. This should be a one-time expense as the protective measures will be affixed to the tanks. The Department estimates $7,000 for each well site.

$7,000 × 434 = $3,038,000

The total cost of this provision is $3,038,000.

Signage for tanks and other approved storage structures (§ 78a.56(a)(8))

Unconventional operators will be required to display a sign on the storage structure identifying the contents and if any warnings exist, such as corrosive or flammable.

The cost of this regulatory requirement depends on the number of tanks/storage structures and the types of signage used. The Department assumes that the cost can be in the range of $250—$2,000 for each well site.

$250 × 434 = $108,500

$2,000 × 434 = $868,000

The total cost of this provision is between $108,500 and $868,000.

Vapor controls for condensate tanks (§ 78a.56(a)(10))

Vapors must be controlled at all condensate tanks. Based on Department inspection experience, this calculation assumes that only 40% of well sites will have condensate tanks. The Department estimates $12,500 for each well site.

$12,500 × (434 × 40%) = $2,170,000

The total cost of this provision is $2,170,000.

Secondary containment for all aboveground structures holding brine or other fluids (§ 78a.57(c))

The cost of this subsection depends on the number of aboveground structures on each well site.

The Department assumes that the cost can be in the range of $5,000—$10,000 for each well site.

$5,000 × 434 = $2,170,000

$10,000 × 434 = $4,340,000

The total cost of this provision is between $2,170,000 and $4,340,000.

Identification of existing underground/partially buried storage tanks and registration of new underground/partially buried storage tanks (§ 78a.57(e))

When initially proposed, this subsection prohibited the use of underground or partially buried storage tanks for storing brine and operators would have 3 years to remove all existing underground or partially buried tanks. The Department's initial cost estimate did not attribute a cost to this subsection because the cost was dependent on the number of buried tanks across this Commonwealth and the Department was unable to estimate the number of buried tanks at that time. As a result of public comment, the Department amended this final-form rulemaking to allow the use of buried tanks by both conventional and unconventional well site operators and does not require removal of existing buried tanks. The Department continues to believe that underground storage tanks warrant extra scrutiny because they are not as easily inspected and can provide a more direct conduit for contamination into groundwater and therefore has included provisions in this final-form rulemaking to require the location of all existing and any new underground storage tanks at well sites to be reported to the Department. Therefore, the original estimate of $20,000 is retained. The Department does not believe that there will be any significant new cost associated with notifying the Department of newly installed underground or partially buried tanks.

The total cost of this provision is estimated to be $20,000.

Corrosion protection for permanent aboveground and underground tanks (§ 78a.57(f) and (g))

Section 78a.57(f) and (g) implements section 3218.4(b) of the 2012 Oil and Gas Act which establishes that permanent aboveground and underground tanks must comply with the applicable corrosion control requirements in the Department's storage tank regulations.

It is common knowledge that steel structures, including storage tanks, corrode or rust and fail when left unprotected and exposed to the elements. It is also common knowledge that brine or salt water which is commonly stored in tanks at conventional well sites increases the rate of corrosion of steel. Given these facts and considering that the estimated cost for replacement tanks is significantly higher than the estimated cost for providing corrosion protection for those same tanks (see the following table; the estimated costs for providing corrosion protection is less than half the cost of a new tank), the Department believes that it would behoove gas operators to provide corrosion protection for their tanks because it can extend the useful life of the tank significantly at a fraction of the cost of replacing the tank. In fact, this provision may represent a cost savings to operators that had previously not been maintaining their tanks appropriately.

Size (bbl)	*Current Cost*	*Cathodic Protection*	*Corrosion Protection Protection*	*Ratio of Cost of Corrosion Protection to Replacement*
25 bbl	$1,800	$350	$450	0.44
50 bbl	$2,200	$350	$650	0.45
100 bbl	$3,451	$350	$1,200	0.45
140 bbl	$5,144	$350	$1,300	0.32
210 bbl	$6,083	$350	$1,600	0.47

Finally, this requirement is a statutory requirement under section 3218.4(b) of the 2012 Oil and Gas Act. As previously noted, § 78a.57(f) and (g) simply implements this requirement. The Department has also explicitly deleted the requirement to use Department certified inspectors to conduct inspections of interior linings or coatings which will alleviate some burden on oil and gas operators. Operators may choose to use nonmetallic tanks which can often be less expensive than steel equivalent and do not require any additional cost to ensure protection from corrosion.

Since this section implements existing statutory requirements, no cost is assigned to this provision.

The estimated new cost of this provision is $0.

Monthly maintenance inspection (§ 78a.57(i))

Section 78a.57 imposes a new requirement for operators to conduct periodic inspections of tanks used to control and store production fluids on a well site and document each inspection. The monthly maintenance inspection is intended to be a visual check of the tank and containment area to ensure that the tank and containment structures are in good working condition and that ancillary and safety equipment are in place and in good working condition. The Department estimates that on average inspection of each tank, including filling out the inspection form, will take 15 minutes. When initially proposed this provision required use of forms provided by the Department but in response to comments the provision was revised to allow operator generated forms. The Department will provide a form for use by operators that prefer to use the Department's form or do not have their own inspection documentation.

The Department estimates that the unconventional industry utilizes approximately 30,000 tanks. With a labor rate of $30/hour the cost to perform monthly maintenance inspections is $2.7 million per year or $90 per tank per year.

Based on comments received, the Department believes that the majority of unconventional well operators are already engaged in some form of periodic tank inspection. With the flexibility of being able to use operator generated forms, the Department does not believe that this provision represents a significant burden on unconventional operators.

The Department believes that periodic inspections are appropriate common sense accident prevention steps that every storage tank operator should follow. In addition, it is almost always less costly to prevent an accident than to remediate the harm that is caused when an accident

occurs. Remediation of a single spill could cost more the total annual cost to inspect all storage tanks utilized unconventional oil and gas well operators.

The estimated new annual cost of this provision is $2.7 million.

Radiation protection action plan (§ 78a.58(d))

The Department added § 78a.58(d) to this final-form rulemaking to require an operator processing fluids onsite to develop a radiation protection action plan which specifies procedures for monitoring and responding to radioactive material produced by the treatment process. This section also requires procedures for training, notification, recordkeeping and reporting to be implemented. This section does not require review or approval by the Department prior to implementation of the plan. In addition, the Department does not believe that a new or unique plan shall be developed for each individual well site where processing occurs. Many operators will probably find that a single plan developed under this provision is applicable to processing operations over large geographic areas.

The Department estimates that processing which would require this plan occurs on approximately 75% of well sites or 326 sites per year.

434 sites × 75% = 326 sites

The Department also estimates that plans developed under this provision will be applicable to 50% of an operator's sites on average or 163 sites per year.

326 sites × 50% = 163 sites

Some operators may only need a single plan and others may need several, depending on their operations.

The Department estimates that development of a radiation protection action plan under this section will cost between $2,000 and $5,000 per plan for initial development. In addition, to implement the plan, operators who develop a plan will need to purchase a dose rate meter. The Department estimates the cost of the dose rate meter to be $1,000—$2,000. Finally, operators will be required to provide training on the plan to staff. This training is typically conducted by the plan development consultant but may be conducted by others. The Department estimates that annual training of staff will cost $1,000—$2,000 per plan.

Cost of development

163 × $2,000 = $326,000

163 × $5,000 = $815,000

Cost of training

163 × $1,000 = $163,000

163 × $2,000 = $326,000

A new meter will not be required for each plan. Operators may be able to use the same meter for multiple sites throughout the year depending on the location of the site. The Department estimate that industry will need to purchase 85 dose rate meters to comply with this requirement.

Cost of meters

85 × $1,000 = $85,000

85 × $2,000 = $170,000

The total annual cost is equal to the cost of development plus the cost of training. The total initial cost is equal to the cost of meters.

$326,000 + $163,000 = $489,000

$815,000 + $326,000 = $1,141,000

Therefore, the estimated annual cost of this provision is between $489,000 and $1,141,000 and the estimated initial cost is estimated to be between $85,000 and $170,000.

Well development impoundment construction standards (§§ 78a.59a and 78a.59b)

In this final-form rulemaking, §§ 78a.59a and 78a.59b impose construction and operation standards for well development impoundments including embankment construction standards, the need for surrounding well development impoundments with a fence and providing an impermeable plastic liner. The Department received comments from unconventional operators indicating that the cost of all new requirements applicable to well development impoundments, excluding fencing around the impoundment, is $250,000 to $500,000 per impoundment and a total cost of $25 million based on the Department's estimate of 100 existing freshwater impoundments. The commentator did not provide a breakdown of how the projected cost was derived.

The Department disagrees with the commentator's cost estimate. First, many of the new requirements are only applicable to new impoundments. Operators shall only certify that existing impoundments meet the requirement for having a synthetic liner, being surrounded by a fence and properly storing MIW. This final-form rulemaking does not require any certification of structural integrity or a groundwater depth determination for existing impoundments so those costs should not be considered for existing impoundments. The requirement to ensure that MIW is properly stored exists regardless of the well development requirements in Chapter 78a so those costs should not be considered for existing impoundments.

The Department understands that the majority of existing well development impoundments already have an impermeable synthetic liner. In addition, it is important to note that the well development impoundment requirements do not apply to water sources such as lakes or ponds, so to the extent that commentators included these types of facilities in their cost estimates, they may have overestimated. The Department estimates that 90% of the existing well development impoundments have a synthetic liner installed so only a small number of well development impoundments will require addition of a synthetic liner under this final-form rulemaking. The Department made the initial estimate of 100 existing well development impoundments in 2013 which would equate to an average of 20 well development impoundments constructed per year. Based on this rate of development, the number of existing well development impoundments is estimated to be 140 since 2 years have passed since the initial estimation.

The Department estimates that on average, a well development impoundment will require 250,000 square feet of synthetic liner to comply with this final-form rulemaking. The estimated cost of installed 30 mil HDPE liner to meet this requirement is 40¢/square foot resulting in a total cost of $1.26 million.

250,000 × 0.40 × 90% × 140 = $1,260,000 for liner installation

The cost of the fencing is dependent upon the size of the impoundment and the type of fencing used. Based on 140 well development impoundments throughout this Commonwealth and assuming that none of them cur-

rently have fencing the Department estimates that the total cost of this provision is between $980,000 and $7 million.

$7,000 × 140 = $980,000

$50,000 × 140 = $7,000,000

This final-form rulemaking also requires operators to register the location of well development impoundments with the Department. Assuming a total of 140 existing well development impoundments, the Department estimates a total cost of $13,000.

$1,260,000 + $980,000 + $13,000 = $2,253,000

$1,260,000 + $7,000,000 + $13,000 = $8,273,000

The initial cost of this provision is estimated to be between $2.253 million and $8.273 million.

For new impoundments, the total cost is dependent upon the number of new impoundments constructed. Based on past trends, the Department estimates that 20 new well development impoundments will be constructed each year. The standards under § 78a.59b provide reasonable requirements to ensure that well development impoundments are structurally sound and protective of public health and safety and the environment. The standard of structurally sound and protective of public health and safety and the environment is a standard that all well development impoundments should meet. To the extent that operators are currently engaged in the practice of constructing and operating impoundments that are not structurally sound and protective of public health and safety and the environment, the Department asserts that they are not only operating irresponsibly but also out of compliance with Department regulations. The Department also notes that § 78a.59a(b) allows an owner or operator to deviate from the requirements in this section provided that the alternate practices provides equivalent or superior protection to the requirements in § 78a.59a. Therefore, these sections should not create any significant new costs to responsible operators.

The Department estimates the cost of determining the depth of the seasonal high groundwater table to be $3,500 per impoundment.

The Department estimates a total cost of $100,000 for installing liners in each impoundment based on the cost of 40¢/square foot for installed 30 mil HDPE liner and 250,000 square feet of liner per impoundment on average.

The Department estimates the cost of installing fencing to be $7,000—$50,000 per impoundment depending on the size of the impoundment and the type of fencing used.

This results in a total estimated cost of $110,500 and $153,500 per impoundment and a total annual cost of $2.21 million to $3.07 million.

($3,500 + $100,000 + $7,000) × 20 = $2,210,000

($3,500 + $100,000 + $50,000) × 20 = $3,070,000

Therefore, the total estimated annual cost of this provision is between $2.21 million and $3.07 million.

Centralized impoundments (§ 78a.59c)

This final-form rulemaking requires unconventional operators to either close or obtain a permit from the Department's waste management program for existing centralized impoundments. The Department did not include a cost estimate for this provision in the proposed rulemaking because it allowed for continued use of these facilities under Chapters 78 and 78a. The cost of this provision is dependent on the number of facilities impacted and how operators decide to comply. The Department received significant comment on this section from unconventional operators. Commentators estimate that the cost to permit a new centralized impoundment under Chapter 289 may increase by $120,000 to $230,000 based on site conditions. Commentators also noted that if an operator chooses to close an existing permitted centralized impoundment due to this final-form rulemaking, an owner may realize a loss of $1.5 million to $2.5 million of investment plus the immediate additional costs to restore the site. If a centralized impoundment permit has been submitted to the Department under the current regulations and is pending review, an applicant would realize a loss of $150,000 to $250,000 plus costs associated with the time to prepare the application as a result of this revision.

The Department does not agree with these cost estimates. First, the costs associated with restoration of existing centralized impoundments should not be considered because restoration of the centralized impoundment has always been required. Second, the standard for construction of a centralized impoundment under Chapter 78 and the Department's existing centralized impoundment program are substantially similar to those required by the residual waste regulations. The Department believes that the majority of costs associated with development of pending applications under the existing centralized impoundment program are applicable to the costs associated with the residual waste permit and therefore no cost should be associated with pending applications.

The cost associated with this provision is dependent on the number of impoundments impacted. There are a total of 26 centralized impoundments operated by 6 unconventional operators in this Commonwealth. The Department believes that operators will choose to restore a number of the existing impoundments rather than obtain a permit from the Department's waste management program because older centralized impoundments were not constructed to standards as closely matched to the waste requirements as newer impoundments and those older impoundments also may be approaching the end of their useful lives. The Department presumes that the replacement cost for each centralized impoundment is between $1.5 million and $2.5 million. To the extent that operators choose to restore and replace all of the existing centralized impoundments, the estimated cost of this provision is between $33 million and $55 million.

20 × $1,500,000 = $30,000,000

20 × $2,500,000 = $50,000,000

The initial cost of this provision is estimated to be between $39 million and $65 million.

Based on past trends, the Department estimates that four centralized impoundments will be constructed per year. If the cost to permit and construct impoundments under Chapter 289 is $120,000 to $230,000 per impoundment, the estimated annual cost is between $480,000 and $920,000.

Therefore, the total estimated annual cost of this provision is estimated to be between $480,000 and $920,000.

Onsite disposal (§§ 78a.62 and 78a.63)

This final-form rulemaking requires unconventional operators to obtain a permit from the Department prior to disposing contaminated drill cuttings or drill cuttings from below the surface casing seat either in a pit or by land application on the well site. This revision removes

the permit-by-rule structure for waste disposal on unconventional well sites. The Department does not expect this provision to add any significant cost for unconventional operations. It has become less and less common for unconventional operators to utilize onsite disposal of contaminated drill cuttings and drill cuttings from below the surface casing seat. In fact, there have been many instances where unconventional operators have exhumed previously encapsulated cuttings due to liability concerns. In addition, the practice of drilling many wells on a single site is generally incompatible with onsite disposal simply due to the volume of waste materials generated and the limited space available. An example of this is the Big Sky pad in Greene County where a total of 22 wells have been drilled as of May 2015.

The total cost of this provision will be dependent on the number of well sites where operators seek permits for onsite disposal. The Department's review of waste disposal data for unconventional wells shows that for the reporting periods from January—June 2014, July—December 2014 and January—June 2015 cuttings from five wells have been disposed through onsite encapsulation and no cuttings have been disposed through land application. During that same time period, 1,746 unconventional wells were drilled so less than 0.3% of wells utilized onsite disposal. In addition, the five wells which utilized onsite disposal were vertical wells that generated 100—120 tons of cuttings so the total mass of cuttings disposed during that time was less than 600 tons while the total mass of drill cuttings generated during that time was over 2.1 million so less than 0.03% of the total mass of cuttings generated by unconventional wells was disposed through onsite disposal. Since these methods are so rarely used, the Department does not believe that this provision will impose any significant cost to the unconventional industry.

The total new cost of this provision is $0.

Alternative waste management (§ 78a.63a)

This section codifies the existing practice of requiring approval for alternative waste management practices. There is no cost associated with this section.

The total new cost of this provision is $0.

Secondary containment (§ 78a.64a)

This final-form rulemaking codifies the statutory requirement of the 2012 Oil and Gas Act for secondary containment.

This cost estimate is conservative and assumes that an operator will use brand new secondary containment at every well site. According to industry secondary containment specialists, many of the secondary containment liners will be reused at multiple well sites. The Department reached out to secondary containment vendors upon finalization of the draft final-form regulations to ensure that cost estimates received in 2013 remained accurate. Vendors indicated that since the initial estimate there has been nearly a 50% decrease in the cost of materials typically used for containment as well as the cost for installation of secondary containment. The Department has retained the initial cost estimate to ensure to be conservative and because material costs fluctuate based on commodity markets.

The Department estimates that the cost of providing secondary containment on an unconventional well site under § 78a.64a to be $140,000.

$140,000 × 434 = $60,760,000

The total annual cost of this provision is $60.76 million.

Section 78a.64a requires materials used for secondary containment to have a coefficient of permeability not greater than 1×10^{-10} cm/s. This requirement effectively eliminates use of natural materials such as clay soils for secondary containment on well sites. The Department does not believe that this standard adds any significant cost over a standard that may allow for the use of natural materials. First, natural materials that are sufficiently impermeable to be effective secondary containment are not generally readily available in this Commonwealth in the areas where unconventional well development occurs. This means that materials would have to be sourced from other areas and hauled to the well site. Clay soils shall also be installed in a much thicker layer than synthetic liners to provide sufficient protection which means more material shall be hauled to the site adding significant hauling costs over a synthetic material. Second, the cost of installation of natural materials as a secondary containment is also significantly more costly and time consuming than synthetic materials.

When initially proposed, this provision required that the synthetic materials used for secondary containment must demonstrate compatibility with the contained fluid. Commentators pointed out that ASTM D5747 is a test for landfill liners and pits where the liner is submerged in diluted chemicals for extended period of time and the test costs around $5,000 to run on each chemical type found at a site. Operators suggest ASTM D543 as an alternate test. By considering the comments, this final-form rulemaking has been changed and the Department allows for the use of test methods if approved by the Department.

Since this is an existing statutory requirement that unconventional operators must already comply with, the total new cost of this provision is $0.

The total new cost of this provision is $0.

Site restoration (§ 78a.65)

This section largely restates the restoration requirements in section 3216 of the 2012 Oil and Gas Act and incorporates the Department's interpretation of these requirements and the Chapter 102 requirements as outlined in the *Policy for Erosion and Sediment Control and Stormwater Management for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 800-2100-008, which was finalized on December 29, 2012. The revisions to § 78a.65 in the ANFR were also intended to address comments on this section that indicated continuing confusion regarding what constitutes restoration as the term is used Chapters 78a and 102, and what the associated requirements are. The changes to this section in the ANFR clarify this question and in particular distinguish between areas not restored and other areas. "Areas not restored" do not fall within the provisions in § 102.8(n) and therefore must meet the requirements, among others, of § 102.8(g). Areas not restored include areas where there are permanent structures or impervious surfaces.

The Department received significant comment on this provision from unconventional operators. Commentators argued that the Department failed to include any estimate for the cost associated with the new site restoration requirements. Commentators did not agree with the Department's position regarding cost savings due to the added provision of 2-year extension of the restoration

period. Unconventional operators estimated that the cost of well site restoration will be approximately $200,000 to $300,000 per pad, not $50,000 as Department estimated. Therefore, rather than a $21.7 million savings, the restoration requirements are a cost of $130 million.

The Department does not agree with these cost estimates. The restoration requirements in this section are not new and do not impose a new cost on the regulated community as previously explained. In addition, the Department disagrees with commentators' assertions that the extension requirement is merely a postponement of the cost. This section mirrors the requirements in section 3216(g) of the 2012 Oil and Gas Act that allow operators to request to extend the restoration period for up to 2 years so that an operator does not have to restore the site and then disturb it again if it plans to drill additional wells on the same well pad. The cost savings associated with the restoration extension are derived from avoiding the cost of restoring the site within 9 months of completion of drilling and later having to reconstruct the site and restore it again. The Department revised its estimate that this provision will result in $21.7 million in cost savings. Since the 2-year extension is provided by statute, operators may be granted an extension regardless of the status of § 78a.65, the revisions to this section do not represent a cost savings for operators.

This section is intended to provide clarity for implementing existing requirements from the 2012 Oil and Gas Act and Chapter 102. To the extent that an operator would incur the costs previously listed, they would incur those costs regardless of the status of § 78a.65 because they are costs associated with complying with the 2012 Oil and Gas Act and Chapter 102.

The total new cost of this provision is $0.

Reporting and remediation of spills and releases (§ 78a.66)

Section 78a.66 establishes a reporting and remediation process for spills and releases that occur at well sites including a requirement to follow the procedures established under Act 2. Prior to this final-form rulemaking, the Department addressed spills through the policy "Addressing Spills and Releases at Oil & Gas Well Sites or Access Roads" which included allowances for use of an alternative process. This final-form rulemaking eliminates use of the alternative process. The Department received significant public comment on this section from oil and gas operators indicating that the Act 2 process increases the cost of remediation by three to four times the alternative process. Commentators also noted an individual cast in which they asserted that the remediation should have only cost $10,000 but was expected to cost $250,000 due to the Act 2 process. Commentators did not provide any specific details to fully explain the estimated costs. Commentators also argued that the timelines established for completing various steps of a spill remediation are inappropriate and overly burdensome for the oil and gas industry.

The Department does not agree with the cost estimates. The cleanup process established under § 78a.66 includes the steps necessary to ensure that spills are appropriately remediated. To the extent that operators are remediating spills, they should generally be conducting the steps outlined by the Act 2 process. To the extent that operators are not conducting the steps outlined by the Act 2 process, the Department asserts that they may not be properly remediating spills. Therefore, since operators should already be conducting the required steps, the only new requirement under this final-form rulemaking is that operators shall follow the Act 2 process in accordance with the required timelines. Since operators are required to remediate spills, the Department does not believe that the timelines established under this section represent a new cost; as commentators have noted, postponement of a cost is not an avoidance of the cost. The Department does not believe that a requirement to follow the Act 2 process represents any significant burden on the oil and gas industry.

The total cost of this provision is dependent upon the total number of spills or releases that shall be reported and remediated. It is not possible for the Department to predict the number of spills or releases that will occur at well sites. Therefore, the Department is unable to provide a specific cost estimate for this provision; however, the Department does not believe that this provision represents any significant new cost to the oil and gas industry.

Borrow pits (§ 78a.67)

Section 78a.67(b) requires the registration of the location of existing borrow pits by December 7, 2016, and registration of new borrow pits before there are built. This will be done electronically through the Department's web site. There were a few comments from operators that this would be burdensome on industry. The Department does not believe that the requirement to register the location of existing borrow pits with the Department represents a significant burden on the industry and has not assigned a cost to this requirement.

Section 78a.67(a) requires an oil and gas operator who owns or controls a borrow pit that does not require a permit under the NSMCRA under the exemption in section 3273.1(b) of the 2012 Oil and Gas Act to operate, maintain and reclaim the borrow pit in accordance with the performance standards in Chapter 77, Subchapter I and in accordance with Chapter 102.

The exemption in section 3273.1(b) of the 2012 Oil and Gas Act was taken verbatim from the 1984 Oil and Gas Act. This section seeks to provide clarity for implementation of those requirements; therefore, the Department has not assigned a new cost to this requirement.

The total estimated cost of these provisions is $0.

Gathering lines (§ 78a.68(a)—(f))

This section establishes common sense environmental controls for construction of oil and gas gathering lines. These requirements are intended to help ensure that operators maintain compliance with The Clean Streams Law and Chapters 102 and 105 when constructing gathering lines. The Department believes that most operators already comply with the bulk of these requirements and will not have to make any significant changes to their operations. The cost of these provisions is dependent on the number of linear miles of pipeline installed and the terrain in which the pipeline is installed. The Department does not have sufficient data to produce an estimated cost of these provisions but since most operators should already be in compliance with the bulk of these common sense environmental controls, the Department does not believe that this section will result in any significant burden to the oil and gas industry.

Corrosion control for gathering lines (§ 78a.68(g))

This final-form rulemaking requires that all buried metallic gathering pipelines shall be installed and placed in operation in accordance with 49 CFR Part 192, Subpart I or Part 195, Subpart H. Some comments received questioned the Department's statutory authority to incor-

porate Federal standards for pipelines into the rulemaking. Section 3218.4(a) of the 2012 Oil and Gas Act provides that "[a]ll buried metallic pipelines shall be installed and placed in operation in accordance with 49 CFR Pt. 192 Subpt. I (relating to requirements for corrosion control)." Section 78a.68(g) reflects this requirement. The incorporation of 49 CFR Part 195, Subpart H is included because it also outlines standards for protecting pipelines against corrosion, specifically steel pipelines transporting hazardous liquids such as condensate from natural gas operations. The reference to 49 CFR Part 195, Subpart H is consistent with the intent of section 3218.4(a) of the 2012 Oil and Gas Act to set forth standards for the installation and placement of metallic pipelines, including related corrosion control requirements. Since this provision is a statutory requirement, the Department has not assigned a new cost.

The total new cost of this provision is $0.

HDD (§ 78a.68a)

This section establishes common sense environmental controls for conducting HDD. These requirements are intended to help ensure that operators maintain compliance with The Clean Streams Law and Chapters 102 and 105 when conducting HDD. The Department believes that most operators already comply with the bulk of these requirements and will not have to make any significant changes to their operations. The cost of these provisions is dependent on the number of horizontal directional bores completed and the terrain in which the bores are completed. The Department does not have sufficient data to produce an estimated cost of these provisions but since most operators should already be in compliance with the bulk of these common sense environmental controls, the Department does not believe that this section will result in any significant burden to the oil and gas industry.

Well development pipelines for oil and gas operations (§ 78a.68b)

Subsections (a) and (d)—(n) establish common sense environmental controls for constructing and operating well development pipelines. These requirements are intended to help ensure that operators maintain compliance with The Clean Streams Law and Chapters 102 and 105 when constructing and operating well development pipelines. The Department believes that most operators already comply with the bulk of these requirements and will not have to make any significant changes to their operations. The cost of these provisions is dependent on the number of well development pipelines constructed and utilized and the terrain in which the well development pipelines are constructed. The Department does not have sufficient data to produce an estimated cost of these provisions but since most operators should already be in compliance with the bulk of these common sense environmental controls, the Department does not believe that this section will result in any significant burden to the oil and gas industry.

Prohibition of buried well development pipeline (§ 78a.68b(b) and (c))

One specific requirement in this section is the requirement that well development pipelines that carry fluid other than fresh ground water, surface water, water from water purveyors or water from Department approved sources shall be installed aboveground except when crossing pathways, roadways, railways, water courses or water bodies. This section also limits the use well development pipelines to a time period of 1 year. Operators expressed significant concerns about these provisions because many operators maintain a network of buried pipelines that fit the definition of well development pipelines. Commentators did not provide any cost estimates to the Department for this provision.

The cost of these provisions is dependent on the number of pipelines that are impacted. The Department does not have sufficient data to make a detailed cost estimate but notes that the costs could be substantial.

WMPs (§ 78a.69)

This final-form rulemaking implements requirements in section 3211(m) of the 2012 Oil and Gas Act which requires anyone who withdraws or uses water from water sources within this Commonwealth for drilling or hydraulic fracture stimulation of any natural gas well completed in an unconventional gas formation to do so in accordance with an approved WMP.

Since this section implements existing statutory requirements, it does not represent a new cost to the oil and gas industry.

The total new cost of this provision is $0.

Monthly waste reporting requirements (§ 78a.121)

This final-form rulemaking includes a requirement for unconventional operators to report waste production to the Department on a monthly basis. This is different from the existing requirement to report once every 6 months. The Department received significant comment on this requirement from operators indicating that it is costly and overly burdensome. Commentators estimated that waste reporting will take 20—30 hours on average regardless of the length of the reporting period. The new cost associated with this provision is the difference in the current cost to report and the new cost to report. The Department assumes a labor rate of $30/hour to do the reporting.

The current cost is between $1,200 and $1,800 per year for each operator.

20 hours × $30/hour × 2 reports/year = $1,200

30 hours × $30/hour × 2 reports/year = $1,800

The new cost is between $7,200 and $10,800 per year for each operator.

20 hours × $30/hour × 12 reports/year = $7,200

30 hours × $30/hour × 12 reports/year = $10,800

The total new cost is between $6,000 and $9,000 per year for each operator.

$7,200 − $1,200 = $6,000

$10,800 − $1,800 = $9,000

The total cost of this new requirement is equal to the average new cost per operator times the number of operators.

73 operators × $6,000 = $438,000

73 operators × $9,000 = $657,000

Therefore, the total estimated annual cost of this provision is estimated to be between $438,000 and $657,000.

The estimated initial cost of this provision on unconventional operators is between $41.358 million and $73.463 million; the estimated annual cost of this provision on unconventional operators is between $5,895,500 and $31,149,664.

The Department provided a summary table of estimated costs in Appendix A of the Regulatory Analysis Form.

Unconventional operators savings

Assumptions

It is estimated that there will be approximately 2,600 unconventional wells permitted each year for the next 3 years.

Based on Department data, approximately 1 out of every 2 permitted wells gets drilled, or approximately 1,300 wells per year.

The Department assumes there are an average of three unconventional wells per well site. In the future, it is estimated that less well sites will be built as there could be as many as 12 unconventional wells per well pad.

The cost analysis for this final-form rulemaking must be factored on a well site basis, not on a per well basis. Many of the processes proposed for regulation in this final-form rulemaking include activities integral to the operation of several wells and even several well pads.

2,600 wells permitted × 50% of wells drilled = 1,300 wells drilled each year

1,300 wells drilled each year ÷ 3 wells per well site = 434 well sites built each year

Savings estimates

Electronic submission of well permits (§ 78a.15(a))

This final-form rulemaking requires applicants to submit well permit applications electronically through the Department's web site. This will achieve greater efficiency and time management on the Department's end and will also save operators in postage.

2,600 permits × $5 postage savings = $13,000

The total savings of this provision is estimated to be $13,000.

Electronic submission of water surveys as one package (§ 78a.52(d))

An operator may submit a copy of all sample results taken as part of a survey to the Department by electronic means. Currently, operators submit each individual's sample by mail as it is completed. This subsection will save the operator postage cost and will help the Department gain efficiencies by having all samples for one well site area submitted as a whole. The Department estimates that on average, each unconventional well site will fall within the 2,500-foot range (as specified by Act 13) of approximately ten properties.

434 well sites × 10 properties (avg.) × $5 postage savings = $21,700

The total savings of this provision is estimated to be $21,700.

