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# PENNSYLVANIA BULLETIN

Volume 41  
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Number 42  
Pages 5529—5610

## Agencies in this issue

The Courts  
Department of Banking  
Department of Environmental Protection  
Department of Health  
Department of Labor and Industry  
Department of Public Welfare  
Department of Transportation  
Environmental Quality Board  
Fish and Boat Commission  
Independent Regulatory Review Commission  
Insurance Department  
Legislative Reference Bureau  
Milk Marketing Board  
Patient Safety Authority  
Susquehanna River Basin Commission

**Detailed list of contents appears inside.**



**Latest Pennsylvania Code Reporters  
(Master Transmittal Sheets):**

**No. 443, October 2011**

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

## *Pennsylvania Bulletin*

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

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

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

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

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

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

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

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

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

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

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

### ***Pennsylvania Code***

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

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

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

### **How to Find Documents**

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

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

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

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

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

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

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## List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2011.

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# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 1, 5, 6, 10 AND 11 ]

**Proposed New Pa.Rs.Crim.P. 556—556.12, and Proposed Correlative Changes to Pa.Rs.Crim.P. 103, 540, 542, 544, 547, 560, 573, 578, 582, 646, 648, 1003 and 1101**

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules of Criminal Procedure 556 through 556.12, amend Rules of Criminal Procedure 103, 540, 544, 547, 560, 646, 1003, and 1101, and revise the Comments to Rules of Criminal Procedure 542, 573, 578, 582, and 648. The proposed new rules and correlative rule changes have been developed at the request of the Court and provide, *inter alia*, for the resumption of the use of indicting grand juries, but only as a local option in the narrowly defined circumstance of cases in which witness intimidation has occurred, is occurring, or is likely to occur. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed new rules and amendments to the rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Counsel  
 Supreme Court of Pennsylvania  
 Criminal Procedural Rules Committee  
 Pennsylvania Judicial Center  
 601 Commonwealth Ave., Suite 6200, P. O. Box 62635  
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no later than Thursday, November 10, 2011.

*By the Criminal Procedural Rules Committee*

RISA VETRI FERMAN,  
*Chair*

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

##### PART A. Business of the Courts

##### Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

\* \* \* \* \*

**INDICTMENT** is [ a bill of indictment which has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215 ] the instrument holding the defendant for court after a grand jury votes to indict and authorizing the attorney for the Commonwealth to prepare an information.

**INFORMATION** is a formal written [ accusation ] statement charging the commission of an offense [ made ] signed and presented to the court by the attorney for the Commonwealth [ , upon which a defendant may be tried, which replaces the indictment in all counties since the use of the indicting grand jury has been abolished. ] after a defendant is held for court or waives the preliminary hearing or a grand jury proceeding.

\* \* \* \* \*

#### Comment

The definitions of arraignment and preliminary arraignment were added in 2004 to clarify the distinction between the two proceedings. Although both are administrative proceedings at which the defendant is advised of the charges and the right to counsel, the preliminary arraignment occurs shortly after an arrest before a member of the minor judiciary, while an arraignment occurs in the court of common pleas after a case is held for court and an information is filed.

**The definition of indictment was amended in 2011 consistent with the adoption of the new indicting grand jury rules in Chapter 5 Part E. Under the new rules, the indictment is the functional equivalent of an issuing authority’s order holding the defendant for court and that forms the basis for the information that is prepared by the attorney for the Commonwealth. Formerly, an indictment was defined as a bill of indictment that has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215.**

\* \* \* \* \*

**Official Note:** Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended April 30, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended February 4, 2005, effective immediately; amended May 6, 2009, effective immediately; **amended , 2011, effective , 2011.**

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the proposed amendments modifying the definitions of indictment and information published for comment at 41 Pa.B. 5549 (October 15, 2011).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

\* \* \* \* \*

(F) Unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2, the issuing authority shall:

(1) fix a day and hour for a preliminary hearing which shall not be [ less than 3 nor more than 10 days after the preliminary arraignment, ] later than 14 days after the preliminary arraignment if the defendant is in custody and no later than 21 days if not in custody unless:

\* \* \* \* \*

Comment

\* \* \* \* \*

Nothing in this rule is intended to address public access to arrest warrant affidavits. See Commonwealth v. Fenstermaker, 515 Pa. 501, 530 A.2d 414 ([ Pa. ] 1987).

\* \* \* \* \*

The 2011 amendment to paragraph (F) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

See Rule 1003(D) for the procedures governing preliminary arraignments in the Municipal Court.

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended , effective , 2011.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the proposed amendments concerning indicting grand juries published for comment at 41 Pa.B. 5549 (October 15, 2011).

Rule 542. Preliminary Hearing; Continuances.

\* \* \* \* \*

Comment

\* \* \* \* \*

For the contents of the transcript, see Rule 135.

See Chapter 5 Part E for the procedures governing indicting grand juries. Under these rules, a case may be presented to the grand jury instead of proceeding to a preliminary hearing. See Rule 556.2.

Official Note: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended January 27, 2011, effective in 30 days; amended , 2011, effective , 2011.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the proposed revision of the Comment concerning indicting grand juries published for comment at 41 Pa.B. 5549 (October 15, 2011).

Rule 544. Reinstating Charges Following Withdrawal or Dismissal.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, or when a grand jury declines to indict, the attorney for the Commonwealth may reinstate the charges by approving, in writing, the [refiling] re-filing of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

(B) Following the [refiling] re-filing of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 132 motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different

issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

**Comment**

This rule provides the procedures for reinstating criminal charges following their withdrawal or dismissal at, or prior to, the preliminary hearing, **or after a grand jury declines to indict.**

The authority of the attorney for the Commonwealth to reinstate charges that have been dismissed at the preliminary hearing is well established by case law. *See, e.g., McNair’s Petition, 324 Pa. 48, 187 A. 498* ([ Pa. ] 1936); *Commonwealth v. Thorpe, 549 Pa. 343, 701 A.2d 488* ([ Pa. ] 1997). This authority, however, is not unlimited. First, the charges must be reinstated prior to the expiration of the applicable statute(s) of limitations. *See Commonwealth v. Thorpe, 549 Pa. 343, 701 A.2d 488* ([ Pa. ] 1997). In addition, the courts have held that the reinstatement may be barred in a case in which the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. *See Commonwealth v. Thorpe, 549 Pa. 343, 701 A.2d 488* ([ Pa. ] 1997); *Commonwealth v. Shoop, 420 Pa. Super. 606, 617 A.2d 351* ([ Pa. Super. ] 1992).

The decision to reinstate charges must be made by the attorney for the Commonwealth. Therefore, in cases in which no attorney for the Commonwealth was present at the preliminary hearing, the police officer may not [ refile ] re-file the complaint without the written authorization of the attorney for the Commonwealth. *See* Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option) for procedures for prior approval of complaints.

\* \* \* \* \*

**See Chapter 5 Part E for the procedures governing indicting grand juries. If the attorney for the Commonwealth is reinstating the charges after a grand jury has declined to indict, the complaint should be re-filed with the issuing authority with whom the original complaint was filed.**

*See* Chapter 5 Part F(1) for the procedures governing motions.

**Official Note:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000. New Rule 143 adopted October 8, 1999, effective January 1, 2000; renumbered Rule 544 and amended March 1, 2000, effective April 1, 2001; amended , 2011, effective , 2011.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed amendments to paragraph (A) concerning indicting grand juries published for comment at 41 Pa.B. 5549 (October 15, 2011).**

**Rule 547. Return of Transcript and Original Papers.**

(A) When a defendant is held for court, **either following a preliminary hearing or an indictment by a grand jury**, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript. It shall be signed by the issuing authority, and have affixed to it the issuing authority’s seal of office.

\* \* \* \* \*

(C) In addition to this transcript the issuing authority shall also transmit the following items:

\* \* \* \* \*

(5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b); [ and ]

(6) notice informing the court of common pleas that the defendant has failed to comply with the fingerprint order as required in Rule 543(D)(3)(b)(ii)[ . ] ; and

**(7) when the defendant is indicted by the grand jury, the copy of the indictment.**

**Comment**

\* \* \* \* \*

When the case is held for court pursuant to Rule 543(D)(3)(b)(ii), the issuing authority must include with the transcript transmittal a notice to the court of common pleas that the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2). **See Rule 543(D)(3)(b)(ii).** The court of common pleas must take whatever actions deemed appropriate to address this non-compliance.

**See Chapter 5 Part E for the procedures governing indicting grand juries. Pursuant to Rule 556.11, the supervising judge will forward a copy of the indictment to the issuing authority for inclusion with documents forwarded with the transcript under this rule. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the original indictment filed by the supervising judge.**

**Official Note:** Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended , 2011, effective , 2011.

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the July 10, 2008 amendments to paragraph (C)(6) concerning the fingerprint order published at [ 37 ] 38 Pa.B. 3975 (July 26, [ 2007 ] 2008).

**Report explaining proposed amendments to paragraph (A) and adding paragraph (C)(7) concerning**

**indicting grand juries published for comment at 41 Pa.B. 5549 (October 15, 2011).**

(Editor's Note: Rules 556—556.12 are new and printed in regular type to enhance readability.)

**PART E. Indicting Grand Jury**

Rule	
556.	Indicting Grand Jury.
556.1	Summoning Panels of Grand Jurors.
556.2.	Proceeding by Indicting Grand Jury Without Preliminary Hearing.
556.3.	Composition and Organization of the Indicting Grand Jury.
556.4.	Challenges to Grand Jury and Grand Jurors.
556.5.	Duration of Indicting Grand Jury.
556.6.	Administering Oath to Grand Jury and Foreperson.
556.7.	Administration of Oath to Witnesses; Court Personnel.
556.8.	Recording of Testimony Before Indicting Grand Jury.
556.9.	Who May be Present During Sessions of Indicting Grand Jury.
556.10.	Secrecy; Disclosure.
556.11.	Proceedings When Case Presented to Grand Jury.
556.12.	Waiver of Grand Jury Action.

**Rule 556. Indicting Grand Jury.**

Each of the several courts of common pleas may proceed with an indicting grand jury pursuant to these rules only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

**Comment**

This rule was adopted in 2011 to permit the use of an indicting grand jury as an alternative to the preliminary hearing but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

**Official Note:** New Rule 556 adopted , effective .

**Committee Explanatory Reports:**

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.1 Summoning Panels of Grand Jurors.**

(A) When the court of common pleas elects to proceed with an indicting grand jury, the president judge, or president judge's designee, shall order one or more grand juries to be summoned for the purpose of issuing indictments or shall order that the sitting investigating grand jury shall sit as the indicting grand jury.

(B) The judge shall order the officials designated by law to summon prospective jurors to summon such number of jurors who are eligible by law as the judge deems necessary to serve as a panel for grand jury service.

(C) The summons shall be made returnable on such date as is ordered by the court.

**Comment**

Pursuant to paragraph (A), the president judge, or president judge's designee, may order that an investigating grand jury that is sitting will also serve in the capacity of the indicting grand jury. To the extent that 42 Pa.C.S. § 4548(c) is inconsistent with this rule, the statute is suspended by Rule 1101 (Suspension of Acts of Assembly).

The number of persons who may be summoned is left to the discretion of the president judge or the president judge's designee to accommodate the needs of the judicial district.

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in 42 Pa.C.S. §§ 4501—4503, 4521—4527, 4531—4532.

**Official Note:** New Rule 556.1 adopted , effective .

**Committee Explanatory Reports:**

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.2. Proceeding by Indicting Grand Jury Without Preliminary Hearing.**

(A) After a person is arrested or otherwise proceeded against with a criminal complaint, the attorney for the Commonwealth may move to present the matter to a grand jury instead of proceeding to a preliminary hearing.

(1) The motion shall allege facts asserting that witness intimidation has occurred, is occurring, or is likely to occur.

(2) The motion shall be presented *ex parte* to the president judge, or the president judge's designee.

(3) Upon receipt of the motion, the president judge, or the president judge's designee, shall review the motion. If the judge determines the allegations are sufficient, the judge shall grant the motion, and shall notify the proper issuing authority.

(4) The order granting the motion and the motion shall be sealed.

(5) The attorney for the Commonwealth shall file the sealed order and the sealed motion with the clerk of courts.

(B) If not already assigned, the president judge shall assign one of the judges in the judicial district to serve as the supervising judge for the indicting grand jury.

(C) If the motion is granted, the case shall be presented to the grand jury within 21 days of the date of the order, unless the grand jury proceedings are waived by the defendant with the consent of the attorney for the Commonwealth.

(D) If the district attorney elects not to present the case to a grand jury, the defendant is entitled to a preliminary hearing before the proper issuing authority.

**Comment**

An accused in Pennsylvania ordinarily has the right to a preliminary hearing before he or she may be indicted by the grand jury. *See Commonwealth v. Hoffman*, 396 Pa. 491, 152 A.2d 726 (1959). However, the 2011 amendments to the rules permit the attorney for the Commonwealth to proceed to the indicting grand jury without first presenting the matter to an issuing authority for a preliminary hearing but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

Pursuant to paragraph (A)(2), the president judge may designate another judge to receive motions from the attorney for the Commonwealth. It is anticipated that this designee will be the judge designated to be the supervising judge of the grand jury.