Two-year permit renewal term (§ 78a.17)

This final-form rulemaking allows well permit renewals to be issued for 2 years instead of limiting the renewal term to 1 year. This represents a savings for operators that renew permits because the cost of well permit fees is reduced. The savings associated with this provision is dependent on the number of well permits that get renewed on an annual basis. Based on Department well permit data, unconventional well operators obtain well permit renewals at the following rates.

One renewal = 6.3% of permits

Two renewals = 0.7% of permits

Three or more renewals = 0.3% of permits

Since the first renewal will be issued for a period of 2 years, the cost to renew permits for the second time is eliminated by this final-form rulemaking. Well permits fees for unconventional wells are either $4,200 for vertical wells or $5,000 for nonvertical wells.

0.7% × 2,600 × $4,200 = $76,440

0.7% × 2,600 × $5,000 = $91,000

Therefore, the total savings of this provision is estimated to be between $76,440 and $91,000.

Well site restoration extension (§ 78a.65(c)(2))

When initially proposed, the Department estimated that well site restoration extensions would provide a savings of $21.7 million. Upon further evaluation, since the well site restoration extension provisions are established by the 2012 Oil and Gas Act, any savings that may be realized by this provision are based on statutory provisions and not this final-form rulemaking.

The total savings of this provision is estimated to be $0.

The estimated savings of this regulation on unconventional operators is approximately $125,700.

Pipeline/midstream companies savings

Assumptions

There are approximately 100 HDD operations annually.

These operations use approximately 25,000 gallons of drilling fluids to conduct HDD operations.

100 × 25,000 = 2,500,000 gallons per year for disposal

Disposal costs = 12¢ per gallon

Recycling and onsite application of gathering line HDD fluid discharges and returns (§ 78.68a(k))

2,500,000 gallons × 12¢ = $300,000

The estimated savings of this regulation on pipeline operators and midstream companies is $300,000 annually.

The total savings for the entire regulated community is estimated to be between $76,440 and $477,100.

Local government costs and savings

The Department does not anticipate that there will be significant costs or saving to local governments. The public resource impact screening provisions in § 78a.15(f)(2) may impose a cost on local governments. In accordance with § 78a.15(f), unconventional operators are required to provide public resource agencies information about the location of a proposed well, including identifying the public resource, describing the public resource's function and uses, and describing any mitigation measures. The public resource agency then has the option to provide written comments to the Department on a pending well permit application related to the functions and uses of the public resource and the measure, if any, needed to avoid, minimize or otherwise mitigate probable harmful impacts. To the extent that a local governmental entity manages public resources listed in § 78a.15(f)(1), there may be cost associated with conducting a review of information submitted and preparing written comments to the Department. Any cost would be voluntary as this is not a requirement of this final-form rulemaking.

State government costs and savings

There are costs to the Department that will be incurred as a result of the implementation of this final-form rulemaking. Increased field inspections and formal reviews are anticipated. More importantly however, there are provisions in this final-form rulemaking that will streamline the Department's operations that are anticipated to balance out any increased workload requirements. The following are measures included in this final-form rulemaking with the goal of increasing Department efficiency:

• Electronic permitting will ensure that permits are submitted in a consistent format that prompts correct and complete permit applications prior to their submittal. Electronic permitting will eliminate incomplete application submittals, eliminate paper communications and increase Department complement efficiency. It will also allow for improved transparency in the Department's permitting operations.

• Upon request, require operators to directly provide the Fish and Boat Commission and landowners a copy of the site-specific PPC plan, instead of having them go through a Right-to-Know Law request, will save the Department staff time of obtaining them on their behalf.

• Electronic notification prior to the start of pipeline HDD and liner installation so the Department's staff can schedule inspections accordingly.

• Allow for the approval for aboveground modular storage systems, which, once approved, will be posted on the Department's web site for all users. This will eliminate duplication of work.

• Allow for the one-time approval for pipeline HDD additives which, once approved, will be posted on Department's web site as preapproved. This will eliminate duplication of work.

• Allow for the one-time approval of onsite waste processing facilities. This will eliminate duplication of work.

Compliance assistance plan

The Department has worked extensively with representatives from the regulated community and leaders from several industry organizations have attended the advisory committee meetings when the final-form regulations were discussed. Therefore, the requirements in this final-form rulemaking are well known.

The Department plans to schedule training sessions for the regulated community to address the new regulatory requirements when this final-form rulemaking is finalized. Additionally, Department field staff are the first points of contact for technical assistance and will be able to provide guidance to the regulated community through technical information and direct field-level assistance.

Paperwork requirements

This final-form rulemaking includes new planning, reporting and recordkeeping requirements. However, operators have many different options for their surface operations, therefore not all of the requirements will be applicable all of the time. To minimize the burden of these requirements, the Department has requested electronic submission of most planning, reporting and recordkeeping required in this final-form rulemaking. The Department notes that some reporting and notification requirements are part of the existing regulations but this final-form rulemaking requires electronic submission, so not all of the following items below new reporting requirements (for example, permit application requirements in § 78a.15). The Department also notes that lists of preapproved structures or methods will be maintained on the Department's web site and operators utilizing those preapproved items will avoid the need to meet these reporting requirements and use these forms. For example, once a processing method is approved under § 78a.58(g), the operator may use that processing method at other well sites with only notice to the Department rather than another request for approval.

The additional reporting requirements are as follows:

• If an operator wants to use survey results to preserve its defenses under section 3218(d)(1)(i) or (2)(i) of the 2012 Oil and Gas Well Act, submission of predrill well sampling data to the Department. § 78a.52(d) (relating to predrilling or prealteration survey) at least 10 days prior to the start of drilling

• If an owner or operator chooses to dispose of drill cuttings on the well site, they will be required to notify the Department 3 business days prior and provide notice of disposal to the surface landowner with the location of the disposal site within 10 business days of the completion of the disposal. § 78a.61(e)

• An operator of a borrow pit shall register the location of the borrow pit. § 78a.67(b)

• If an operator is using a borrow pit that does not fall under the permitting requirements of the NSMCRA, they will be required to register the location of the borrow pit with the Department. § 78a.67(b)

• Submission to the Department of an area of review report inclusive of a monitoring plan. § 78a.52a(c)

• If an operator wishes to use an alternate temporary storage practice, the operator shall submit a request for approval to the Department. § 78a.56(b)

• If modular aboveground storage structures are to be installed, a 3-business-day notice to the Department is required. § 78a.56(a)(4)

• Operators are required to submit a list to the Department of the well sites where underground or partially buried storage tanks are located. § 78a.57(e)

• Notice of planned use of previously approved or new processing method 3 business days prior to initiation. § 78a.58(d) and (g)

• The Department shall be notified electronically 24 hours prior to all HDD activities. § 78a.68a(c)

• The Department shall be notified of any water supply complaints during HDD. § 78a.68a(j)

• The Department shall be notified of any loss or discharge of HDD fluid during HDD activities. § 78a.68a(i)

• Proof of consultation with the Pennsylvania Natural Heritage Program regarding PNDI and the Pennsylvania Historical and Museum Commission regarding historical/archaeological sites shall be provided to the Department. § 78a.69(c) (relating to water management plans)

• Proof of notification of a proposed withdrawal has been provided to municipalities and counties where water source will be located. § 78a.69(c)

• An operator of an existing freshwater impoundment shall provide electronic notification of the impoundment's GPS coordinates to the township and county in which the impoundment is located. § 78a.59b(b)

• If an operator uses an open pit for storage of production fluids, it shall report the activity to the Department. § 78a.57(a)

• The operator shall notify the Department within 3 business days of the deficiencies found during the monthly inspection of tanks. § 78a.57(i)

• Surface restoration plan. § 78a.65(b)

• The operator shall demonstrate proof of compliance with § 102.8(l) and (m) or provide a licensed professional certification of complete site restoration to approximate original contours and return to preconstruction stormwater runoff rate, volume and quality in accordance with § 102.8(g). § 78a.65(b) and (b)(6)

• If a well site is constructed and the well is not drilled, the well site shall be restored within 9 months after the expiration of the well permit unless the Department approves an extension for reasons of adverse weather or lack of essential fuel, equipment or labor. § 78a.65(a)(3)

• An application for a well permit shall be submitted electronically to the Department through its web site and contain enough information to enable the Department to evaluate the application. § 78a.15(a)

• An operator of a planned unconventional well which will be stimulated using hydraulic fracturing shall develop and submit to the Department an area of review monitoring plan. § 78a.52a(c)(3)

• An operator that constructed a well development impoundment prior to October 8, 2016, shall register the location of the well development impoundment by December 7, 2016, to the Department, through the Department's web site, with electronic notification of the GPS coordinates, township and county where the well development impoundment is located. § 78a.59b(c)

• An operator that constructed a well development impoundment prior to October 8, 2016, shall provide to the Department certification as to whether the impoundment meets the requirements. Any impoundment that does not meet the requirements shale be upgraded to meet the requirements. § 78a.59b(b)

• An operator who plans to close a well development impoundment shall submit electronically to the Department a well development impoundment closure plan. § 78a.59c(a)

• An operator seeking to manage waste on a well site in any manner other than provided in §§ 78a.56—78a.63 shall submit a request electronically to the Department describing the alternate management practice. § 78a.63a (relating to alternative waste management)

• A water purveyor withdrawing water from waters of the Commonwealth shall submit to the Department daily withdrawal volumes on a quarterly basis, in stream flow measurements or other water source purchases, or both. § 78a.69(c)(3)

The regulated community will need new reporting forms with this final-form rulemaking. The Department will make forms and guidance documents available prior to adoption of this final-form rulemaking. The additional forms required are as follows:

• Consideration of Public Resources Form. § 78a.15(f)(3)

• Landowner Questionnaire & Instructions. § 78a.52a(b)(3)

• Survey Plat & Instructions. § 78a.52a(c)(1)

• Proof of Operator Notification Form & Instructions. § 78a.73(c)

• Stimulation Communication Notification Form and Instructions. § 78a.73(c)

• Form/questionnaire to submit to landowners for location of oil and gas wells. § 78a.52a(b)(3)

• Monthly Tank Inspection Form. § 78a.57(i)

• Form to request to process wastewater and drill cuttings. § 78a.58(a) and (e)

• Freshwater Impoundment Registration Form. § 78a.59b(c)

• Land owner request to waive restoration requirement. § 78a.59b(g)

• Mine Influenced Water Storage in a Freshwater Impoundment Form (must include parameters that demonstrate that water stored will not cause pollution). § 78a.59b(h)

• Extension of Drilling or Production Period Request Forms. § 78a.65(c)(1)

• Well Site Restoration Extension Request Form. § 78a.65(d)(3)

• Written Consent of Landowner Restoration. § 78a.65(d)(4)

• Post Drilling Restoration Report. § 78a.65(e)

• Post Plugging Restoration Report. § 78a.65(f)

• Landowner Consent Forms. § 78a.65(g)

• Material Staging Area Setback Waiver Form. § 78a.68a(e)

• Water Management Plan Approval Request Form. § 78a.69(c)

• Request for modification approval of a Water Management Plan. § 78a.69(c)

Landowner notification

Section 78a.52(g) requires unconventional operators to notify landowners that if their water supply becomes impacted and they have refused to allow the operator to perform a predrilling survey of their water supply, the presumption of liability provided by the 2012 Oil and Gas Act will not apply. This provision is needed because this notice is required under section 3218(e.1) of the 2012 Oil and Gas Act. This was a new requirement added in the 2012 Oil and Gas Act.

Department notifications

To enhance the Department's field staff inspection efficiency, this final-form rulemaking requires operators to notify the Department prior to oil and gas construction activities, such as building a well pad or installing a pit liner. These provisions allow the Department to effectively manage its resources and ensure timely inspections.

Three-day notifications are required for the following:

• Prior to disposal of drill cuttings on unconventional well sites. § 78a.61

• Prior to conducting onsite processing on unconventional well sites. § 78a.58

• Prior to utilizing modular aboveground storage structures on unconventional well sites. § 78a.56

• After noticing deficiencies in tanks during monthly inspections on unconventional well sites. § 78a.57(h)

24-hour notice for HDD

In § 78a.68a(c), persons conducting HDD activities associated with pipeline construction relating to unconventional oil and gas operations shall electronically notify the Department through its web site at least 24 hours prior to beginning of any HDD activities, including conventional boring, beneath any body of water or watercourse. This provision is needed because it will allow the Department to conduct HDD inspections as the HDD is occurring.

Additionally, in § 78a.68a(j), any water supply complaints received by the responsible party for HDD shall be reported to the Department within 24 hours through the Department's web site. This requirement will ensure that the Department conducts a timely water supply investigation upon receipt of a water supply complaint to the responsible party.

Electronic filing requirements throughout this final-form rulemaking are needed because electronic filing allows the Department to:

• More efficiently track well development and operations from beginning to end, enabling inspectors to focus on field inspections of the hundreds of thousands of wells in this Commonwealth rather than the review and management of paper submissions.

• Provide the public easy access to data through the Department's web site.

• Develop business rules to ensure that the data submitted is complete and accurate, thereby reducing the workload for both the Department and operators in returning and addressing deficient submissions.

• Have a complete picture regarding well development/operations to more efficiently determine compliance. For example, when reviewing production data, Department staff needs to have permit, Well Record, Completion Report and additional information readily available to help determine the validity of the production/waste data. Currently, paper files need to be retrieved, sometimes from other offices, to obtain this information.

In the proposed rulemaking, the well permit and nearly all approvals, reports and notifications required by the proposed rulemaking had to be made to the Department electronically. The Department determined that moving to all electronic filing is appropriate and necessary for the Department to fulfill its mission. Therefore, this final-form rulemaking retains the concept of mandatory electronic submissions to the Department.

The Department also received comments questioning the Department's ability to implement these requirements, as they will require a substantial increase in IT development and support staff than is currently required to support the Oil and Gas Program. The Department currently has a number of online electronic reporting applications for the submission of information pertaining to oil and gas wells. These applications are accessed through the Department's GreenPort enterprise portal. The Department acknowledges that the online electronic reporting functionality with respect to oil and gas operations will need to be expanded. The Department strives to develop applications that are user friendly for both external users and Department staff. The Department will continue in this effort by releasing enhancements to existing applications based upon user feedback. Operators will not be expected to submit information electronically if the Department has not yet developed an electronic portal to accept the information. The Department acknowledges that backup provisions will need to be in place for those situations during which the electronic portal is down.

H. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The Department notes that section 3211(m)(2)(iv) of the 2012 Oil and Gas Act requires unconventional operators to "include a reuse plan for fluids that will be used to hydraulically fracture wells" as part of the operator's Department-approved WMP. The unconventional oil and gas industry has been extremely effective in utilizing wastewater from one well to hydraulically fracture the next well, achieving almost a 90% recycling rate annually over the past several years. The requirements in this final-form rulemaking are intended to encourage these efforts while maintaining appropriate and reasonable environmental protections in place.

I. *Sunset Review*

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

J. *Regulatory Review*

On December 4, 2013, the Department submitted the proposed rulemaking approved by the Board to the Bureau for publication in the *Pennsylvania Bulletin* for a 60-day public comment period. On the same date, as required under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted the proposed rulemaking and a Regulatory Analysis Form to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment. Notice of the proposed rulemaking was published at 43 Pa.B. 7377. The public comment period was subsequently extended for another 30 days until March 14, 2014, through a notice published at 44 Pa.B. 648.

On March 3, 2016, the Department submitted the pre-Act 52 final-form regulations approved by the Board, the responses to all comments received during the public comment period and a Regulatory Analysis Form to IRRC and the House and Senate Environmental Resources and Energy Committees as required under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)). The pre-Act 52 final-form regulations were prepared based on consideration of all comments received from IRRC, the House and Senate Environmental Resources and Energy Committees, and the public.

On April 12, 2016, the House and Senate Environmental Resources and Energy Committees voted to disapprove the pre-Act 52 final-form regulations and notified IRRC and the Board as required under section 5.1(j.2) of the Regulatory Review Act. On April 21, 2016, IRRC held a

public meeting to consider the pre-Act 52 final-form regulations and approved it in a 3-2 vote.

On May 3, 2016, the House Environmental Resources and Energy Committee voted to report a concurrent resolution to disapprove the pre-Act 52 final-form regulations approved by IRRC to the General Assembly under section 7(d) of the Regulatory Review Act (71 P.S. § 745.7(d)). The concurrent resolution was not passed by the General Assembly within 30 calendar days or 10 legislative days from the reporting of the concurrent resolution, and the Board may therefore promulgate the pre-Act 52 final-form regulations.

On June 23, 2016, Act 52 was enacted abrogating the pre-Act 52 final-form regulations "insofar as such regulations pertain to conventional oil and gas wells."

The Department delivered the pre-Act 52 final-form regulations to the Office of Attorney General for form and legality review on June 27, 2016. In accordance with the Regulatory Review Act and the Commonwealth Attorneys Act, the Office of Attorney General directed the Department to make changes to the pre-Act 52 final-form regulations to comply with Act 52. On July 26, 2016, the Department resubmitted this final-form rulemaking to the Office of Attorney General for review.

In accordance with the Office of Attorney General's direction, the Department removed all amendments or additions to Chapter 78 regarding conventional oil and gas wells and retained the deletions and modifications in Chapter 78 that related solely to the unconventional wells. This revised final-form rulemaking also contains clarifications and corrections to respond to other issues identified by the Office of Attorney General, including the addition of § 78a.2 to clarify that Chapter 78a supersedes Chapter 78 for unconventional wells to avoid any potential conflict between the requirements in Chapter 78 and Chapter 78a regarding unconventional wells. Later on July 26, 2016, the Office of Attorney General approved this revised final-form rulemaking for form and legality under the Commonwealth Attorneys Act. The regulations in Annex A are the revised final-form rulemaking as approved by the Office of Attorney General. This preamble was revised to reflect the final-form rulemaking as approved by the Office of Attorney General in conformance with Act 52.

The Joint Committee on Documents met on August 18, 2016, and voted to direct the Bureau to publish this final-form rulemaking.

K. *Findings*

The Board finds that:

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

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 43 Pa.B. 7377.

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

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code, are amended by amending §§ 78.1, 78.19, 78.55, 78.72 and 78.121 and by adding §§ 78a.1, 78a.2, 78a.11—78a.19, 78a.21—78a.33, 78a.51, 78a.52, 78a.52a, 78a.53—78a.58, 78a.59a, 78a.59b, 78a.59c, 78a.60—78a.63, 78a.63a, 78a.64, 78a.64a, 78a.65—78a.68, 78a.68a, 78a.68b, 78a.69, 78a.70, 78a.70a, 78a.71—78a.75, 78a.75a, 78a.76—78a.78, 78a.81—78a.83, 78a.83a, 78a.83b, 78a.83c, 78a.84—78a.89, 78a.91—78a.98, 78a.101—78a.105, 78a.111, 78a.121—78a.124, 78a.301—78a.308 and 78a.310—78a.314 to read as set forth in Annex A.

(*Editor's Note*: The provisions added in the new Chapter 78a were initially proposed as amendments to Chapter 78 in the proposed rulemaking published at 43 Pa.B. 7377. In response to comments and Act 126, the pre-Act 52 final-form rulemaking was separated into two chapters. The proposed rescission of §§ 78.2 and 78.309, proposed addition of §§ 78.52a, 78.59a, 78.59b, 78.59c, 78.64a, 78.67, 78.68, 78.68a, 78.68b, 78.69, 78.70 and 78.70a and proposed amendments to §§ 78.13, 78.15, 78.17, 78.18, 78.21, 78.25, 78.28, 78.51—78.53, 78.56—78.58, 78.60—78.66, 78.73, 78.75, 78.76, 78.87, 78.91, 78.101, 78.103, 78.105, 78.122, 78.123, 78.301, 78.302, 78.306, 78.308, 78.310 and 78.402—78.404 have been withdrawn by the Board.)

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the House and Senate Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Bureau as required by law.

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

PATRICK McDONNELL,
Acting Chairperson

(*Editor's Note*: See 46 Pa.B. 6392 (October 8, 2016) for a notice relating to this final-form rulemaking.)

(*Editor's Note*: See 46 Pa.B. 2384 (May 7, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 7-484 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 78. OIL AND GAS WELLS

Subchapter A. GENERAL PROVISIONS

§ 78.1. Definitions.

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

Act—The Oil and Gas Act (58 P.S. §§ 601.101—601.605).

Attainable bottom—The depth, approved by the Department, which can be achieved after a reasonable effort is expended to clean out to the total depth.

Casing seat—The depth to which casing is set.

Cement—A mixture of materials for bonding or sealing that attains a 7-day maximum permeability of 0.01 millidarcies and a 24-hour compressive strength of at least 500 psi in accordance with applicable standards and specifications.

Cement job log—A written record that documents the actual procedures and specifications of the cementing operation.

Certified laboratory—A laboratory accredited by the Department under Chapter 252 (relating to environmental laboratory accreditation).

Coal area—An area that is underlain by a workable coal seam.

Coal protective casing—A string of pipe which is installed in the well for the purpose of coal segregation and protection. In some instances the coal protective casing and the surface casing may be the same.

Conductor pipe—A short string of large-diameter casing used to stabilize the top of the wellbore in shallow unconsolidated formations.

Conventional formation—A formation that is not an unconventional formation.

Conventional well—

(i) A bore hole drilled or being drilled for the purpose of or to be used for construction of a well regulated under 58 Pa.C.S. §§ 3201—3274 (relating to development) that is not an unconventional well, irrespective of technology or design.

(ii) The term includes, but is not limited to:

(A) Wells drilled to produce oil.

(B) Wells drilled to produce natural gas from formations other than shale formations.

(C) Wells drilled to produce natural gas from shale formations located above the base of the Elk Group or its stratigraphic equivalent.

(D) Wells drilled to produce natural gas from shale formations located below the base of the Elk Group where natural gas can be produced at economic flow rates or in economic volumes without the use of vertical or nonvertical well bores stimulated by hydraulic fracture treatments or multilateral well bores or other techniques to expose more of the formation to the well bore.

(E) Irrespective of formation, wells drilled for collateral purposes, such as monitoring, geologic logging, secondary and tertiary recovery or disposal injection.

Deepest fresh groundwater—The deepest fresh groundwater bearing formation penetrated by the wellbore as determined from drillers logs from the well or from other wells in the area surrounding the well or from historical records of the normal surface casing seat depths in the area surrounding the well, whichever is deeper.

Drill cuttings—Rock cuttings and related mineral residues generated during the drilling of an oil or gas well.

Fresh groundwater—Water in that portion of the generally recognized hydrologic cycle which occupies the pore spaces and fractures of saturated subsurface materials.

Gas storage field—A gas storage reservoir and all of the gas storage wells connected to the gas storage reservoir.

Gas storage reservoir—The portion of a subsurface geologic formation or rock strata used for or being tested for storage of natural gas that:

(i) Has sufficient porosity and permeability to allow gas to be injected or withdrawn, or both.

(ii) Is bounded by strata of insufficient porosity or permeability, or both, to allow gas movement out of the reservoir.

(iii) Contains or will contain injected gas geologically or by pressure control.

Gas storage well—A well located and used in a gas storage reservoir for injection or withdrawal purposes, or an observation well.

Gel—A slurry of clay or other equivalent material and water at a ratio of not more than 7 barrels of water to each 100 pounds of clay or other equivalent matter.

Intermediate casing—A string of casing set after the surface casing and before production casing, not to include coal protection casing, that is used in the wellbore to isolate, stabilize or provide well control.

L.E.L.—Lower explosive limit.

Noncementing material—A mixture of very fine to coarse grained nonbonding materials, including unwashed crushed rock, drill cuttings, earthen mud or other equivalent material approved by the Department.

Noncoal area—An area that is not underlain by a workable coal seam.

Nonporous material—Nontoxic earthen mud, drill cuttings, fire clay, gel, cement or equivalent materials approved by the Department that will equally retard the movement of fluids.

Observation well—A well used to monitor the operational integrity and conditions in a gas storage reservoir, the reservoir protective area or strata above or below the gas storage horizon.

Owner—A person who owns, manages, leases, controls or possesses a well or coal property. For purposes of sections 203(a)(4) and (5) and 210 of the act (58 P.S. §§ 601.203(a)(4) and (5) and 601.210), the term does not include those owners or possessors of surface real property on which the abandoned well is located who did not participate or incur costs in the drilling or extraction operation of the abandoned well and had no right of control over the drilling or extraction operation of the abandoned well. The term does not apply to orphan wells except where the Department determines a prior owner or operator benefited from the well as provided in section 210(a) of the act.

Perimeter area—An area that begins at the outside coal boundaries of an operating coal mine and extends within 1,000 feet beyond those boundaries or an area within 1,000 feet beyond the mine permit boundaries of a coal mine already projected and permitted but not yet being operated.

Permanently cemented—Surface casing or coal protective casing that is cemented until cement is circulated to the surface or is cemented with a calculated volume of cement necessary to fill the theoretical annular space plus 20% excess.

Private water supply—A water supply that is not a public water supply.

Production casing—A string of pipe other than surface casing and coal protective casing which is run for the

purpose of confining or conducting hydrocarbons and associated fluids from one or more producing horizons to the surface.

Public water supply—A water system that is subject to the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).

Reportable release of brine—Spilling, leaking, emitting, discharging, escaping or disposing of one of the following:

(i) More than 5 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is equal or greater than 10,000 mg/l.

(ii) More than 15 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is less than 10,000 mg/l.

Retrievable—When used in conjunction with surface casing, coal protective casing or production casing, the casing that can be removed after exerting a prudent effort to pull the casing while applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater.

Seasonal high groundwater table—The saturated condition in the soil profile during certain periods of the year. The condition can be caused by a slowly permeable layer within the soil profile and is commonly indicated by the presence of soil mottling.

Sheen—An iridescent appearance on the surface of the water.

Soil mottling—Irregular marked spots in the soil profile that vary in color, size and number.

Surface casing—A string or strings of casing used to isolate the wellbore from fresh groundwater and to prevent the escape or migration of gas, oil or other fluids from the wellbore into fresh groundwater. The surface casing is also commonly referred to as the water string or water casing.

Tophole water—Water that is brought to the surface while drilling through the strata containing fresh groundwater and water that is fresh groundwater or water that is from a body of surface water. Tophole water may contain drill cuttings typical of the formation being penetrated but may not be polluted or contaminated by additives, brine, oil or man induced conditions.

Total depth—The depth to which the well was originally drilled, subsequently drilled or the depth to which it was plugged back in a manner approved by the Department.

Tour—A workshift in drilling of a well.

Unconventional formation—A geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.

Unconventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.

Water protection depth—The depth to a point 50 feet below the surface casing seat.

Water purveyor—The owner or operator of a public water supply.

Water supply—A supply of water for human consumption or use, or for agricultural, commercial, industrial or other legitimate beneficial uses.

Well operator or *operator*—The person designated as the well operator or operator on the permit application or well registration. If a permit or registration was not issued, the term means a person who locates, drills, operates, alters or plugs a well or reconditions a well with the purpose of production therefrom. In cases where a well is used in connection with the underground storage of gas, the term also means a storage operator.

Well site—The area occupied by the equipment or facilities necessary for or incidental to the drilling, production or plugging of a well.

Workable coal seam—One of the following:

(i) A coal seam in fact being mined in the area in question under the act and this chapter by underground methods.

(ii) A coal seam which, in the judgment of the Department, reasonably can be expected to be mined by underground methods.

Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

PERMITS AND TRANSFERS

§ 78.19. Permit application fee schedule.

(a) An applicant shall pay a permit application fee according to the following schedule:

Conventional Wells	
Total Well Bore Length in Feet	*Total Fee*
0 to 2,000	$250
2,001 to 2,500	$300
2,501 to 3,000	$350
3,001 to 3,500	$400
3,501 to 4,000	$450
4,001 to 4,500	$500
4,501 to 5,000	$550
5,001 to 5,500	$650
5,501 to 6,000	$750
6,001 to 6,500	$850
6,501 to 7,000	$950
7,001 to 7,500	$1,050
7,501 to 8,000	$1,150
8,001 to 8,500	$1,250
8,501 to 9,000	$1,350
9,001 to 9,500	$1,450
9,501 to 10,000	$1,550
10,001 to 10,500	$1,650
10,501 to 11,000	$1,750
11,001 to 11,500	$1,850
11,501 to 12,000	$1,950

(b) An applicant for a conventional well exceeding 12,000 feet in total well bore length shall pay a permit application fee of $1,950 + $100 for every 500 feet the well bore extends over 12,000 feet. Fees shall be rounded to the nearest 500-foot interval under this subsection.

(c) If, when drilled, the total well bore length of the conventional well exceeds the length specified in the permit application due to target formation being deeper than anticipated at the time of application submittal, the operator shall pay the difference between the amount paid as part of the permit application and the amount required under subsections (a) and (b).

(d) An applicant for a conventional well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of $200.

(e) At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

Subchapter C. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 78.55. Control and disposal planning.

(a) *Preparation and implementation of plan.* Prior to generation of waste, the well operator shall prepare and implement a plan under § 91.34 (relating to activities utilizing pollutants) for the control and disposal of fluids, residual waste and drill cuttings, including tophole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids and drill cuttings from the drilling, alteration, production, plugging or other activity associated with oil and gas wells.

(b) *Requirements.* The plan must identify the control and disposal methods and practices utilized by the well operator and be consistent with the act, The Clean Streams Law (35 P.S. §§ 691.1—691.1001), the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and §§ 78.54, 78.56—78.58 and 78.60—78.63. The plan must also include a pressure barrier policy that identifies barriers to be used during identified operations.

(c) *Revisions.* The operator shall revise the plan prior to implementing a change to the practices identified in the plan.

(d) *Copies.* A copy of the plan shall be provided to the Department upon request and shall be available at the site during drilling and completion activities for review.

(e) *Emergency contacts.* A list of emergency contact phone numbers for the area in which the well site is located must be included in the plan and be prominently displayed at the well site during drilling, completion or alteration activities.

Subchapter D. WELL DRILLING, OPERATION AND PLUGGING

GENERAL

§ 78.72. Use of safety devices—blow-out prevention equipment.

(a) The operator shall use blow-out prevention equipment after setting casing with a competent casing seat in the following circumstances:

(1) When drilling out solid core hydraulic fracturing plugs to complete a well.

(2) When well head pressures or natural open flows are anticipated at the well site that may result in a loss of well control.

(3) When the operator is drilling in an area where there is no prior knowledge of the pressures or natural open flows to be encountered.

(4) On wells regulated by the Oil and Gas Conservation Law (58 P.S. §§ 401—419).

(5) When drilling within 200 feet of a building.

(b) Blow-out prevention equipment used must be in good working condition at all times.

(c) Controls for the blow-out preventer shall be accessible to allow actuation of the equipment. Additional controls for a blow-out preventer with a pressure rating of greater than 3,000 psi, not associated with the rig hydraulic system, shall be located at least 50 feet away from the drilling rig so that the blow-out preventer can be actuated if control of the well is lost.

(d) The operator shall use pipe fittings, valves and unions placed on or connected to the blow-out prevention systems that have a working pressure capability that exceeds the anticipated pressures.

(e) The operator shall conduct a complete test of the ram type blow-out preventer and related equipment for both pressure and ram operation before placing it in service on the well. The operator shall test the annular type blow-out preventer in accordance with the manufacturer's published instructions, or the instructions of a professional engineer, prior to the device being placed in service. Blow-out prevention equipment that fails the test may not be used until it is repaired and passes the test.

(f) When the equipment is in service, the operator shall visually inspect blow-out prevention equipment during each tour of drilling operation and during actual drilling operations test the pipe rams for closure daily and the blind rams for closure on each round trip. When more than one round trip is made in a day, one daily closure test for blind rams is sufficient. Testing shall be conducted in accordance with American Petroleum Institute publication API RP53, "API Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells," or other procedure approved by the Department. The operator shall record the results of the inspection and closure test in the drillers log before the end of the tour. If blow-out prevention equipment is not in good working order, drilling shall cease when cessation of drilling can be accomplished safely and not resume until the blow-out prevention equipment is repaired or replaced and retested.

(g) All lines, valves and fittings between the closing unit and the blow-out preventer stack must be flame resistant and have a rated working pressure that meets or exceeds the requirements of the blow-out preventer system.

(h) When a blowout preventer is installed or required under subsection (a), there shall be present on the well site an individual with a current certification from a well control course accredited by the International Association of Drilling Contractors or other organization approved by the Department. The certification shall be available for review at the well site. The Department will maintain a list of approved accrediting organizations on its web site.

(i) Well drilling and completion operations requiring pressure barriers, as identified by the operator under § 78.55(b) (relating to control and disposal plan), shall employ at least two mechanical pressure barriers between the open producing formation and the atmosphere that are capable of being tested. The mechanical pressure barriers shall be tested according to manufacturer specifications prior to operation. If during the course of operations the operator only has one functioning barrier, operations must cease until additional barriers are added and tested or the redundant barrier is repaired and tested. Stripper rubber or a stripper head may not be considered a barrier.

(j) The minimum amount of intermediate casing that is cemented to the surface to which blow-out prevention equipment may be attached, shall be in accordance with the following:

Proposed Total Vertical Depth (in feet)	*Minimum Cemented Casing Required (in feet of casing cemented)*
Up to 5,000	400
5,001 to 5,500	500
5,501 to 6,000	600
6,001 to 6,500	700
6,501 to 7,000	800
7,001 to 8,000	1,000
8,001 to 9,000	1,200
9,001 to 10,000	1,400
Deeper than 10,000	1,800

(k) Upon completion of the drilling operations at a well, the operator shall install and utilize equipment, such as a shut-off valve of sufficient rating to contain anticipated pressure, lubricator or similar device, as may be necessary to enable the well to be effectively shut-in while logging and servicing the well and after completion of the well.

Subchapter E. WELL REPORTING

§ 78.121. Production reporting.

(a) The well operator shall submit an annual production and status report for each permitted or registered well on an individual basis, on or before February 15 of each year. When the production data is not available to the operator on a well basis, the operator shall report production on the most well-specific basis available. The annual production report must include information on the amount and type of waste produced and the method of waste disposal or reuse. Waste information submitted to the Department in accordance with this subsection is deemed to satisfy the residual waste biennial reporting requirements of § 287.52 (relating to biennial report).

(b) The production report shall be submitted electronically to the Department through its web site.

CHAPTER 78a. UNCONVENTIONAL WELLS

Subchapter A. GENERAL PROVISIONS

§ 78a.1. Definitions.

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

ABACT—Antidegradation best available combination of technologies—The term as defined in § 102.1 (relating to definitions).

Abandoned water well—

(i) A water well that is no longer equipped in such a manner as to be able to draw groundwater.

(ii) The term includes a water well where the pump, piping or electrical components have been disconnected or removed or when its use on a regular or prescribed basis has been discontinued.

(iii) The term does not include a water well that is not currently used, but is equipped or otherwise properly maintained in such a manner as to be able to draw groundwater as an alternative, backup or supplemental water supply.

Accredited laboratory—A laboratory accredited by the Department under Chapter 252 (relating to environmental laboratory accreditation).

Act—58 Pa.C.S. §§ 3201—3274 (relating to development).

Act 2—The Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.908).

Anti-icing—Brine applied directly to a paved road prior to a precipitation event.

Approximate original conditions—Reclamation of the land affected to preconstruction contours so that it closely resembles the general surface configuration of the land prior to construction activities and blends into and complements the drainage pattern of the surrounding terrain, and can support the land uses that existed prior to the applicable oil and gas operations to the extent practicable.

Attainable bottom—The depth, approved by the Department, which can be achieved after a reasonable effort is expended to clean out to the total depth.

Barrel—A unit of volume equal to 42 US liquid gallons.

Body of water—The term as defined in § 105.1 (relating to definitions).

Borrow pit—An area of earth disturbance activity where rock, stone, gravel, sand, soil or similar material is excavated for construction of well sites, access roads or facilities that are related to oil and gas development.

Building—An occupied structure with walls and roof within which persons live or customarily work.

Casing seat—The depth to which casing is set.

Cement—A mixture of materials for bonding or sealing that attains a 7-day maximum permeability of 0.01 millidarcies and a 24-hour compressive strength of at least 500 psi in accordance with applicable standards and specifications.

Cement job log—A written record that documents the actual procedures and specifications of the cementing operation.

Centralized impoundment—A facility authorized by a Permit for a Centralized Impoundment Dam for Oil and Gas Operations (DEP # 8000-PM-OOGM0084).

Certified mail—Any verifiable means of paper document delivery that confirms the receipt of the document by the intended recipient or the attempt to deliver the document to the proper address for the intended recipient.

Coal area—An area that is underlain by a workable coal seam.

Coal protective casing—A string of pipe which is installed in the well for the purpose of coal segregation and protection. In some instances the coal protective casing and the surface casing may be the same.

Common areas of a school's property—An area on a school's property accessible to the general public for recreational purposes. For the purposes of this definition, a school is a facility providing elementary, secondary or postsecondary educational services.

Condensate—A low-density, high-API gravity liquid hydrocarbon phase that generally occurs in association with natural gas. For the purposes of this definition, high-API gravity is a specific gravity scale developed by the American Petroleum Institute for measuring the relative density of various petroleum liquids, expressed in degrees.

Conductor pipe—A short string of large-diameter casing used to stabilize the top of the wellbore in shallow unconsolidated formations.

Deepest fresh groundwater—The deepest fresh groundwater bearing formation penetrated by the wellbore as determined from drillers logs from the well or from other wells in the area surrounding the well or from historical records of the normal surface casing seat depths in the area surrounding the well, whichever is deeper.

De-icing—Brine applied to a paved road after a precipitation event.

Drill cuttings—Rock cuttings and related mineral residues generated during the drilling of an oil or gas well.

Floodplain—The area inundated by the 100-year flood as identified on maps and flood insurance studies provided by the Federal Emergency Management Agency, or in the absence of these maps or studies or any evidence to the contrary, the area within 100 feet measured horizontally from the top of the bank of a perennial stream or 50 feet from the top of the bank of an intermittent stream.

Freeboard—The vertical distance between the surface of an impounded or contained fluid and the lowest point or opening on a lined pit edge or open top storage structure.

Fresh groundwater—Water in that portion of the generally recognized hydrologic cycle which occupies the pore spaces and fractures of saturated subsurface materials.

Gas storage field—A gas storage reservoir and all of the gas storage wells connected to the gas storage reservoir.

Gas storage reservoir—The portion of a subsurface geologic formation or rock strata used for or being tested for storage of natural gas that:

(i) Has sufficient porosity and permeability to allow gas to be injected or withdrawn, or both.

(ii) Is bounded by strata of insufficient porosity or permeability, or both, to allow gas movement out of the reservoir.

(iii) Contains or will contain injected gas geologically or by pressure control.

Gas storage well—A well located and used in a gas storage reservoir for injection or withdrawal purposes, or an observation well.

Gathering pipeline—A pipeline that transports oil, liquid hydrocarbons or natural gas from individual wells to an intrastate transmission pipeline regulated by the Pennsylvania Public Utility Commission or interstate transmission pipeline regulated by the Federal Energy Regulatory Commission.

Gel—A slurry of clay or other equivalent material and water at a ratio of not more than seven barrels of water to each 100 pounds of clay or other equivalent matter.

Inactive well—A well granted inactive status by the Department under section 3214 of the act (relating to inactive status) and § 78a.101 (relating to general provisions).

Intermediate casing—A string of casing set after the surface casing and before production casing, not to include coal protection casing, that is used in the wellbore to isolate, stabilize or provide well control.

L.E.L.—Lower explosive limit.

Limit of disturbance—The boundary within which it is anticipated that earth disturbance activities (including installation of best management practices) will take place.

Mine influenced water—Any of the following:

(i) Water in a mine pool.

(ii) Surface discharge of water caused by mining activities that pollutes or may create a threat of pollution to waters of the Commonwealth.

(iii) A surface water polluted by mine pool water.

(iv) A surface discharge caused by mining activities.

Modular aboveground storage structure—An aboveground structure used to store wastewater that requires final assembly at a well site to function and which can be disassembled and moved to another well site after use.

Noncementing material—A mixture of very fine to coarse grained nonbonding materials, including unwashed crushed rock, drill cuttings, earthen mud or other equivalent material approved by the Department.

Noncoal area—An area that is not underlain by a workable coal seam.

Nonporous material—Nontoxic earthen mud, drill cuttings, fire clay, gel, cement or equivalent materials approved by the Department that will equally retard the movement of fluids.

Nonvertical unconventional well—

(i) An unconventional well drilled intentionally to deviate from a vertical axis.

(ii) The term includes wells drilled diagonally and wells that have horizontal bore holes.

Observation well—A well used to monitor the operational integrity and conditions in a gas storage reservoir, the reservoir protective area, or strata above or below the gas storage horizon.

Oil and gas operations—The term includes the following:

(i) Well site preparation, construction, drilling, hydraulic fracturing, completion, production, operation, alteration, plugging and site restoration associated with an oil or gas well.

(ii) Water withdrawals, residual waste processing, water and other fluid management and storage used exclusively for the development of oil and gas wells.

(iii) Construction, installation, use, maintenance and repair of:

(A) Oil and gas well development, gathering and transmission pipelines.

(B) Natural gas compressor stations.

(C) Natural gas processing plants or facilities performing equivalent functions.

(iv) Construction, installation, use, maintenance and repair of all equipment directly associated with activities in subparagraphs (i)—(iii) to the extent that the equipment is necessarily located at or immediately adjacent to a well site, impoundment area, oil and gas pipeline, natural gas compressor station or natural gas processing plant.

(v) Earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Other critical communities—

(i) Species of special concern identified on a PNDI receipt, including plant or animal species:

(A) In a proposed status categorized as proposed endangered, proposed threatened, proposed rare or candidate.

(B) That are classified as rare or tentatively undetermined.

(ii) The term does not include threatened and endangered species.

Owner—

(i) A person who owns, manages, leases, controls or possesses a well or coal property.

(ii) The term does not apply to orphan wells, except when the Department determines a prior owner or operator benefited from the well as provided in section 3220(a) of the act (relating to plugging requirements).

PCSM—Post-construction stormwater management—The term as defined in § 102.1.

PCSM plan—The term as defined in § 102.1.

PNDI—Pennsylvania Natural Diversity Inventory—The Pennsylvania Natural Heritage Program's database containing data identifying and describing this Commonwealth's ecological information, including plant and animal species classified as threatened and endangered as well as other critical communities provided by the Department of Conservation and Natural Resources, the Fish and Boat Commission, the Game Commission and the United States Fish and Wildlife Service. The database informs the online environmental review tool. The database contains only those known occurrences of threatened and endangered species and other critical communities, and is a component of the Pennsylvania Conservation Explorer.

PNDI receipt—The results generated by the Pennsylvania Natural Diversity Inventory Environmental Review Tool containing information regarding threatened and endangered species and other critical communities.

PPC plan—Preparedness, Prevention and Contingency plan—A written preparedness, prevention and contingency plan.

Perimeter area—An area that begins at the outside coal boundaries of an operating coal mine and extends within 1,000 feet beyond those boundaries or an area within 1,000 feet beyond the mine permit boundaries of a coal mine already projected and permitted but not yet being operated.

Permanently cemented—Surface casing or coal protective casing that is cemented until cement is circulated to the surface or is cemented with a calculated volume of cement necessary to fill the theoretical annular space plus 20% excess.

Pit—A natural topographic depression, manmade excavation or diked area formed primarily of earthen materials designed to hold fluids, semifluids or solids.

Playground—

(i) An outdoor area provided to the general public for recreational purposes.

(ii) The term includes community-operated recreational facilities.

Pre-wetting—Mixing brine with antiskid material prior to roadway application.

Primary containment—A pit, tank, vessel, modular aboveground storage structure, temporary storage facility or other equipment designed to hold regulated substances including all piping and other appurtenant facilities located on the well site.

Private water supply—A water supply that is not a public water supply.

Process or *processing*—The term has the same meaning as "processing" as defined in section 103 of the Solid Waste Management Act (35 P.S. § 6018.103).

Production casing—A string of pipe other than surface casing and coal protective casing which is run for the purpose of confining or conducting hydrocarbons and associated fluids from one or more producing horizons to the surface.

Public resource agency—An entity responsible for managing a public resource identified in § 78a.15(d) or (f)(1) (relating to application requirements) including the Department of Conservation and Natural Resources, the Fish and Boat Commission, the Game Commission, the United States Fish and Wildlife Service, the United States National Park Service, the United States Army Corps of Engineers, the United States Forest Service, counties, municipalities and playground owners.

Public water supply—A source of water used by a water purveyor.

Regional groundwater table—

(i) The fluctuating upper water level surface of an unconfined or confined aquifer where the hydrostatic pressure is equal to the ambient atmospheric pressure.

(ii) The term does not include the perched water table or the seasonal high groundwater table.

Regulated substance—The term as defined in section 103 of Act 2 (35 P.S. § 6026.103).

Residual waste—The term as defined in § 287.1 (relating to definitions).

Retrievable—When used in conjunction with surface casing, coal protective casing or production casing, the casing that can be removed after exerting a prudent effort to pull the casing while applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater.

Seasonal high groundwater table—The saturated condition in the soil profile during certain periods of the year. The condition can be caused by a slowly permeable layer within the soil profile and is commonly indicated by the presence of soil mottling.

Secondary containment—A physical barrier specifically designed to minimize releases into the environment of regulated substances from primary containment or well development pipelines, to prevent comingling of incompat-

ible released regulated substances and to minimize the area of potential contamination, to the extent practicable.

Sheen—An iridescent appearance on the surface of the water.

Soil mottling—Irregular marked spots in the soil profile that vary in color, size and number.

Stormwater—Runoff from precipitation, snowmelt, surface runoff and drainage.

Surface casing—A string or strings of casing used to isolate the wellbore from fresh groundwater and to prevent the escape or migration of gas, oil or other fluids from the wellbore into fresh groundwater. The surface casing is also commonly referred to as the water string or water casing.

Threatened or endangered species—Those animal and plant species identified as a threatened or endangered species as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544), the Wild Resource Conservation Act (32 P.S. §§ 5301—5314), 30 Pa.C.S. (relating to Fish and Boat Code) and 34 Pa.C.S. (relating to Game and Wildlife Code).

Tophole water—Water that is brought to the surface while drilling through the strata containing fresh groundwater and water that is fresh groundwater or water that is from a body of surface water. Tophole water may contain drill cuttings typical of the formation being penetrated but may not be polluted or contaminated by additives, brine, oil or man-induced conditions.

Total depth—The depth to which the well was originally drilled, subsequently drilled or the depth to which it was plugged back in a manner approved by the Department.

Tour—A workshift in drilling of a well.

Unconventional formation—A geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.

Unconventional well or *well*—A bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.

Vertical unconventional well—An unconventional well with a single vertical well bore.

WMP—Water management plan—A plan associated with drilling or completing a well in an unconventional formation that demonstrates that the withdrawal and use of water sources within this Commonwealth protects those sources, as required under law, and protects public health, safety and welfare.

Water protection depth—The depth to a point 50 feet below the surface casing seat.

Water purveyor—Either of the following:

(i) The owner or operator of a public water system as defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.3).

(ii) Any person subject to the act of June 24, 1939 (P.L. 842, No. 365) (32 P.S. §§ 631—641), known as the Water Rights Law.

Water source—

(i) Any of the following:

(A) Waters of the Commonwealth.

(B) A source of water supply used by a water purveyor.

(C) Mine pools and discharges.

(D) Any other waters that are used for drilling or completing a well in an unconventional formation.

(ii) The term does not include flowback or production waters or other fluids:

(A) Which are used for drilling or completing a well in an unconventional formation.

(B) Which do not discharge into waters of the Commonwealth.

Water supply—A supply of water for human consumption or use, or for agricultural, commercial, industrial or other legitimate beneficial uses.

Watercourse—The term as defined in § 105.1.

Waters of the Commonwealth—The term as defined in section 1 of The Clean Streams Law (35 P.S. § 691.1).

Well development impoundment—A facility that is:

(i) Not regulated under § 105.3 (relating to scope).

(ii) A natural topographic depression, manmade excavation or diked area formed primarily of earthen materials although lined with synthetic materials.

(iii) Designed to hold surface water, fresh groundwater and other fluids approved by the Department.

(iv) Constructed for the purpose of servicing multiple well sites.

Well development pipelines—Pipelines used for oil and gas operations that:

(i) Transport materials used for the drilling or hydraulic fracture stimulation, or both, of a well and the residual waste generated as a result of the activities.

(ii) Lose functionality after the well site it serviced has been restored under § 78a.65 (related to site restoration).

Well operator or *operator*—Any of the following:

(i) The person designated as the operator or well operator on the permit application or well registration.

(ii) If a permit or registration was not issued, a person who locates, drills, operates, alters or plugs a well or reconditions a well with the purpose of production from the well.

(iii) If a well is used in connection with the underground storage of gas, a storage operator.

Well site—The area occupied by the equipment or facilities necessary for or incidental to the drilling, production or plugging of a well.

Wellhead protection area—The term as defined in § 109.1 (relating to definitions).

Wetland—The term as defined in § 105.1.

Workable coal seam—Either of the following:

(i) A coal seam in fact being mined in the area in question under the act and this chapter by underground methods.

(ii) A coal seam which, in the judgment of the Department, reasonably can be expected to be mined by underground methods.

§ 78a.2. Applicability.

This chapter applies to unconventional wells and supersedes any regulations in Chapter 78 (relating to oil and gas wells) applicable to unconventional wells.

Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

PERMITS AND TRANSFERS

OBJECTIONS

PERMITS AND TRANSFERS

§ 78a.11. Permit requirements.

(a) No person may drill or alter a well unless that person has first obtained a permit from the Department.

(b) No person may operate a well unless one of the following conditions has been met:

(1) The person has obtained a permit under the act.

(2) The person has registered the well under the act.

(3) The well was in operation on April 18, 1985, under a permit that was obtained under the Gas Operations Well-Drilling Petroleum and Coal Mining Act (52 P.S. §§ 2104, 2208, 2601 and 2602) (Repealed).

§ 78a.12. Compliance with permit.

A person may not drill, alter or operate a well except in accordance with a permit or registration issued under the act and in compliance with the terms and conditions of the permit, this chapter and the statutes under which it was promulgated. A copy of the permit shall be kept at the well site during drilling or alteration of a well.

§ 78a.13. Permit transfers.

(a) No transfer, assignment or sale of rights granted under a permit or registration may be made without prior written approval of the Department. Permit transfers may be denied for the reasons set forth in section 3211(e.1)(4) and (5) of the act (relating to well permits).

(b) The Department may require the transferee to fulfill the drilling, plugging, well site restoration, water supply replacement and other requirements of the act, regardless of whether the transferor started the activity and regardless of whether the transferor failed to properly perform the transferor's obligations under the act.

§ 78a.14. Transfer of well ownership or change of address.

(a) Within 30 days after the sale, assignment, transfer, conveyance or exchange of a well, the new owner or operator shall notify the Department, in writing, of the transfer of ownership.

(b) The notice must include the following information:

(1) The names, addresses and telephone numbers of the former and new owner, and the agent if applicable.

(2) The well permit or registration number.

(3) The effective date of the transfer of ownership.

(4) An application for a well permit transfer if there is a change in the well operator.

(c) The permittee shall notify the Department of a change in address or name within 30 days of the change.

§ 78a.15. Application requirements.

(a) An application for a well permit shall be submitted electronically to the Department on forms provided through its web site and contain the information required by the Department to evaluate the application.

(b) The permit application will not be considered complete until the applicant submits a complete and accurate plat, an approvable bond or other means of complying with Subchapter G (relating to bonding requirements) and section 3225 of the act (relating to bonding), the fee in compliance with § 78a.19 (relating to permit application fee schedule), proof of the notifications required under section 3211(b.1) of the act (relating to well permits), necessary requests for variance or waivers or other documents required to be furnished by law or the Department and the information in subsections (b.1), (b.2), (c)—(f) and (h). The person named in the permit shall be the same person named in the bond or other security.

(b.1) If the proposed limit of disturbance of the well site is within 100 feet measured horizontally from any watercourse or any high quality or exceptional value body of water or any wetland 1 acre or greater in size, the applicant shall demonstrate that the well site location will protect those watercourses or bodies of water. The applicant may rely upon other plans developed under this chapter or approved by the Department to make this demonstration, including:

(1) An erosion and sediment control plan or permit consistent with Chapter 102 (relating to erosion and sediment control).

(2) A water obstruction and encroachment permit issued under Chapter 105 (relating to dam safety and waterway management).

(3) Applicable portions of the PPC plan prepared in accordance with § 78a.55(a) and (b) (relating to control and disposal planning; emergency response for unconventional wells).

(4) Applicable portions of the emergency response plan prepared in accordance with § 78a.55(i).

(5) Applicable portions of the site containment plan prepared in accordance with section 3218.2 of the act (relating to containment for unconventional wells).

(b.2) For purposes of compliance with section 3215(a) of the act (relating to well location restrictions), an abandoned water well does not constitute a water well.

(c) The applicant shall submit information identifying parent and subsidiary business corporations operating in this Commonwealth with the first application submitted after October 8, 2016, and provide any changes to this information with each subsequent application.

(d) The well permit application must include a detailed analysis of the impact of the well, well site and access road on threatened and endangered species. This analysis must include:

(1) A PNDI receipt.

(2) If any potential impact is identified in the PNDI receipt to threatened or endangered species, demonstration of how the impact will be avoided or minimized and mitigated in accordance with State and Federal laws pertaining to the protection of threatened or endangered species and critical habitat. The applicant shall provide written documentation to the Department supporting this demonstration, including any avoidance/mitigation plan, clearance letter, determination or other correspondence resolving the potential species impact with the applicable public resource agency.

(e) If an applicant seeks to locate a well on an existing well site where the applicant has obtained a permit under § 102.5 (relating to permit requirements) and complied with § 102.6(a)(2) (relating to permit applications and fees), the applicant may comply with subsections (b.1) and (d) if the permit was obtained within 2 years from the receipt of the application submitted under this section.

(f) An applicant proposing to drill a well at a location that may impact a public resource as provided in paragraph (1) shall notify the applicable public resource agency, if any, in accordance with paragraph (2). The applicant shall also provide the information in paragraph (3) to the Department in the well permit application.

(1) This subsection applies if the proposed limit of disturbance of the well site is located:

(i) In or within 200 feet of a publicly owned park, forest, game land or wildlife area.

(ii) In or within the corridor of a State or National scenic river.

(iii) Within 200 feet of a National natural landmark.

(iv) In a location that will impact other critical communities.

(v) Within 200 feet of a historical or archeological site listed on the Federal or State list of historic places.

(vi) Within 200 feet of common areas on a school's property or a playground.

(vii) Within zones 1 or 2 of a wellhead protection area as part of a wellhead protection program approved under § 109.713 (relating to wellhead protection program).

(viii) Within 1,000 feet of a water well, surface water intake, reservoir or other water supply extraction point used by a water purveyor.

(2) The applicant shall notify the public resource agency responsible for managing the public resource identified in paragraph (1), if any. The applicant shall forward by certified mail a copy of the plat identifying the proposed limit of disturbance of the well site and information in paragraph (3) to the public resource agency at least 30 days prior to submitting its well permit application to the Department. The applicant shall submit proof of notification with the well permit application. From the date of notification, the public resource agency has 30 days to provide written comments to the Department and the applicant on the functions and uses of the public resource and the measures, if any, that the public resource agency recommends the Department consider to avoid, minimize or otherwise mitigate probable harmful impacts to the public resource where the well, well site and access road is located. The applicant may provide a response to the Department to the comments.

(3) The applicant shall include the following information in the well permit application on forms provided by the Department:

(i) An identification of the public resource.

(ii) A description of the functions and uses of the public resource.

(iii) A description of the measures proposed to be taken to avoid, minimize or otherwise mitigate impacts, if any.

(4) The information required under paragraph (3) shall be limited to the discrete area of the public resource that may be affected by the well, well site and access road.

(g) The Department will consider the following prior to conditioning a well permit based on impacts to public resources:

(1) Compliance with all applicable statutes and regulations.

(2) The proposed measures to avoid, minimize or otherwise mitigate the impacts to public resources.

(3) Other measures necessary to protect against a probable harmful impact to the functions and uses of the public resource.

(4) The comments and recommendations submitted by public resource agencies, if any, and the applicant's response, if any.

(5) The optimal development of the gas resources and the property rights of gas owners.

(h) An applicant proposing to drill a well that involves 1 acre to less than 5 acres of earth disturbance over the life of the project and is located in a watershed that has a designated or existing use of high quality or exceptional value under Chapter 93 (relating to water quality standards) shall submit an erosion and sediment control plan consistent with Chapter 102 with the well permit application for review and approval and shall conduct the earth disturbance in accordance with the approved erosion and sediment control plan.

§ 78a.16. Accelerated permit review.

In cases of hardship, an operator may request an accelerated review of a well permit application. For the purposes of this section, hardship includes cases where immediate action is necessary to protect public health or safety, to control pollution or to effect other environmental or safety measures, and extraordinary circumstances beyond the control of the operator. Permits issued shall be consistent with the requirements of the act.

§ 78a.17. Permit expiration and renewal.

(a) A well permit expires 1 year after issuance if drilling has not started. If drilling is started within 1 year after issuance, the well permit expires unless drilling is pursued with due diligence. Due diligence for the purposes of this subsection means completion of drilling the well to total depth within 16 months of issuance. A permittee may request an extension of the 16-month

expiration from the Department for good cause. This request shall be submitted electronically to the Department through its web site.

(b) An operator may request a single 2-year renewal of an unexpired well permit. The request shall be accompanied by a permit fee, the surcharge required under section 3271 of the act (relating to well plugging funds) and an affidavit affirming that the information on the original application is still accurate and complete, that the well location restrictions are still met and that the entities required to be notified under section 3211(b)(2) of the act (relating to well permits) have been notified of this request for renewal. If new water wells or buildings are constructed that are not indicated on the plat as originally submitted, the attestation shall be updated as part of the renewal request. Any new water well or building owners shall be notified of the renewal request; however, the setbacks outlined in section 3215(a) of the act (relating to well location restrictions) do not apply provided that the original permit was issued prior to the construction of the building or water well. The request shall be received by the Department at least 15 calendar days prior to the expiration of the original permit.

§ 78a.18. Disposal and enhanced recovery well permits.

Disposal or enhanced recovery well permits shall meet the requirements of § 78.18 (relating to disposal and enhanced recovery well permits).

§ 78a.19. Permit application fee schedule.

(a) An applicant for an unconventional well shall pay a permit application fee according to the following:

(1) $4,200 for a vertical unconventional well.

(2) $5,000 for a nonvertical unconventional well.

(b) At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

OBJECTIONS

§ 78a.21. Opportunity for objections and conferences; surface landowners.

(a) The surface landowner of the tract on which the proposed well is located may object to the well location based on the assertion that the well location violates section 3215 of the act (relating to well location restrictions) or on the basis that the information in the application is untrue in a material respect, and request a conference under section 3251 of the act (relating to conferences).

(b) The objection and request for a conference shall be filed in writing with the Department within 15 calendar days of receipt of the plat by the surface landowner. The objection must contain the following:

(1) The name, address and telephone number of the person submitting the objection.

(2) The name of the well operator, and the name and number of the proposed well.

(3) A statement of the objection and a request for a conference if a conference is being requested.

§ 78a.22. Objections by owner or operator of coal mine.

The owner or operator of an operating coal mine or a coal mine already projected and platted, but not yet being operated, may file written objections to a proposed well location with the Department if the following apply:

(1) The well, when drilled, would penetrate within the outside coal boundaries of such a mine or within 1,000 feet beyond the boundaries.

(2) In the opinion of the owner or operator, the well will unduly interfere with or endanger the mine or persons working in the mine.

§ 78a.23. Time for filing objections by owner or operator of coal mine.

(a) A coal mine owner or operator who objects to a proposed gas well for financial considerations, and wishes to go before a panel with an objection over which the panel has jurisdiction, shall file objections to a proposed gas well within 10 calendar days of the receipt of the plat.

(b) A coal mine owner or operator who does not wish to go before a panel with an objection over which the panel has jurisdiction, or who is not raising financial objections to the proposed gas well, shall file objections to a proposed well within 15 calendar days of the receipt of the plat.

§ 78a.24. Information to be provided with objections by owner or operator of coal mine.

(a) The objections shall be filed in writing and must contain the following information, if applicable:

(1) The name, address and telephone number of the person filing the objection, and the date on which a copy of the plat was received.

(2) The name and address of the applicant for the well permit and the name and number of the well.

(3) The type of well—for example, oil, gas, injection, and the like—that is the subject of the objections.

(4) The location of the well in relation to the coal owned or operated by the objecting party.

(5) The area through which the well will be drilled, specifically:

(i) Whether the well will be drilled through a mining area that is projected, platted or permitted, but not yet being operated.

(ii) Whether the well will be drilled through a perimeter area.

(iii) Whether the well will penetrate a workable coal seam.

(iv) Whether the well will be located above an active mine.

(v) Whether the well will penetrate an operating mine.

(6) A copy of the plans, maps or projections of the mining area underlying the proposed gas well showing the location of the proposed well.

(7) Whether the owner or operator believes that the well will pose undue interference or endangerment to the mine, and the nature of the threat.

(8) The financial impact posed by the well, to which objections may be heard by a panel under § 78a.30 (relating to jurisdiction of panel).

(9) Whether the well will violate the act, the Coal and Gas Resource Coordination Act (58 P.S. §§ 501—518) or another applicable law administered by the Department.

(b) The objections must include an alternate location, if possible, on the tract of the well operator that would overcome the objections or at which the interference

would be minimized. The Department is not bound to consider alternate locations that are proposed after the close of the first conference.

§ 78a.25. Conferences—general.

(a) If a timely objection to the location is filed by the coal owner or operator under §§ 78a.22—78a.24 (relating to objections by owner or operator of coal mine; time for filing objections by owner or operator of coal mine; and information to be provided with objections by owner or operator of coal mine), or if objections are made by the Department, the Department will fix a time and place for a conference within 10 calendar days from the date of service of the objections upon the well operator, unless all parties agree to an extension of time for the conference.