*See* Rule 556.11 for the procedures when a case is presented to the grand jury.

*See* Rule 556.12 for the procedures for the defendant to waive the grand jury proceedings.

If, after a motion to proceed to a grand jury is granted, the attorney for the Commonwealth elects not to present the case to the grand jury, the case will proceed as any other criminal case following the preliminary arraignment. *See* Rules 541—547.

**Official Note:** New Rule 556.2 adopted , effective

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.3. Composition and Organization of the Indicting Grand Jury.**

(A) There initially shall be impaneled to serve on an indicting grand jury 23 legally qualified jurors and a minimum of 7 and not more than 15 legally qualified alternates. During its term, the indicting grand jury shall consist, as provided hereinafter, of not less than 15 nor more than 23 legally qualified jurors, and the remaining alternates.

(B) When an indicting grand jury is to be impaneled, the supervising judge in charge of the grand jury shall examine prospective jurors to determine which prospective jurors to excuse for cause. After prospective grand jurors have been excused for cause, the reduction to the minimum of 30 or maximum of 38 shall take place by random drawing in the following manner: 30 to 38 jurors shall be selected by random drawing, of which the first 23 jurors so selected shall be designated permanent grand jurors and the next 7 to 15 jurors shall be designated alternate jurors. Alternate jurors shall replace permanent jurors in the sequence in which the alternate jurors are selected.

(C) Alternate jurors shall attend and participate in sessions of the grand jury but they may not attend or participate in the deliberations and voting until such time as they may be appointed as permanent grand jurors as provided in paragraph (D).

(D) The court shall have the power to permanently excuse a permanent or alternate grand juror for cause at any time during the term of the indicting grand jury. For each such excused permanent grand juror, the court shall appoint a new permanent grand juror from among the available alternates.

(E) Fifteen permanent members of the grand jury shall constitute a quorum, but an affirmative vote of 12 permanent members of the grand jury shall be required to indict.

(F) Whenever the number of permanent grand jurors, including alternates who have been appointed to replace permanent grand jurors, becomes less than 15, the term of the indicting grand jury shall be considered at an end.

(G) The supervising judge shall appoint one of the grand jurors as foreperson and another juror as the deputy foreperson, who will act in the foreperson's absence. The grand jury shall select one of its members as a secretary to assist the foreperson in keeping a record of the action of the grand jury.

**Comment**

To accommodate the possibility that a grand jury would serve the dual function of both an investigating and indicting grand jury, see Rule 556.2(A), the procedures in this rule comport to the procedures in Rule 222 (Composition and Organization of the Investigating Grand Jury).

The term "permanent grand juror" is used to distinguish grand jurors with the power to vote from alternate grand jurors. The purpose of providing a built-in system of alternates is to ensure the smooth functioning of the grand jury throughout its term and to provide that

alternates, when made permanent grand jurors, will be fully cognizant of all the proceedings before the grand jury.

It is intended that no alternate may be appointed as a temporary substitute for a permanent grand juror, and that the court will excuse permanent grand jurors only when necessary and in the interests of justice. However, whenever a permanent juror is excused for cause and an alternate is available to become a permanent grand juror, the court must substitute an alternate for the excused permanent grand juror. It is intended that such substitution be made in the order of the alternate jurors' numerical designation.

**Official Note:** New Rule 556.3 adopted , effective

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.4. Challenges to Grand Jury and Grand Jurors.**

(A) *Challenges*

The attorney for the Commonwealth or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(1) The challenge shall be in the form of a written motion and shall allege the ground upon which the challenge is made.

(2) If a challenge to an individual grand juror is sustained, the juror shall be discharged and replaced with an alternate juror.

(B) *Motion to Dismiss*

(1) The attorney for the Commonwealth or a defendant may move to dismiss the information filed following the grand jury's vote to indict the defendant based on the following grounds:

(a) an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under paragraph (A);

(b) the evidence did not establish probable cause that the defendant committed the crime or crimes charged;

(c) lack of jurisdiction of the grand jury; or

(d) expiration of the Statute of Limitations.

(2) The judge shall not dismiss the information on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(C) Any motion under paragraph (A) or paragraph (B) shall be made as part of the omnibus pretrial motion.

**Comment**

Concerning the right to challenge the array of the grand jury, see, *Commonwealth v. Dessus*, 423 Pa. 177, 224 A.2d 188 (1966), in which the Court held, *inter alia*, that "the law must not deprive an accused of any of his legal or Constitutional rights in this case the right to promptly (a) challenge the array of the grand jury and (b) prove by legally competent evidence that one or more of the grand jurors should be disqualified for cause."

Nothing in this rule is intended to limit the availability of *habeas corpus* review as provided by law.

Nothing in this rule is intended to require notice to the defendant of the time and place of the impaneling of a grand jury, or to give the defendant the right to be present for the selection of the grand jury.

**Official Note:** New Rule 556.4 adopted \_\_\_\_\_, effective \_\_\_\_\_.

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.5. Duration of Indicting Grand Jury.**

(A) The length of the grand jury term shall be determined by the president judge, or the president judge's designee, but shall not exceed 18 months, unless an order for discharge is entered earlier by the supervising judge upon determination by the grand jury, by majority vote, that its business has been completed, or an extension is granted pursuant to paragraph (B).

(B) At the end of its original term or any extension thereof, if the grand jury determines by majority vote that it has not completed its business, it may request the supervising judge to extend its term for an additional period of 6 months. No grand jury term shall exceed 24 months from the time the grand jury was originally summoned.

(1) The supervising judge shall grant a request for extension unless the judge determines that such request clearly is without basis.

(2) Failure to grant an extension of term under this rule may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rule.

(3) If an appeal is taken, the grand jury shall continue to exercise its powers pending the disposition of the appeal.

(C) At any time within the original term of a grand jury, or any extension thereof, if the supervising judge determines that the grand jury is not conducting proper indicting activity, the judge may order that the grand jury be discharged.

(1) An order of discharge under this rule shall not become effective less than 10 days after the date on which the order is issued and actual notice given to the attorney for the Commonwealth and the foreperson of the grand jury.

(2) The order may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rule.

(3) If an appeal is taken, the grand jury shall continue to exercise its powers pending the disposition of the appeal.

**Comment**

The procedures governing the duration of the indicting grand jury are consistent with the procedures for investigating grand juries as set forth in 42 Pa.C.S. § 4546.

**Official Note:** New Rule 556.5 adopted \_\_\_\_\_, effective \_\_\_\_\_.

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.6. Administering Oath to Grand Jury and Foreperson.**

(A) After the selection of the members of the grand jury, the supervising judge shall administer the oath

separately to the foreperson and deputy foreperson and then to the other grand jurors. The supervising judge shall then charge the grand jury concerning its duties.

(B) The supervising judge shall administer the oath to the grand jury in substantially the following form:

"You, as grand jurors, do solemnly swear that you will make diligent inquiry with regard to all matters brought before you as well as such things as may come to your knowledge in the course of your duties; that you will keep secret all that transpires in the jury room except as authorized by law; that you will neither approve any indictment or present any person for hatred, envy or malice, or refuse to approve any indictment or present any person for love, fear, favor, or any reward or hope thereof; and that you will present all things truly to the court as they come to your knowledge and understanding."

(C) The supervising judge shall administer the oath to the foreperson and deputy foreperson in substantially the following form:

"You, as foreperson, do solemnly swear that you will make diligent inquiry with regard to all matters as shall be given you in charge; that you will keep secret all that transpires in the jury room, except as authorized by law; that you will neither approve any indictment or present any person for hatred, envy or malice, or refuse to approve any indictment or present any person for love, fear, favor, or any reward or hope thereof; and that you will present all things truly to the court as they come to your knowledge and understanding."

**Comment**

It is intended that all grand jurors, including alternate grand jurors, will be sworn at this time.

**Official Note:** New Rule 556.6 adopted \_\_\_\_\_, effective \_\_\_\_\_.

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.7. Administration of Oath to Witnesses; Court Personnel.**

(A) Each witness to be heard by the indicting grand jury shall be sworn by the foreperson before testifying.

(B) All court personnel who are to be present during any portion of the grand jury proceedings, and all others who assist in the proceedings, shall be sworn to secrecy by the supervising judge prior to their participation.

**Comment**

When it is necessary to give constitutional warnings to a witness, the warnings and the oath must be administered by the supervising judge. As to warnings that the court may have to give to the witness when the witness is sworn, see, e.g., *Commonwealth v. McCloskey*, 443 Pa. 117, 277 A.2d 764 (1971).

**Official Note:** New Rule 556.7 adopted \_\_\_\_\_, effective \_\_\_\_\_.

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.8. Recording of Testimony Before Indicting Grand Jury.**

(A) Proceedings before an indicting grand jury, other than the deliberations and voting of the grand jury, shall



be recorded by a court reporter or by a suitable recording device, and a transcript made.

(B) The supervising judge shall retain control of the recording device and the original and all copies of the transcript, and shall maintain their secrecy.

(C) When physical evidence is presented before the indicting grand jury, the supervising judge shall establish procedures for supervising custody.

(D) In cases in which an indictment is not returned, the notes or transcriptions shall be destroyed unless ordered by the supervising judge to be preserved for good cause shown, including but not limited to the prosecution of a witness for perjury.

#### Comment

This rule requires that the supervising judge retain control over the transcript of the indicting grand jury proceedings and all copies thereof, as the record is transcribed, until such time as the transcript is released as provided in these rules.

**Official Note:** New Rule 556.8 adopted , effective .

#### Committee Explanatory Reports:

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

#### Rule 556.9. Who May be Present During Sessions of Indicting Grand Jury.

(A) The attorney for the Commonwealth, the alternate grand jurors, the witness under examination, and a stenographer may be present while the indicting grand jury is in session. Counsel for the witness under examination may be present as provided by law.

(B) The supervising judge, upon the request of the attorney for the Commonwealth or the grand jury, may order that an interpreter, security officers, and such other persons as the judge may determine are necessary to the presentation of the evidence may be present while the indicting grand jury is in session.

(C) All persons who are to be present while the indicting grand jury is in session shall be identified in the record, shall be sworn to secrecy as provided in these rules, and shall not disclose any information pertaining to the grand jury except as provided by law.

(D) No person other than the permanent grand jurors may be present during the deliberations or voting of the grand jury.

#### Comment

It is intended in paragraph (B) that when the supervising judge authorizes a certain individual to be present during a session of the indicting grand jury, the person may remain in the grand jury room only as long as is necessary for that person to assist the grand jurors.

Paragraph (C) prohibits the disclosure of any information related to testimony before the indicting grand jury. This prohibition differs from the disclosure provisions in 42 Pa.C.S. § 4549 for investigating grand juries that provides some exceptions for witnesses to disclose their testimony.

See also Rule 556.10 concerning secrecy and disclosure of indicting grand jury proceedings.

Nothing in these rules precludes the supervising judge from permitting a witness to testify using two-way simultaneous audio-visual communication.

**Official Note:** New Rule 556.9 adopted , effective .

#### Committee Explanatory Reports:

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

#### Rule 556.10. Secrecy; Disclosure.

##### (A) Secrecy

(1) All evidence, including exhibits and all testimony presented to the grand jury, is subject to grand jury secrecy, and no person may disclose any matter occurring before the grand jury.

(2) A violation of grand jury secrecy rules may be punished as a contempt of court.

##### (B) Disclosure

##### (1) Attorney for the Commonwealth:

Upon receipt of the certified transcript of the proceedings before the indicting grand jury, the supervising judge shall furnish a copy of the transcript to the attorney for the Commonwealth for use in the performance of official duties.

##### (2) Defendant in a Criminal Case:

(a) If a defendant in a criminal case has testified before the indicting grand jury concerning the subject matter of the charges against him or her, upon application of such defendant, the supervising judge shall order that the defendant be furnished with a copy of the transcript of such testimony.

(b) Pretrial discovery in cases indicted by a grand jury is subject to Rule 573, except that discovery shall not be ordered until 30 days before the commencement of trial. Pretrial discovery includes the transcripts of the testimony of any witnesses in a criminal case who have testified before the indicting grand jury concerning the subject matter of the charges against the defendant and, when ordered by the supervising judge, the grand jury material that is subject to the secrecy provisions in paragraph (A).

(c) The attorney for the Commonwealth may request that the supervising judge delay the disclosure of a grand jury witness' testimony, but such delay in disclosure shall not be later than the conclusion of direct testimony of that witness at trial.

##### (3) Other Disclosures:

Disclosure of grand jury material or matters, other than the grand jury's deliberations and the vote of individual jurors, may be made to any law enforcement personnel that an attorney for the Commonwealth considers necessary to assist in the enforcement of the criminal law.