(b) The Department may decide not to hold a conference if it determines that the objections are not valid or if the objection is resolved.

(c) The Department will attempt to schedule the conference as late as possible in the 10-day period if the well is subject to the Coal and Gas Resource Coordination Act (58 P.S. §§ 501—518). The Department will not schedule a conference under section 3212 of the act (relating to permit objections) if it receives written notice that the gas well operator or the coal mine owner or operator has made a written request to convene a panel to resolve objections to the location of a gas well over which a panel has jurisdiction in accordance with §§ 78a.29—78a.33.

(d) The conference will be governed by §§ 78a.26—78a.28 (relating to agreement at conference; continuation of conference; and final action if objections do not proceed to panel).

(e) The Department or a person having a direct interest in the subject matter of the act may request a conference any time to attempt to resolve by mutual agreement a matter arising under the act.

§ 78a.26. Agreement at conference.

(a) If the parties reach an agreement at the conference, and if the Department approves the location, the Department will cause the agreement to be reduced to writing.

(b) If the Department does not reject the agreement within 10 calendar days after the agreement is reduced to writing, the agreement becomes effective.

(c) An agreement reached at the conference shall be consistent with the requirements of the act and applicable statutes. An agreement that is not in accordance with the act, the Coal and Gas Resource Coordination Act (58 P.S. §§ 501—518) and applicable law shall be deemed to be null and void.

§ 78a.27. Continuation of conference.

The Department may continue the conference for good cause. Good cause includes one or more of the following:

(1) The need for supplemental data, maps or surveys.

(2) The need to verify that the agreement or a proposed well location is consistent with the requirements of the act, the Coal and Gas Resource Coordination Act (58 P.S. §§ 501—518) and other applicable requirements.

(3) The need for the presence of essential witnesses whose unavailability is due to good cause.

(4) The need for further investigation into the allegations that are the basis for the objections.

(5) Agreement by all parties that a continuance is beneficial to the resolution of the objections.

§ 78a.28. Final action if objections do not proceed to panel.

If the panel does not have jurisdiction over the objections, under § 78a.30 (relating to jurisdiction of panel), or if the panel has jurisdiction but the parties choose not to proceed to a panel, the Department may proceed to issue or deny the permit, under sections 3211 and 3212 of the act (relating to well permits; and permit objections). No permit will be issued for a well at a location that in the opinion of the Department would endanger the safety of persons working in a coal mine.

§ 78a.29. Composition of panel.

(a) If the gas well operator and the objecting coal owner or operator are unable to agree upon a drilling location, and the gas well is subject to the jurisdiction of a panel under § 78a.30 (relating to jurisdiction of panel), the well operator or a coal owner or operator may convene a panel.

(b) The panel shall consist of one person selected by the objecting coal owners or operators, a second person selected by the permit applicant and a third selected by these two.

(c) The parties shall submit their positions to the panel within such time as the panel prescribes, in accordance with section 12 of the Coal and Gas Resource Coordination Act (58 P.S. § 512).

§ 78a.30. Jurisdiction of panel.

(a) A panel shall hear objections by the owner or operator of the coal mining area only if the proposed gas well is not subject to the Oil and Gas Conservation Law (58 P.S. §§ 401—419) and one of the following applies:

(1) The well will be drilled through an area that is projected and permitted, but not yet being operated.

(2) The well will be drilled through a perimeter area.

(3) The well will penetrate a workable coal seam, and will be located above an active mine, but will not penetrate an operating mine.

(b) The panel shall hear only objections that were filed by the owner or operator of the mining areas set forth in subsection (a).

(c) If after a conference in accordance with § 78a.25 (relating to conferences—general), the Department has unresolved objections, the panel does not have jurisdiction to convene or to hear objections.

§ 78a.31. Scheduling of meeting by the panel.

The panel shall convene a meeting within 10 calendar days of the panel chairperson's receipt of a written request to do so by the permit applicant or by the objecting coal owner or operator.

§ 78a.32. Recommendation by the panel.

(a) The panel shall make its recommendation of where the proposed well should be located, based upon the financial considerations of the parties.

(b) The panel shall make its recommendation within 10 calendar days of the close of the meeting held under § 78a.31 (relating to scheduling of meeting by the panel).

(c) If the Department determines that the first recommended location endangers a mine or the public, it will reject the location and notify the panel to make another recommendation. The panel shall submit another recommended location to the Department within 10 calendar days of the Department's notification.

(d) If the Department determines that the second recommended location endangers a mine or the public, the Department may designate a location where it has determined that the well will not unduly interfere with or endanger the mine or the public and issue a permit for the well at that designated location. However, if the Department has not designated such a location, and if the Department determines that a well drilled at any proposed or panel-recommended alternate location will unduly interfere with or endanger the mine or the public, it will deny the permit.

(e) No permit will be issued for a well at a location that would, in the opinion of the Department, endanger the safety of persons working in a coal mine.

§ 78a.33. Effect of panel on time for permit issuance.

The period of time during which the objections are being considered by a full panel will not be included in the 45-day period for the issuance or denial of a permit under section 3211(e) of the act (relating to well permits).

Subchapter C. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

Sec.

§ 78a.51. Protection of water supplies.

(a) A well operator who affects a public or private water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply as determined by the Department.

(b) A landowner, water purveyor or affected person suffering pollution or diminution of a water supply as a result of oil and gas operations may so notify the Department and request that an investigation be conducted. Notice shall be made to the appropriate Department regional office or by calling the Department's Statewide toll free number at (800) 541-2050. The notice and request must include the following:

(1) The name, address and telephone number of the person requesting the investigation.

(2) The type, location and use of the water supply.

(3) Available background quality and quantity data regarding the water supply, if known.

(4) Well depth, pump setting and water level, if known.

(5) A description of the pollution or diminution.

(c) Within 10 calendar days of the receipt of the investigation request, the Department will investigate the claim and will, within 45 calendar days of receipt of the request, make a determination. If the Department finds that pollution or diminution was caused by the oil and gas operations or if it presumes the well operator responsible for polluting the water supply of the landowner or water purveyor under section 3218(c) of the act (relating to protection of water supplies) as a result of completion, drilling, stimulation or alteration of the unconventional well, the Department will issue orders to the well operator necessary to assure compliance with this section. The presumption established by section 3218(c) of the act is not applicable to pollution resulting from well site construction.

(d) A restored or replaced water supply includes any well, spring, public water system or other water supply approved by the Department, which meets the criteria for adequacy as follows:

(1) *Reliability, cost, maintenance and control.* A restored or replaced water supply, at a minimum, must:

(i) Be as reliable as the previous water supply.

(ii) Be as permanent as the previous water supply.

(iii) Not require excessive maintenance.

(iv) Provide the water user with as much control and accessibility as exercised over the previous water supply.

(v) Not result in increased costs to operate and maintain. If the operating and maintenance costs of the restored or replaced water supply are increased, the operator shall provide for permanent payment of the increased operating and maintenance costs of the restored or replaced water supply.

(2) *Quality.* The quality of a restored or replaced water supply will be deemed adequate if it meets the standards established under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17), or is comparable to the quality of water that existed prior to pollution if the water quality was better than these standards.

(3) *Adequate quantity.* A restored or replaced water supply will be deemed adequate in quantity if it meets one of the following as determined by the Department:

(i) It delivers the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(ii) It is established through a connection to a public water supply system that is capable of delivering the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(iii) For purposes of this paragraph and with respect to agricultural water supplies, the term "reasonably foreseeable uses" includes the reasonable expansion of use where the water supply available prior to drilling exceeded the actual use.

(4) *Water source serviceability.* Replacement of a water supply includes providing plumbing, conveyance, pumping or auxiliary equipment and facilities necessary for the water user to utilize the water supply.

(e) If the water supply is for uses other than human consumption, the operator shall demonstrate to the De-

partment's satisfaction that the restored or replaced water supply is adequate for the purposes served by the supply.

(f) Tank trucks or bottled water are acceptable only as temporary water replacement for a period approved by the Department and do not relieve the operator of the obligation to provide a restored or replaced water supply.

(g) If the well operator and the water user are unable to reach agreement on the means for restoring or replacing the water supply, the Department or either party may request a conference under section 3251 of the act (relating to conferences).

(h) A well operator who receives notice from a landowner, water purveyor or affected person that a water supply has been affected by pollution or diminution shall report receipt of notice from an affected person to the Department within 24 hours of receiving the notice. Notice shall be provided electronically to the Department through its web site.

§ 78a.52. Predrilling or prealteration survey.

(a) A well operator who wishes to preserve its defense under section 3218(d)(2)(i) of the act (relating to protection of water supplies) that the pollution of a water supply existed prior to the drilling or alteration of the well shall conduct a predrilling or prealteration survey in accordance with this section. For the purposes of this section, "survey" means all of the predrilling or prealteration water supply samples associated with a single well.

(b) A person who wishes to document the quality of a water supply to support a future claim that the drilling or alteration of the well affected the water supply by pollution may conduct a predrilling or prealteration survey in accordance with this section.

(c) The survey shall be conducted by an independent Pennsylvania-accredited laboratory. A person independent of the well owner or well operator, other than an employee of the accredited laboratory, may collect the sample and document the condition of the water supply, if the accredited laboratory affirms that the sampling and documentation is performed in accordance with the laboratory's approved sample collection, preservation and handling procedure and chain of custody.

(d) An operator electing to preserve its defenses under section 3218(d)(2)(i) of the act shall provide a report containing a copy of all the sample results taken as part of the survey electronically to the Department on forms provided through its web site 10 business days prior to the start of drilling of the well that is the subject of the survey. The operator shall provide a copy of any sample results to the landowner or water purveyor within 10 business days of receipt of the sample results. Survey results not received by the Department within 10 business days may not be used to preserve the operator's defenses under section 3218(d)(2)(i) of the act.

(e) The report describing the results of the survey must contain the following information:

(1) The location of the water supply and the name of the surface landowner or water purveyor.

(2) The date of the survey, and the name of the independent Pennsylvania-accredited laboratory and the person who conducted the survey.

(3) A description of where and how the samples were collected.

(4) A description of the type and age, if known, of the water supply, and treatment, if any.

(5) The name of the well operator, name and number of well to be drilled and permit number if known.

(6) The results of the laboratory analysis.

(f) A well operator who wishes to preserve the defense under section 3218(d)(2)(ii) of the act that the landowner or water purveyor refused the operator access to conduct a survey shall confirm the desire to conduct this survey and that access was refused by issuing notice to the person by certified mail, or otherwise document that access was refused. The notice must include the following:

(1) The operator's intention to drill or alter a well.

(2) The desire to conduct a predrilling or prealteration survey.

(3) The name of the person who requested and was refused access to conduct the survey and the date of the request and refusal.

(4) The name and address of the well operator and the address of the Department, to which the water purveyor or landowner may respond.

(g) The operator of an unconventional well shall provide written notice to the landowner or water purveyor indicating that the presumption established under section 3218(c) of the act may be void if the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey. Proof of written notice to the landowner or water purveyor shall be provided to the Department for the operator to retain the protections under section 3218(d)(2)(ii) of the act. Proof of written notice will be presumed if provided in accordance with section 3212(a) of the act (relating to permit objections).

§ 78a.52a. Area of review.

(a) The operator shall identify the surface and bottom hole locations of any of the following having well bore paths within 1,000 feet measured horizontally from the vertical well bore and 1,000 feet measured from the surface above the entire length of a horizontal well bore:

(1) Active wells.

(2) Inactive wells.

(3) Orphan wells.

(4) Abandoned wells.

(5) Plugged and abandoned wells.

(b) Identification of wells listed in subsection (a) must be accomplished by the following:

(1) Conducting a review of the Department's well databases and other available well databases.

(2) Conducting a review of historical sources of information, such as applicable farm line maps, where accessible.

(3) Submitting a questionnaire by certified mail on forms provided by the Department to landowners whose property is within the area identified in subsection (a) regarding the precise location of wells on their property.

(c) The operator shall submit a report summarizing the review, including:

(1) A plat showing the location and GPS coordinates of all wells identified under subsection (b).

(2) Proof that the operator submitted questionnaires under subsection (b)(3).

(3) A monitoring plan for wells required to be monitored under § 78a.73(c) (relating to general provision for

well construction and operation), including the methods the operator will employ to monitor these wells.

(4) To the extent that information is available, the true vertical depth of identified wells.

(5) The sources of the information provided for identified wells.

(6) To the extent that information is available, surface evidence of failed well integrity for any identified well.

(d) The operator shall submit the report required under subsection (c) to the Department at least 30 days prior to the start of drilling the well or at the time the permit application is submitted if the operator plans to start drilling the well less than 30 days from the date of permit issuance. The report shall be provided to the Department electronically through the Department's web site.

(e) The Department may require other information necessary to review the report submitted under subsection (c). The Department may make a determination that additional measures are needed, on a case-by-case basis, to ensure protection of waters of the Commonwealth.

§ 78a.53. Erosion and sediment control and stormwater management.

Any person proposing or conducting earth disturbance activities associated with oil and gas operations shall comply with Chapter 102 (relating to erosion and sediment control). Best management practices for erosion and sediment control and stormwater management for oil and gas operations are listed in the *Erosion and Sediment Pollution Control Program Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008, as amended and updated, the *Pennsylvania Stormwater Best Management Practices Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002, as amended and updated, the *Oil and Gas Operators Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 550-0300-001, as amended and updated, and *Riparian Forest Buffer Guidance*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 395-5600-001, as amended and updated.

§ 78a.54. General requirements.

The well operator shall control and dispose of fluids, residual waste and drill cuttings, including tophole water, brines, drilling fluids, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids and drill cuttings, in a manner that prevents pollution of the waters of the Commonwealth and in accordance with §§ 78a.55—78a.58 and 78a.60—78a.63 and with the statutes under which this chapter is promulgated.

§ 78a.55. Control and disposal planning; emergency response for unconventional wells.

(a) *Preparation and implementation of plan for oil and gas operations.* Persons conducting oil and gas operations shall prepare and implement site-specific PPC plans according to §§ 91.34 and 102.5(l) (relating to activities utilizing pollutants; and permit requirements).

(b) *Preparation and implementation of plan for well sites.* In addition to the requirements in subsection (a), the well operator shall prepare and develop a site-specific PPC plan prior to storing, using, or generating regulated substances on a well site from the drilling, alteration, production, plugging or other activity associated with a gas well or transporting those regulated substances to, on or from a well site.

(c) *Containment practices.* The well operator's PPC plan must describe the containment practices to be utilized and the area of the well site where primary and secondary containment will be employed as required under § 78a.64a (relating to secondary containment). The PPC plan must include a description of the equipment to be kept onsite during drilling and hydraulic fracturing operations that can be utilized to prevent a spill from leaving the well site.

(d) *Requirements.* The well operator's PPC plan must also identify the control and disposal methods and practices utilized by the well operator and be consistent with the act, The Clean Streams Law (35 P.S. §§ 691.1—691.1001), the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and §§ 78a.54, 78a.56—78a.58 and 78a.60—78a.61. The PPC plan must also include a pressure barrier policy developed by the operator that identifies barriers to be used during identified operations.

(e) *Revisions.* The well operator shall revise the PPC plan prior to implementing a change to the practices identified in the PPC plan.

(f) *Copies.* A copy of the well operator's PPC plan shall be provided to the Department, the Fish and Boat Commission or the landowner upon request and shall be available at the site during drilling and completion activities for review.

(g) *Guidelines.* With the exception of the pressure barrier policy required under subsection (d), a PPC plan developed in conformance with the *Guidelines for the Development and Implementation of Environmental Emergency Response Plans*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 400-2200-001, as amended and updated, will be deemed to meet the requirements of this section.

(h) *Emergency contacts.* A list of emergency contact phone numbers for the area in which the well site is located must be included in the PPC plan and be prominently displayed at the well site during drilling, completion or alteration activities.

(i) *Emergency response for unconventional well sites.*

(1) *Applicability.* This subsection applies to unconventional wells.

(2) *Definitions.* For the purposes of this subsection, the following definitions apply:

Access road—A road connecting a well site to the nearest public road, private named road, administrative road with a name and address range, or private unnamed road with an address range.

Address—A location, by reference to a road or a landmark, made by a county or municipality responsible for assigning addresses within its jurisdiction.

Administrative road—A road owned and maintained by the Commonwealth open to the public at the discretion of the Commonwealth that may or may not have a name and address range.

Emergency responder—Police, firefighters, emergency medical technicians, paramedics, emergency management personnel, public health personnel, State certified hazardous materials response teams, Department emergency personnel and other personnel authorized in the course of their occupations or duties, or as an authorized volunteer, to respond to an emergency.

Entrance—The point where the access road to a well site connects to the nearest public road, private named road, administrative road with a name and address range, or a private unnamed road with an address range.

GPS coordinates—The coordinates in latitude and longitude as expressed in degrees decimal to at least six

digits after the decimal point based upon the World Geodetic System 1984 Datum or any other datum approved by the Department.

PEMA—The Pennsylvania Emergency Management Agency.

Private named road—A private road with a name and address range.

Private road—A road that is not a public road.

Private unnamed road—A private road that is not a private named road.

Public road—A road owned and maintained by the Commonwealth, a county within this Commonwealth, a municipality within the Commonwealth or any combination thereof that is open to the public.

Public safety answering point—An entity operating in cooperation with local municipalities and counties to receive 9-1-1 calls for a defined geographic area and process calls according to a specific operational policy.

Well site name—The name used to designate the well site by the operator on the well permit application submitted to the Department.

(3) *Registration of addresses*.

(i) Prior to construction of an access road to a well site, the operator of an unconventional well shall request a street address for the well site from the county or municipality responsible for assigning street addresses.

(ii) The operator shall determine the GPS coordinates for both the well site and the entrance to the well site. The GPS coordinates must have a horizontal accuracy of plus or minus 6.67 feet or better. If there is more than one well on a well site, one set of GPS coordinates must be used for the well site.

(iii) The operator shall register the following with PEMA, the Department, the Public Safety Answering Point and the county emergency management organization within the county where the well site is located:

(A) The well site name.

(B) The well site address.

(C) The GPS coordinates for the entrance and the well site.

(iv) When there is a change of well site address, the operator shall register the new address as provided in subparagraph (iii).

(v) When there is a change of the entrance due to a change in the well site address or otherwise, the operator shall register the GPS coordinates for the entrance as provided in subparagraph (iii).

(vi) The following shall be retained at the well site for reference when contacting emergency responders:

(A) The well site name.

(B) The well site address.

(C) The GPS coordinates for the entrance and the well site.

(4) *Signage.*

(i) Prior to construction of the access road, the operator of an unconventional well shall display a reflective sign at the entrance.

(ii) The sign must meet the following requirements:

(A) The sign must be fabricated with approved retroreflective sheeting material meeting ASTM 4956 Type III.

(B) The sign must have a white background with a 2-inch red border and black numbers and letters. Signs for entrances on administrative roads may use other colors provided that the signs use contrasting colors between the background, border, numbers and letters.

(C) The sign must be of sufficient size to accommodate the required information described in this section. The minimum size of a sign must be 36 inches in height and 48 inches in width.

(D) The sign must follow the format of Figure 1 and contain:

(I) The address number for the well site displayed horizontally on the first line of the sign in text no smaller than 4 inches in height.

(II) The full address of the entrance, including the county and municipality in which the entrance is located.

(III) The well operator's company name.

(IV) The 24-hour contact telephone information for the operator of the well site.

(V) The GPS coordinates for the entrance.

(VI) The well site name.

(VII) The wording "In Case of Emergency Call 9-1-1."

(iii) The sign must be mounted independently from other signage.

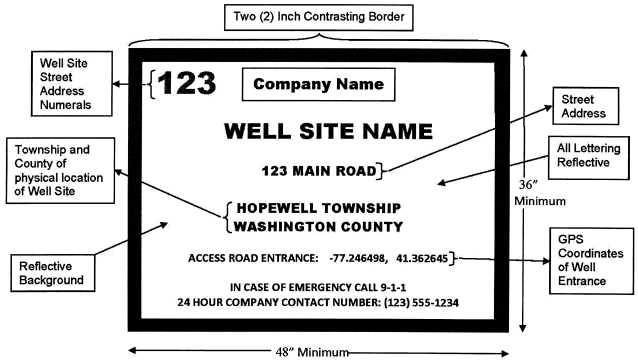
(iv) The bottom of the sign must be positioned a minimum of 3 feet above ground level.

(v) The sign may not contain other markings.

(vi) A sign, as viewed from the applicable road, may not be obstructed from view by vegetation, equipment, vehicles or other obstruction.

(vii) During drilling operations, the American Petroleum Institute (API) permit numbers of the wells at the site may be posted on a nonreflective sign below the principal sign. The API sign may be removed after the well is completed, provided that it is not otherwise required to be posted.

Figure 1. Sample Site Entrance Signage



(Not to scale)

(5) *Emergency response planning.*

(i) The operator of an unconventional well shall develop and implement an emergency response plan that provides for equipment, procedures, training and documentation to properly respond to emergencies that threaten human health and safety for each well site. The plan must incorporate National Incident Management System planning standards, including the use of the Incident Com-

mand System, Incident Action Planning and Common Communications Plans. The plan must include:

(A) The emergency contact information, including phone numbers, for the well operator's local representative for the well site and the well operator's 24-hour emergency phone number.

(B) The emergency notification procedures that the operator shall utilize to contact emergency responders during an emergency.

(C) A description of the well site personnel's response to the following well site emergencies:

(I) Fire.

(II) Medical emergency.

(III) Explosion or similar event.

(IV) Spill.

(V) Security breach or other security event.

(VI) Any other incident that necessitates the presence of emergency responders.

(D) A description of the procedure to be used to provide the most current information to emergency responders in the event of an emergency, including the following:

(I) The current Safety Data Sheet (SDS) required under law to be present at the well site.

(II) The location of the SDSs at the well site.

(III) The name of the position in the operator's organization responsible for providing the information in subclauses (I) and (II).

(E) A list containing the location of any fire suppression and spill control equipment maintained by the well operator at the well site.

(F) A description of any emergency equipment available to the operator that is located off of the well site.

(G) A summary of the risks and hazards to the public within 1/2 mile of the well site and the associated planning assumptions.

(H) An outline of the emergency response training plan that the operator has established.

(I) The location of and monitoring plan for any emergency shutoff valves located along well development pipelines in accordance with § 78a.68b (relating to well development pipelines for oil and gas operations).

(ii) The emergency response plan in subparagraph (i) may consist of two parts:

(A) A base plan common to all of the operator's well sites containing some of the elements described in subparagraph (i).

(B) A site-specific plan containing the remaining elements described in subparagraph (i).

(iii) The operator shall submit a copy of the current emergency response plan for that well site unless the permit provides otherwise. For plans using the approach in subparagraph (ii), the operator may submit one base plan provided that the site-specific plans are submitted for each well site.

(iv) The operator shall review the plan and submit an update annually on or before March 1 each year. In the event that updates are not made to the plan for that review period, the operator shall submit a statement indicating the review was completed and updates to the plan were not necessary.

(v) The plan and subsequent updates shall be submitted to:

(A) PEMA.

(B) The Department.

(C) The county emergency management agency.

(D) The Public Safety Answering Point with jurisdiction over the well site.

(vi) A copy of the plan shall be available at the well site during all phases of operation.

(vii) The emergency response plan must address response actions for the following stages of operation at the well site:

(A) Preparation of the access road and well site.

(B) Drilling of the well.

(C) Hydraulic fracturing and stimulation of the well.

(D) Production.

(E) Well site restoration.

(F) Plugging of the well.

(viii) The requirements in subparagraphs (i)—(vii) may be met by implementing guidance issued by the Department in coordination with PEMA.

(6) *Transition.*

(i) This subsection is effective January 26, 2013, except as provided in subparagraph (ii).

(ii) For a well site containing a well that is being drilled or has been drilled as of January 26, 2013, or a well site for which a well permit has been issued but wells have not started drilling as of January 26, 2013, or a well site for which an administratively complete application is pending as of January 26, 2013, as provided in subparagraph (i), the following applies:

(A) Paragraph (3) is effective on February 25, 2013.

(B) Paragraph (4) is effective on July 25, 2013.

(C) Paragraph (5) is effective on April 26, 2013.

§ 78a.56. Temporary storage.

(a) Except as provided in §§ 78a.60(b) and 78a.61(b) (relating to discharge requirements; and disposal of drill cuttings), the operator shall contain regulated substances and wastes used at or generated at a well site in a tank, series of tanks or other storage structures approved by the Department. The operator shall install or construct and maintain the tank or series of tanks or other approved storage structures in accordance with the following requirements:

(1) The tank, series of tanks or other approved storage structure shall be constructed and maintained with sufficient capacity to contain all regulated substances which are used or produced during drilling, altering, completing, recompleting, servicing and plugging the well.

(2) Modular aboveground storage structures that exceed 20,000 gallons capacity may not be utilized to store regulated substances without prior Department approval. The Department will maintain a list of approved modular storage structures on its web site.

(3) The operator shall obtain siting approval from the Department for site-specific installation of all modular aboveground storage structures for each individual well site where use of the modular aboveground storage structure is proposed.

(4) After obtaining approval to utilize a modular aboveground storage structure at a specific well site, the owner or operator shall notify the Department at least 3 business days before the beginning of construction of these storage structures. The notice shall be submitted electronically to the Department through its web site and include the date the storage structure installation will begin. If the date of installation is extended, the operator shall renotify the Department with the date that the installation will begin, which does not need to be 3 business days in advance.

(5) If open tanks or open storage structures are used, the tanks and storage structures shall be maintained so that at least 2 feet of freeboard remain at all times unless the tank or storage structure is provided with an overflow system to a standby tank with sufficient volume to contain all excess fluid or regulated substances. If an open standby tank or standby open storage structure is used, it shall be maintained with 2 feet of freeboard. If this subsection is violated, the operator shall immediately take the necessary measures to ensure the structural stability of the tank or other storage structure, prevent spills and restore the 2 feet of freeboard.

(6) Tanks and other approved storage structures shall be designed, constructed and maintained to be structurally sound and reasonably protected from unauthorized acts of third parties.

(7) Unless an individual is continuously present at the well site, operators shall equip all tank valves and access lids to regulated substances with reasonable measures to prevent unauthorized access by third parties such as locks, open end plugs, removable handles, retractable ladders or other measures that prevent access by third parties. Tanks storing only freshwater, fire prevention materials and spill response kits are excluded from the requirements of this paragraph.

(8) The operator shall display a sign on the tank or other approved storage structure identifying the contents and an appropriate warning of the contents such as flammable, corrosive or a similar warning.

(9) A tank or other approved storage structure that contains drill cuttings from below the casing seat, regulated substances or fluids other than tophole water, fresh water and uncontaminated drill cuttings shall be impermeable.

(10) Condensate, whether separated or mixed with other fluids at a concentration greater than 1% by volume, may not be stored in any open top structure or pit. Aboveground tanks used for storing or separating condensate during well completion shall be monitored and have controls to prevent vapors from exceeding the L.E.L. of the condensate outside the tank. Tanks used for storing or separating condensate must be grounded.

(b) The operator may request to use practices other than those specified in subsection (a) which provide equivalent or superior protection by submitting a request to the Department for approval. The request shall be made electronically to the Department through its web site on forms provided by the Department.

(c) Disposal of uncontaminated drill cuttings in a pit or by land application shall comply with § 78a.61.

(d) Pits may not be used for temporary storage. An operator using a pit for temporary storage as of October 8, 2016, shall properly close the pit in accordance with appropriate restoration standards no later than April 8, 2017. Any spills or leaks detected shall be reported and remediated in accordance with § 78a.66 (relating to reporting and remediating spills and releases) prior to pit closure.

§ 78a.57. Control, storage and disposal of production fluids.

(a) Unless a permit has been obtained under § 78a.60(a) (relating to discharge requirements), the operator shall collect the brine and other fluids produced during operation of the well in a tank or a series of tanks, or other device approved by the Department for subsequent disposal or reuse. Open top structures may not be used to store brine and other fluids produced during operation of the well. An operator using a pit for storage of production fluids as of October 8, 2016, shall report the use of the pit to the Department no later than April 8, 2017, and shall properly close the pit in accordance with appropriate restoration standards no later than October 10, 2017. Any spills or leaks detected shall be reported and remediated in accordance with § 78a.66 (relating to reporting and remediating spills and releases) prior to pit closure. Except as allowed in this subchapter or otherwise approved by the Department, the operator may not discharge the brine and other fluids on or into the ground or into the waters of the Commonwealth. Unless separately permitted under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), wastes may not be stored at a well site unless the wastes are generated at or will be beneficially reused at that well site.

(b) An operator may not use a pit for the control, handling or storage of brine and other fluids produced during operation of a well.

(c) Secondary containment is required for all new, refurbished or replaced aboveground primary containment, including their associated manifolds, that contain brine and other fluids produced during operation of the well. If one tank in a series of tanks is added, refurbished or replaced, secondary containment is required for the entire series of tanks. The secondary containment area provided by dikes or other methods of secondary containment open to the atmosphere must have containment capacity sufficient to hold the volume of the largest single aboveground tank, plus an additional 10% of volume for precipitation. Compliance with § 78a.64 (relating to secondary containment around oil and condensate tanks) or using double walled tanks capable of detecting a leak in the primary containment fulfills the requirements in this subsection.

(d) Primary containment used to store brine or other fluids produced during operation of the well shall be designed, constructed and maintained to be structurally sound in accordance with sound engineering practices adhering to Nationally recognized industry standards and the manufacturer's specifications. Tanks that are manifolded together shall be designed in a manner to prevent the uncontrolled discharge of multiple manifolded tanks.

(e) Underground or partially buried storage tanks used to store brine or other fluids produced during operation of the well shall be designed, constructed and maintained to be structurally sound in accordance with sound engineering practices adhering to Nationally recognized industry standards and the manufacturer's specifications. A well operator utilizing underground or partially buried storage tanks as of October 8, 2016, shall provide electronically to the Department a list of the well sites through its web site where the underground or partially buried storage tanks are located by April 8, 2017. A well operator shall register the location of an additional underground storage

tank prior to installation. Registration shall utilize forms provided by the Department and be submitted electronically to the Department through its web site.

(f) All new, refurbished or replaced aboveground storage tanks that store brine or other fluid produced during operation of the well must comply with the corrosion control requirements in §§ 245.531—245.534 (relating to corrosion and deterioration prevention), with the exception of use of Department-certified inspectors to inspect interior linings or coatings.

(g) All new, refurbished or replaced underground storage tanks that store brine or other fluid produced during operation of the well must comply with the corrosion control requirements in § 245.432 (relating to operation and maintenance including corrosion protection) with the exception of use of Department-certified inspectors to inspect interior linings.

(h) All new, refurbished or replaced tanks storing brine or other fluids produced during operation of the well must be reasonably protected from unauthorized acts of third parties. Unless the tank is surrounded by a fence, tank valves and access lids must utilize locks, open end plugs or removable handles and ladders on tanks must be retractable or other measures that prevent access by third parties.

(i) Tanks storing brine or other fluids produced during operation of the well shall be inspected by the operator at least once per calendar month and documented. Deficiencies noted during the inspection shall be addressed and remedied. When substantial modifications are necessary to correct deficiencies, they shall be made in accordance with manufacturer's specifications and applicable engineering design criteria. Any deficiencies identified during the inspection shall be reported to the Department electronically through its web site within 3 days of the inspection and remedied prior to continued use of the tank. Inspection records shall be maintained for 1 year and made available to the Department upon request.

§ 78a.58. Onsite processing.

(a) The operator may request approval by the Department to process fluids generated by the development, drilling, stimulation, alteration, operation or plugging of oil or gas wells or mine influenced water at the well site where the fluids were generated or at the well site where all of the fluid is intended to be beneficially used to develop, drill or stimulate a well. The request shall be submitted on forms provided by the Department and demonstrate that the processing operation will not result in pollution of land or waters of the Commonwealth.

(b) Approval from the Department is not required for the following activities conducted at a well site:

(1) Mixing fluids with freshwater.

(2) Aerating fluids.

(3) Filtering solids from fluids.

(c) Activities described in subsection (b) shall be conducted within secondary containment.

(d) An operator processing fluids or drill cuttings generated by the development, drilling, stimulation, alteration, operation or plugging of oil or gas wells shall develop an action plan specifying procedures for monitoring for and responding to radioactive material produced by the treatment processes, as well as related procedures for training, notification, recordkeeping and reporting. The action plan shall be prepared in accordance with the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 250-3100-001, as amended and updated, or in a manner at least as protective of the environment, facility staff and public health and safety and which meets all statutory and regulatory requirements.

(e) The operator may request to process drill cuttings only at the well site where those drill cuttings were generated by submitting a request to the Department for approval. The request shall be submitted on forms provided by the Department and demonstrate that the processing operation will not result in pollution of land or waters of the Commonwealth.

(f) Processing residual waste generated by the development, drilling, stimulation, alteration, operation or plugging of oil or gas wells other than as provided for in subsections (a) and (b) shall comply with the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

(g) Processing of fluids in a manner approved under subsection (a) will be deemed to be approved at subsequent well sites provided the operator notifies the Department of location of the well site where the processing will occur at least 3 business days prior to the beginning of processing operations. The notice shall be submitted electronically to the Department through its web site and include the date activities will begin.

(h) Sludges, filter cake or other solid waste remaining after the processing or handling of fluids under subsection (a) or (b), including solid waste mixed with drill cuttings, shall be characterized under § 287.54 (relating to chemical analysis of waste) before the solid waste leaves the well site.

§ 78a.59a. Impoundment embankments.

(a) Embankments constructed for well development impoundments for oil and gas operations must meet the following requirements:

(1) The foundation for each embankment shall be stripped and grubbed to a minimum depth of 2 feet below existing contour prior to any placement and compaction of fill.

(2) Any springs encountered in the embankment foundation area shall be drained to the downstream toe of the embankment with a drain section 2 feet by 2 feet in dimension consisting of PennDOT Type A sand, compacted by hand tamper. Geotextiles may not be used around sand. The last 3 feet of this drain at the downstream slope must be constructed of AASHTO # 8 material.

(3) The minimum top width of the embankment must be 12 feet.

(4) The inside and outside slope must have a slope no steeper than 3 horizontal to 1 vertical.

(5) Soils to be used for embankment construction must be classified in accordance with ASTM D-2487 (Unified Soils Classification). Soil samples must be classified at a minimum rate of one sample per 10,000 cubic yards of placed fill with at least one test per source with an additional test conducted each time the material changes. At least one sample must be classified in accordance with ASTM D-2487. Soils utilized during embankment construction shall be described and identified in accordance with ASTM D-2488—09A (Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)). Soil identification and description in accordance

with this procedure shall be performed at a minimum rate of one sample per 1,000 cubic yards of placed fill. Results of testing of materials shall be provided to the Department upon request.

(6) The embankment must be constructed out of soils designated as GC, GM, SC, SM, CL or ML, only. Soils with split designations when one of the designations is not GC, GM, SC, SM, CL or ML may not be used. Soils must contain a minimum of 20% of No. 200 sieve materials or larger. Results of testing of materials shall be provided to the Department upon request.

(7) Particles greater than 6 inches in any dimension may not be used for embankment construction.

(8) Soil used in embankment construction must be compacted. Soil compaction shall be conducted in accordance with the following:

(i) Compaction shall be conducted with a sheepsfoot or pad roller.

(ii) The maximum loose lift thickness must be 9 inches.

(iii) Soil shall be compacted until visible nonmovement of the embankment material.

(iv) Soil shall be compacted to a minimum of 95% of the standard proctor in accordance with ASTM D698 (Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort). Satisfactory compaction shall be verified by field density testing in accordance with ASTM D1556 (Standard Test Method for Density and Unit Weight of Soil in Place by the Sand Cone Method) or ASTM D6938 (Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)) with a minimum of one test per 2,000 square yards of lift surface and at least one test per lift.

(9) Exposed embankment slopes shall be permanently stabilized using one or a combination of the following methods:

(i) Exposed embankments shall be limed, fertilized, seeded and mulched, and permanent vegetative ground covering in compliance with § 102.22 (relating to site stabilization) shall be established upon completion of construction of the impoundment.

(ii) Compacted rock fill or riprap placed on the downstream face of the embankment as a cover having a minimum depth of 2 feet. The rock fill must be durable, evenly distributed and underlain by a Class 2, Type A geotextile.

(b) The owner or operator may request approval from the Department to deviate from the requirements in this section. The request must demonstrate that the alternate practice provides equivalent or superior protection to the requirements of this section.

§ 78a.59b. Well development impoundments.

(a) In addition to meeting the requirements of § 78a.59a (relating to impoundment embankments), any new well development impoundments must be in compliance with this section.

(b) A well operator using a well development impoundment prior to October 8, 2016, shall register the location of the well development impoundment by December 7, 2016, by providing the Department, through the Department's web site, with electronic notification of the GPS coordinates, township and county where the well development impoundment is located as well as certification as to whether the impoundment meets the requirements in subsections (d), (e) and (h). Any impoundments that do not comply with the requirements in subsections (d), (e) and (h) shall be upgraded to meet these requirements or restored in accordance with subsection (g) by October 10, 2017.

(c) A well operator shall register the location of a new well development impoundment prior to construction. Registration of the well development impoundment may be transferred to another operator. Registration transfers shall utilize forms provided by the Department and be submitted electronically to the Department through its web site.

(d) Well development impoundments shall be constructed with a synthetic impervious liner.

(e) Unless an individual is continuously present at a well development impoundment, a fence must completely surround the well development impoundment to prevent unauthorized acts of third parties and damage caused by wildlife.

(f) The bottom of the impoundment must be at least 20 inches above the seasonal high groundwater table. The applicant may maintain the required separation distance of 20 inches by passive artificial means such as an under-drain system throughout the lifetime of the impoundment. In no case shall the regional groundwater table be affected by the passive artificial system. The operator shall document the depth of the seasonal high groundwater table, the manner in which the depth of the seasonal high groundwater table was ascertained, the distance between the bottom of the impoundment and the seasonal high groundwater table, and the depth of the regional groundwater table if the separation between the impoundment bottom and seasonal high groundwater table is maintained by artificial means. A soil scientist or other similarly trained person using accepted and documented scientific methods shall make the determination. The determination must contain a statement certifying that the impoundment bottom is at least 20 inches above the seasonal high groundwater table according to observed field conditions. The name, qualifications and statement of the person making the determination and the basis of the determination shall be provided to the Department upon request.

(g) Well development impoundments shall be restored by the operator that the impoundment is registered to within 9 months of completion of hydraulic fracturing of the last well serviced by the impoundment. An impoundment is restored under this subsection by the operator removing excess water and the synthetic liner, returning the site to approximate original conditions, including preconstruction contours, and supporting the land uses that existed prior to oil and gas operations to the extent practicable. An extension of the restoration requirement may be approved under § 78a.65(c) (relating to site restoration). If requested by the landowner in writing, on forms provided by the Department, the requirement to return the site to approximate original contours may be waived by the Department if the liner is removed from the impoundment.

(h) Prior to storing mine influenced water in a well development impoundment, the operator shall develop a mine influenced water storage plan and submit it to the Department for approval.

(1) The mine influenced water storage plan shall be submitted on forms provided by the Department and include the following:

(i) A demonstration that the escape of the mine influenced water stored in the well development impoundment will not result in air, water or land pollution, or endanger persons or property.

(ii) A procedure and schedule to test the mine influenced water. This testing shall be conducted at the source prior to storage in the impoundment.

(iii) A records retention schedule for the mine influenced water test results.

(2) An operator with an approved mine influenced water storage plan shall maintain records of all mine influenced water testing prior to storage. These records shall be made available to the Department upon request.

(i) The Department may require the operator to test water sources proposed to be stored in a well development impoundment prior to storage.

§ 78a.59c. Centralized impoundments.

(a) An operator using a centralized impoundment as of October 8, 2016, shall close the centralized impoundment in accordance with this section or obtain a permit in accordance with Subpart D, Article IX (relating to residual waste management). The closure plan shall be submitted electronically to the Department through its web site for review and approval no later than April 8, 2017. The operator shall properly close the centralized impoundment in accordance with the approved plan or obtain a permit in accordance with Subpart D, Article IX no later than October 8, 2019.

(b) The closure plan must provide for the following:

(1) Removal of any impermeable membrane, concrete and earthen liner so that water movement to subsoils is achieved.

(2) Restoration of the site to approximate original conditions, including preconstruction contours, and backfilling the impoundment to above finished grade to allow for settlement of fill and so the impoundment will no longer impound water.

(3) A plan for the removal of equipment, structures, wastes and related material from the facility.

(4) An estimate of when final closure will occur, including an explanation of the basis for the estimate.

(5) A description of the steps necessary for closure of the facility.

(6) A narrative description, including a schedule of measures that are proposed to be carried out in preparation for closure and after closure at the facility, including measures relating to the following:

(i) Water quality monitoring including, but not limited to, analyses of samples from the monitoring wells that were installed at the time of the construction of the centralized impoundment.

(ii) A soil sampling plan that explains how the operator will analyze the soil beneath the impoundment's liners. Analysis shall be based on a grid pattern or other method approved by the Department. Any spills or leaks detected shall be reported and remediated in accordance with § 78a.66 (relating to reporting and remediating spills and releases) prior to impoundment closure.

(iii) Compliance with Chapter 102 (relating to erosion and sediment control) including erosion and sediment control and PCSM.

(iv) Access control, including maintenance of access control.

(v) The name, address and telephone number at which the operator may be reached.

§ 78a.60. Discharge requirements.

(a) The owner and operator may not cause or allow a discharge of a substance, fill or dredged material to the waters of the Commonwealth unless the discharge complies with this subchapter and Chapters 91, 92a, 93, 95, 102 and 105, The Clean Streams Law (35 P.S. §§ 691.1—691.1001), the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27) and the act.

(b) The owner and operator may not discharge tophole water or water in a pit as a result of precipitation by land application unless the discharge is in accordance with the following requirements:

(1) No additives, drilling muds, regulated substances or drilling fluids other than gases or fresh water have been added to or are contained in the water, unless otherwise approved by the Department.

(2) The pH is not less than 6 nor greater than 9 standard units, or is characteristic of the natural background quality of the groundwater.

(3) The specific conductance of the discharge is less than 1,000 µmHos/cm.

(4) There is no sheen from oil and grease.

(5) The discharge water shall be spread over an undisturbed, vegetated area capable of absorbing the tophole water and filtering solids in the discharge, and spread in a manner that prevents a direct discharge to surface waters and complies with § 78a.53 (relating to erosion and sediment control and stormwater management).

(6) Upon completion, the area complies with § 78a.53.

(7) The area of land application is not within 200 feet of a water supply or within 100 feet of a watercourse or body of water or within the floodplain.

(8) If the water does not meet the requirements of paragraph (2) or (4), the Department may approve treatment prior to discharge to the land surface.

(c) Compliance with subsection (b) shall be documented by the operator and made available to the Department upon request while conducting activities under subsection (b) and submitted under § 78a.65(e)(1) and (2) (relating to site restoration).

§ 78a.61. Disposal of drill cuttings.

(a) *Drill cuttings from above the surface casing seat—pits.* The owner or operator may dispose of drill cuttings from above the surface casing seat determined in accordance with § 78a.83(c) (relating to surface and coal protective casing and cementing procedures) in a pit at the well site if the owner or operator satisfies the following requirements:

(1) The drill cuttings are generated from the well at the well site.

(2) The drill cuttings are not contaminated with a regulated substance, including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, or drilling fluids other than tophole water, fresh water or gases.

(3) The disposal area is not within 100 feet of a watercourse or body of water or within the floodplain.

(4) The disposal area is not within 200 feet of a water supply.

(5) The pit is designed, constructed and maintained to be structurally sound.

(6) The free liquid fraction of the waste shall be removed and disposed under § 78a.60 (relating to discharge requirements).

(7) The pit shall be backfilled to the ground surface and graded to promote runoff with no depression that would accumulate or pond water on the surface. The stability of the backfilled pit must be compatible with the adjacent land.

(8) The surface of the backfilled pit area shall be revegetated to stabilize the soil surface and comply with § 78a.53 (relating to erosion and sediment control and stormwater management). The revegetation shall establish a diverse, effective, permanent, vegetative cover which is capable of self-regeneration and plant succession. Where vegetation would interfere with the intended use of the surface of the landowner, the surface shall be stabilized against erosion.

(b) *Drill cuttings from above the surface casing seat—land application.* The owner or operator may dispose of drill cuttings from above the surface casing seat determined in accordance with § 78a.83(c) by land application at the well site if the owner or operator satisfies the following requirements:

(1) The drill cuttings are generated from the well at the well site.

(2) The drill cuttings are not contaminated with a regulated substance, including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, or drilling fluids other than tophole water, fresh water or gases.

(3) The disposal area is not within 100 feet of a watercourse or body of water or within the floodplain.

(4) The disposal area is not within 200 feet of a water supply.

(5) The soils have a minimum depth from surface to bedrock of 20 inches.

(6) The drill cuttings are not spread when saturated, snow covered or frozen ground interferes with incorporation of the drill cuttings into the soil.

(7) The drill cuttings are not applied in quantities which will result in runoff or in surface water or groundwater pollution.

(8) The free liquid fraction is disposed in accordance with § 78a.60.

(9) The drill cuttings are spread and incorporated into the soil. The loading and application rate of drill cuttings may not exceed a maximum of drill cuttings to soil ratio of 1:1.

(10) The land application area shall be revegetated to stabilize the soil surface and comply with § 78a.53. The revegetation shall establish a diverse, effective permanent vegetative cover which is capable of self-regeneration and plant succession. Where vegetation would interfere with the intended use of the surface by the landowner, the surface shall be stabilized against erosion.

(c) *Drill cuttings from below the surface casing seat.* After removal of the free liquid fraction and disposal in accordance with § 78a.60, drill cuttings from below the surface casing seat determined in accordance with § 78a.83(c) may not be disposed of on the well site unless authorized by a permit or other approval is obtained from the Department in accordance with § 78a.62 or § 78a.63 (relating to disposal of residual waste—pits; and disposal of residual waste—land application).

(d) *Alternative practices.* The owner or operator may request to use solidifiers, dusting, unlined pits, attenuation or other alternative practices for the disposal of uncontaminated drill cuttings by submitting a request to the Department for approval. The request shall be made on forms provided by the Department and shall demonstrate that the practice provides equivalent or superior protection to the requirements of this section. The Department will maintain a list of approved solidifiers on its web site. The operator does not need to request approval from the Department for use of approved solidifiers.

(e) *Notifications.* The owner or operator shall notify the Department at least 3 business days before disposing of drill cuttings under this section. This notice shall be submitted electronically to the Department through its web site and include the date the cuttings will be disposed. If the date of disposal is extended, the operator shall renotify the Department of the date of disposal, which does not need to be 3 business days in advance. The owner or operator shall also provide notice of disposal to the surface landowner, including the location of the disposed drill cuttings, within 10 business days of completion of disposal.

§ 78a.62. Disposal of residual waste—pits.

An owner or operator proposing to dispose of residual waste, including contaminated drill cuttings, in a pit at the well site shall obtain a residual waste pit disposal permit issued under this chapter prior to constructing the waste disposal pit.

§ 78a.63. Disposal of residual waste—land application.

An owner or operator proposing disposal of residual waste, including contaminated drill cuttings, at the well site by land application shall obtain a residual waste land application permit issued under this chapter prior to land application of the waste.

§ 78a.63a. Alternative waste management.

An operator seeking to manage waste on a well site in any manner other than provided in §§ 78a.56—78a.58, 78a.59a, 78a.59b, 78a.59c and 78a.60—78a.63 shall submit a request electronically to the Department through its web site describing the alternate management practice and shall demonstrate that the practice provides equivalent or superior protection to the requirements in these sections.

§ 78a.64. Secondary containment around oil and condensate tanks.

(a) If an owner or operator uses a tank or tanks with a combined capacity of at least 1,320 gallons to contain oil or condensate produced from a well, the owner or operator shall construct and maintain a dike or other method of secondary containment which satisfies the requirements under 40 CFR Part 112 (relating to oil pollution prevention) around the tank or tanks which will prevent the tank contents from entering waters of the Commonwealth.

(b) The secondary containment provided by the dikes or other method of secondary containment must have containment capacity sufficient to hold the volume of the largest single tank, plus a reasonable allowance for precipitation based on local weather conditions and facility operation.

(c) Prior to drainage of accumulated precipitation from secondary containment, the secondary containment shall be inspected and accumulations of oil picked up and returned to the tank or disposed of in accordance with approved methods.

(d) After complying with subsection (c), drainage of secondary containment is acceptable if:

(1) The accumulation in the secondary containment consists of only precipitation directly to the secondary containment and drainage will not cause a harmful discharge or result in a sheen.

(2) The secondary containment drain valve is opened and resealed, or other drainage procedure, as applicable, is conducted under responsible supervision.

(e) An owner or operator who installed a tank or tanks with a combined capacity of at least 1,320 gallons prior to October 8, 2016, to store condensate produced from a well shall meet the requirements of this section when a tank is replaced, refurbished or repaired or by October 9, 2018, whichever is sooner.

§ 78a.64a. Secondary containment.

(a) Well sites shall be designed and constructed using secondary containment.

(b) All regulated substances, including solid wastes and other regulated substances in equipment or vehicles, shall be managed within secondary containment. This subsection does not apply to fuel stored in equipment or vehicle fuel tanks unless the equipment or vehicle is being refueled at the well site.

(c) Secondary containment must meet all of the following:

(1) Secondary containment must be used on the well site when any equipment that will be used for any phase of drilling, casing, cementing, hydraulic fracturing or flowback operations is brought onto a well site and when regulated substances including drilling mud, drilling mud additives, hydraulic oil, diesel fuel, hydraulic fracturing additives or flowback are brought onto or generated at the well site.

(2) Secondary containment must have a coefficient of permeability no greater than 1×10^{-10} cm/sec.

(3) The physical and chemical characteristics of all liners, coatings or other materials used as part of the secondary containment, that could potentially come into direct contact with regulated substances being stored, must be compatible with the regulated substance and be resistant to physical, chemical and other failure during handling, installation and use. Liner compatibility must satisfy compatibility test methods as approved by the Department.

(d) Methods of secondary containment open to the atmosphere must have storage capacity sufficient to hold the volume of the largest single aboveground primary containment, plus an additional 10% of volume for precipitation. Using double walled tanks capable of detecting a leak in the primary containment fulfill the requirements in this subsection. Tanks that are manifolded together shall be designed in a manner to prevent the uncontrolled discharge of multiple manifolded tanks.

(e) All secondary containment shall be inspected weekly to ensure integrity. If the secondary containment is damaged or compromised, the well operator shall repair the secondary containment as soon as practicable. The well operator shall maintain records of any repairs until the well site is restored. Stormwater shall be removed as soon as possible and prior to the capacity of secondary containment being reduced by 10% or more.

(f) Regulated substances that escape from primary containment or are otherwise spilled onto secondary containment shall be removed as soon as possible. After removal of the regulated substances the operator shall inspect the secondary containment. If the secondary containment did not completely contain the material, the operator shall notify the Department and remediate the affected area in accordance with § 78a.66 (relating to reporting and remediating spills and releases).

(g) Stormwater that comes into contact with regulated substances stored within the secondary containment shall be managed as residual waste.

(h) Inspection reports and maintenance records shall be available at the well site for review by the Department.

(i) Documentation of chemical compatibility of secondary containment with material stored within the system shall be provided to the Department upon request.

§ 78a.65. Site restoration.

(a) *Restoration.* The owner or operator shall restore land surface areas disturbed to construct the well site as follows:

(1) *Post-drilling.* Within 9 months after completion of drilling a well, the owner or operator shall undertake post-drilling restoration of the well site in accordance with a restoration plan developed in accordance with subsection (b) and remove all drilling supplies, equipment, primary containment and secondary containment not necessary for production or needed to safely operate the well.

(i) When multiple wells are drilled or permitted to be drilled on a single well site, post-drilling restoration is required within 9 months after completion of drilling all permitted wells on the well site or 9 months after the expiration of all existing well permits on the well site, whichever is later.

(ii) A drill hole or bore hole used to facilitate the drilling of a well shall be filled with cement, soil, uncontaminated drill cuttings or other earthen material before moving the drilling equipment from the well site.

(iii) Drilling supplies and equipment not needed for production may only be stored on the well site if express written consent of the surface landowner is obtained and the supplies or equipment are maintained in accordance with § 78a.64a (relating to secondary containment).

(iv) The areas necessary to safely operate the well include the following:

(A) Areas used for service vehicle and rig access.

(B) Areas used for storage tanks and secondary containment.

(C) Areas used for wellheads and appurtenant oil and gas processing facilities.

(D) Areas used for any necessary safety buffer limited to the area surrounding equipment that is physically cordoned off to protect the facilities.

(E) Areas used to store any supplies or equipment consented to by the surface landowner.

(F) Areas used for operation and maintenance of long-term PCSM best management practices.

(2) *Post-plugging.* Within 9 months after plugging the final well on the well site, the owner or operator shall remove all production or storage facilities, supplies and equipment and restore the well site to approximate original conditions and restore stormwater runoff rate, volume and quality to preconstruction condition in accordance with § 102.8 (relating to PCSM requirements).

(3) *Wells not drilled.* If a well site is constructed and the well is not drilled, the well site shall be restored within 9 months after the expiration of the well permit unless the Department approves an extension for reasons of adverse weather or lack of essential fuel, equipment or labor.

(b) *Restoration plan.* An operator of a well site shall develop and implement a restoration plan. The restoration plan must address:

(1) The restoration of areas not needed to safely operate the well to approximate original conditions.

(2) The proposed site configuration after post-drilling restoration including the areas of the well site being restored.

(3) The minimization of impervious areas. Impervious areas include, but are not limited to, areas where soil has been compacted, areas where soil has been treated with amendments to firm or harden the soil, and areas underlain with an impermeable liner.

(4) The removal of all drilling supplies and equipment not needed for production, including primary and secondary containment.

(5) The manner in which the restoration of the disturbed areas will achieve meadow in good condition or better or otherwise incorporate ABACT or nondischarge alternative PCSM best management practices (BMP).

(6) PCSM BMPs remaining in place and proof of compliance with § 102.8(l) and (m), or a licensed professional certification of complete site restoration to approximate original contours and return to preconstruction stormwater runoff rate, volume and quality in accordance with § 102.8(g). The owner or operator shall remain responsible for compliance with the terms of the restoration plan including long-term operation and maintenance of all PCSM BMPs on the project site and is responsible for any violations occurring on the project site, prior to written approval of the final restoration report.

(7) The permanent stabilization of the restored areas by either of the following:

(i) In accordance with § 102.22 (relating to site stabilization).

(ii) Through implementation of PCSM BMPs as required under § 102.8, including § 102.8(a)—(m).

(8) An operator of a well site who is required to obtain a permit under § 102.5(c) (relating to permit requirements) may develop a written restoration plan containing drawings and a narrative that address the requirements of paragraphs (1)—(7) to demonstrate compliance with § 102.8(n).

(c) *Extension of drilling or production period.* The restoration period in this subsection may be extended through approval by the Department for an additional period of time, not to exceed 2 years.

(1) A request to extend the restoration period shall be submitted electronically on forms provided by the Department through the Department's web site not more than 6 months after the completion of drilling.

(2) The request must specify the reasons for the request to extend the restoration period not to exceed 24 months. The request must include a justification for the length of extension and demonstrate that either:

(i) The extension will result in less earth disturbance, increased water reuse or more efficient development of the resources.

(ii) Restoration cannot be achieved due to adverse weather conditions or a lack of essential fuel, equipment or labor.

(3) A demonstration that the extension will result in less earth disturbance, increased water reuse or more efficient development of the resources must include the following:

(i) A demonstration that the site is stabilized and the BMPs utilized on the well site will address PCSM.

(ii) A demonstration that the portions of the well site not occupied by production facilities or equipment will be returned to approximate original conditions.

(d) *Areas not restored.* Disturbed areas associated with well sites that are not included in a restoration plan, and other remaining impervious surfaces, must comply with all requirements in Chapter 102 (relating to erosion and sediment control). The PCSM plan provisions in § 102.8(n) apply only to the portions of the restoration plan that provide for restoration of disturbed areas to meadow in good condition or better or otherwise incorporate ABACT or nondischarge PCSM BMPs.

(e) *Post-drilling restoration reports.* Within 60 calendar days after post-drilling restoration under subsection (a)(1), the operator shall submit a restoration report to the Department. The well operator shall forward a copy of all restoration reports to the surface landowner. The report shall be made electronically on forms provided by the Department through the Department's web site and must identify the following:

(1) The date of land application of the tophole water.

(2) The results of pH and specific conductance tests and an estimated volume of discharge.

(3) The method used for disposal or reuse of the free liquid fraction of the waste, and the name of the hauler and disposal facility, if any.

(4) The location, including GPS coordinates, of the pit in relation to the well, the depth of the pit, the type and thickness of the material used for the pit subbase, the type and thickness of the pit liner, the type and nature of the waste, the type of any approved solidifier, a description of the pit closure procedures used and the pit dimensions.

(5) The location of the area used for land application of the waste, and the results of a chemical analysis of the waste soil mixture if requested by the Department.

(6) The types and volumes of waste produced and the name and address of the waste disposal facility and waste hauler used to dispose of the waste.

(7) The name, qualifications and basis for determination that the bottom of a pit used for encapsulation is at least 20 inches above the seasonal high groundwater table.

(f) *Post-plugging restoration reports.* Within 60 calendar days after post-plugging restoration under subsection (a)(2), the operator shall submit a restoration report to the Department. The well operator shall forward a copy of all restoration reports to the surface landowner. The

report shall be made electronically on forms provided by the Department through the Department's web site and must include the following:

(1) A description of the types and volumes of waste produced, and the name and address of the waste disposal facility and waste hauler used to dispose of the waste.

(2) Confirmation that earth disturbance activities, site restoration including an installation of any PCSM BMPs and permanent stabilization in accordance with § 102.22 have been completed.

(g) *Written consent.* Written consent of the landowner on forms provided by the Department satisfies the restoration requirements of this section provided the operator develops and implements a site restoration plan that complies with subsections (a) and (b)(2)—(7) and all PCSM requirements in Chapter 102.

§ 78a.66. Reporting and remediating spills and releases.

(a) *Scope.* This section applies to reporting and remediating spills or releases of regulated substances on or adjacent to well sites and access roads.

(b) *Reporting releases.*

(1) An operator or other responsible party shall report the following spills and releases of regulated substances to the Department in accordance with paragraph (2):

(i) A spill or release of a regulated substance causing or threatening pollution of the waters of the Commonwealth in the manner required under § 91.33 (relating to incidents causing or threatening pollution).

(ii) A spill or release of 5 gallons or more of a regulated substance over a 24-hour period that is not completely contained by secondary containment.

(2) In addition to meeting the notification requirements of § 91.33, the operator or other responsible party shall contact the appropriate regional Department office by telephone or call the Department's Statewide toll free number as soon as practicable, but no later than 2 hours after discovering the spill or release. To the extent known, the following information shall be provided:

(i) The name of the person reporting the spill or release and telephone number where that person can be reached.

(ii) The name, address and telephone number of the operator or other responsible party.

(iii) The date and time of the spill or release or when it was discovered.

(iv) The location of the spill or release, including directions to the site, GPS coordinates or the 9-1-1 address, if available.

(v) A brief description of the nature of the spill or release and its cause, what potential impacts to public health and safety or the environment may exist, including any available information concerning the pollution or threatened pollution of surface water, groundwater or soil.

(vi) The estimated weight or volume of each regulated substance spilled or released.

(vii) The nature of any injuries.

(viii) Remedial actions planned, initiated or completed.

(3) The operator or other responsible party shall take necessary interim corrective actions to prevent:

(i) The regulated substance from polluting or threatening to pollute the waters of the Commonwealth.

(ii) Damage to property.

(iii) Impacts to downstream users of waters of the Commonwealth.

(4) The operator or other responsible party shall identify and sample water supplies that have been polluted or for which there is a potential for pollution in a reasonable and systematic manner. The operator or other responsible party shall restore or replace a polluted water supply in accordance with § 78a.51 (relating to protection of water supplies). The operator or other responsible party shall provide a copy of the sample results to the water supply owner and the Department within 5 business days of receipt of the sample results from the laboratory.

(5) The Department may immediately approve temporary emergency storage or transportation methods necessary to prevent or mitigate harm to the public health, safety or the environment. Storage may be at the site of the incident or at a site approved by the Department.

(6) After responding to a spill or release, the operator or other responsible party shall decontaminate equipment used to handle the regulated substance, including storage containers, processing equipment, trucks and loaders, before returning the equipment to service. Contaminated wash water, waste solutions and residues generated from washing or decontaminating equipment shall be managed as residual waste.

(c) *Remediating releases.* Remediation of an area polluted by a spill or release is required. The operator or other responsible party shall remediate a release in accordance with the following:

(1) Spills or releases to the ground of less than 42 gallons at a well site that do not pollute or threaten to pollute waters of the Commonwealth may be remediated by removing the soil visibly impacted by the spill or release and properly managing the impacted soil in accordance with the Department's waste management regulations. The operator or responsible party shall notify the Department of its intent to remediate a spill or release in accordance with this paragraph at the time the report of the spill or release is made.

(2) For spills or releases to the ground of greater than or equal to 42 gallons or that pollute or threaten to pollute waters of the Commonwealth, the operator or other responsible person must demonstrate attainment of one or more of the standards established by Act 2 and Chapter 250 (relating to administration of Land Recycling Program) in the following manner:

(i) Within 15 business days of the spill or release, the operator or other responsible party shall provide an initial written report that includes, to the extent that the information is available, the following:

(A) The regulated substance involved.

(B) The location where the spill or release occurred.