(C) The supervising judge shall close to the public any hearing relating to grand jury proceedings to the extent necessary to prevent disclosure of a matter occurring before a grand jury. Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to prevent the unauthorized disclosure of a matter occurring before a grand jury.

#### Comment

The attorney for the Commonwealth has an affirmative duty to provide the defendant with any testimony before the indicting grand jury and any physical evidence presented to the grand jury that is exculpatory to the defendant consistent with the line of cases beginning with

*Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the *Brady* standards embodied in subsequent judicial decisions.

Paragraph (B) establishes the limitations on pretrial discovery in cases in which a defendant has been indicted by a grand jury information. Although the Criminal Rules generally recognize the defendant's right to have pretrial discovery to be able to prepare his or her case, given the nature of the cases presented to the grand jury, see Rule 556, this rule provides for the limited delay in providing pretrial discovery of grand jury testimony until 30 days before the commencement of trial. For purposes of this rule, a trial commences when the trial judge determines that the parties are present and directs them to proceed to *voir dire* or to opening argument, or to the hearing of any motions that had been reserved for the time of trial, or to the taking of testimony, or to some other such first step in the trial. It is not intended that preliminary calendar calls should constitute commencement of a trial.

Paragraph (B)(2)(b)(ii) permits the supervising judge to extend the time for the disclosure of a grand jury witness' testimony upon the request of the attorney for the Commonwealth. Under no circumstances may the extension be later than the completion of the witness' direct testimony at trial.

The supervising judge may grant a continuance to enable the defendant to review the grand jury testimony as the interests of justice require.

**Official Note:** New Rule 556.10 adopted , effective .

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.11. Proceedings When Case Presented to Grand Jury.**

(A) When a case is presented to an indicting grand jury, the case shall remain open in the office of the issuing authority in which the complaint was filed until conclusion of the proceedings before the grand jury, and the issuing authority shall cancel the preliminary hearing and schedule a hearing to review the status of the case.

(1) The status hearing shall be held 30 days from the date when the issuing authority received notice that the case will be presented to the grand jury. If the case still is before the grand jury at the time of the status hearing, the issuing authority shall schedule additional status hearings every 30 days until such time as the grand jury indicts the defendant or declines to indict the defendant.

(2) The defendant, the defendant's attorney, if any, and the attorney for the Commonwealth shall be present at the status hearings.

(3) In the discretion of the issuing authority, the status hearing may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the status hearing.

(B) A grand jury has the authority to:

(1) inquire into violations of criminal law through subpoenaing witnesses and documents; and

(2) based upon evidence it has received, including hearsay evidence as permitted by law, or upon a presentment issued by an investigating grand jury, indict defend-

dant for an offense under the criminal laws of the Commonwealth of Pennsylvania; or

(3) decline to indict.

(B) After a grand jury has considered the evidence presented, the grand jury shall vote whether to indict the defendant. The affirmative vote of at least 12 grand jurors is required to indict.

(C) In cases in which the grand jury votes to indict, an indictment shall be prepared setting forth the offenses on which the grand jury has voted to indict. The indictment shall be signed by the grand jury foreperson, or deputy foreperson if the foreperson is unavailable, and returned to the supervising judge.

(D) Upon receipt of the indictment, the supervising judge shall:

(1) provide a copy of the indictment to the Commonwealth authorizing the attorney to prepare an information pursuant to Rule 560; and

(2) forward the indictment to the issuing authority, or issue an arrest warrant, if the subject of the indictment has not been arrested on the charges contained in the indictment.

(E) At the request of the attorney for the Commonwealth, the supervising judge shall order the indictment to be sealed.

(F) In cases in which the grand jury does not vote to indict, the foreperson promptly and in writing shall so report to the supervising judge who immediately shall dismiss the complaint and shall notify the issuing authority of the dismissal.

**Comment**

As provided in paragraph (A), the case will remain open in the magisterial district office in which the complaint was filed and the issuing authority must conduct a hearing into the status of the case every 30 days until the grand jury takes action on the case. At the status hearing, issues related to the case, such as bail, may be addressed.

When the grand jury votes to indict the defendant, the vote to indict is the functional equivalent of holding the defendant for court following a preliminary hearing. In these cases, the matter will proceed in the same manner as when the defendant is held for court following a preliminary hearing. *See, e.g.*, Rules 547 and 560.

The indictment required by paragraph (C) no longer serves the traditional function of an indictment, but rather serves as an instrument authorizing the attorney for the Commonwealth to file an information. *See* Rule 103.

Concerning hearsay evidence before the indicting grand jury, see *Commonwealth v. Dessus*, 423 Pa. 177, 224 A.2d 188 (1966).

If the grand jury declines to indict, the attorney for the Commonwealth may reinstitute the charges as provided in Rule 544.

**Official Note:** New Rule 556.11 adopted , effective .

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

**Rule 556.12. Waiver of Grand Jury Action.**

A defendant, with the consent of the attorney for the Commonwealth and the approval of the supervising judge, may waive action by the grand jury and consent to be bound over to court. The waiver shall be in writing and signed by the defendant and defense attorney, if any, and shall certify that the defendant voluntarily waives the grand jury action and consents to be bound over to court.

**Official Note:** New Rule 556.12 adopted , effective

*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 41 Pa.B. 5549 (October 15, 2011).

PART [ E ] F. Procedures Following a Case Held for Court

**Rule 560. Information: Filing, Contents, Function.**

(A) After the defendant has been held for court following a preliminary hearing or an indictment, the attorney for the Commonwealth shall proceed by preparing an information and filing it with the court of common pleas.

\* \* \* \* \*  
**Comment**  
\* \* \* \* \*

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing. When the preliminary hearing is held in the defendant's absence and the case is held for court, the attorney for the Commonwealth should proceed as provided in this rule.

See Chapter 5 Part E for the procedures governing indicting grand juries. As explained in the Comment to Rule 556.11, when the grand jury indicts the defendant, this is the functional equivalent to holding the defendant for court following a preliminary hearing.

**Official Note:** Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised April 23, 2004, effective immediately; **Comment revised August 24, 2004, effective August 1, 2005;** Comment revised March 9, 2006, effective September 1, 2006; **amended , 2011, effective , 2011.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March [ 3 ] 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Report explaining the proposed amendments to paragraph (A) concerning indicting grand juries published for comment at 41 Pa.B. 5549 (October 15, 2011).

PART [ F ] G. Procedures Following Filing of Information

**Rule 573. Pretrial Discovery and Inspection.**

\* \* \* \* \*

(B) DISCLOSURE BY THE COMMONWEALTH

\* \* \* \* \*

(2) DISCRETIONARY WITH THE COURT:

(a) In all court cases, except as otherwise provided in [ Rule ] Rules 230 (Disclosure of Testimony Before Investigating Grand Jury) and 556.10 (Secrecy; Disclosure), if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

\* \* \* \* \*

**Comment**

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the *Brady* standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 103.

See Rule 556.10(B)(2)(b) for discovery in cases indicted by a grand jury. In these cases, discovery is not to be ordered until 30 days before the commencement of trial.

\* \* \* \* \*

**Official Note:** Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004; amended January 27, 2006, effective August 1, 2006; **Comment revised , 2011, effective , 2011.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March 3, 2004 amendments to paragraphs (A), (C)(1)(a), and [ (C)(1)(16) ] (C)(1)(b), and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

\* \* \* \* \*

Report explaining the proposed revision of the Comment concerning discovery when case is indicted by grand jury published for comment at 41 Pa.B. 5549 (October 15, 2011).

PART [ F(1) ] G(1). Motion Procedures

**Rule 578. Omnibus Pretrial Motion for Relief.**

\* \* \* \* \*

**Comment**

Types of relief appropriate for the omnibus pretrial motions include the following requests:

\* \* \* \* \*

- (5) to quash **or dismiss** an information;
- (6) for change of venue or venire;
- (7) to disqualify a judge;
- (8) for appointment of investigator; [ **and** ]
- (9) for pretrial conference[ . ] ; **and**
- (10) **challenging the array of an indicting grand jury.**

The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions *in limine*, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

**See Rule 556.4 for challenges to the array of an indicting grand jury and for motions to dismiss an information filed after a grand jury indicts a defendant.**

**Official Note:** Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; Comment revised October 25, 1990, effective January 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised** , 2011, effective , 2011.

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [ 1477 ] 1478 (March 18, 2000).

**Report explaining the proposed revision of the Comment referencing indicting grand jury rules published for comment at 41 Pa.B. 5549 (October 15, 2011).**

**Rule 582. Joinder—Trial of Separate Indictments or Informations.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Paragraph (A)(1)(a) is based upon *Commonwealth v. Morris*, 493 Pa. 164, 425 A.2d 715 ([ Pa. ] 1981). Paragraph (A)(1)(b) is based upon statutory and case law that, ordinarily, if all offenses arising from the same criminal episode or transaction are not tried together, subsequent prosecution on any such offense not already tried may be barred. See the Crimes Code, 18 Pa.C.S. §§ 109–110; *Commonwealth v. Campana*, 452 Pa. 233, 304 A.2d 432 (1973), vacated and remanded, 414 U.S. 808 (1973), addendum opinion on remand, 455 Pa. 622, 314 A.2d 854 ([ Pa. ] 1974); *Commonwealth v. Tarver*, 467 Pa. 401, 357 A.2d 539 ([ Pa. ] 1976). The court has also held that a defendant's failure to move for consolidation does not

ordinarily constitute a waiver of an objection to a subsequent, separate trial of any such offense. See, e.g., *Commonwealth v. Stewart*, 493 Pa. 24, 425 A.2d 346 ([ Pa. ] 1981).

See Rule 571 concerning arraignment procedures.

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 since the indicting grand jury was abolished in all counties (see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b)), the reference was retained in **paragraphs (A) and (B)** of this rule because there may be some cases still pending that were instituted **under the former indicting grand jury rules** prior to the abolition of the indicting grand jury in 1993. **These references to "indictment" do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2011 in which an information would be filed after a grand jury indicts a defendant. See Rules 103 and 556.11.**

**Official Note:** Rule 1127 adopted December 11, 1981, effective July 1, 1982; amended August 12, 1993, effective September 1, 1993; amended August 14, 1995, effective January 1, 1996; renumbered Rule 582 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **Comment revised** , 2011, effective , 2011.

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [ 1477 ] 1478 (March 18, 2000).

\* \* \* \* \*

**Report explaining the proposed rescission of the last paragraph of the Comment concerning the abolition of the indicting grand jury published for comment at 41 Pa.B. 5549 (October 15, 2011).**

**PART [ G ] H. Plea Procedures**

- Rule 590. Pleas and Plea Agreement.
- 591. Withdrawal of Plea of Guilty or Nolo Contendere.

**CHAPTER 6. TRIAL PROCEDURES IN COURT CASES**

**PART C(2). Conduct of Jury Trial**

(*Editor's Note:* See 39 Pa.B. 6331 (October 31, 2009) for the text of Rule 646.)

**Rule 646. Material Permitted in Possession of the Jury.**

\* \* \* \* \*

(C) During deliberations, the jury shall not be permitted to have:

\* \* \* \* \*

- (3) a copy of the information **or indictment**; and

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in **paragraph (C)(3)** of this rule because there may be some cases still pending that were instituted **under the former indicting grand jury rules** prior to the abolition of the

indicting grand jury in 1993. The reference to "indictment" does not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2011 in which an information would be filed after a grand jury indicts a defendant. See Rules 103 and 556.11.

**Official Note:** Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999, effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; amended June 30, 2005, effective August 1, 2005; amended August 7, 2008, effective immediately; **amended October 16, 2009, effective February 1, 2010.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed amendment to paragraph (C)(3) and the revision of the Comment concerning the former abolition of the indicting grand jury published for comment at 41 Pa.B. 5549 (October 15, 2011).**

**Rule 648. Verdicts.**

\* \* \* \* \*

**Comment**

Paragraph (A) of the rule replaces the practice of automatically appointing the first juror chosen as foreman of the jury. Paragraphs (C), (D), and (E) serve only to codify the procedure where conviction or acquittal of one offense operates as a bar to a later trial on a necessarily included offense. Similarly, the rule applies to situations of merger and *autrefois* convict or acquit. No attempt is made to change the substantive law [ **which** ] that would operate to determine when merger or any of the other situations arise. See, e.g., *Commonwealth v. Comber*, 374 Pa. 570, 97 A.2d 343 (1953).

\* \* \* \* \*

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in **paragraphs (D) and (E) of this rule** because there may be some cases still pending that were instituted **under the former indicting grand jury rules** prior to the abolition of the indicting grand jury in 1993. **These references to "indictment" do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2011 in which an information would be filed after a grand jury indicts a defendant. See Rules 103 and 556.11.**

**Official Note:** Rule 1120 adopted January 24, 1968, effective August 1, 1968; amended February 13, 1974, effective immediately; paragraph (E) amended to correct printing error June 28, 1976, effective immediately; paragraph (F) amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 648 and amended March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006; **Comment revised , 2011, effective , 2011.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March [ 3 ] 9, 2006 amendments concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

**Report explaining the proposed revision of the Comment concerning the former abolition of the indicting grand jury published for comment at 41 Pa.B. 5549 (October 15, 2011).**

**CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT**

**PART A. Philadelphia Municipal Court Procedures**

**Rule 1003. Procedure in Non-Summary Municipal Court Cases.**

\* \* \* \* \*

**(D) PRELIMINARY ARRAIGNMENT**

\* \* \* \* \*

(3) At the preliminary arraignment, the issuing authority:

\* \* \* \* \*

(d) also shall [ **also** ] inform the defendant:

\* \* \* \* \*

(iii) in a case charging a felony, **unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.1**, of the date, time, and place of the preliminary hearing, which shall not be less than 14 nor more than 21 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and that failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued; and

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (1987).

**The 2011 amendment to paragraph (D)(3)(d)(iii) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur. See Rule 556.2.**

\* \* \* \* \*

**Official Note:** Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January

1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006; amended April 5, 2010, effective April 7, 2010; amended January 27, 2011, effective in 30 days; **amended** , 2011, **effective** , 2011.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Court's Order adopting the April 5, 2010 amendments to paragraph (D)(3)(d) published at 40 Pa.B. 2012 (April 17, 2010).**

**Report explaining the proposed amendments to paragraph (D)(3)(d)(iii) concerning indicting grand juries published for comment at 41 Pa.B. 5549 (October 15, 2011).**

**CHAPTER 11. ABOLITIONS AND SUSPENSIONS**

**Rule 1101. Suspension of Acts of Assembly.**

This rule provides for the suspension of the following Acts of Assembly:

\* \* \* \* \*

(7) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Rule 211, is suspended only insofar as the Act is inconsistent with Rules 205, 206, and 211.

**(8) The Act of October 5, 1980, P. L. 693, No. 142, § 216(a)(2), 42 Pa.C.S. § 4548, that provides that "except for the power to indict," the investigating grand jury has all the same powers as any other grand jury, is suspended only insofar as the Act is inconsistent with Rule 556.1(A).**

\* \* \* \* \*

**Official Note:** Former Rule 39 adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 159 adopted September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; amended April 10, 1989, effective July 1, 1989; amended January 31, 1991, effective July 1, 1991; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 340 combined previous Rules 321 and 322, which were the prior suspension rules, and was adopted June 29, 1977, effective September 1, 1977; amended April 24, 1981, effective June 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 1415 adopted July 23, 1973, effective 90 days hence; paragraph (g) added March 21, 1975, effective March 31, 1975; amended August 14, 1995, effective January 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 2020 adopted September 3, 1993, effective January 1, 1994; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. New Rule 1101 adopted March 1, 2000, effective April 1, 2001; **amended** , 2011, **effective** , 2011.

*Committee Explanatory Reports:*

\* \* \* \* \*

**NEW RULE 1101:**

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 1101 published at 30 Pa.B. [ 1477 ] 1478 (March 18, 2000).

**Report explaining the proposed amendments adding paragraph (8) suspending 42 Pa.C.S. § 4548 published for comment at 41 Pa.B. 5549 (October 15, 2011).**

**REPORT**

***Proposed New Pa.Rs.Crim.P. 556 through 556.12, and Proposed Correlative Changes to Pa.Rs.Crim.P. 103, 540, 542, 544, 547, 560, 573, 578, 582, 646, 648, 1003, and 1101***

**Indicting Grand Juries**

**I. Background**

In January 2010, the Philadelphia Inquirer published a series of articles reporting on what was seen as systemic problems within the criminal justice system of the First Judicial District. In response to these articles, the Court appointed a Commission to study the issues raised by the Philadelphia Inquirer.

One of the problems identified in the Inquirer articles concerned intimidation by threats of violence to witnesses and/or witnesses' family members. "Witness intimidation pervades the Philadelphia criminal courts, increasingly extracting a heavy toll in no-show witnesses, recanted testimony—and collapsed cases . . . Prosecutors, detectives, and even some defense lawyers say witness fear has become an unspoken factor in virtually every court case involving violent crime in Philadelphia. Reluctant or terrified witnesses routinely fail to appear in court, and when they do, they often recant their earlier testimony or statements to police."<sup>1</sup>

The recommendations of the Court's Commission included, as a way to address the problem of witness intimidation, a proposal that the Court adopt rules providing for the use of the indicting grand jury similar to the indicting grand jury procedures in a number of other jurisdictions, including the federal courts. The Commission's Report explained that the indicting grand jury would be utilized in lieu of proceeding by preliminary hearing on an as-needed basis in cases in which witness intimidation has occurred or is a distinct possibility. The Court referred the matter to the Committee to consider the Commission's proposal and to develop a set of rules that would reinstitute the indicting grand jury in Pennsylvania as suggested by the Commission.

The Committee reviewed the history of the indicting grand jury and its evolution in Pennsylvania, examining the constitutional, statutory, and rule provisions, and the case law governing indicting grand juries in Pennsylvania and in other jurisdictions. An initial question raised by the Court was whether the process for reinstating the indicting grand jury could be accomplished by rule or would have to be by statute. After thoroughly reviewing the history of the indicting grand jury and its evolution in Pennsylvania, and the materials prepared by the Commission, the Committee unanimously agreed that the Court, pursuant to its constitutional and statutory authority to prescribe general rules governing practice,

<sup>1</sup> Nancy Phillips, et al., "Witnesses Fear Reprisals, and Cases Crumble—Intimidation On The Streets Is Changing the Way Trials Are Run." PHILA. INQUIRER, Dec. 14, 2009.

procedure, and conduct of all courts, has the power to reinstitute the indicting grand jury by rule. The Committee therefore proceeded with development of procedural rules to accomplish this as requested by the Court, and is proposing that the Court adopt new Rules of Criminal Procedure 556 through 556.12 that establish the procedures for the judicial districts to resume using the indicting grand jury and that establish the procedures necessary to convene the indicting grand jury, to conduct the grand jury, and to proceed following the grand jury's action. The Committee also is proposing correlative and conforming amendments Rules of Criminal Procedure 103, 540, 544, 547, 560, 646, 1003, and 1101 and revisions of the Comments to Rules of Criminal Procedure 542, 573, 578, 582, and 648. The proposed new procedures, as much as possible, incorporate the procedures recommended by the Commission, the procedures from the current investigating grand jury rules, Rules 220—231, and the former indicting grand jury rules, former Rules 200—224.

## II. Discussion of Rule Changes

### *Placement of New Rules*

When initially considering the placement of the new indicting grand jury rules, it was thought that the rules just would be re-inserted into the same chapter of the rules where the indicting grand jury rules were prior to being rescinded—then-Chapter 200 (Grand Jury, Indictment, and Information). However, since the time when the indicting grand jury rules were rescinded, the Criminal Rules have been reorganized and renumbered, and there no longer is a chapter comparable to former Chapter 200.<sup>2</sup> In the current rules, Chapter 200 deals only with investigations and includes the search warrant and investigating grand jury rules. The rules governing preliminary hearings are in Chapter 5, Part D (Proceedings in Court Cases Before Issuing Authorities) and the rules governing informations, formerly in Chapter 2, are now in Chapter 5 Part E (Procedures Following a Case Held for Court). Sequentially, the indicting grand jury procedures come after the rules governing preliminary hearings and before the procedures for when a case is held for court. In view of this, the Committee is proposing that a separate Part be added to Chapter 5 that would be dedicated to the indicting grand jury procedures. This separate Part would be new Part E (Indicting Grand Jury) and begin with Rule 556.<sup>3</sup> Because of the dearth of available numbers in this chapter, although not a preferred method for numbering the Criminal Rules but a less confusing option than renumbering all the rules in Chapter 5, all the new rules in Part E will fall under Rule 556, and the next rules in the sequence would be Rule 556.1 *etc.*

### *Resumption of Using Indicting Grand Jury*

In 1973, Article I § 10 of the Pennsylvania Constitution (Initiation of criminal proceedings; twice in jeopardy; eminent domain) was amended to provide “each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law.” The implementing statute, Act 238 of 1974,<sup>4</sup> and the Criminal Rules establishing the procedures for the use of informations in judicial districts that had received approval from the Court to proceed by information instead of indicting grand jury were adopted in 1974.

<sup>2</sup> See 30 Pa.B. 1478 (March 18, 2000).

<sup>3</sup> This will necessitate re-naming current Parts E and F.

<sup>4</sup> The Act 238, which initially was in Title 17, sections 271—276, was repealed in 1978 as part of the Judiciary Act Repealer Act and replaced and amended by 42 Pa.C.S. § 8931.

In 1991, the Supreme Court approved the request of the last court of common pleas to abolish the indicting grand jury,<sup>5</sup> and directed the Committee to develop rules providing for the rescission of the indicting grand jury rules. On August 12, 1993, effective September 1, 1993, the Court adopted the Committee's proposal for the rescission of the indicting grand jury and indictment rules as no longer necessary, and for correlative changes to other rules necessitated by the rescission.<sup>6</sup>

The Committee believes that, because the Supreme Court was constitutionally required to approve the judicial districts' request to proceed by information instead of indictment, which effectively rescinded the indicting grand jury, before a judicial district may resume using the indicting grand jury, the judicial district would have to receive the approval of the Supreme Court.

The Committee initially considered requiring the individual judicial districts to petition the Court for permission to reinstitute the indicting grand jury, similar to the petition procedure used when the judicial districts requested permission to proceed by information. Procedurally, however, such a procedure seemed to be overly complex, time consuming, and potentially confusing. Alternatively, the Committee agreed that the best way to accomplish the reinstatement of the indicting grand jury would be for the Supreme Court, correlatively with adopting procedural rules governing indicting grand jury rules, to issue an administrative order permitting any judicial district to resume using the indicting grand jury subject to the provisions of the indicting grand jury rules. Accordingly, the Committee plans on proposing this to the Court when it submits the proposal for the new indicting grand jury rules. If the Court adopts the rules and issues such an administrative order, the administrative order would be referenced in the Comment to proposed new Rule 556.

### *Scope of Indicting Grand Jury Authority: Proposed New Rule 556*

The Committee discussed how broad the jurisdiction of the indicting grand juries should be and whether the scope should be expanded beyond the cases in which witness intimidation is at issue. There were a number of different opinions expressed by the Committee about whether and in what manner the use of the indicting grand jury should be limited. After considering various approaches, the Committee ultimately agreed that, as a first step for bringing back the indicting grand jury the new procedures should be narrowly drafted. Adding to this determination was the fact that indicting grand juries had not been used in Pennsylvania for more than eighteen years and the new proposals would not provide for a preliminary hearing procedure following indictment as was the case in the previous practice.

Accordingly, proposed new Rule 556 (Indicting Grand Jury) permits the judicial districts to proceed by indicting grand jury as provided by the rules but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

### *Proposed Rule 556.1 (Summoning Panels of Grand Jurors)*

Rule 556.1 sets forth the procedures for summoning an indicting grand jury. When a judicial district elects to proceed with the indicting grand jury, the president judge, or the president judge's designee, must order that one or more panels be summoned. The Committee noted that the judicial districts that choose to use the indicting

<sup>5</sup> Bedford County Court of Common Pleas.

<sup>6</sup> See 22 Pa.B. 3826 (July 25, 1992).

grand jury may want to have a standing grand jury for that purpose, and agreed that should be permitted in the rule.

In addition, the Committee discussed whether judicial districts with sitting investigating grand juries could order the investigating grand jury to sit as an indicting grand jury reasoning that permitting this dual function would promote judicial economy. From research into this question, we learned that several other jurisdictions provide for this by rule or statute, and agreed that the rules should permit this in Pennsylvania. To accommodate a sitting investigating grand jury sitting as an indicting grand jury, to the extent possible, the proposed new procedures for the indicting grand jury, including the procedures for summoning, are the same as the procedures for the investigating grand jury.<sup>7</sup>

By permitting the investigating grand jury to sit as an indicting grand jury, the rules create an inconsistency with the provision of Section 4548(c) of the Investigating Grand Jury Act, 42 Pa.C.S. § 4548(c) (Other Powers), that provides, *inter alia*, “[e]xcept for the power to indict, the investigating grand jury shall have every power available to any other grand jury in the Commonwealth,” and, unless addressed, may cause confusion for the bench and bar. Because of the benefits of permitting the investigating grand jury to sit as an indicting grand jury, the proposal includes the recommendation that 42 Pa.C.S. § 4548(c) be suspended but only insofar as it is inconsistent with Rule 556.1(A). To accomplish this, the Rule 556.1 Comment includes a paragraph explaining the suspension and referring to Rule 1101. Rule 1101 would be amended to provide for the suspension.

When an investigating grand jury sits as an indicting grand jury, there should not be an overlap of functions. However, there may be situations in which there has been a crime but the Commonwealth does not know who did it and submits the case to the investigating grand jury. The investigating grand jury gathers information during its investigation of the crime and learns the identity of the perpetrator. The attorney for the Commonwealth then determines the crime is one in which there is intimidation and submits the case to the indicting grand jury, which, in this case, is the same body as the investigating grand jury. In this situation, it makes sense to permit the incorporation of the evidence presented to the grand jury during the investigation for the grand jury’s consideration when it is sitting as the indicting grand jury. The Comment explains that the rule does not prevent the investigating grand jury when sitting as an indicting grand jury from considering the evidence already presented to it.