(C) The environmental media affected.

(D) Pollution or threatened pollution of water supplies.

(E) Impacts to buildings or utilities.

(F) Interim remedial actions planned, initiated or completed.

(G) A summary of the actions the operator or other responsible party intends to take at the site to address the spill or release such as a schedule for site character-

ization, to the extent known, and the anticipated time frames within which it expects to take those actions.

(ii) After the initial report, any new pollution or other impacts identified or discovered during interim remedial actions or site characterization shall also be reported in writing to the Department within 15 business days of their discovery.

(iii) Within 180 calendar days of the spill or release, the operator or other responsible party shall perform a site characterization to determine the extent and magnitude of the pollution and submit a site characterization report to the appropriate Department regional office describing the findings. The time to submit the site characterization report may be extended by the Department. The report must include a description of any interim remedial actions taken.

(iv) The report under subparagraph (iii) may be considered to be a final remedial action completion report if the interim remedial actions meet all of the requirements of an Act 2 cleanup standard.

(v) If the site characterization indicates that the interim remedial actions taken did not adequately remediate the spill or release, the operator or other responsible party shall develop and submit a remedial action plan to the appropriate Department regional office for approval. The plan is due within 45 calendar days of submission of the site characterization to the Department. Remedial action plans must contain the elements outlined in § 245.311(a) (relating to remedial action plan), as well as a schedule for the submission of remedial action progress reports.

(vi) Within 45 days after the selected remediation standard has been attained, the operator or other responsible party shall submit a remedial action completion report to the appropriate Department regional office for approval. Remedial action completion reports shall contain the elements outlined in § 245.313(b) (relating to remedial action completion report).

§ 78a.67. Borrow pits.

(a) An operator who owns or controls a borrow pit that does not require a permit under the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326) under the exemption in section 3273.1(b) of the act (relating to relationship to solid waste and surface mining), because the borrow pit is used exclusively for extraction of minerals for the purpose of oil and gas well development, including access road construction, shall operate, maintain and reclaim the borrow pit in accordance with the performance standards in Chapter 77, Subchapter I (relating to environmental protection performance standards) and in accordance with Chapter 102 (relating to erosion and sediment control), and other applicable laws. The mining permit exemption only applies so long as the borrow pit is servicing an oil and gas well site where a well is permitted under section 3211 of the act (relating to well permits) or registered under section 3213 of the act (relating to well registration and identification) and the requirements of section 3225 of the act (relating to bonding) are satisfied by filing a surety or collateral bond for wells drilled on or after April 18, 1985. Borrow pits shall be subject to The Clean Streams Law (35 P.S. §§ 691.1—691.1001), and regulations promulgated thereunder, including Chapter 102. For purposes of determining permitting requirements under § 102.5(c) (relating to permit requirements), areas subject to the mining permit exemption shall be considered part of the project along with the well site being serviced.

(b) Operators shall register the location of their existing borrow pits by December 7, 2016, by providing the Department, electronically, through the Department's web site, with the GPS coordinates, township and county where the borrow pit is located. The operator shall register the location of a new borrow pit in the same manner prior to construction.

(c) Borrow pits used for the development of oil and gas well sites and access roads that no longer meet the conditions under section 3273.1 of the act must meet one of the following:

(1) Be restored within 9 months after completion of drilling the final well on a well site serviced by the borrow pit or 9 months after the expiration of all well permits on well sites serviced by the borrow pit, whichever occurs later. An extension of the restoration requirement may be approved under § 78a.65(c) (relating to site restoration).

(2) Obtain a noncoal surface mining permit for its continued use, unless relevant exemptions apply under the Noncoal Surface Mining Conservation and Reclamation Act and regulations promulgated thereunder.

(d) A well operator who owns or operates a borrow pit constructed prior to October 8, 2016, shall have the borrow pit inspected by a qualified person for compliance with the requirements of this section prior to April 6, 2017. Any borrow pits that do not comply with subsection (a) shall be upgraded to meet the requirements of this section or restored by October 10, 2017.

§ 78a.68. Oil and gas gathering pipelines.

(a) The requirements of this section apply to all earth disturbance activities associated with oil and gas gathering pipeline installations and supporting facilities including the construction right-of-way, work space areas, pipe storage yards, borrow and disposal areas, access roads and other necessary areas identified on the erosion and sediment control plan. The construction, installation, use, maintenance, repair and removal of oil and gas gathering pipelines under this section shall be conducted in accordance with Chapters 102 and 105 (relating to erosion and sediment control; and dam safety and waterway management).

(b) Highly visible flagging, markers or signs shall be used to identify the shared boundaries of the limit of disturbance, wetlands and locations of threatened or endangered species habitat prior to land clearing. The flagging, markers or signs shall be maintained throughout earth disturbance activities and restoration or PCSM activities.

(c) The operator shall maintain topsoil and subsoil during excavation under the following, unless otherwise authorized by the Department:

(1) Topsoil and subsoil must remain segregated until restoration.

(2) Topsoil and subsoil must be prevented from entering watercourses and bodies of water.

(3) Topsoil cannot be used as bedding for pipelines.

(4) Native topsoil and imported topsoil must be of equal or greater quality to ensure the land is capable of supporting the uses that existed prior to earth disturbance.

(d) Backfilling of the gathering pipeline trench shall be conducted in a manner that minimizes soil compaction at the surface to ensure that water infiltration will be

sufficient to support the establishment of vegetative growth to meet stabilization or restoration requirements.

(e) Equipment may not be refueled within the floodway or within 50 feet of any body of water.

(f) Materials staging areas must be located outside of a floodway or greater than 50 feet from any body of water, unless otherwise approved in writing by the Department.

(g) All buried metallic gathering pipelines shall be installed and placed in operation in accordance with 49 CFR Part 192, Subpart I or Part 195, Subpart H (relating to requirements for corrosion control; and corrosion control).

§ 78a.68a. Horizontal directional drilling for oil and gas pipelines.

(a) Horizontal directional drilling activities associated with pipeline construction related to oil and gas operations, including gathering and transmission pipelines, that occur beneath any body of water or watercourse may not begin prior to authorization by the Department in accordance with Chapters 102 and 105 (relating to erosion and sediment control; and dam safety and waterway management).

(b) Prior to beginning of any horizontal directional drilling activity, the person planning to conduct those activities shall develop a PPC plan under § 102.5(l) (relating to permit requirements). The PPC plan must include a site-specific contingency plan that describes the measures to be taken to control, contain and collect any discharge of drilling fluids and minimize impacts to waters of the Commonwealth. The PPC plan must be present onsite during drilling operations and shall be made available to the Department upon request.

(c) The Department shall be notified at least 24 hours prior to beginning of any horizontal directional drilling activities, including conventional boring, beneath any body of water or watercourse. Notice shall be made electronically to the Department through its web site and include the name of the municipality where the activities will occur, GPS coordinates of the entry point of the drilling operation and the date when drilling will begin.

(d) All required permits and Safety Data Sheets must be onsite during horizontal directional drilling activities and shall be made available to the Department upon request.

(e) Materials staging areas shall be located outside of a floodway, as defined in § 105.1 (relating to definitions), of any watercourse or greater than 50 feet from any body of water, unless otherwise approved in writing by the Department.

(f) Drilling fluid additives other than bentonite and water shall be approved by the Department prior to use. All approved horizontal directional drilling fluid additives will be listed on the Department's web site. Use of a preapproved horizontal directional drilling fluid additive does not require separate Department approval.

(g) Horizontal directional drilling activities shall be monitored for pressure and loss of drilling fluid returns. Bodies of water and watercourses over and adjacent to horizontal directional drilling activities shall also be monitored for any signs of drilling fluid discharges. Monitoring shall be in accordance with the PPC plan.

(h) Horizontal directional drilling activities may not result in a discharge of drilling fluids to waters of the Commonwealth. If a discharge occurs during horizontal directional drilling activities, the person subject to subsection (a) shall immediately implement the contingency plan developed under subsection (b).

(i) When a drilling fluid discharge or loss of drilling fluid circulation is discovered, the loss or discharge shall be immediately reported to the Department, and the person subject to subsection (a) shall request an emergency permit under § 105.64 (relating to emergency permits), if necessary for emergency response or remedial activities to be conducted.

(j) Any water supply complaints received by the person subject to subsection (a) shall be reported to the Department within 24 hours electronically through its web site.

(k) Horizontal directional drilling fluid returns and drilling fluid discharges shall be managed in accordance with Subpart D, Article IX (relating to residual waste management).

§ 78a.68b. Well development pipelines for oil and gas operations.

(a) The construction, installation, use, maintenance, repair and removal of well development pipelines shall meet applicable requirements in Chapters 102 and 105 (relating to erosion and sediment control; and dam safety and waterway management).

(b) Operators shall install well development pipelines that transport fluids other than fresh ground water, surface water, water from water purveyors or other Department-approved sources aboveground except when crossing pathways, roads or railways where the pipeline may be installed below ground surface, or crossing a watercourse or body of water where the pipeline may be installed below the ground surface with prior Department approval.

(c) Well development pipelines may not be installed through existing stream culverts, storm drain pipes or under bridges crossing streams without approval by the Department under § 105.151 (relating to permit applications for construction or modification of culverts and bridges).

(d) The section of a well development pipeline crossing over a watercourse or body of water, except wetlands, may not have joints or couplings unless secondary containment is provided. Well development pipeline crossings over wetlands must utilize a single section of pipe to the extent practicable. Shut off valves shall be installed on both sides of the temporary crossing.

(e) In addition to the requirements of subsection (c), well development pipelines used to transport fluids other than fresh ground water, surface water, water from water purveyors or approved sources must have shut off valves, check valves or other methods of segmenting the pipeline placed at designated intervals, to be determined by the pipeline diameter, that prevent the discharge of more than 1,000 barrels of fluid. Elevation changes that would effectively limit flow in the event of a pipeline leak shall be taken into consideration when determining the placement of shut off valves and be considered effective flow barriers.

(f) Highly visible flagging, markers or signs shall be placed at regular intervals, no greater than 75 feet, along the entire length of the well development pipeline.

(g) Well development pipelines shall be pressure tested prior to being first placed into service and after the pipeline is moved, repaired or altered. A passing test is holding 125% of the anticipated maximum pressure for 2 hours. Leaks or other defects discovered during pressure

testing shall be repaired prior to use. Pressure test results and any defects and repairs to the well development pipeline shall be documented and made available to the Department upon request.

(h) Water used for hydrostatic pressure testing shall be discharged in a manner that does not result in a discharge to waters of the Commonwealth unless approved by the Department in writing.

(i) Well development pipelines shall be inspected prior to and during each day the pipeline is not emptied and depressurized. Inspection dates and any defects and repairs to the well development pipeline shall be documented and made available to the Department upon request.

(j) Well development pipelines not used to transport fluids for more than 7 consecutive calendar days shall be emptied and depressurized. In no case may a well development pipeline be used to transport or store fluids for more than 12 months without approval from the Department.

(k) Flammable materials may not be transported through a well development pipeline.

(l) Well development pipelines shall be removed in accordance with the required restoration timeline of the well site it serviced under § 78a.65 (relating to site restoration).

(m) An operator shall keep records regarding the location of all well development pipelines, the type of fluids transported through those pipelines and the approximate period of time that the pipeline was installed. The records shall be made available to the Department upon request.

(n) Records required under this section shall be retained by the operator for 1 year after the well development pipeline is removed.

§ 78a.69. Water management plans.

(a) *General.*

(1) Except as provided in paragraph (2), a person may not withdraw or use water from water sources within this Commonwealth for drilling or hydraulic fracture stimulation of any natural gas well governed by this chapter except in accordance with a WMP approved by the Department. The WMP must demonstrate that the withdrawal and use of the water sources protects those water sources as required by law and protects public health, safety and welfare.

(2) A water purveyor that has a water allocation permit or order of confirmation under the act of June 24, 1939 (P.L. 842, No. 365) (32 P.S. §§ 631—641), known as the Water Rights Law, or a safe drinking water permit under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17), as applicable, is not required to apply for a WMP under this section.

(b) *WMP requirements.* A WMP must meet the following requirements:

(1) Protect instream flow.

(2) Prevent adverse effects on quantity and quality of water available to other users.

(3) Protect and maintain designated and existing uses of water sources.

(4) Prevent adverse impacts to water quality in the watershed considered as a whole.

(5) Protect groundwater resources including nearby water wells.

(6) Provide for water reuse.

(c) *Application requirements.* A request for approval under this section shall be submitted on forms furnished by the Department and must include, but not be limited to, the following:

(1) General water source information including identification of source name, source type, average daily and instantaneous maximum withdrawal rates.

(2) A plan for monitoring and reporting of water sources and uses.

(3) A low flow analysis.

(4) A withdrawal and diversion impact analysis.

(5) A description of how the proposed withdrawal will not adversely affect the quantity or quality of water available to other users of the same water sources. When obtaining water from a water purveyor, the application must include a description of how the withdrawal will not adversely affect the water purveyor's system.

(6) For surface water sources:

(i) An operations plan that includes an intake design, a flow schematic showing how water is to be withdrawn, a site layout and a footprint for each surface water withdrawal.

(ii) A description of measures to be taken to prevent the rapid movement of invasive, harmful or nuisance species by vehicles, equipment or other facilities from one site to another.

(7) For groundwater sources, a well report that includes information necessary to evaluate:

(i) Proper well construction.

(ii) The hydraulic characteristics of the aquifer.

(iii) The suitability of the proposed groundwater source.

(iv) Proper well abandonment.

(v) Information consistent with Department guidance, including the *Public Water Supply Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 383-2125-108, as amended and updated, and the *Groundwater Monitoring Guidance Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 383-3000-001, as amended and updated, satisfies this requirement.

(8) A reuse plan for fluids that will be used to hydraulically fracture wells. Proof of a wastewater source reduction strategy in compliance with § 95.10(b) (relating to treatment requirements for new and expanding mass loadings of Total Dissolved Solids (TDS)) satisfies the reuse plan requirement.

(9) Proof of consultation with the Pennsylvania Natural Heritage Program regarding the presence of a State or Federal threatened or endangered species at the location of a withdrawal.

(10) Proof of notification of the proposed withdrawal to municipalities and counties where the water source will be located.

(11) Proof of consultation with the Pennsylvania Historic and Museum Commission regarding the presence of a historical or archaeological site included on the Federal or State list of historical places at the location of a withdrawal.

(d) *Approval of WMPs.* The Department will presume that the requirements in subsection (b) and section

3211(m)(2) of the act (relating to well permits) are met when an approval from the Susquehanna River Basin Commission, the Delaware River Basin Commission or the parties to the Great Lakes-St. Lawrence River Basin Water Resources Compact is obtained for a water withdrawal, to the extent that the requirements in subsection (c) are considered in granting the approval.

(e) *Operational requirements.* A person whose WMP has been approved by the Department shall comply with the WMP, and shall meet the following:

(1) Prior to any withdrawal, post a sign at the entrance to the water source withdrawal location displaying the name of the person and contact telephone number, water withdrawal approval conditions including daily withdrawal volume, maximum instantaneous withdrawal rate and passby flow requirements, if applicable, and the WMP water source expiration date.

(2) Measure water withdrawals and purchases using continuous-recording devices or flow meters. Water sources having passby flow conditions shall conduct instream flow monitoring and measuring using methods acceptable to the Department.

(3) Submit reports to the Department by electronic means consisting of daily withdrawal volumes, in-stream flow measurements or water source purchases, or both, as required by the Department.

(4) Retain withdrawal data and daily instream flow measurements and purchases for at least 5 years. These records shall be available for review by the Department upon request.

(f) *Administration of WMPs.*

(1) Approvals for individual water sources within a WMP are valid for 5 years.

(2) A WMP renewal application shall be submitted at least 6 months prior to the expiration of the 5-year term for withdrawal or use of a water source under a WMP.

(3) The Department may suspend or revoke an approved water source within a WMP for failure to comply with the WMP or for any reasons in section 3211(m) of the act and sections 3252 and 3259 of the act (relating to public nuisances; and unlawful conduct).

(4) A person whose WMP has been approved by the Department may terminate approval of any water source within an approved WMP by submitting a letter to the Department's Oil and Gas District Office requesting termination of the water source approval.

(g) *Denial.* The Department may deny an application for a WMP for either of the following reasons:

(1) The WMP application is administratively incomplete.

(2) The WMP application does not demonstrate that the requirements of this section will be met.

§ 78a.70. Road-spreading of brine for dust control and road stabilization.

Production brines from unconventional wells may not be used for dust suppression and road stabilization.

§ 78a.70a. Pre-wetting, anti-icing and de-icing.

Production brines from unconventional wells may not be used for pre-wetting, anti-icing and de-icing.

Subchapter D. WELL DRILLING, OPERATION AND PLUGGING

GENERAL

CASING AND CEMENTING

OPERATING WELLS

PLUGGING

INACTIVE STATUS

RADIOACTIVE LOGGING SOURCES

GENERAL

§ 78a.71. Use of safety devices—well casing.

(a) The operator shall equip the well with one or more strings of casing of sufficient cemented length and strength to attach proper well control equipment and prevent blowouts, explosions, fires and casing failures during installation, completion and operation.

(b) The operator shall determine the amount and type of casing to be run and the amount and type of cement to be used in accordance with current prudent industry practices and engineering. In making the determinations, the operator shall consider the following:

(1) Successful local practices for similar wells.

(2) Maximum anticipated surface pressure.

(3) Collapse resistance.

(4) Tensile strength.

(5) Chemical environment.

(6) Potential mechanical damage.

(7) Manufacturing standards, including American Petroleum Institute or equivalent specifications for pipe

used in wells drilled below the Onondaga formation or where blow-out preventers are required.

§ 78a.72. Use of safety devices—blow-out prevention equipment.

(a) The operator shall use blow-out prevention equipment after setting casing with a competent casing seat in the following circumstances:

(1) When drilling a well that is intended to produce natural gas from an unconventional formation.

(2) When drilling out solid core hydraulic fracturing plugs to complete a well.

(3) When well head pressures or natural open flows are anticipated at the well site that may result in a loss of well control.

(4) When the operator is drilling in an area where there is no prior knowledge of the pressures or natural open flows to be encountered.

(5) On wells regulated by the Oil and Gas Conservation Law (58 P.S. §§ 401—419).

(6) When drilling within 200 feet of a building.

(b) Blow-out prevention equipment used must be in good working condition at all times.

(c) Controls for the blow-out preventer shall be accessible to allow actuation of the equipment. Additional controls for a blow-out preventer with a pressure rating of greater than 3,000 psi, not associated with the rig hydraulic system, shall be located at least 50 feet away from the drilling rig so that the blow-out preventer can be actuated if control of the well is lost.

(d) The operator shall use pipe fittings, valves and unions placed on or connected to the blow-out prevention systems that have a working pressure capability that exceeds the anticipated pressures.

(e) The operator shall conduct a complete test of the ram type blow-out preventer and related equipment for both pressure and ram operation before placing it in service on the well. The operator shall test the annular type blow-out preventer in accordance with the manufacturer's published instructions, or the instructions of a professional engineer, prior to the device being placed in service. Blow-out prevention equipment that fails the test may not be used until it is repaired and passes the test.

(f) When the equipment is in service, the operator shall visually inspect blow-out prevention equipment during each tour of drilling operation and during actual drilling operations test the pipe rams for closure daily and the blind rams for closure on each round trip. When more than one round trip is made in a day, one daily closure test for blind rams is sufficient. Testing shall be conducted in accordance with American Petroleum Institute publication API RP53, "API Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells," or other procedure approved by the Department. The operator shall record the results of the inspection and closure test in the drillers log before the end of the tour. If blow-out prevention equipment is not in good working order, drilling shall cease when cessation of drilling can be accomplished safely and not resume until the blow-out prevention equipment is repaired or replaced and retested.

(g) All lines, valves and fittings between the closing unit and the blow-out preventer stack must be flame resistant and have a rated working pressure that meets or exceeds the requirements of the blow-out preventer system.

(h) When a blowout preventer is installed or required under subsection (a), there shall be present on the well site an individual with a current certification from a well control course accredited by the International Association of Drilling Contractors or other organization approved by the Department. The certification shall be available for review at the well site. The Department will maintain a list of approved accrediting organizations on its web site.

(i) Well drilling and completion operations requiring pressure barriers, as identified by the operator under § 78a.55(d) (relating to control and disposal planning; emergency response for unconventional wells), shall employ at least two mechanical pressure barriers between the open producing formation and the atmosphere that are capable of being tested. The mechanical pressure barriers shall be tested according to manufacturer specifications prior to operation. If during the course of operations the operator only has one functioning barrier, operations shall cease until additional barriers are added and tested or the redundant barrier is repaired and tested. Stripper rubber or a stripper head may not be considered a barrier.

(j) A coiled tubing rig or a hydraulic workover unit with appropriate blowout prevention equipment shall be employed during post-completion cleanout operations in horizontal unconventional formations.

(k) The minimum amount of intermediate casing that is cemented to the surface to which blow-out prevention equipment may be attached shall be in accordance with the following:

Proposed Total Vertical Depth (in feet)	*Minimum Cemented Casing Required (in feet of casing cemented)*
Up to 5,000	400
5,001 to 5,500	500
5,501 to 6,000	600
6,001 to 6,500	700
6,501 to 7,000	800
7,001 to 8,000	1,000
8,001 to 9,000	1,200
9,001 to 10,000	1,400
Deeper than 10,000	1,800

(l) Upon completion of the drilling operations at a well, the operator shall install and utilize equipment, such as a shut-off valve of sufficient rating to contain anticipated pressure, lubricator or similar device, as may be necessary to enable the well to be effectively shut-in while logging and servicing the well and after completion of the well.

§ 78a.73. General provision for well construction and operation.

(a) The operator shall construct and operate the well in accordance with this chapter and ensure that the integrity of the well is maintained and health, safety, environment and property are protected.

(b) The operator shall prevent gas, oil, brine, completion and servicing fluids, and any other fluids or materials from below the casing seat from entering fresh

groundwater, and shall otherwise prevent pollution or diminution of fresh groundwater.

(c) The operators of active, inactive, abandoned, and plugged and abandoned wells identified as part of an area of review survey conducted under § 78a.52a (relating to area of review) that likely penetrate within 1,500 feet measured vertically from the stimulation perforations, if known, shall be notified. Notice shall be provided at least 30 days prior to the start of drilling the well or at the time the permit application is submitted to the Department if the start of drilling is planned less than 30 days from the date of permit issuance. Orphan wells, abandoned wells, and plugged and abandoned wells identified as part of an area of review survey conducted under § 78a.52a that either penetrate within 1,500 feet measured vertically from the stimulation perforations or have an unknown true vertical depth shall be visually monitored during stimulation activities. The operator shall immediately notify the Department of any change to a well being monitored, of any treatment pressure or volume changes indicative of abnormal fracture propagation at the well being stimulated or if otherwise made aware of a confirmed well communication incident associated with their stimulation activities. Notice shall be provided to the Department electronically through the Department's web site. In an event such as this, the operator shall cease stimulating the well that is the subject of the area of review survey and take action to prevent pollution of waters of the Commonwealth or discharges to the surface. The operator may not resume stimulation of the well that is the subject of the area of review survey without Department approval.

(d) An operator that alters an orphan well, or an abandoned well or plugged and abandoned well by hydraulic fracturing shall plug the altered well in accordance with this chapter, or the operator may adopt the altered well and place it into production.

(e) After a well has been completed, recompleted, reconditioned or altered the operator shall prevent surface shut-in pressure and surface producing back pressure inside the surface casing or coal protective casing from exceeding the following pressure: 80% multiplied by 0.433 psi per foot multiplied by the casing length (in feet) of the applicable casing.

(f) After a well has been completed, recompleted, reconditioned or altered, if the surface shut-in pressure or surface producing back pressure exceeds the pressure as calculated in subsection (e), the operator shall take action to prevent the migration of gas and other fluids from lower formations into fresh groundwater. To meet this standard the operator may cement or install on a packer sufficient intermediate or production casing or take other actions approved by the Department. This section does not apply during testing for mechanical integrity in accordance with State or Federal requirements.

(g) Excess gas encountered during drilling, completion or stimulation shall be flared, captured or diverted away from the drilling rig in a manner that does not create a hazard to the public health or safety.

(h) The well must be equipped with a check valve to prevent backflow from the pipelines into the well.

§ 78a.74. Venting of gas.

The venting of gas to the atmosphere from a well is prohibited when the venting produces a hazard to the public health and safety.

§ 78a.75. Alternative methods.

(a) A well operator may request approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well under section 3221 of the act (relating to alternative methods).

(b) A well operator seeking approval under this section shall file an application with the Department on forms furnished by the Department. The application must:

(1) Describe the proposed alternative method or material, in reasonable detail.

(2) Indicate the manner in which the alternative will satisfy the goals of the act and this chapter.

(3) Include a drawing or schematic of the alternative method, if appropriate.

(c) The well operator shall notify all coal owners and operators and gas storage operators of record of the proposal, by certified mail. The well operator shall state in the application that he has sent the certified mail notice to the coal owners and operators and gas storage operators of record, either simultaneously with or prior to submitting the proposal to the Department.

(d) The coal owners and operators and gas storage operators of record shall have up to 15 days from their receipt of the notice to file objections or to indicate concurrence with the proposed alternative method or material.

(e) If no objections are filed within 15 days from receipt of the notice, and if none are raised by the Department, the Department will make a determination whether to allow the use of the proposed alternative method or material.

§ 78a.75a. Area of alternative methods.

(a) A well operator may request approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well under section 3221 of the act (relating to alternative methods).

(b) To establish an area of alternative methods, the Department will publish a notice in the *Pennsylvania Bulletin* of the proposed area of alternative methods and provide the public with an opportunity to comment on the proposal. After reviewing any comments received on the proposal, the Department will publish a final designation of the area and required alternative methods in the *Pennsylvania Bulletin*.

(c) Wells drilled within an area of alternative methods established under subsection (b) must meet the requirements specified by the Department unless the operator obtains approval from the Department to drill, operate or plug the well in a different manner that is at least as safe and protective of the environment as the requirements of the area of alternative methods.

§ 78a.76. Drilling within a gas storage reservoir area.

(a) An operator proposing to drill a well within a gas storage reservoir area or a reservoir protective area shall forward by certified mail a copy of the well location plat, the drilling, casing and cementing plan, and the anticipated date drilling will start to the gas storage reservoir operator and to the Department for approval by the Department and shall submit proof of notification to the gas storage reservoir operator to the Department with the well permit application.

(b) The storage operator may file an objection with the Department to the drilling, casing and cementing plan or

the proposed well location within 15 calendar days of receipt of the notification and request a conference in accordance with section 3251 of the act (relating to conferences).

§ 78a.77. Wells in a hydrogen sulfide area.

(a) An operator proposing to drill a well within a 1-mile radius of a well drilled to or through the same formation where hydrogen sulfide has been found while drilling shall install monitoring equipment during drilling at the well site to detect the presence of hydrogen sulfide in accordance with American Petroleum Institute publication RP49, "Recommended Practices for Safe Drilling of Wells Containing Hydrogen Sulfide."

(b) When hydrogen sulfide is detected in concentrations of 20 ppm or greater, the well shall be drilled in accordance with American Petroleum Institute publication RP49, "Recommended Practices for Safe Drilling of Wells Containing Hydrogen Sulfide."

(c) An operator who operates a well in which hydrogen sulfide is discovered in concentrations of 20 ppm or greater shall operate the well in a way that presents no danger to human health or to the environment.

(d) When an operator discovers hydrogen sulfide in concentrations of 20 ppm or greater during the drilling of a well, the operator shall notify the Department and identify the location of the well and the concentration of hydrogen sulfide detected. The Department will maintain a list of all notices that will be available to operators for their reference.

§ 78a.78. Pillar permit applications.

(a) The Department will use recommendations for coal pillar size and configuration set forth in the coal pillar study, listed in the Department's *Coal Pillars*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 550-2100-006, as amended and updated, as a basis for approval or disapproval of coal pillar permit applications submitted by underground coal mine operators.

(b) Where proposed coal pillar size and configuration does not conform to the recommendations of the coal pillar study referenced in subsection (a), the underground coal mine operator may request Department approval for an alternate coal pillar size and configuration.

CASING AND CEMENTING

§ 78a.81. General provisions.

(a) The operator shall conduct casing and cementing activities under this section and §§ 78a.82, 78a.83, 78a.83a, 78a.83b, 78a.83c and 78a.84—78a.87 or an approved alternate method under § 78a.75 (relating to alternative methods). The operator shall case and cement a well to accomplish the following:

(1) Allow effective control of the well at all times.

(2) Prevent the migration of gas or other fluids into sources of fresh groundwater.

(3) Prevent pollution or diminution of fresh groundwater.

(4) Prevent the migration of gas or other fluids into coal seams.

(b) The operator shall drill through fresh groundwater zones with diligence and as efficiently as practical to minimize drilling disturbance and commingling of groundwaters.

§ 78a.82. Use of conductor pipe.

If the operator installs conductor pipe in the well, the following provisions apply:

(1) The operator may not remove the pipe.

(2) Conductor pipe shall be installed in a manner that prevents the subsurface infiltration of surface water or fluids by either driving the pipe into place or cementing the pipe from the seat to the surface.

(3) Conductor pipe must be made of steel unless a different material is approved for use by the Department.

§ 78a.83. Surface and coal protective casing and cementing procedures.

(a) For wells drilled, altered, reconditioned or recompleted after February 5, 2011, surface casing or any casing functioning as a water protection casing may not be utilized as production casing unless one of the following applies:

(1) In oil wells where the operator does not produce any gas generated by the well and the annulus between the surface casing and the production pipe is left open.

(2) The operator demonstrates that the pressure in the well is no greater than the pressure permitted under § 78a.73(e) (relating to general provision for well construction and operation), demonstrates through a pressure test or other method approved by the Department that all gas and fluids will be contained within the well, and installs a working pressure gauge that can be inspected by the Department.

(b) If the well is to be equipped with threaded and coupled casing, the operator shall drill a hole so that the diameter is at least 1 inch greater than the outside diameter of the casing collar to be installed. If the well is to be equipped with plain-end welded casing, the operator shall drill a hole so that the diameter is at least 1 inch greater than the outside diameter of the casing coupling.

(c) The operator shall drill to approximately 50 feet below the deepest fresh groundwater or at least 50 feet into consolidated rock, whichever is deeper, and immediately set and permanently cement a string of surface casing to that depth. Except as provided in subsection (f), the surface casing may not be set more than 200 feet below the deepest fresh groundwater except if necessary to set the casing in consolidated rock. The surface hole shall be drilled using air, freshwater or freshwater-based drilling fluid. Prior to cementing, the wellbore shall be conditioned to ensure an adequate cement bond between the casing and the formation. The surface casing seat shall be set in consolidated rock. When drilling a new well or redrilling an existing well, the operator shall install at least one centralizer within 50 feet of the casing seat and then install a centralizer in intervals no greater than every 150 feet above the first centralizer.

(d) The operator shall permanently cement the surface casing by placing the cement in the casing and displacing it into the annular space between the wall of the hole and the outside of the casing.