*Proposed Rule 556.2 (Proceeding by Indicting Grand Jury without Preliminary Hearing)*

Rule 556.2 sets forth the new procedures for either proceeding to an indicting grand jury or proceeding to a preliminary hearing. To proceed to an indicting grand jury, the attorney for the Commonwealth must file a motion setting forth facts that show that witness intimidation has occurred, is occurring, or is likely to occur. This fact-based motion procedure provides the judge with an opportunity to decline to grant the motion but only if the attorney for the Commonwealth does not make out sufficient facts about the witness intimidation. However, if the judge finds the motion is sufficient, he or she must grant the motion.

<sup>7</sup> This reasoning also applies to the inclusion of the procedures from the investigating grand jury rules in proposed new Rules 556.3, 556.5, 556.6, 556.7, 556.8, 556.9, and 556.10.

The motion is made *ex parte* to the president judge, or the president judge’s designee. In most cases, the Committee anticipates that the judge designated to receive these motions also will be the judge designated to supervise the grand jury. If the judge grants the motion, the judge shall seal the motion and order granting the motion, and the attorney for the Commonwealth shall file both with the clerk of courts. In addition, concurrently with granting the motion, the judge must notify the proper issuing authority that the attorney for the Commonwealth’s motion has been granted thereby providing notice that the preliminary hearing must be stayed.

Procedurally, all court cases will continue to be instituted by the filing of a complaint or an arrest without a warrant, the preliminary arraignments will be conducted by the proper issuing authority, and the preliminary hearing initially will be scheduled by the issuing authority. When the attorney for the Commonwealth is proceeding to an indicting grand jury instead of to a preliminary hearing, because the case has not been held for court, and because, until the grand jury proceeding actually is held, the possibility that a preliminary hearing will have to be held remains, the Committee is proposing that the case remain open in the proper issuing authority’s office. Proposed new Rule 556.11, explained in more detail below, sets forth the procedures for maintaining the case before the magisterial district judge when the case is submitted to the grand jury.

The proposal also permits the defendant to waive the grand jury proceedings in the same manner that he or she may waive the preliminary hearing, but only with the consent of the Commonwealth. The consent of the Commonwealth requirement was added because there may be situations in which the Commonwealth will want to memorialize a witness’s testimony on the record particularly when there is witness intimidation. Paragraph (C) of this rule and new Rule 556.12 provide for the waiver.

*Proposed Rule 556.3 (Composition and Organization of the Indicting Grand Jury)*

Rule 556.3 incorporates most of the procedures for the composition and organization of the indicting grand jury as are set forth in Rule 222 for the investigating grand jury because the investigating grand jury also may be sitting as the indicting grand jury. The Committee is proposing some organizational changes to paragraph (B) to make the rule clearer with regard to the manner of selection.

*Proposed Rule 556.4 (Objections to Grand Jury and Grand Jurors; Motion to Dismiss)*

Rule 556.4 is taken from former Criminal Rule 203. During discussions of these procedures, questions arose about the procedures for challenging the array of the grand jury and whether such challenges have a constitutional basis. Research revealed that the right to challenge the array is a common law right and that some of the challenges, such as those based on race or gender, are constitutional challenges. *Commonwealth v. Dessus*, 423 Pa. 177, 224 A.2d 188 (1966), cited in the former indicting grand jury rules, and other early Pennsylvania cases that recognize the right to challenge the array appear to still be good law. In view of this research, proposed new Rule 556.4 incorporates procedures for challenging the array. The rule also sets forth the procedures for filing a motion to dismiss the indictment.

The former rules provided that the motion to dismiss an indictment should be made as part of the omnibus pretrial motion. This provision was deleted from the rules



when the indicting grand jury rules were rescinded. With the reinstatement of the indicting grand jury, the new procedures incorporate this previous procedure. In addition, the challenge to the array also would be made as part of the omnibus pretrial motion. Rule 556.4(C) spells out these requirements and the Comment to Rule 578 would be revised to add challenges to the array and motions to dismiss to the list of matters that should be included in the omnibus pretrial motion.

One concern raised throughout the Committee's discussions was the importance of protecting a defendant's right to *habeas corpus* proceedings when there has been an indicting grand jury proceeding. To ensure that the procedures in Rule 556.4 are not read as limiting this right, the Rule 556.4 Comment includes a cautionary provision explaining that "nothing in the rule limits the availability of *habeas corpus* proceedings as provided by law."

A last point with reference to challenges to the array and motions to dismiss relates to the defendant's access to information concerning the indicting grand jury prior to the grand jury proceedings. Providing for these challenges and motions in the rules does not give the defendant a right to participate in the process prior to an indictment, see, e.g., *Commonwealth v. Dessus, supra*. In recognition of the special nature of these indicting grand juries because of witness intimidation and the fact that indicting grand juries have not been in existence in Pennsylvania for over 18 years, the Comment provides clarification by explaining "nothing in this rule is intended to require notice to defendant of the time and place of the impaneling of a grand jury, or to give the defendant the right to be present for the selection of the grand jury."

*Proposed Rule 556.5 (Duration of Indicting Grand Jury)*

Rule 556.5 is consistent with 42 Pa.C.S. § 4546 (Term of Investigating Grand Jury) but leaves the duration to the discretion of the judge with the outside limit of 18 months. Although the Committee believes the indicting grand jury proceedings under these new rules ordinarily will be relatively brief, and therefore it might not be necessary to provide for an extension mechanism, because the goal is to have the new procedures for the indicting grand jury be the same as the procedures for the investigating grand jury, Rule 556.5 includes, as much as possible, the same detailed procedures for the extension of and early termination of the grand jury that are applicable in investigating grand jury proceedings.

*Proposed Rules 556.6 (Administering Oath to Grand Jury and Foreperson) and 556.7 (Administration of Oath to Witnesses; Court Personnel)*

The provisions in Rules 556.6 and 556.7 are taken from former Criminal Rules 206 and 207 and Criminal Rules 223, 223, and 225. The supervising judge would be required to administer the oath to the foreperson, the deputy foreperson, and the other grand jurors. This provision is taken from the rescinded rules and includes the text of the oaths that is required to be administered. The oaths to the witnesses and court personnel would be administered by the foreperson, or deputy foreperson, and the text of the oaths are taken from the investigating grand jury rules.

*Proposed Rule 556.8 (Recording of Testimony Before Indicting Grand Jury)*

Rule 556.8 provides for the recording of the grand jury proceedings other than deliberations and voting and is taken from Criminal Rules 228 and 229. The rescinded

indicting grand jury rules prohibited the recording of the proceedings. The Committee agreed to follow the procedure in the investigating grand jury rules, as well as a number of states, to ensure there is a record should there be a need to review the grand jury proceedings. The supervising judge would maintain control of the recordings and the transcript, as well as, of any physical evidence introduced during the proceedings. In addition, the rule provides for the destruction of the transcript if no indictment is returned, except for good cause. "Good cause" would include, for example, the prosecution of a witness for perjury.

*Proposed Rule 556.9 (Who May be Present During Sessions of Indicting Grand Jury)*

Rule 556.9 is taken from Criminal Rule 231. In considering the provisions of Rule 231, whether a witness may disclose his or her testimony was discussed in view of the provisions of 42 Pa.C.S. § 4549(d) that provides for a witness to disclose his or her grand jury testimony. Because any case before the indicting grand jury under these new rules involves witness intimidation and permitting a witness to disclose his or her testimony could be dangerous, there are different considerations for these witnesses than for witnesses before the investigating grand jury. In view of this, Rule 556.9 provides that the indicting grand jury witness may not disclose his or her testimony unless the witness has received the supervising judge's permission to do so. This variation between the investigating grand jury procedures and the indicting grand jury procedures is explained in the Comment.

The Committee also considered the procedures in other jurisdictions for permitting witnesses to testify using two-way simultaneous audio-visual communication. Although the Committee does not believe the rules should mandate this procedure, it agreed there would be no reason not to permit such testimony with the approval of the supervising judge. A paragraph explaining this is included in the Comment.

*Proposed Rule 556.10 (Secrecy; Disclosure)*

Rule 556.10 is taken from Criminal Rule 230 and provides the procedures for maintaining the secrecy of the grand jury proceedings, paragraph (A), and for the disclosure, paragraph (B).

Paragraph (A) requires that all evidence is subject to grand jury secrecy and any violation may be subject to contempt.

Paragraph (B)(1) provides that the supervising judge must provide the attorney for the Commonwealth with a copy of the transcript of the grand jury proceeding for the attorney's official duties.

Paragraph (B)(2) provides that the transcript of a witness's testimony be furnished to the defendant but only after the direct testimony of the witness at trial. This limitation on disclosure was a concern for the Committee. We explored various options for the time for pretrial discovery taking into consideration the concerns about witness intimidation as well as the defendant's need to have adequate time to review the discovery to prepare for the trial. The proposal is that rule would provide that the pretrial discovery would be 30 days before the commencement of trial with a provision for the attorney for the Commonwealth to request a delay in discovery when the need arises. The Comment explains that the court should grant a continuance to the defendant when he or she needs more time to review the

materials. The Comment also includes an explanation of what constitutes the “commencement of trial” using the provisions from Rule 600.

Another issue discussed concerned whether a defendant may testify before the indicting grand jury, noting that Rule 230(B)(1) suggests that the defendant may testify before the investigating grand jury, and that other jurisdictions provide for the defendant’s testimony. The Committee agreed the rules should not address this issue, but reasoned that leaving the rule silent did not prevent a defendant from asking to testify. However, the Committee decided to include language comparable to Rule 230(B)(1) in Rule 556.10 to ensure that any defendant who is permitted to testify before the indicting grand jury would be entitled to a copy of the transcript of his or her testimony. They were concerned that if the language was omitted from Rule 556.10 then it might be construed as prohibiting the defendant’s right to the transcript and that would create due process issues.

*Proposed Rule 556.11 (Grand Jury Authority and Action)*

Although Rule 556.11 is taken from former Criminal Rule 210, the new rule sets forth a completely new concept for the proceedings related to the indicting grand jury’s actions and for how the case is handled while remaining with the issuing authority. Under the former indicting grand jury procedures, after a defendant was held for court following a preliminary hearing, the attorney for the Commonwealth would prepare a bill of indictment and submit that to the indicting grand jury. If the indicting grand jury, after considering the bill of indictment, voted to indict, the attorney for the Commonwealth would prepare the indictment and file it in the court of common pleas and the case would proceed to an arraignment. Under the proposed new procedures:

(1) The case would remain open in the magisterial district court until the grand jury acts to either indict the defendant (holds the case for court), or declines to indict. The issuing authority would forward the case to the clerk of courts pursuant to Rule 547 after the grand jury indicts in the same way he or she forwards a case after a case is held for court following a preliminary hearing.

(2) When the issuing authority receives notice from the president judge that the case is being presented to an indicting grand jury, the issuing authority is required to cancel the preliminary hearing. To provide a means to monitor the case while the proceedings are before the indicting grand jury, the rule would require the issuing authority to conduct status hearings every 30 days until the grand jury acts.

(3) To simplify the post-indictment procedures and to keep them more in line with the post-preliminary hearing procedures, the function of the grand jury’s indictment would be changed from the charging document that was comparable to an information to a notice-type document that sets forth the charges held for court by the grand jury and authorizes the attorney for the Commonwealth to file an information. Thereafter, the attorney for the Commonwealth would proceed in the same manner as he or she would proceed after a case is held for court following a preliminary hearing.

(4) If the grand jury declines to indict, the supervising judge must dismiss the complaint and the attorney for the Commonwealth may re-file pursuant to Rule 544.

*Proposed Rule 556.12. (Waiver of Grand Jury Action)*

Rule 556.12 sets forth the procedures for the waiver of the grand jury proceedings. The procedures are comparable to the procedures for waiving the preliminary hearing but, as explained above, require the consent of the attorney for the Commonwealth. In addition, the supervising judge has to approve the waiver.

*Conforming Changes to Rules 103, 540, 542, 544, 547, 560, 573, 578, 582, 646, 648, and 1003*

The Committee also is proposing conforming changes to Rules 103, 540, 542, 544, 547, 560, 573, 578, 582, 646, 648, and 1003. Except for the changes described below, the conforming changes merely add references to the new indicting grand jury procedures.

Rule 103 would be amended to change the definition of “indictment” from “a bill of indictment which has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215” to “the instrument holding the defendant for court after a grand jury votes to indict and authorizing the attorney for the Commonwealth to prepare an information” to conform with the proposal that when an indicting grand jury votes to indict the defendant, the attorney for the Commonwealth proceeds by filing an information as set forth in the rules. The definition of “information” also would be amended to make it clear that an information is presented to the court by the attorney for the Commonwealth when the defendant is held for court or waives the preliminary hearing or a grand jury proceeding. The Rule 103 Comment further clarifies the new function of the “indictment” under the indicting grand jury rules.

Rule 540(F) includes, as an exception to when an issuing authority would set the date for the preliminary hearing, the situation when the attorney for the Commonwealth is presenting the case to an indicting grand jury. Paragraph (F)(3) would be amended to extend the time for conducting the preliminary hearing from 3 to 10 days after the preliminary arraignment to 14 to 21 days after the preliminary arraignment to accommodate the timing for proceeding to an indicting grand jury depending on whether or not the defendant is in custody.

Rule 544(A) would be amended to add when the indicting grand jury declines to indict a defendant as a situation when the attorney for the Commonwealth may re-file the charges.

Rule 547(A) would be amended by adding “either following a preliminary hearing or an indictment by a grand jury” after “When a defendant is held for court” to include the action by the grand jury into the rule requirement for when an issuing authority must prepare a transcript of the proceedings to send to the court of common pleas. Similarly, paragraph (C) would be amended by the addition of a new paragraph (7) that requires a copy of the indictment to be forwarded with the transcript.

Rule 560(A) would be amended by adding the issuance of an indictment to when an information is to be prepared by the attorney for the Commonwealth.

The Rule 578 Comment would be amended to add “or dismiss” in paragraph (5) to make it clear that a motion to dismiss an information is to be included in the

omnibus pretrial motion and to add a new paragraph (10) providing that a challenge to the array of an indicting grand jury ordinarily would be made as part of the omnibus pretrial motion.

The amendment to Rule 646(C)(3) adding “indictment” is a corrective amendment referring to indictments under the former indicting grand jury rules that were rescinded in 1993 as explained further in the Comment.

Rule 1003(D)(3)(d)(iii) would be amended by adding an “unless” clause comparable to the “unless” clause in Rule 540(F), and explains that the Municipal Court judge must inform the defendant of the preliminary hearing unless the preliminary hearing is waived or the case is being presented to an indicting grand jury.

As explained more fully in the discussion of proposed new Rule 556.1, Rule 1101 would be amended to include the suspension of 42 Pa.C.S. § 4548(c) but only insofar as the statute is inconsistent with the provisions of Rule 556.1 that permit an investigating grand jury to also sit as an indicting grand jury.

[Pa.B. Doc. No. 11-1762. Filed for public inspection October 14, 2011, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that Kurt D. Mitchell having been suspended from the practice of law in the State of Florida for a period of 10 days by Order of the Supreme Court of Florida dated October 5, 2010; the Supreme Court of Pennsylvania issued an Order dated September 26, 2011, suspending Kurt D. Mitchell from the practice of law in this Commonwealth for a period of 10 days. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 11-1763. Filed for public inspection October 14, 2011, 9:00 a.m.]

# PROPOSED RULEMAKINGS

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 69 ]

### Fishing; Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. *Effective Date*

The proposed rulemaking, if adopted on final-form, will go into effect on January 1, 2012, or upon publication in the *Pennsylvania Bulletin*, whichever occurs later.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendments to §§ 69.11 and 69.12 (relating to applicability of fishing regulations; and seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) and proposed §§ 69.12b and 69.19 (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limits; and permits for the use of cast nets, throw nets or dip nets by sport anglers) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to §§ 69.21, 69.22, 69.23, 69.26, 69.33, 69.35, 69.37 and 69.39 are published under the statutory authority of 2903 of the code (relating to boat and net licenses for boundary lakes).

#### D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

#### E. *Summary of Proposals*

(1) The Lake Erie Committee (LEC) is a convening body consisting of fisheries managers from Pennsylvania, Ohio, New York, Michigan and Ontario, Canada, operating under the auspices of the Great Lakes Fishery Commission. Critical management issues regarding Lake Erie fisheries are discussed and decisions are derived through consensus among the members in the best interest of the resource. One major responsibility of the LEC is to set annual Lakewide harvest limits (quotas) for walleye and yellow perch in the form of a Total Allow Catch (TAC) for these species.

Annually, a range (minimum, mean and maximum) of recommended allowable harvests (RAH) for walleye and perch are generated by agency biologists that serve on technical task groups, the Walleye Task Group (WTG) and the Yellow Perch Task Group (YPTG). A compilation of assessment and fishery survey data from across Lake Erie are used to generate population estimates of perch

and walleye utilizing state-of-the-art catch-at-age models. Based on these abundance estimates, the RAHs are calculated by the WTG and YPTG and forwarded to the LEC to provide safe guidelines in establishing the annual TAC. Each March, the LEC reviews the RAH of the WTG and YPTG and sets the TAC for yellow perch and walleye based on a set of biological and social metrics.

After the TAC is established, individual harvest limits for each state (and Ontario) are apportioned based on the percentage of Lake Erie owned by each jurisdiction. It is the responsibility of each fisheries management agency to ensure that local TACs are not exceeded. These harvest controls are usually met through regional commercial quotas and angling regulations (creel limits, minimum size limits and closed seasons).

A challenge for the state fisheries agencies is applying angling regulations in a timely manner, synchronized with the condition of fish stocks. Because regulatory change is typically a lengthy process, harvest regulation changes cannot usually be applied in ample time to provide for effective control. Another issue is the application of analogous sport harvest regulations across jurisdictions. Many anglers believe that when more conservative or liberal regulations are appropriate, they should be applied across the board, effectively sharing in both the pain and the bounty. Ohio implemented this strategy in 2010, Michigan in 2011 and New York expects to adopt a proposal in 2012. The flexibility of being able to apply creel limits in April, before the onset of each fishing season (similar to setting commercial quotas), will align the harvest controls (regulations) with the condition of the stocks and establish fishing regulations similarly across jurisdictions.

The Commission therefore proposes to amend §§ 69.11 and 69.12 and add § 69.12b to read as set forth in Annex A. The proposed amendments to §§ 69.11 and 69.12(c)(4) and (f) are housekeeping changes. The other proposed amendments to § 69.12(f) and the proposed addition of § 69.12b implement the adaptive management approach to establishing daily limits for walleye and yellow perch.

(2) The discovery of viral hemorrhagic septicemia (VHS) in the Great Lakes watershed resulted in the creation of Federal and State regulations intended to contain the disease within the Great Lakes. The United States Department of Agriculture—Animal Plant Health Inspection Service prohibits the interstate transport of 37 VHS susceptible fish species, unless they are determined to be VHS free based on analysis from a certified laboratory. Similar regulations imposed by the Department of Agriculture and the Commission prohibit the transport of 27 of these species outside of the Great Lakes watershed (10 of these species are marine or not found in the Great Lakes). Among the VHS susceptible species listed are emerald and spottail shiners, which are popular baitfish preferred by Lake Erie yellow perch anglers. These restrictions have resulted in limited availability and significant increases in the cost of these species at local bait shops. In response, the sportsmen's group SONS of Lake Erie has requested that harvest limits of emerald shiners be increased from 50 per day to 150 per day.

The Commission identified two concerns with this request: 1) the formation of entitlement regulations unique to Lake Erie; and 2) protest by the Commonwealth's Lake Erie commercial seine fishery, which pays for a license that allows for the harvest and sale of baitfish. Upon review, the Commission determined that this issue could be best addressed by implementing a cast/throw net permit similar to the permit system currently in place on Blue Marsh Lake, Nockamixon Lake, Beltzville Lake, Raystown Lake, Lake Wallenpaupack, Lake Arthur and Shenango River Lake that allows for the harvest of certain baitfish (gizzard shad or alewife) in excess of the creel limit of 50 per day provided under the general fishing regulations. Including Lake Erie under this permit system will not provide a special privilege to Lake Erie anglers in the form of enhanced baitfish harvest limits beyond what is allowed in other areas of this Commonwealth. In addition, it will address possible opposition by commercial seine operators because anglers will also be paying for the opportunity to harvest additional shiners. The Commission therefore proposes that § 69.19 be added to read as set forth in Annex A.

(3) Related to the inadequate supply of shiners is the limited availability of commercial seine licenses for Lake Erie. Since 2007, there have been numerous requests for commercial seine licenses that have not been granted due to regulatory constraints limiting the availability of seine licenses. Currently, there are only ten seine licenses available, which are held by six individuals (one individual holds three licenses, two individuals hold two licenses and three individuals hold one license). Seine licenses are assigned to an individual net, which sometimes results in multiple licenses per applicant.

The impact of this fishery on shiner populations has been minimal. Harvest by the existing commercial seine fishery has averaged about 5,700 pounds annually since 1987, representing less than 2% of the total biomass estimates from assessment trawls conducted by the Commission's Lake Erie Research Unit. Harvest can fluctuate significantly and is correlated to the abundance of the population.

Harvest has steadily increased in the last 3 years and peaked at 17,673 pounds in 2010, coinciding with prodigious increases in emerald shiner abundance and demand for this popular baitfish by perch anglers during this same time period.

Increasing the number of available seine licenses in § 69.21 (relating to limitations on number and types of commercial licenses) from 10 to 40 should increase the local availability of shiners and help control the escalating cost of baitfish while having no measurable impact on shiner populations. Moreover, limiting the commercial harvest to emerald and spottail shiners, gizzard shad and alewife in § 69.35 (relating to use of commercial seines) will reduce the potential of accidental introduction of exotic species (that is, round gobies) by means of feral baitfish collections. The Commission therefore proposes that §§ 69.21 and 69.35 be amended to read as set forth in Annex A.

In addition, the Commission conducted a comprehensive review of Chapter 69, Subchapters C and D (relating to commercial fishing licenses; and commercial fishing, seasons and nets) and proposes amendments to other commercial fishing regulations. The Commission proposes that §§ 69.22, 69.23, 69.26, 69.33, 69.37 and 69.39 be amended to read as set forth in Annex A.

*F. Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

*G. Fiscal Impact*

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public. However, under section 2902 of the code (relating to net permits), the fee for net permits is \$10. Therefore, Lake Erie anglers wishing to take advantage of the new permit for the use of cast nets, throw nets or dip nets under proposed § 69.19 will be charged that fee. The Commission estimates that it will initially issue approximately 200 permits under proposed § 69.19 each year. The Commission expects that number to increase over time.

*H. Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-232. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

**§ 69.11. Applicability of fishing regulations.**

Except as otherwise provided in this subchapter, this subpart applies to fish and sport fishing in Lake Erie [ and its ], Lake Erie tributaries and Presque Isle Bay, including peninsula waters.

§ 69.12. Seasons, sizes and creel limits—Lake Erie [ and ], Lake Erie tributaries and Presque Isle Bay including peninsula waters.

\* \* \* \* \*

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1-calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

\* \* \* \* \*

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. **A fish that is injured or is bleeding as a result of being caught will not be**

considered unharmed and will be considered as part of a daily creel or possession limits. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish

returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

\* \* \* \* \*

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
	* * * * *		
WALLEYE	January 1 to midnight March [ 15 ] 14 and [ 12:01 a.m. the first Saturday in ] May 1 to December 31.	15 inches	[ 6 ] Established annually by April 15*
	* * * * *		
TROUT and SALMON	[ First ] 8 a.m. first Saturday after April 11 until midnight Labor Day. 12:01 a.m. the day after Labor Day until [ midnight ] 12:01 a.m. on the Friday before the first Saturday after April 11.	9 inches 15 inches	5 (combined species only 2 of which may be lake trout). 3 (combined species only 2 of which may be lake trout).
	* * * * *		
YELLOW PERCH	From December 1 through [ March 31 ] April 30 From [ April 1 ] May 1 through November 30	7 inches None	[ 30 ] Established annually by April 15** [ 30 ] Established annually by April 15*
	* * * * *		

\* \* \* \* \*

**\*\*See § 69.12b (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limits). After the Executive Director establishes the daily limit for the year, the information will be posted on the Commission’s web site and available from any Commission office.**

*(Editor’s Note: Sections 69.12b and 19 are new and printed in regular type to enhance readability.)*

**§ 69.12b. Lake Erie walleye and yellow perch adaptive management for establishing daily limits.**

The Executive Director or a designee will monitor the walleye and yellow perch populations in Lake Erie taking into account commercial and recreational harvest. Based on that information, the Executive Director will establish daily limits for walleye and yellow perch that are necessary and appropriate for the better protection and management of the fishery. The Executive Director will establish the daily limits for walleye and yellow perch each year and announce them on or before April 15. In any given year, the Executive Director may revise the daily limit for walleye or yellow perch if the Executive Director determines that conditions warrant a revision. The daily limits will remain in effect until the Executive Director establishes new daily limits. Anglers are responsible for obtaining the current daily limits for walleye and yellow perch on Lake Erie including Presque Isle Bay prior to fishing those waters.

**§ 69.19. Permit for the use of cast nets, throw nets or dip nets by sport anglers.**

(a) The Executive Director or a designee may issue permits for the use of cast nets, throw nets or dip nets for

the taking of emerald shiners or spottail shiners from Lake Erie including Presque Isle Bay.