(e) Where potential oil or gas zones are anticipated to be found at depths within 50 feet below the deepest fresh groundwater, the operator shall set and permanently cement surface casing prior to drilling into a stratum known to contain, or likely containing, oil or gas.

(f) If additional fresh groundwater is encountered in drilling below the permanently cemented surface casing, the operator shall document the depth of the fresh ground water zone in the well record and protect the additional

fresh groundwater by installing and cementing a subsequent string of casing or other procedures approved by the Department to completely isolate and protect fresh groundwater. The string of casing may also penetrate zones bearing salty or brackish water with cement in the annular space being used to segregate the various zones. Sufficient cement shall be used to cement the casing to the surface. The operator shall install at least one centralizer within 50 feet of the casing seat and then install a centralizer in intervals no greater than, if possible, every 150 feet above the first centralizer.

(g) The operator shall set and cement a coal protective string of casing through workable coal seams. The base of the coal protective casing shall be at least 30 feet below the lowest workable coal seam. The operator shall install at least two centralizers. One centralizer shall be within 50 feet of the casing seat and the second centralizer shall be within 100 feet of the surface.

(h) Unless an alternative method has been approved by the Department in accordance with § 78a.75 (relating to alternative methods), when a well is drilled through a coal seam at a location where the coal has been removed or when a well is drilled through a coal pillar, the operator shall drill to a depth of at least 30 feet but no more than 50 feet deeper than the bottom of the coal seam. The operator shall set and cement a coal protection string of casing to this depth. The operator shall equip the casing with a cement basket or other similar device above and as close to the top of the coal seam as practical. The bottom of the casing must be equipped with an appropriate device designed to prevent deformation of the bottom of the casing. The interval from the bottom of the casing to the bottom of the coal seam shall be filled with cement either by the balance method or by the displacement method. Cement shall be placed on top of the basket between the wall of the hole and the outside of the casing by pumping from the surface. If the operator penetrates more than one coal seam from which the coal has been removed, the operator shall protect each seam with a separate string of casing that is set and cemented or with a single string of casing which is stage cemented so that each coal seam is protected as described in this subsection. The operator shall cement the well to isolate workable coal seams from each other.

(i) If the operator sets and cements casing under subsection (g) or (h) and subsequently encounters additional fresh groundwater zones below the deepest cemented casing string installed, the operator shall protect the fresh groundwater by installing and cementing another string of casing or other method approved by the Department. Sufficient cement shall be used to cement the casing to the surface. The additional casing string may also penetrate zones bearing brackish or salt water, but shall be run and cemented prior to penetrating a zone known to or likely to contain oil or gas. The operator shall install at least one centralizer within 50 feet of the casing seat and then, if possible, install a centralizer in intervals no greater than every 150 feet above the first centralizer.

(j) If it is anticipated that cement used to permanently cement the surface casing cannot be circulated to the surface a cement basket may be installed immediately above the depth of the anticipated lost circulation zone. The casing shall be permanently cemented by the displacement method. Additional cement may be added above the cement basket, if necessary, by pumping through a pour string from the surface to fill the annular space. Filling the annular space by this method does not constitute permanently cementing the surface or coal protective casing under § 78a.83b (relating to casing and cementing—lost circulation).

§ 78a.83a. Casing and cementing plan.

(a) The operator shall prepare and maintain a casing and cementing plan showing how the well will be drilled and completed. The plan must demonstrate compliance with this subchapter and include the following information:

(1) The anticipated depth and thickness of any producing formation, expected pressures, anticipated fresh groundwater zones and the method or information by which the depth of the deepest fresh groundwater was determined.

(2) The diameter of the borehole.

(3) Casing type, whether the casing is new or used, depth, diameter, wall thickness and burst pressure rating.

(4) Cement type, yield, additives and estimated amount.

(5) The estimated location of centralizers.

(6) The proposed borehole conditioning procedures.

(7) Alternative methods or materials as required by the Department as a condition of the well permit.

(b) The plan shall be available at the well site for review by the Department.

(c) Upon request, the operator shall provide a copy of the well-specific casing and cementing plan to the Department for review and approval.

(d) Revisions to the plan made as a result of onsite modification shall be documented in the plan and be available for review by the Department. The person making the revisions to the plan shall initial and date the revisions.

§ 78a.83b. Casing and cementing—lost circulation.

(a) If cement used to permanently cement the surface or coal protective casing is not circulated to the surface despite pumping a volume of cement equal to or greater than 120% of the calculated annular space, the operator shall determine the top of the cement, notify the Department and meet one of the following requirements as approved by the Department:

(1) Run an additional string of casing at least 50 feet deeper than the string where circulation was lost and cement the additional string of casing back to the seat of the string where circulation was lost and vent the annulus of the additional casing string to the atmosphere at all times unless closed for well testing or maintenance. Shut-in pressure on the casing seat of the additional string of casing may not exceed the requirements of § 78a.73(e) (relating to general provision for well construction and operation).

(2) Run production casing and set the production casing on a packer in a competent formation below the string where circulation was lost and vent the annulus of the production casing to the atmosphere at all times unless closed for well testing or maintenance.

(3) Run production casing at least to the top of the formation that is being produced and cement the production casing to the surface.

(4) Run intermediate and production casing and cement both strings of casing to the surface.

(5) Produce oil but not gas and leave the annulus between the surface casing and the production pipe open.

(b) In addition to meeting the requirements of subsection (a), the operator may also pump additional cement through a pour string from the surface to fill the annular space.

§ 78a.83c. Intermediate and production casing.

(a) Prior to cementing the intermediate and production casing, the borehole, mud and cement shall be conditioned to ensure an adequate cement bond between the casing and the formation.

(b) If the well is to be equipped with an intermediate casing, centralizers shall be used and the casing shall be cemented to the surface by the displacement method. Gas may be produced off the intermediate casing if a shoe test demonstrates that all gas will be contained within the well and a relief valve is installed at the surface that is set less than the shoe test pressure. The shoe test pressure shall be recorded in the completion report.

(c) Except as provided in § 78a.83 (relating to surface and coal protective casing and cementing procedures), each well must be equipped with production casing. The production string may be set on a packer or cemented in place. If the production casing is cemented in place, centralizers shall be used and cement shall be placed by the displacement method with sufficient cement to fill the annular space to a point at least 500 feet above true vertical depth or at least 200 feet above the uppermost perforations, whichever is greater.

§ 78a.84. Casing standards.

(a) The operator shall install casing that can withstand the effects of tension, and prevent leaks, burst and collapse during its installation, cementing and subsequent drilling and producing operations.

(b) Except as provided in subsection (c), all casing must be a string of new pipe with an internal pressure rating that is at least 20% greater than the anticipated maximum pressure to which the casing will be exposed.

(c) Used casing may be approved for use as surface, intermediate or production casing but shall be pressure tested after cementing and before continuation of drilling. A passing pressure test is holding the anticipated maximum pressure to which it will be exposed for 30 minutes with not more than a 10% decrease in pressure.

(d) New or used plain end casing, except when being used as conductor pipe, that is welded together for use must meet the following requirements:

(1) The casing must pass a pressure test by holding the anticipated maximum pressure to which the casing will be exposed for 30 minutes with not more than a 10% decrease in pressure. The operator shall notify the Department at least 24 hours before conducting the test. The test results shall be entered on the drilling log.

(2) The casing shall be welded using at least three passes with the joint cleaned between each pass.

(3) The casing shall be welded by a person trained and certified in the applicable American Petroleum Institute, American Society of Mechanical Engineers, American Welding Society or equivalent standard for welding casing and pipe or an equivalent training and certification program as approved by the Department. The certification requirements of this paragraph shall take effect August 5, 2011. A person with 10 years or more of experience welding casing as of February 5, 2011, who registered with the Department by November 7, 2011, is deemed to be certified.

(e) When casing through a workable coal seam, the operator shall install coal protective casing that has a minimum wall thickness of 0.23 inch.

(f) Casing which is attached to a blow-out preventer with a pressure rating of greater than 3,000 psi shall be pressure tested after cementing. A passing pressure test must be holding the anticipated maximum pressure to which the casing will be exposed for 30 minutes with not more than a 10% decrease. Certification of the pressure test shall be confirmed by entry and signature of the person performing the test on the driller's log.

§ 78a.85. Cement standards.

(a) When cementing surface casing or coal protective casing, the operator shall use cement that meets or exceeds the ASTM International C 150, Type I, II or III Standard or API Specification 10. The cement must also:

(1) Secure the casing in the wellbore.

(2) Isolate the wellbore from fresh groundwater.

(3) Contain any pressure from drilling, completion and production.

(4) Protect the casing from corrosion from, and degradation by, the geochemical, lithologic and physical conditions of the surrounding wellbore. For wells employing coal protective casing, this includes, but is not limited to, formulating cement to withstand elevated sulfate concentrations and other geochemical constituents of coal and associated strata which have the potential to adversely affect the integrity of the cement.

(5) Prevent gas flow in the annulus. In areas of known shallow gas producing zones, gas block additives and low fluid loss slurries shall be used.

(b) After the casing cement is placed behind surface casing, the operator shall permit the cement to set to a minimum designed compressive strength of 350 pounds per square inch (psi) at the casing seat. The cement placed at the bottom 300 feet of the surface casing must constitute a zone of critical cement and achieve a 72-hour compressive strength of 1,200 psi and the free water separation may be no more than 6 milliliters per 250 milliliters of cement. If the surface casing is less than 300 feet, the entire cemented string constitutes a zone of critical cement.

(c) After any casing cement is placed and cementing operations are complete, the casing may not be disturbed for a minimum of 8 hours by doing any of the following:

(1) Releasing pressure on the cement head within 4 hours of cementing if casing equipment check valves did not hold or casing equipment was not equipped with check valves. After 4 hours, the pressure may be released at a continuous, gradual rate over the next 4 hours provided the floats are secure.

(2) Nippling up on or in conjunction to the casing.

(3) Slacking off by the rig supporting the casing in the cement sheath.

(4) Running drill pipe or other mechanical devices into or out of the wellbore with the exception of a wireline used to determine the top of cement.

(d) Where special cement or additives are used, the operator may request approval from the Department to reduce the cement setting time specified in subsection (c).

(e) The operator shall notify the Department a minimum of 1 day before cementing of the surface casing begins, unless the cementing operation begins within 72 hours of the start of drilling.

(f) A copy of the cement job log shall be available at the well site for inspection by the Department during drilling operations. The cement job log must include the mix water temperature and pH, type of cement with listing and quantity of additive types, the volume, yield and density in pounds per gallon of the cement and the amount of cement returned to the surface, if any. Cementing procedural information must include a description of the pumping rates in barrels per minute, pressures in psi, time in minutes and sequence of events during the cementing operation.

(g) The cement job log shall be maintained by the operator after drilling operations for at least 5 years and be made available to the Department upon request.

§ 78a.86. Defective casing or cementing.

In a well that has defective, insufficient or improperly cemented casing, the operator shall report the defect to the Department within 24 hours of discovery by the operator and shall correct the defect. The operator shall correct the defect or submit a plan to correct the defect for approval by the Department within 30 days. If the defect cannot be corrected or an alternate method is not approved by the Department, the well shall be plugged under §§ 78a.91—78a.98 (relating to plugging).

§ 78a.87. Gas storage reservoir protective casing and cementing procedures.

(a) In addition to the other provisions in this subchapter, a well drilled through a gas storage reservoir or a gas storage reservoir protective area shall be drilled, cased and cemented as follows:

(1) An operator shall use drilling procedures capable of controlling anticipated gas flows and pressures when drilling from the surface to 200 feet above a gas storage reservoir or gas storage horizon.

(2) An operator shall use drilling procedures capable of controlling anticipated gas storage reservoir pressures and flows at all times when drilling from 200 feet above a gas storage reservoir horizon to the depth at which the gas storage protective casing will be installed. Operators shall use blow-out prevention equipment with a pressure rating in excess of the allowable maximum storage pressure for the gas storage reservoir.

(3) To protect the gas storage reservoir, an operator shall run intermediate or production casing from a point located at least 100 feet below the gas storage horizon to the surface. The operator shall cement this casing by circulating cement to a point at least 200 feet above the gas storage reservoir or gas storage horizon.

(4) When cementing casing in a well drilled through a gas storage reservoir, the operator shall ensure that no gas is present in the drilling fluids in an amount that could interfere with the integrity of the cement.

(b) A request by an operator for approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well drilled through a gas storage reservoir under section 3221 of the act (relating to alternative methods) shall be made in accordance with § 78a.75 (relating to alternative methods).

OPERATING WELLS

§ 78a.88. Mechanical integrity of operating wells.

(a) Except for wells that have been granted inactive status, the operator shall inspect each operating well at least quarterly to ensure it is in compliance with the well construction and operating requirements of this chapter and the act. The results of the inspections shall be recorded and retained by the operator for at least 5 years and be available for review by the Department and the coal owner or operator.

(b) At a minimum, inspections shall determine:

(1) The well-head pressure or water level measurement.

(2) The open flow on the annulus of the production casing or the annulus pressure if the annulus is shut in.

(3) If there is evidence of gas escaping from the well and the amount escaping, using measurement or best estimate of quantity.

(4) If there is evidence of progressive corrosion, rusting or other signs of equipment deterioration.

(c) For structurally sound wells in compliance with § 78a.73(e) (relating to general provision for well construction and operation), the operator shall follow the reporting schedule outlined in subsection (e).

(d) For wells exhibiting progressive corrosion, rusting or other signs of equipment deterioration that compromise the integrity of the well, or the well is not in compliance with § 78a.73(e), the operator shall immediately notify the Department and take corrective actions to repair or replace defective equipment or casing or mitigate the excess pressure on the surface casing seat or coal protective casing seat according to the following hierarchy:

(1) The operator shall reduce the shut-in or producing back pressure on the casing seat to achieve compliance with § 78a.73(e).

(2) The operator shall retrofit the well by installing production casing to reduce the pressure on the casing seat to achieve compliance with § 78a.73(e). The annular space surrounding the production casing must be open to the atmosphere. The production casing shall be either cemented to the surface or installed on a permanent packer. The operator shall notify the Department at least 7 days prior to initiating the corrective measure.

(3) Additional mechanical integrity tests, including, but not limited to, pressure tests, may be required by the Department to demonstrate the integrity of the well.

(e) The operator shall submit an annual report to the Department identifying the compliance status of each well with the mechanical integrity requirements of this section. The report shall be submitted on forms prescribed by, and available from, the Department or in a similar manner approved by the Department.

§ 78a.89. Gas migration response.

(a) When an operator or owner is notified of or otherwise made aware of a potential natural gas migration incident, the operator shall immediately conduct an investigation of the incident. The purpose of the investigation is to determine the nature of the incident, assess the potential for hazards to public health and safety, and mitigate any hazard posed by the concentrations of stray natural gas.

(b) The investigation undertaken by the operator under subsection (a) shall include, but not be limited to, the following:

(1) A site visit and interview with the complainant to obtain information about the complaint and to assess the reported natural gas migration incident.

(2) A field survey to assess the presence and concentrations of natural gas and aerial extent of the stray natural gas.

(3) If necessary, establishment of monitoring locations at potential sources, in potentially impacted structures and the subsurface.

(c) If combustible gas is detected inside a building or structure at concentrations equal to or greater than 10% of the L.E.L., the operator shall do the following:

(1) Immediately notify the Department, local emergency response agency, gas and electric utility companies, police and fire departments, and, in conjunction with the Department and local emergency response agencies, take measures necessary to ensure public health and safety.

(2) Initiate mitigation measures necessary to control and prevent further migration.

(3) Implement the additional investigation and mitigation measures as provided in subsection (e)(1)—(5).

(d) The operator shall notify the Department and, in conjunction with the Department, take measures necessary to ensure public health and safety, if sustained detectable concentrations of combustible gas satisfy any of the following:

(1) Greater than 1% and less than 10% of the L.E.L., in a building or structure.

(2) Equal to or greater than 25% of the L.E.L. in a water well head space.

(3) Detectable in the soils.

(4) Equal to or greater than 7 mg/l dissolved methane in water.

(e) The Department may require the operator to take the following additional actions:

(1) Conduct a field survey to assess the presence and concentrations of combustible gas and the areal extent of the combustible gas in the soils, surface water bodies, water wells and other potential migration pathways.

(2) Collect gas or water samples, or both, at a minimum for molecular and stable carbon and hydrogen isotope analyses from the impacted locations such as water wells, and from potential sources of the migration such as gas wells.

(3) Conduct an immediate evaluation of the operator's adjacent oil or gas wells to determine well cement and casing integrity and to evaluate the potential mechanism of migration. This evaluation may include assessing pressures for all casing intervals, reviewing records for indications of defective casing or cement, application of cement bond logs, ultrasonic imaging tools, geophysical logs and other mechanical integrity tests as required. The initial area of assessment must include wells within a radius of 2,500 feet and may be expanded if required by the Department.

(4) Take action to correct any defect in the oil and gas wells to mitigate the stray gas incident.

(5) Establish monitoring locations and monitoring frequency in consultation with the Department at potential sources, in potentially impacted structures and the subsurface.

(f) If concentrations of stray natural gas as defined in subsection (c) or (d) are not detected, the operator shall notify the Department, and do the following if requested by the Department:

(1) Conduct additional monitoring.

(2) Document findings.

(3) Submit a closure report.

(g) If concentrations of stray natural gas are detected inside a building or structure at concentrations equal to or greater than 10% of the L.E.L., the operator and owner shall file a report with the Department by phone and email within 24 hours after the interview with the complainant and field survey of the extent of stray natural gas. Additional daily or weekly reports shall be submitted if requested by the Department.

(h) For all stray natural gas migration incidents, a final written report documenting the results of the investigation shall be submitted to the Department for approval within 30 days of the close of the incident, or in a time frame otherwise approved by the Department. The final report must include the following:

(1) Documentation of all results of the investigation, including analytical data and monitoring results.

(2) Operational changes established at the operator's oil and gas wells in this Commonwealth.

(3) Measures taken by the operator to repair any defects at any of the investigated oil and gas wells.

(i) Reports submitted in accordance with this section that contain an analysis of geological or engineering data shall be prepared and sealed by a geologist or engineer licensed in this Commonwealth.

PLUGGING

§ 78a.91. General provisions.

(a) Upon abandoning a well, the owner or operator shall plug the well under §§ 78a.92—78a.98 or an approved alternate method under section 3221 of the act (relating to alternative methods) to stop the vertical flow of fluids or gas within the well bore unless one of the following applies:

(1) The Department has granted inactive status under §§ 78a.101—78a.105 (relating to inactive status).

(2) The well is part of a plugging schedule that has been approved by the Department and the operator is complying with that schedule, and the schedule takes into account potential harm that the well poses to the environment or public health and safety.

(3) The Department has approved the identification of the well as an orphan well under section 3213 of the act (relating to well registration and identification), and the Department has not determined a prior owner or operator received economic benefit after April 18, 1979, from this well other than economic benefit derived only as a landowner or from a royalty interest.

(b) The operator shall plug a well where a radioactive logging source has been lost under §§ 78a.92—78a.98 and 78a.111.

(c) When a well is being plugged from the attainable bottom, the operator shall install a 50-foot plug of cement at the attainable bottom and plug the remainder of the well under §§ 78a.92—78a.98.

(d) If the production casing cannot be retrieved, the operator shall plug strata bearing or having borne oil, gas or water by perforating the casing and squeezing cement into the annulus or other method approved by the Department. The maximum distance the stub of the uncemented production casing may extend is 100 feet below the surface casing seat or coal protective casing

seat, whichever is deeper. The uncemented portion of the casing left in the well above the total depth or attainable bottom may not extend through a formation bearing or having borne oil, gas or water or extend to a point where it interferes with subsequent plugging requirements of §§ 78a.92(a)(2) and 78a.93(a)(2) and (b)(4) (relating to wells in coal areas—surface or coal protective casing is cemented; and wells in coal areas—surface or coal protective casing anchored with a packer or cement). The remainder of the well shall be plugged under §§ 78a.92—78a.98.

(e) When plugging a well, an operator shall ensure that no gases are present in the well in an amount that could interfere with cementing the well.

(f) When plugging a well with a casing string cemented through a gas storage reservoir or reservoir protective area, an operator shall use bridge plugs immediately above and below the gas storage reservoir unless an alternate plugging plan has been approved by the Department.

(g) When a well located in a coal area is plugged to allow mining through it, the person authorized by the Department to plug the well under the act or section 13 of the Coal and Gas Resource Coordination Act (58 P.S. § 513) shall clean out the gas well to a depth of at least 200 feet below the coal seam which will be mined and, unless impracticable, to a point 200 feet below the deepest minable coal seam the well penetrates.

(h) In lieu of the plugging requirements of §§ 78a.92—78a.95 and 78a.97, an operator may cement a well from the total depth or attainable bottom to the surface. Wells in coal areas still shall meet the venting requirements of § 78a.92 or § 78a.93.

§ 78a.92. Wells in coal areas—surface or coal protective casing is cemented.

(a) In a well underlain by a workable coal seam, where the surface casing or coal protective casing is cemented and the production casing is not cemented or the production casing is not present, the owner or operator shall plug the well as follows:

(1) The retrievable production casing shall be removed by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120%, whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. The well shall be filled with nonporous material from the total depth or attainable bottom of the well to a point 50 feet below the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of cement, which shall extend for at least 50 feet above this stratum. Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that will completely seal the hole. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other materials approved by the Department. Where the production casing is not retrievable, the operator shall plug that portion of the well under § 78a.91(d) (relating to general provisions).

(2) After plugging strata bearing or having borne oil, gas or water, the well shall be filled with nonporous material to a point approximately 100 feet below the surface or coal protective casing seat, whichever is deeper. At this point, a 100-foot plug of cement shall be installed.

(3) After the plug has been installed below the casing seat, the inner casing shall be emptied of liquid from the surface to the plug of cement. A vent or other device approved by the Department shall then be installed on top of the inner string of casing to prevent liquids and solids from entering the well but permit access to the full internal diameter of the inner casing when required. The vent or other device approved by the Department must extend, when finally in place, a distance of at least 72 inches above ground level and the permit or registration number must be permanently affixed.

(b) The owner or operator shall plug a well, where the surface casing, coal protective casing and production casing are cemented, as follows:

(1) If the total depth or attainable bottom is deeper than the cemented production casing seat, the operator shall plug that portion of the well under subsection (a)(1).

(2) Cement plugs shall be set in the cemented portion of the production casing so that the plugs will extend from at least 50 feet below each stratum bearing or having borne oil, gas or water to a point at least 100 feet above each stratum bearing or having borne, oil, gas or water. A Department-approved mechanical plug may be set 20 feet above each stratum bearing or having borne oil, gas or water as a substitute for the plug of cement. Nonporous material must separate each cement plug or mechanical plug. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other materials as approved by the Department.

(3) Following the plugging of the cemented portion of the production casing, the uncemented portion of the production casing shall be separated from the cemented portion and retrieved by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120%, whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. The maximum distance the stub of the uncemented portion of the production casing may extend is 100 feet below the surface or coal protective casing whichever is lower. In no case may the uncemented portion of the casing left in the well extend through a formation bearing or having borne oil, gas or water. Other stratum above the cemented portion of the production casing bearing or having borne oil, gas or water shall be plugged by filling the hole with nonporous material to 20 feet above the stratum and setting a 50-foot plug of cement. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other material as approved by the Department. When the uncemented portion of the production casing is not retrievable, the operator shall plug that portion of the well under § 78a.91(d).

(4) After plugging all strata bearing or having borne oil, gas or water, the well shall be filled with nonporous material to a point approximately 100 feet below the surface or coal protective casing seat, whichever is deeper. At this point a 200-foot cement plug shall be placed so

that the plug extends from 100 feet below the casing seat to a point at least 100 feet above the casing seat.

(5) After the 200-foot plug has been installed, the remainder of the well shall be plugged and vented as described in subsection (a)(3).

(c) A person authorized by the Department under the act or section 13 of the Coal and Gas Resource Coordination Act (58 P.S. § 513) to plug a gas well that penetrates a workable coal seam that was drilled prior to November 30, 1955, or which was permitted after that date but not plugged in accordance with the act, shall plug the well to mine through it in the following manner:

(1) The gas well shall be cleaned out to a depth of at least 200 feet below the coal seam which is proposed to be mined and, unless impracticable, to a point 200 feet below the deepest mineable coal seam that the well penetrates.

(2) The gas well shall be plugged in accordance with section 13(a)(1), (2), (3) or (4) of the Coal and Gas Resource Coordination Act.

§ 78a.93. Wells in coal areas—surface or coal protective casing anchored with a packer or cement.

(a) In a well where the surface casing or coal protective casing and production casing are anchored with a packer or cement, the owner or operator shall plug the well as follows:

(1) The retrievable production casing shall be removed by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120%, whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. The well shall be filled with nonporous material from the total depth or attainable bottom of the well to a point 50 feet below the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of cement, which must extend for at least 50 feet above this stratum. Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that will completely seal the hole. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other material as approved by the Department. When the production casing is not retrievable, the operator shall plug this portion of the well under § 78a.91(d) (relating to general provisions).

(2) The well shall then be filled with nonporous material to a point approximately 200 feet below the lowest workable coal seam, or surface or coal protective casing seat, whichever is deeper. Beginning at this point a 100-foot plug of cement shall be installed.

(3) After it has been established that the surface casing or coal protective casing is free and can be retrieved, the surface or coal protective casing shall be retrieved by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120%, whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. A string of casing with an outside diameter of at least 4 1/2 inches for gas wells, or at least 2 inches for oil wells, shall be run to the top of the 100-foot plug described in paragraph (2) and cemented to the surface.

(4) If the surface or coal protective string is not free and cannot be retrieved, it shall be perforated or cut below the lowest workable coal to allow the cement used to cement the 4 1/2-inch or 2-inch casing to communicate between the surface casing or coal protective casing, or both, and the well bore. A string of casing of at least 4 1/2 inches for gas wells or at least 2 inches for oil wells shall be run to the top of the 100-foot plug described in paragraph (2) and cemented to the surface.

(5) The inner casing shall then be emptied of liquid and cement from the base of the casing to the surface and a vent or other device approved by the Department shall be installed on the top of the casing to prevent liquids and solids from entering the well, but permit ready access to the full internal diameter of the inner casing. The inner string of casing and the vent or other device approved by the Department must extend, when finally in place, a distance of at least 72 inches above ground level and the permit or registration number must be permanently affixed to the vent.

(b) The owner or operator shall plug a well, where the surface casing and coal protective casing is anchored with a packer or cement and the production casing is cemented, as follows:

(1) If the total depth or attainable bottom is deeper than the cemented production casing seat, the operator shall plug that portion of the well under subsection (a)(1).

(2) A cement plug shall be set in the cemented portion of the production casing so that the plugs extend from at least 50 feet below each stratum bearing or having borne oil, gas or water to a point at least 100 feet above each stratum bearing or having borne, oil, gas or water. A Department approved mechanical plug may be set 20 feet above the stratum bearing or having borne oil, gas or water as a substitute for the plug of cement. Nonporous material shall separate each cement plug or mechanical plug. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other materials as approved by the Department.

(3) Following the plugging of the cemented portion of the production casing, the uncemented portion of the production casing shall be separated from the cemented portion and retrieved. The maximum distance the stub of the uncemented portion of the production casing may extend is 100 feet below the surface or coal protective casing whichever is lower. In no case may the uncemented portion of the casing left in the well extend through a formation bearing or having borne oil, gas or water. Other stratum above the cemented portion of the production casing bearing or having borne oil, gas or water shall be plugged by filling the hole with nonporous material to 20 feet above the stratum and setting a 50-foot plug of cement. The operator may treat multiple strata as one stratum and plug as described in this paragraph with a single column of cement or other material approved by the Department. When the uncemented portion of the production casing is not retrievable, the operator shall plug that portion of the well under § 78a.91(d).

(4) The well shall be filled with nonporous material to a point approximately 300 feet below the bottom of the

surface casing or coal protective casing, whichever is deeper. In this case, a 100-foot plug of cement shall then be placed in the well beginning at that point and extending to a point approximately 200 feet below the bottom of the casing seat.

(5) After it has been established that the surface casing or coal protective casing is free and can be retrieved, the surface or coal protective casing shall be retrieved and a string of casing with an outside diameter of not less than 4 1/2 inches for gas wells, or not less than 2 inches for oil wells, shall be run to the top of the 100-foot plug described in paragraph (4) and cemented to the surface.

(6) If the surface or coal protective string is not free and cannot be retrieved, it shall be perforated or cut below the lowest workable coal seam to allow the cement used to cement the 4 1/2-inch or 2-inch casing to communicate between the surface casing or coal protective casing, or both, and the well bore. A string of casing of not less than 4 1/2 inches for gas wells or not less than 2 inches for oil wells shall be run to the top of the 100-foot plug described in paragraph (4) and cemented to the surface.

(7) The inner casing shall then be emptied of liquid and cement from the base of the casing to the surface and a vent or other device approved by the Department shall be installed on the top of the casing to prevent liquids and solids from entering the well, but permit ready access to the full internal diameter of the inner casing. The inner string of casing and the vent or other device approved by the Department shall extend, when finally in place, a distance of not less than 72 inches above ground level and the permit or registration number shall be permanently affixed to the vent.

(c) A person authorized by the Department under the act or section 13 of the Coal and Gas Resource Coordination Act (58 P.S. § 513) to plug a gas well that penetrates a workable coal seam which was drilled prior to November 30, 1955, or which was permitted after that date but not plugged in accordance with the act shall plug the well to mine through it in the following manner:

(1) The gas well shall be cleaned out to a depth of at least 200 feet below the coal seam which is proposed to be mined and, unless impracticable, to a point 200 feet below the deepest minable coal seam which the well penetrates.

(2) The well shall be plugged in accordance with section 13(a)(2) or (4) of the Coal and Gas Resource Coordination Act.

§ 78a.94. Wells in noncoal areas—surface casing is not cemented or not present.

(a) The owner or operator shall plug a noncoal well, where the surface casing and production casing are not cemented, or is not present as follows:

(1) The retrievable production casing shall be removed by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120%, whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. The well shall be filled with nonporous material from the total depth or attainable bottom of the well to a point 50 feet below the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of cement, which must extend for at least 50 feet above this stratum. Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that will completely seal the hole. The operator may treat multiple strata as one stratum and plug as described in this paragraph with a single column of cement or other materials as approved by the Department. When the production casing is not retrievable, the operator shall plug this portion of the well under § 78a.91(d) (relating to general provisions).

(2) After plugging strata bearing or having borne oil, gas or water, the well shall be filled with nonporous material to approximately 100 feet below the surface casing seat and there shall be placed another plug of cement or other equally nonporous material approved by the Department extending at least 50 feet above that point.

(3) After setting the uppermost 50-foot plug, the retrievable surface casing shall be removed by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120%, whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. The hole shall be filled from the top of the 50-foot plug to the surface with nonporous material other than gel. If the surface casing is not retrievable, the hole shall be filled from the top of the 50-foot plug to the surface with a noncementing material.