(b) In addition to other permit conditions that the Executive Director may require, the cast nets or throw nets may not be greater than 10 feet in radius (20 feet in diameter) and the dip nets may not be greater than 10 feet in diameter.

(c) Notwithstanding the provisions in § 69.12 (relating to seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters), holders of a permit issued under this section may take, catch, kill or possess a daily creel limit of 200 emerald shiners and spottail shiners (combined species).

(d) A person may apply for a permit for the use of cast nets, throw nets or dip nets by completing the form prescribed by the Commission. The applicant shall submit the completed form to the Commission along with the fee in section 2902 of the code (relating to net permits).

(e) It is unlawful to use cast nets, throw nets or dip nets for the taking of emerald shiners or spottail shiners or to take, catch, kill or possess more than the daily creel limit of emerald shiners or spottail shiners as set forth in § 69.12 without the required permit. A permit for the use of cast nets, throw nets or dip nets shall be carried so that it can be presented to an officer authorized to enforce the code. The permit holder is the only person authorized to use the cast net, throw net or dip net.

(f) It is unlawful to use emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets as bait in any water other than Lake Erie and Lake Erie tributaries including Presque Isle Bay.

(g) It is unlawful to sell, offer for sale, trade or barter live, dead or preserved emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets.

(h) It is unlawful to transport or export live, dead or preserved emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets out of the Lake Erie watershed.

(i) The holder of a permit for the use of cast nets, throw nets or dip nets may possess an unlimited number of preserved emerald shiners or spottail shiners at the permit holder's residence provided the residence is located within the Lake Erie watershed.

(j) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net within 100 yards of a holder of a commercial seine license.

(k) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net within an area 300 feet from the mouth of any stream or within the confines of a tributary stream to Lake Erie.

(l) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net to interfere with sport anglers or boaters.

**Subchapter C. COMMERCIAL FISHING LICENSES**

§ 69.21. Limitations on number and types of **commercial** licenses.

[ (a) ] The number and types of commercial fishing licenses for fishing in Lake Erie shall be limited as follows:

(1) Trap nets: Up to three [ **individuals** ] **applicants** may be licensed to fish up to six trap nets each. Each trap net requires a separate license.

(2) [ **Trawls: zero licenses.**

(3) ] Seines: [ **ten** ] **40** licenses. **An applicant may be issued up to three seine licenses in a year. Each seine requires a separate license.**

[ (4) **Outlines: zero licenses.**

(b) **Implementation of trap net licenses.** The Executive Director may implement subsection (a)(1), providing for additional trap net licenses, by gradually increasing the number of trap net licenses on an annual basis up to the maximum number of licenses authorized. In making a determination on how many trap net licenses to issue, the Executive Director may consider the available estimates of fish populations and the possible impacts of additional commercial fishing efforts. ]

§ 69.22. Applications.

(a) *Renewals.* Licensees applying for renewal of a Lake Erie commercial fishing license shall submit their application on forms provided by the Commission by no later than March [ **26** ] **1** of the year for which the license is sought. The applicant shall fully and accurately complete the application and provide requested information.

(b) *Nonrenewals.* Applicants for new licenses shall submit their applications on forms provided by the Commission by no later than [ **April** ] **March** 15 of the year for which the license is sought. Applicants shall fully and accurately complete the application [ **form** ] and provide requested information. A new license will not be issued until on or after April [ **16** ] **1**. If there are more

applicants for new licenses than the number of licenses available after renewals have been issued, on or after April [ **16** ] **1**, the Executive Director will cause a random drawing to be conducted to determine which applicants for new licenses shall be issued these licenses.

(c) *Residency.* Applicants for resident commercial fishing licenses shall submit proof of their residence in this Commonwealth by showing that they paid personal income tax to the Commonwealth for the year prior to the year of application. Proof shall include evidence that the applicant paid resident personal income tax to the Commonwealth and did not pay income tax as a resident of any other state or sovereignty. Applicants for resident commercial licenses shall also submit proof that boats used for fishing in Commonwealth waters of Lake Erie are either registered with the Commonwealth or documented in accordance with **Federal** law. To qualify for a resident license, both the applicant and the principal operators of the gear subject to licensing shall prove to the satisfaction of the Commission that they are bona fide residents of this Commonwealth. The applicant shall submit the names and addresses of all operators of the gear to be licensed, including proof of their residence in this Commonwealth.

\* \* \* \* \*

§ 69.23. Responsibility of licensees.

\* \* \* \* \*

(b) [ **Licensees** ] **Trap net licensees** are personally responsible for, and shall be physically present during, the day-to-day operation of gear licensed under this chapter and section 2903 of the code (relating to boat and net licenses for boundary lakes). Day-to-day operation of gear includes setting, lifting, pulling and cleaning of nets and the sorting and landing of catch. If exigent circumstances preclude the physical presence of the licensee during the day-to-day operation of gear, the licensee shall notify in advance the Northwest Region Law Enforcement Office.

(c) **Seine net licensees are personally responsible for the day-to-day operation of gear licensed under this chapter and section 2903 of the code. The seine net licensee, agent or employee of a licensee may conduct day-to-day operation of the licensed seine net. Day-to-day operation of gear includes setting, pulling and cleaning of the seine net and the sorting and landing of catch.**

(d) A licensee shall prove to the satisfaction of the Commission that the licensee is responsible to carry out the obligations of the license. The proof shall consist of the following:

\* \* \* \* \*

(2) For the second and [ **all** ] subsequent years, the **trap net** licensee shall show proof of at least 50 days of commercial fishing **with the licensed gear** in the Commonwealth waters of Lake Erie in the previous year.

(3) **For the second and subsequent years, the seine net licensee shall show proof of at least 10 days of commercial fishing with the licensed gear in the Commonwealth waters of Lake Erie including Presque Isle Bay in the previous year.**

(e) **A licensee that fails to show proof of the required minimum number of days of commercial fishing with the licensed gear may not be eligible for renewal of the license for the next year.**

§ 69.26. Reports.

\* \* \* \* \*

(e) Information contained in reports submitted under this section may be used for governmental purposes by the Commission and other agencies [ **and for reporting catch statistics to the authorized agent of the United States Fish and Wildlife Service** ]. Information contained in the reports will not be released to the public without the consent of the licensee except as may be required in compliance actions and prosecutions for violation of reporting requirements or as otherwise required by law.

<i>Species</i>	<i>Size Limit</i>
Yellow perch ( <i>Perca flavescens</i> )	None
Walleye ( <i>Stizostedion vitreum</i> )	15 inches

\* \* \* \* \*

\* \* \* \* \*

(e) **Restricted waters.** The use of trap nets to harvest yellow perch from Lake Erie will be prohibited from an area bound on the west by the 80°00" longitudinal line and on the east at the Commonwealth/New York border (79°45'43") and on the south by the Lake Erie shoreline and on the north by the international border between the Commonwealth and Ontario, Canada.

(f) **Time.** Trap nets may be fished 24 hours a day, but it is unlawful to set or lift them during the period from 30 minutes after sunset to 30 minutes before sunrise. Trap nets may be set or fished, or both, from March 1 to November 30.

[ (f) ] (g) *Description of trap net.*

\* \* \* \* \*

(2) A trap net fishing device is designed to catch fish by impoundment[, as opposed to catching fish by entanglement, which is the action by which gill nets capture fish]. Fish caught by impoundment remain alive and swimming for an extended period while confined within the trap net crib. [ **Fish caught by entanglement are unable to free themselves of the net, cannot swim freely and cannot be expected to live while entangled in the gear.** ] The elements of netting, webbing and twine (thread) size (diameter) used in the construction of a trap net shall be of design and dimension that will discourage, prohibit and preclude the enmeshing and entanglement of fish in the netting of any part of the trap net device. The netting of the crib shall be constructed as a single panel or sheet of webbing. Lawful trap nets may not have liners or covers which would make the external crib webbing two or more sheets in thickness.

\* \* \* \* \*

[ (g) ] (h) *Setting or tending trap nets.* A boat engaged in the setting or tending of trap nets shall comply with

**Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS**

§ 69.33. Use of **commercial** trap nets.

\* \* \* \* \*

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

*Season*

No closed season until the total allowable catch is taken. **See § 69.31 (relating to seasons).**

January 1 to March 14 and [ **12:01 a.m. the first Saturday in** ] May 1 to December 31.

This season will close when the total allowable catch for walleye is taken. **See § 69.31.**

Navigation Rule 26 (United States Coast Guard) from the time the boat leaves the dock until it arrives back at the dock.

§ 69.35. [ **Seines** ] Use of **commercial seines.**

(a) *Species.* It is unlawful to use a seine for commercial fishing in Lake Erie except for the taking of [ **minnows and smelt** ] **emerald shiners, spottail shiners, gizzard shad and alewife.** There shall be no minimum length or **daily limit** for legal species captured by means of seines.

(b) *Taking shiners, gizzard shad and alewife.* It is unlawful to use a seine for the purpose of taking [ **smelt,** ] **emerald shiners, [ and spot tail ] spottail shiners, gizzard shad and alewife** within an area 300 feet from the mouth of any stream or within the confines of a [ **stream** ] **tributary stream** to Lake Erie.

(c) [ **Presque Isle Bay.** In the waters of Presque Isle Bay it is unlawful to use a seine other than from a dock or a boat. Seines of a length of more than 12 feet are prohibited.

(d) [ *Lake Erie proper.* Shore seining and seining from docks and boats with no restrictions on the [ **type or** ] size of seine used is permitted for legal species designated in subsection (a).

[ (e) ] (d) *Identification of seine.* Each seine used shall be licensed separately and shall carry the identifying plastic tag furnished with the license.

(e) **Sale.** **Emerald shiners, spottail shiners, gizzard shad or alewife caught by the holder of a seine license issued under this chapter may be sold either alive, dead or preserved by the holder of the license in the Lake Erie watershed only. It is unlawful to sell these fish in other watersheds of this Commonwealth except in accordance with § 69.3(e) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).**



(f) *Interference with sport anglers or boaters.* It is unlawful for a holder of a seine license issued under this chapter to interfere with sport anglers or boaters.

(g) *Interference with other holders of commercial seine license.* It is unlawful for the holder of a commercial seine license to use a seine within 100 yards of another holder of a commercial seine license.

§ 69.37. Prohibited acts.

\* \* \*

(b) It is unlawful for a person other than the holder of a commercial fishing license, [an authorized agent] and the agents and employees of the holder or an officer authorized to enforce the code or this part to lift, clear[, ] or disturb a commercial net or net-marking buoy.

(c) It is unlawful while fishing under a commercial license or otherwise fishing with a device subject to commercial licensing to manipulate, alter or otherwise use a commercial fishing device [including gill nets] in a way to reduce the effective mesh size of the net being fished.

\* \* \* \* \*

§ 69.39. Landing of catch.

\* \* \* \* \*

[ (d) The Executive Director or his designee may grant an exception to subsection (a) and permit a commercial licensee to land its catch outside of this Commonwealth upon application in writing from the licensee showing reasonable grounds why it is impossible, infeasible, or impractical for the licensee to land its catch in this Commonwealth. A permit for a commercial licensee to land its catch outside this Commonwealth will set forth terms and conditions as the Executive Director may deem appropriate. It is unlawful for a licensee to land its catch outside this Commonwealth without first procuring the required permit and being in compliance with the terms and conditions thereof. ]

[Pa.B. Doc. No. 11-1764. Filed for public inspection October 14, 2011, 9:00 a.m.]

[ 58 PA. CODE CH. 71 ]

Fishing; Propagation and Introduction of Fish into Commonwealth Waters

The Fish and Boat Commission (Commission) proposes to amend Chapter 71 (relating to propagation and introduction of fish into Commonwealth waters). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking amends and updates the Commission's fishing regulations.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2012.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harris-

burg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to § 71.7 (relating to triploid grass carp) are published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

Under section 2904 of the code, the Executive Director, with the Commission's approval, may require permits for the taking, catching, killing, possession, introduction, removal, importing, transporting, exporting or disturbing of fish when it is determined that the permits may be needed to insure proper protection and management of any species of fish. This section also authorizes the Commission to establish fees and to promulgate regulations. Under the section, the Commission may not establish a fee in excess of \$5 per permit for trout/salmon permits. There is no other restriction on fees. This section further provides that the Commission may not issue permits under the authority of the section for game fish other than trout or salmon.

Section 71.7 pertains to the possession and introduction of triploid grass carp (white amur). This section provides that permits shall be required for possessing triploid grass carp, introducing them into Commonwealth waters and importing or transporting them into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain a triploid grass carp possession/introduction permit from the Commission. A person who wishes to import triploid grass carp into this Commonwealth shall obtain a triploid grass carp importation/transportation permit from the Commission.

The triploid grass carp program (program) was initiated by the Commission in January 1994. Two types of permits with associated fees were established and those fees are the same today. A triploid grass carp possession/introduction permit is \$20. A triploid grass carp importation/transportation permit is \$50.