(b) The owner or operator shall plug a well, where the surface casing is not cemented or not present, and the production casing is cemented as follows:

(1) If the total depth or attainable bottom is deeper than the cemented production casing seat, the operator shall plug that portion of the well under subsection (a)(1).

(2) Cement plugs shall be set in the cemented portion of the production casing so that each plug extends from at least 50 feet below each stratum bearing or having borne oil, gas or water to a point at least 100 feet above each stratum. A Department-approved mechanical plug may be used as a substitute for the plug of cement. The mechanical plug shall be set 20 feet above each stratum having borne oil, gas or water. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other material approved by the Department.

(3) Following the plugging of the cemented portion of the production casing, the uncemented portion of the production string shall be separated from the cemented portion and retrieved. The maximum distance the stub of the uncemented portion of the production casing may extend is 100 feet below the surface casing. In no case may the uncemented portion of the production casing left in the hole extend through stratum bearing or having borne oil, gas or water. Other stratum bearing or having borne oil, gas or water shall be plugged by filling the hole with nonporous material to 20 feet above the stratum and setting a 50-foot plug of cement. When the uncemented portion of the production casing is not retrievable, the operator shall plug that portion of the well under § 78a.91(d).

(4) The remainder of the well shall be plugged under subsection (a)(2) and (3).

§ 78a.95. Wells in noncoal areas—surface casing is cemented.

(a) The owner or operator shall plug a well, where the surface casing is cemented and the production casing is not cemented or not present, as follows:

(1) The retrievable production casing shall be removed by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120%, whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. The well shall be filled with nonporous material from the total depth or attainable bottom of the well to a point 50 feet below the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of cement, which extends for at least 50 feet above this stratum. Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that will completely seal the hole. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other materials as approved by the Department. When the production casing is not retrievable, the operator shall plug this portion of the well under § 78a.91(d) (relating to general provisions).

(2) After plugging all strata bearing or having borne oil, gas or water, the well shall be filled with nonporous material to approximately 100 feet below the surface casing seat. Another plug of cement, or other equally nonporous material approved by the Department, shall be placed extending at least 50 feet above that point.

(3) After setting the 50-foot plug, the hole shall be filled from the top of the 50-foot plug to the surface with a noncementing material or the operator shall set a 100-foot cement plug which extends 50-feet into the surface casing and fill the hole to the surface with noncementing material.

(b) The owner or operator shall plug a noncoal well, where the surface casing and production casing are cemented, as follows:

(1) If the total depth or attainable bottom is deeper than the cemented production casing seat, the operator shall plug that portion of the well under subsection (a)(1).

(2) Cement plugs shall be set in the cemented portion of the production casing so that each plug extends from at least 50 feet below each stratum bearing or having borne oil, gas or water to a point at least 100 feet above the stratum. A Department-approved mechanical plug may be used as a substitute for the plug of cement. The mechanical plug shall be set 20 feet above each stratum having borne oil, gas or water. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other materials approved by the Department.

(3) Following the plugging of the cemented portion of the production casing, the uncemented portion of the production string shall be separated from the cemented portion and retrieved. The maximum distance the stub of the uncemented portion of the production casing may extend is 100 feet below the surface casing. In no case may the uncemented portion of the production casing left in the hole extend through stratum bearing or having borne oil, gas or water. Other stratum bearing or having borne oil, gas or water shall be plugged by filling the hole with nonporous material to 20 feet above the stratum and setting a 50-foot plug of cement. When the uncemented portion of the production casing is not retrievable, the operator shall plug that portion of the well under § 78a.91(d).

(4) The remainder of the well shall be plugged under subsection (a)(2) and (3).

§ 78a.96. Marking the location of a plugged well.

Upon the completion of plugging or replugging a well, the operator shall erect over the plugged well a permanent marker of concrete, metal, plastic or equally durable material. The marker must extend at least 4 feet above the ground surface and enough below the surface to make the marker permanent. Cement may be used to hold the marker in place provided the cement does not prevent inspection of the adequacy of the well plugging. The permit or registration number shall be stamped or cast or otherwise permanently affixed to the marker. In lieu of placing the marker above the ground surface, the marker may be buried below plow depth and shall contain enough metal to be detected at the surface by conventional metal detectors.

§ 78a.97. Plugging a well stimulated with explosives.

Where strata bearing or having borne oil, gas or water in the well have been stimulated with explosives, thereby creating cavities which cannot be readily filled as described in §§ 78a.92—78a.95, the well operator shall place at the nearest suitable point, but at least 20 feet above the stratum, a plug of cement which extends at least 50 feet above that point. If the stimulation has been done above one or more strata bearing or having borne oil, gas or water in the well, plugging in the applicable manner specified in §§ 78a.92—78a.95 shall be done at the nearest suitable points, to at least 20 feet below and at least 20 feet above the stratum stimulated. From a point immediately above and below these plugs, the well shall be plugged under §§ 78a.94 and 78a.95 (relating to wells in noncoal areas—surface casing is not cemented or not present; and wells in noncoal areas—surface casing is cemented).

§ 78a.98. Restricting surface water from the well bore.

When casing, including conductor pipe, is left in the well at the surface, the area between the casings or the casing and the well bore shall be permanently filled to the surface with a nonporous material to restrict surface water from the well bore.

INACTIVE STATUS

§ 78a.101. General provisions.

Upon application, the Department will grant inactive status for 5 years for a permitted or registered well if the application meets the requirements of section 3214 of the act (relating to inactive status) and §§ 78a.102—78a.105. The Department may require information to demonstrate that the conditions imposed by § 78a.102 (relating to criteria for approval of inactive status) are satisfied.

§ 78a.102. Criteria for approval of inactive status.

To obtain inactive status, the applicant shall affirmatively demonstrate to the Department's satisfaction that:

(1) The condition of the well is sufficient to:

(i) Prevent damage to the producing zone or contamination of fresh water or other natural resources or surface leakage of substances.

(ii) Stop the vertical flow of fluid or gas within the well bore.

(iii) Protect fresh groundwater.

(iv) Pose no threat to the health and safety of persons, property or the environment.

(2) The well complies with one of the following:

(i) The well meets casing and cementing requirements of §§ 78a.81—78a.83, 78a.83a, 78a.83b, 78a.83c and 78a.84—78a.86.

(ii) For wells not drilled in conformance with casing and cementing requirements of §§ 78a.81—78a.83, 78a.83a, 78a.83b, 78a.83c and 78a.84—78a.86, and for the purpose of the annual monitoring of wells granted inactive status as required under § 78a.103 (relating to annual monitoring of inactive wells), the applicant demonstrates that:

(A) For oil and gas wells equipped with surface casing, the operator shall demonstrate that the liquid level in the well bore is maintained at a level at no higher than the water protection depth. For purposes of this clause where oil or gas bearing formations are encountered less than 100 feet below the surface casing seat, the water protection depth shall be that point midway between the top of the oil or gas bearing formation and the surface casing seat.

(B) If the liquid level in an oil or gas well equipped with surface casing stands above the water protection depth and below the groundwater table depth, the operator shall test the liquid to determine its quality. If the liquid has a total dissolved solids content or conductivity generally equivalent to fresh groundwater in the immediate area, the casing is assumed to be either leaking or not set deep enough to shut off groundwater, and mechanical integrity is not demonstrated and inactive status will not be granted unless the operator demonstrates that the well is in compliance with the shut-in portion of the mechanical integrity test requirements of the Under Ground Injection Control program under the Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-26). If the liquid has a total dissolved solids content or conductivity equivalent to the production formation or production liquid, mechanical integrity is considered to be demonstrated.

(C) For oil wells not equipped with surface casing or for oil wells equipped with surface casing that cannot be approved for inactive status under clause (A) or (B), the operator shall modify the well to meet one of the following:

(I) The operator shall set a string of casing on a packer sufficiently deep to isolate the fresh groundwater system. The casing shall be set to the water protection depth for wells in the area, and the requirements of clause (A) or (B) shall be met.

(II) The operator has set a temporary plug or mechanical seal at the water protection depth and isolated the fresh groundwater system. The operator may demonstrate the integrity of the plug by demonstrating that water standing above the plug is, and continues to be, fresh water not contaminated by production fluids, or by other means acceptable to the Department.

(III) The operator shall fill the well with a freshwater bentonite gel or other material approved by the Department which will restrict vertical migration of gas or fluids in the well bore. The operator shall monitor the gel level and report significant changes to the Department on an annual basis and take remedial action approved by the Department.

(D) For gas wells equipped with production casing separate from the surface casing, the annulus between the surface or coal protective casing and the production casing is vented to the atmosphere. The owner or operator of a well granted inactive status under this clause shall monitor the annular vents for gas flow volumes. If the gas flow volume exceeds 5,000 cubic feet per day, the owner or operator shall notify the Department and take remedial action approved by the Department.

(E) For gas wells not equipped with separate production casing, but with cemented or uncemented surface casing present, the produced gas shut-in pressure is less than the pressure necessary to cause gas migration into the adjacent formation at the surface casing seat. Compliance with this condition may be demonstrated by mechanical tests of the casing and by evidence that the gas wellhead shut-in pressure does not exceed 0.433 psi per foot of surface or coal protective casing depth.

(3) If gas exists at an inactive oil well, the operator may vent the gas to the atmosphere or equip the well to confine the gas to the producing formation. If this gas flow is greater than 5,000 cubic feet per day, the owner or operator shall notify the Department and take remedial action approved by the Department.

(4) The applicant shall certify that the well is of future utility and shall present a viable plan for utilizing the well within a reasonable time. In addition to providing information to demonstrate compliance with paragraphs (1) and (2), the application for inactive status must include the following:

(i) A plan showing when the well will be used.

(ii) A certification identifying that one of the following applies:

(A) Significant reserves remain in place and the operator plans to produce the well.

(B) The well will be used as a disposal well.

(C) The well will be used as a storage well.

(D) The well will be used as an observation well.

(E) The well will be used as a secondary or tertiary recovery injection well or that the well will be used for other purposes specified by the applicant.

(iii) Other information necessary for the Department to make a determination on inactive status.

§ 78a.103. Annual monitoring of inactive wells.

The owner or operator of a well granted inactive status shall monitor the integrity of the well on an annual basis and shall report the results to the Department. The owner or operator shall give the Department 3 business days prior notice of the annual monitoring and mechanical integrity testing. For wells that were drilled in accordance with the casing and cementing standards of §§ 78a.81—78a.83, 78a.83a, 78a.83b, 78a.83c and 78a.84—78a.86, the operator shall monitor the integrity of the well by using the method described in § 78a.102(2)(ii)(A), (B), (D) or (E) (relating to criteria for

approval of inactive status), as appropriate. For a well that was not drilled in accordance with the casing and cementing standards, the wells shall be monitored in accordance with § 78a.102(1). To qualify for continued inactive status, the owner or operator shall demonstrate, by the data in the monitoring reports, that the condition of the well continues to satisfy the requirements of § 78a.102. The owner or operator shall submit the report by March 31 of the following year.

§ 78a.104. Term of inactive status.

Approval of inactive status for a well is valid for 5 years unless revoked. After 5 years, the owner or operator shall plug or return to active status a well granted inactive status unless the Department grants an application for a 1-year extension. The operator of a well granted inactive status may apply for renewal of inactive status by demonstrating that the well continues to satisfy the conditions imposed on the well by §§ 78a.102 and 78a.103 (relating to criteria for approval of inactive status; and annual monitoring of inactive wells).

§ 78a.105. Revocation of inactive status.

The Department may revoke inactive status and may order the immediate plugging of a well if one of the following applies:

(1) The well is in violation of the act or regulations administered by the Department.

(2) The operator of the inactive well has become insolvent, to the extent that the plan provided under § 78a.102 (relating to criteria for approval of inactive status) is no longer viable to return the well to active status, or the operator otherwise demonstrates a lack of ability or intention to comply with applicable laws and regulations.

(3) The condition of the well no longer satisfies the requirements of section 3214 of the act (relating to inactive status) and § 78a.102 and §§ 78a.103 and 78a.104 (relating to annual monitoring of inactive wells; and term of inactive status).

(4) The owner or operator is unwilling or unable to perform his obligations under the act.

RADIOACTIVE LOGGING SOURCES

§ 78a.111. Abandonment.

(a) The owner or operator may not abandon a radioactive source licensed by the Commonwealth for logging purposes without consent of the Department. Approval of a plan of abandonment may be arranged with the Department by telephone and is to be followed by a written report to the Department within 30 days after abandonment of the radioactive source. The plan shall be approved by the Department.

(b) The operator shall notify the Department of his intention to leave a radioactive source in a well.

(c) The operator shall mechanically equip a well in which a radioactive source is abandoned to prevent the accidental or intentional mechanical disintegration of the radioactive source.

(1) The operator shall cover the radioactive source being abandoned in the bottom of a well with a substantial standard color-dyed cement plug on top of which a mechanical stop or deflector shall be set. The dye must contrast with the color of the formation to alert a re-entry operator prior to encountering the source.

(2) In a well where a logging source has been cemented in place behind a casing string and above total depth, upon plugging the well, a color-dyed cement plug shall be placed opposite the abandoned source inside the well bore and a mechanical stop or deflector shall be placed on top of the plug.

(3) If, after expending a reasonable effort, the operator cannot comply with paragraph (1) or (2) because of hole conditions, the operator shall request Department approval to cease efforts to comply with paragraph (1) or (2) and shall obtain approval for an alternate method for abandoning the source and plugging the well.

(d) Upon plugging a well in which a radioactive source is left in the hole, the operator shall place a permanent plaque by welding, bolting or cementing it to the top of the bore hole in a manner approved by the Department that re-entry cannot be accomplished without disturbing the plaque. The plaque shall serve as a visual warning to a person re-entering the hole that a radioactive source has been abandoned in-place in the well. The plaque shall depict the trefoil radiation symbol with the words "Caution, Radioactive Material" under 10 CFR 20.1901(a) (relating to caution signs) and must be constructed of a long-lasting material such as monel, stainless steel, bronze or brass. The marker must bear the following information:

(1) Farm name.

(2) Permit number.

(3) Name and address of operator.

(4) The type and strength of radioactive material abandoned in the well.

(5) The total well depth.

(6) Depth at which the source was abandoned.

(7) A warning not to drill below the plug-back depth or to enlarge the casing.

(8) The date the source was abandoned.

(e) Prior to workover or re-entry activity, if a radioactive source is present, the operator shall have the plan of operation approved by the Department before the workover or re-entry is permitted.

(f) This section does not relieve the licensee, owner or operator from the obligation to comply with Federal regulations and this title, including Chapters 225 and 226 (relating to radiation safety requirements for industrial radiographic operations; and licenses and radiation safety requirements for well logging).

Subchapter E. WELL REPORTING

Sec.
78a.121. Production reporting.
78a.122. Well record and completion report.
78a.123. Logs and additional data.
78a.124. Certificate of plugging.

§ 78a.121. Production reporting.

(a) Each operator of an unconventional well shall submit a monthly production and status report for each well on an individual basis within 45 calendar days of the close of each monthly reporting period. Production shall be reported for the preceding reporting period. When the production data is not available to the operator on a well basis, the operator shall report production on the most well-specific basis available.

(b) The monthly production report must include information on the amount and type of waste produced and the method of waste disposal or reuse, including the specific facility or well site where the waste was managed. Waste information submitted to the Department in

accordance with this subsection is deemed to satisfy the residual waste biennial reporting requirements of § 287.52 (relating to biennial report).

(c) The production report shall be submitted electronically to the Department through its web site.

§ 78a.122. Well record and completion report.

(a) For each well that is drilled or altered, the operator shall keep a detailed drillers log at the well site available for inspection until drilling is completed. Within 30 calendar days of cessation of drilling or altering a well, the well operator shall submit a well record to the Department on a form provided by the Department that includes the following information:

(1) Name, address and telephone number of the permittee.

(2) Permit number, and farm name and number.

(3) Township and county.

(4) Date drilling started and completed.

(5) Method of drilling.

(6) Size and depth of conductor pipe, surface casing, coal protective casing, intermediate casing, production casing and borehole.

(7) Type and amount of cement and results of cementing procedures.

(8) Elevation and total depth.

(9) Drillers log that includes the name and depth of formations from the surface to total depth, depth of oil and gas producing zone, depth of fresh water and brines and source of information.

(10) Certification by the operator that the well has been constructed in accordance with this chapter and any permit conditions imposed by the Department.

(11) Whether methane was encountered other than in a target formation.

(12) The country of origin and manufacture of tubular steel products used in the construction of the well.

(13) The borrow pit used for well site development, if any.

(14) Other information required by the Department.

(b) Within 30 calendar days after completion of the well, when the well is capable of production, the well operator shall arrange for the submission of a completion report to the Department on a form provided by the Department that includes the following information:

(1) Name, address and telephone number of the permittee.

(2) Name, address and telephone number of the service companies.

(3) Permit number, and farm name and number.

(4) Township and county.

(5) Perforation record.

(6) Stimulation record which includes the following:

(i) A descriptive list of the chemical additives in the stimulation fluid, including any acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor and surfactant.

(ii) The percent by mass of each chemical additive in the stimulation fluid.

(iii) The trade name, vendor and a brief descriptor of the intended use or function of each chemical additive in the stimulation fluid.

(iv) A list of the chemicals intentionally added to the stimulation fluid, by name and chemical abstract service number.

(v) The maximum concentration, in percent by mass, of each chemical intentionally added to the stimulation fluid.

(vi) The total volume of the base fluid.

(vii) A list of water sources used under an approved WMP and the volume of water used from each source.

(viii) The total volume of recycled water used.

(ix) The pump rate and pressure used in the well.

(7) Actual open flow production and shut in surface pressure.

(8) Open flow production and shut in surface pressure, measured 24 hours after completion.

(9) The well development impoundment, if any, used in the development of the well.

(10) Certification by the operator that the monitoring plan required under § 78a.52a (relating to area of review) was conducted as outlined in the area of review report.

(c) When the well operator submits a stimulation record, it may designate specific portions of the stimulation record as containing a trade secret or confidential proprietary information. The Department will prevent disclosure of the designated confidential information to the extent permitted under the Right-to-Know Law (65 P.S. §§ 67.101—67.3104) or other applicable State law.

(d) The well record required under subsection (a) and the completion report required under subsection (b) shall be submitted electronically to the Department through the Department's web site.

§ 78a.123. Logs and additional data.

(a) The well operator shall, within 90 days of completion or recompletion of drilling, submit a copy of any electrical, radioactive or other standard industry logs which have been run.

(b) In addition, if requested by the Department within 1 year of the completion or recompletion of drilling, the well operator shall file with the Department a copy of the drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis and lithologic log or sample description or other similar data as compiled. Information is not required unless the operator has had the information described in this subsection compiled in the ordinary course of business. Interpretation of the data is not required to be filed.

(c) Upon notification by the Department prior to drilling, the well operator shall collect additional data specified by the Department, such as representative drill cuttings and samples from cores taken, and other geological information that the operator can reasonably compile. Interpretation of the data is not required to be filed.

(d) Data requested by the Department under subsections (b) and (c) shall be retained by the well operator and filed with the Department no more than 3 years after completion of the well. Upon request for good cause, the Department may extend the deadline up to 5 years from the date of completion or recompletion of drilling the well. The Department may request submission of the informa-

tion before these time frames if the information is necessary to conduct an investigation or for enforcement proceedings.

(e) The Department is entitled to utilize information collected under this section in enforcement proceedings, in making designations or determinations under section 1927-A of The Administrative Code of 1929 (71 P.S. § 510-27), and in aggregate form for statistical purposes.

§ 78a.124. Certificate of plugging.

(a) Within 30 calendar days after the well has been plugged, the owner or operator of the well shall submit a certificate of plugging to the Department and each coal operator, lessee or owner who was sent notice by certified mail of the intent to plug the well.

(b) The certificate of plugging must be on a form provided by the Department and contain information required by the Department.

(c) The certificate of plugging shall be prepared and signed by two experienced and qualified people who participated in the work, and shall also be signed by the well owner or operator.

Subchapter G. BONDING REQUIREMENTS

Sec.
78a.301. Scope.
78a.302. Requirement to file a bond.
78a.303. Form, terms and conditions of the bond.
78a.304. Terms and conditions for surety bonds.
78a.305. Terms and conditions for collateral bonds—general.
78a.306. Collateral bonds—letters of credit.
78a.307. Collateral bonds—certificates of deposit.
78a.308. Collateral bonds—negotiable bonds.
78a.310. Replacement of existing bond.
78a.311. Failure to maintain adequate bond.
78a.312. Forfeiture determination.
78a.313. Incapacity of operators.
78a.314. Preservation of remedies.

§ 78a.301. Scope.

In addition to the requirements of section 3225 of the act (relating to bonding), this subchapter specifies certain requirements for surety bonds, collateral bonds, replacement of existing bonds, maintaining adequate bond and bond forfeiture.

§ 78a.302. Requirement to file a bond.

For a well that has not been plugged, the owner or operator shall file a bond or otherwise comply with the bonding requirements of section 3225 of the act (relating to bonding) and this chapter. A bond or bond substitute is not required for a well drilled before April 18, 1985.

§ 78a.303. Form, terms and conditions of the bond.

(a) The following types of security are approvable:

(1) A surety bond as provided in § 78a.304 (relating to terms and conditions for surety bonds).

(2) A collateral bond as provided in §§ 78a.305—78a.308.

(b) A person submitting a bond shall comply with the Department guidelines establishing minimum criteria for execution and completion of the bond forms and related documents.

(c) A bond shall be conditioned upon compliance with the drilling, water supply replacement, restoration and plugging requirements in the act, this chapter and permit conditions relating thereto. The bonds are penal in nature and are designed to ensure compliance by the operator to protect the environment, public health and safety affected by the oil and gas well.

(d) The person named in the bond or other security shall be the same as the person named in the permit.

§ 78a.304. Terms and conditions for surety bonds.

(a) The bond of a surety company that has failed, refused or unduly delayed to pay, in full, on a forfeited surety bond is not approvable.

(b) Only the bond of a surety authorized to do business in this Commonwealth is approvable. If the principal place of business of the surety is outside of this Commonwealth, or if the surety is not a Pennsylvania corporation, the surety bond shall also be signed by an authorized resident agency of the surety that maintains an office in this Commonwealth.

(c) The surety may cancel the bond by filing written notice of cancellation with the Department, the operator and the principal on the bond, only under the following conditions:

(1) The notice of cancellation shall be sent by certified mail, return receipt requested. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the Department, the operator and the principal on the bond as evidenced by return receipts.

(2) Within 30 days after receipt of a notice of cancellation, the operator shall provide the Department with a replacement bond under § 78a.310 (relating to replacement of existing bond).

(d) The Department will not accept surety bonds from a surety company when the total bond liability to the Department on the bonds filed by the operator, the principal and related parties exceeds the surety company's single risk limit as provided by The Insurance Company Law of 1921 (40 P.S. §§ 341—991.2610).

(e) The bond must provide that the surety and the principal shall be jointly and severally liable for payment of the bond amount.

(f) The bond must provide that the amount shall be confessed to judgment and execution upon forfeiture.

(g) The Department will retain, during the term of the bond, and upon forfeiture of the bond, a property interest in the surety's guarantee of payment under the bond which is not affected by the bankruptcy, insolvency or other financial incapacity of the operator or principal on the bond.

(h) The surety shall give written notice to the Department, if permissible under law, to the principal and the Department within 10 days of a notice received or action filed by or with a regulatory agency or court having jurisdiction over the surety alleging one of the following:

(1) The insolvency or bankruptcy of the surety.

(2) A violation of regulatory requirements applicable to the surety, when as a result of the violation, suspension or revocation of the surety's license to do business in this Commonwealth or another state is under consideration by a regulatory agency.

§ 78a.305. Terms and conditions for collateral bonds—general.

(a) Collateral documents shall be executed by the owner or operator.

(b) The market value of collateral deposited shall be at least equal to the required bond amount with the exception of United States Treasury Zero Coupon Bonds which

shall have a maturity date of not more than 10 years after the date of purchase and at maturity a value of at least $25,000.

(c) Collateral shall be pledged and assigned to the Department free from claims or rights. The pledge or assignment shall vest in the Department a property interest in the collateral which shall remain until release as provided by law and is not affected by the bankruptcy, insolvency or other financial incapacity of the operator.

(d) The Department's ownership rights to deposited collateral shall be such that the collateral is readily available to the Department upon forfeiture. The Department may require proof of ownership and other means, such as secondary agreements, as it deems necessary to meet the requirements of this subchapter. If the Department determines that deposited collateral does not meet the requirements of this subchapter, it may take action under the law to protect its interest in the collateral.

§ 78a.306. Collateral bonds—letters of credit.

(a) Letters of credit submitted as collateral for collateral bonds shall be subject to the following conditions:

(1) The letter of credit must be a standby or guarantee letter of credit issued by a Federally-insured or equivalently protected financial institution, regulated and examined by the Commonwealth or a Federal agency and authorized to do business in this Commonwealth.

(2) The letter of credit must be irrevocable and must be so designated. However, the Department may accept a letter of credit for which a limited time period is stated if the following conditions are met and are stated in the letter:

(i) The letter of credit is automatically renewable for additional time periods unless the financial institution gives at least 90 days prior written notice to both the Department and the operator of its intent to terminate the credit at the end of the current time period.

(ii) The Department has the right to draw upon the credit before the end of its time period, if the operator fails to replace the letter of credit with other acceptable means of compliance with section 3225 of the act (relating to bonding) within 30 calendar days of the financial institution's notice to terminate the credit.

(3) Letters of credit must name the Department as the beneficiary and be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts, at sight. The Department's right to draw upon the letter of credit does not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or other requirements.

(4) A letter of credit is subject to 13 Pa.C.S. (relating to Uniform Commercial Code) and the latest revision of *Uniform Customs and Practices for Documentary Credits* as published in the International Chamber of Commerce Publication No. 400.

(5) The Department will not accept a letter of credit from a financial institution which has failed, refused or unduly delayed to pay, in full, on a letter of credit or a certificate of deposit previously submitted as collateral to the Department.

(6) The issuing financial institution shall waive rights of set-off or liens which it has or might have against the letter of credit.

(b) If the Department collects any amount under the letter of credit due to failure of the operator to replace the letter of credit after demand by the Department, the Department will hold the proceeds as cash collateral as provided by this subchapter. The operator may obtain the cash collateral after he has submitted and the Department has approved a bond or other means of compliance with section 3225 of the act.

§ 78a.307. Collateral bonds—certificates of deposit.

A certificate of deposit submitted as collateral for collateral bonds is subject to the following conditions:

(1) The certificate of deposit shall be made payable to the operator and shall be assigned to the Department by the operator, in writing, as required by the Department and on forms provided by the Department. The assignment shall be recorded upon the books of the financial institution issuing the certificate.

(2) The certificate of deposit shall be issued by a Federally-insured or equivalently protected financial institution which is authorized to do business in this Commonwealth.

(3) The certificate of deposit must state that the financial institution issuing it waives rights of setoff or liens which it has or might have against the certificate.

(4) The certificate of deposit must be automatically renewable and fully assignable to the Department. Certificates of deposit must state on their face that they are automatically renewable.

(5) The operator shall submit certificates of deposit in amounts which will allow the Department to liquidate those certificates prior to maturity, upon forfeiture, for the full amount of the bond without penalty to the Department.

(6) The Department will not accept certificates of deposit from financial institutions which have failed, refused or unduly delayed to pay, in full, on certificates of deposit or letters of credit which have previously been submitted as collateral to the Department.

(7) The operator is not entitled to interest accruing after forfeiture is declared by the Department, until the forfeiture declaration is ruled invalid by a court having jurisdiction over the Department, and the ruling is final.

§ 78a.308. Collateral bonds—negotiable bonds.

Negotiable bonds submitted and pledged as collateral for collateral bonds under section 3225(a)(3) of the act (relating to bonding) are subject to the following conditions:

(1) The Department will use the current market value of governmental securities, other than United States Treasury Zero Coupon Bonds, for the purpose of establishing the value of the securities for bond deposit.

(2) The current market value must be at least equal to the amount of the required bond.

(3) The Department may periodically evaluate the securities and may require additional amounts if the current market value is insufficient to satisfy the bond amount requirements for the oil or gas well operations.

(4) The operator may request and receive the interest accruing on governmental securities filed with the Department as the interest becomes due and payable. An operator will not receive interest accruing on governmental securities until the full amount of the bond has been accumulated. No interest may be paid for postforfeiture interest accruing during appeals and after resolution of the appeals, when the forfeiture is adjudicated, decided or settled in favor of the Commonwealth.

§ 78a.310. Replacement of existing bond.

(a) An owner or operator may replace an existing surety or collateral bond with another surety or collateral bond that satisfies the requirements of this chapter, if the liability which has accrued against the bond, the owner or operator who filed the first bond and the well operation is transferred to the replacement bond. An owner or operator may not substitute a phased deposit of collateral bond under section 3225(d) and (d.1) of the act (relating to bonding) for a valid surety bond or collateral that has been filed and approved by the Department.

(b) The Department will not release existing bonds until the operator has submitted and the Department has approved acceptable replacement bonds.

§ 78a.311. Failure to maintain adequate bond.

The permittee shall maintain a bond in an amount and with sufficient guarantee as provided by this chapter. If a surety company that had provided surety bonds, or a financial institution that had provided certificates of deposit or letters of credit for an operator enters into bankruptcy or liquidation, has its license suspended or revoked or for another reason indicates an inability or unwillingness to provide an adequate financial guarantee of the obligations under the bond, the operator shall submit a bond within 45 days of notice from the Department.

§ 78a.312. Forfeiture determination.

(a) A collateral or surety bond may be forfeited when the Department determines that the operator fails or refuses to comply with the act, this title, an order of the Department, or the terms or conditions of the permit relating to drilling, water supply replacement, plugging and site restoration.

(b) If forfeiture of the bond is required, the Department will:

(1) Send written notification by mail to the permittee, and the surety, if any, of the Department's intent to forfeit the bond and describe the grounds for forfeiture. The notification will also provide an opportunity to take remedial action or submit a schedule for taking remedial actions acceptable to the Department within 30 days of the notice of intent to forfeit, in lieu of collecting the bond.

(2) If the permittee and surety, if any, fail either to take remedial action or to submit a plan acceptable to the Department within 30 days of the notice of the intent to forfeit, the bond will be subject to forfeiture and collection up to the face amount thereof. The Department will issue a declaration to forfeit the bond.

(3) The declaration to forfeit is an action which may be appealable to the Environmental Hearing Board under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514).

§ 78a.313. Incapacity of operators.

An owner or operator shall notify the Department by certified mail within 10 calendar days after the start of a voluntary or involuntary proceeding under 11 U.S.C.A. §§ 101—1532, known as the Federal Bankruptcy Act, naming the owner or operator as debtor.

§ 78a.314. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including the act, the applicable environmental protection acts, this title, the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this subchapter is an exclusive penalty or remedy for the violations. No action under this subchapter waives or impairs another remedy or penalty provided in law or equity.

[Pa.B. Doc. No. 16-1757. Filed for public inspection October 7, 2016, 9:00 a.m.]