For bodies of water that are more than 5 acres in surface area or are considered to be of special concern, an applicant is required to submit an environmental inspection report prepared by a biologist or fisheries or environmental scientist acceptable to the Commission. This is a detailed report that requires personal inspection of the body of water. Currently, § 71.7 states that the applicant may request the Commission to conduct the inspection and prepare the report upon payment of a \$200 fee. Today, this fee would not begin to cover costs that would be incurred by staff to perform an environmental inspection of a large body of water or a water of special concern.

The Aquatic Resource Section within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the program. Administering the program

requires staff to review permit applications, maintain a database, process and approve the permits. Reviewing the applications requires a technical review, some field views and clerical support.

In 2010, the Commission issued 307 triploid grass carp permits and in the past 5 years approximately 1,700 triploid grass carp permits have been issued by the Commission. Staff time spent reviewing and processing triploid grass carp permits costs approximately \$75 per permit. The Commission therefore proposes to increase the fees in § 71.7 to \$75 to help offset inflation and increasing program costs and to remove the option for applicants to request the Commission to perform the environmental inspection for a \$200 fee. The Commission proposes that § 71.7 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking, however, will impose new costs on the private sector and the general public. The current fees for a triploid grass carp possession/introduction permit and an importation/transportation permit are \$20 and \$50, respectively. The Commission proposes to increase the fee for both permit types to \$75. These fee increases will affect the applicants for the approximately 300 to 400 permits that the Commission issues per year.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-231. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS

§ 71.7. Triploid grass carp.

\* \* \* \* \*

(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of [ \$20 ] \$75. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/transportation permit for a fee of [ \$50 ] \$75. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from: Triploid Grass Carp Manager, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, PA 16823-9616. Permits will not be issued until after January 1, 1994.

\* \* \* \* \*

(e) *Restrictions on introduction of triploid grass carp.*

\* \* \* \* \*

[ (6) When an applicant for a triploid grass carp permit is required to submit an environmental inspection report, the applicant may request the Commission to conduct the inspection and prepare the report upon payment of a fee of \$200. ]

\* \* \* \* \*

[Pa.B. Doc. No. 11-1765. Filed for public inspection October 14, 2011, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF BANKING

### Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 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, 2011.

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

### BANKING INSTITUTIONS

#### Section 112 Acquisitions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
5-10-2011	Edward S. Crooks and Brian D. Selby  Application for approval to collectively acquire up to 84.0% of the voting shares of Counsel Trust Company, York.	Effective

#### Branch Applications

##### De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
9-19-2011	Ambler Savings Bank Ambler Montgomery County	1120 Meetinghouse Road Gwynedd Montgomery County (Limited Service Facility)	Opened
9-19-2011	Ambler Savings Bank Ambler Montgomery County	9000 Twin Silo Drive Blue Bell Montgomery County (Limited Service Facility)	Opened
9-20-2011	Ambler Savings Bank Ambler Montgomery County	3205 Skippack Pike Worcester Montgomery County (Limited Service Facility)	Opened

#### Branch Discontinuances

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
9-22-2011	Firsttrust Savings Bank Conshohocken Montgomery County	701 Hamilton Mall Allentown Lehigh County	Approved

### SAVINGS INSTITUTIONS

No activity.

### CREDIT UNIONS

No activity.

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

GLENN E. MOYER,  
*Secretary*

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, actions and special notices

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## APPLICATIONS

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### THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

### APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications concern, but are not limited to, discharges 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).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Waste; Discharge into Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

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

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

Unless indicated otherwise, the 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

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0026646 Amendment No. 1	Antietam Valley Municipal Authority 502 Butter Lane Reading, PA 19606-1604	Berks County St. Lawrence Borough Exeter Township	Antietam Creek/ 3-C	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N?</i>
PA0104108	Hickory View Terrace WWTP 169 Terrace Drive New Castle, PA 16102	Lawrence County North Beaver Township	20-B	Y

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

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

**PA0058378**, Sewage, SIC Code 4952, **Upper Uwchlan Township Municipal Authority**, 140 Pottstown Pike, Chester Springs, PA 19425-9516. Facility Name: St Andrews Brae STP. This existing facility is located in Upper Uwchlan Township, **Chester 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, Black Horse Creek, is located in State Water Plan watershed 3-H and is classified for High Quality Waters—Trout Stocking and Migratory fishery, 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 0.0036 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Instant. Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Instant. Maximum</i>
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	6.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.2
CBOD <sub>5</sub> May 1 - Oct 31	0.30	0.45	XXX	10	15	20
CBOD <sub>5</sub> Nov 1 - Apr 30	0.60	0.90	XXX	20	30	40
Total Suspended Solids	0.30	0.45	XXX	10	15	20
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	XXX	1000
Total Nitrogen	Report	XXX	XXX	Geo Mean Report	XXX	XXX
Ammonia-Nitrogen May 1 - Oct 31	0.05	XXX	XXX	1.5	XXX	3.0
Nov 1 - Apr 30	0.14	XXX	XXX	4.5	XXX	9.0
Total Phosphorus May 1 - Oct 31	0.03	XXX	XXX	1.0	XXX	2.0
Nov 1 - Apr 30	0.06	XXX	XXX	2.0	XXX	4.0

In addition, the permit contains the following major special conditions:

- A. Operator Notification
- B. Average Weekly Reporting
- C. Remedial Measures if Unsatisfactory Effluent
- D. No Stormwater
- E. Necessary Property Rights
- F. Change in Ownership
- G. Chlorine Minimization
- H. Proper Sludge Disposal
- I. Certified Operator
- J. 2/Month Sampling
- K. Laboratory Certification
- L. Fecal Coliform Reporting
- M. TMDL revision

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 in effect.

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

**PA0083712**, Industrial Waste, SIC Code 4941, 221310, **Bear Valley Franklin County Pennsylvania Joint Authority**, PO Box 308, Saint Thomas, PA 17252-0294. Facility Name: Bear Valley Water Plant. This existing facility is located in Saint Thomas 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), Broad Run, is located in State Water Plan watershed 13-C and is classified for High Quality Waters—Cold Water Fishes, 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 0.05 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	0.5	XXX	XXX	1.6
Total Suspended Solids	Report	Report	XXX	30	60	75
Total Aluminum	1.1	2.3	XXX	2.8	5.6	7.0
Total Iron	Report	Report	XXX	2.0	4.0	5.0
Total Manganese	Report	Report	XXX	1.0	2.0	2.5

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

<i>Parameters</i>	<i>Mass (lbs)</i>		<i>Minimum</i>	<i>Concentration (mg/l)</i>	
	<i>Monthly</i>	<i>Annual</i>		<i>Monthly Average</i>	<i>Maximum</i>
Kjeldahl—N	Report			Report	
Nitrate-Nitrite as N	Report			Report	
Total Nitrogen	Report	Report		Report	
Total Phosphorus	Report	Report		Report	

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.

**PA0081043**, Sewage, SIC Code 8052, **Guardian Elder Care Inc.**, 2 Manor Boulevard, Mifflintown, PA 17059-8757. Facility Name: Bridges at Brookline STP. This existing facility is located in Fermanagh Township, **Juniata 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), Big Run, is located in State Water Plan watershed 12-A 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 0.024 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>		<i>Instant. Maximum</i>
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 <sub>5</sub>	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1,000
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean 2000	XXX	10,000
				Geo Mean		

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.

**PA0046302**, SIC Code 4941, **PA American Water**, 800 West Hersheypark Drive, Hummelstown, PA 17033. Facility Name: PA American Water Hershey. This existing facility is located in South Hanover Township, **Dauphin County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated.

The receiving streams, Swatara Creek and Manada Creek, is located in State Water Plan watershed 7-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 0.2 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average	Daily	Minimum	Average	Daily	Instant. Maximum
	Monthly	Maximum		Monthly	Maximum	
Flow (MGD)	Report XXX	Report XXX	XXX 6.0	XXX XXX	XXX XXX	XXX 9.0
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
Total Suspended Solids	Report	Report	XXX	30	60	75
Total Aluminum	Report	Report	XXX	4.0	8.0	10
Total Iron	Report	Report	XXX	2.0	4.0	5.0
Total Manganese	Report	Report	XXX	1.0	2.0	2.5

The proposed effluent limits for Outfall 002 are based on a design flow of 0.2 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average	Daily	Minimum	Average	Daily	Instant. Maximum
	Monthly	Maximum		Monthly	Maximum	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	XXX	0.37	XXX	1.22
Total Suspended Solids	Report	Report	XXX	30	60	75
Total Aluminum	Report	Report	XXX	4.0	8.0	10
Total Iron	Report	Report	XXX	2.0	4.0	5.0
Total Manganese	Report	Report	XXX	1.0	2.0	2.5

The proposed effluent limits for Outfall 003 are based on a design flow of 0.00 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average	Daily	Minimum	Average	Daily	Instant. Maximum
	Monthly	Maximum		Monthly	Maximum	
Flow (MGD)	XXX	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	XXX	XXX	Report	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	Mass (lbs)			Concentration (mg/l)		
	Monthly	Annual	Minimum	Monthly		
				Average	Maximum	
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	

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.

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Northcentral Regional Office: Regional Water Management Program Manager, 208 W Third Street Suite 101, Williamsport, PA 17701-6448, Telephone: 570.327.3664.

**PA0111759**, Industrial Waste, SIC Code 2011, **Cargill Meat Solutions Corp**, PO Box 188, Wyalusing, PA 18853-0188. Facility Name: Cargill Meat Solutions Corp. This existing facility is located in Wyalusing Township, **Bradford 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), Wyalusing Creek, is located in State Water Plan watershed 4-D and is classified for, 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 0.528 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	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 Residual Halogens	XXX	XXX	XXX	0.5	XXX	1.6
BOD <sub>5</sub>	368	737	XXX	Report	Report	XXX
Total Suspended Solids	439	877	XXX	Report	Report	XXX
Total Dissolved Solids	Report	Report	XXX	Report	Report	XXX
Oil and Grease	74	148	XXX	15	30	30
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	XXX	XXX	400
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	XXX	XXX	XXX
Total Nitrogen	Total Mo XXX	XXX	XXX	134	194	XXX
Total Nitrogen Effluent Net	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Nitrogen	Report Total Mo	XXX	XXX	134	194	XXX
Total Nitrogen	XXX Report Total Annual	XXX	XXX	XXX	XXX	XXX
Total Nitrogen Effluent Net (Interim)	XXX	Report Total Annual	XXX	XXX	XXX	XXX
Total Nitrogen Effluent Net (Final)	XXX	19483 Total Annual	XXX	XXX	XXX	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	4.0	8.0	XXX
Ammonia-Nitrogen	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Ammonia-Nitrogen	XXX Report Total Annual	XXX	XXX	XXX	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus Effluent Net	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Phosphorus	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Phosphorus	XXX Report Total Annual	XXX	XXX	XXX	XXX	XXX
Total Phosphorus Effluent Net (Interim)	XXX	Report Total Annual	XXX	XXX	XXX	XXX
Total Phosphorus Effluent Net (Final)	XXX	1218 Total Annual	XXX	XXX	XXX	XXX

In addition, the permit contains the following major special conditions:

- Chesapeake Bay Nutrient Requirements
- Chemical Additives Usage

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-327-3693.

The EPA Waiver is not in effect.

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

**Permit No. 1011401**, Sewage, **Evans City Water & Sewer Authority**, 204 B. South Jackson St., Evans City, PA 16033. Facility Name: Evans City STP. This facility is located in Jackson Township, **Butler County**.

Description of Existing Activity: The applicant is proposing to replace the existing activated sludge/extended aeration treatment process with an SBR treatment process.

The improvements project will consist of the following major elements:

- The construction of a new plant headworks equipped with an automated bar screen and a grit removal unit.
- The installation of two extended aeration SBR tanks



- The installation of a UV disinfection unit
- The installation of an aerated sludge holding tank

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### III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law

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

**WQM Permit No. 6675059 Amendment 11-1**, Sewerage, **Antietam Valley Municipal Authority**, 502 Butter Lane, Reading, PA 19606-1604.

This proposed facility is located in St. Lawrence Borough and Exeter Township, **Berks County**.

Description of Proposed Action/Activity: Re-rate of existing sewage treatment hydraulic capacity to 2.45 mgd.

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### IV. NPDES Applications for Stormwater Discharges from MS4

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### V. Applications for NPDES Waiver Stormwater Discharges from MS4

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

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

*Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, 570-629-3060.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024511006	Arcadia North Land, LLC 101 E. Erie St. Suite 810 Chicago, IL 60611	Monroe	Coolbaugh Township	Hawkey Run, HQ-CWF, MF

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

*Clearfield County Conservation District: 650 Leonard Street, Clearfield, PA 16830, (814) 765-2629*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041711003	Eagle Environmental II LP 354 Alexander Spring Rd Ste 3 Carlisle PA 17015	Clearfield	Chest Township	Pine Run EV, MF Chest Creek CWF, MF

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

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PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

## STATE CONSERVATION COMMISSION

### NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES PERMITS FOR CAFOs

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under 3 Pa.C.S. Chapter 5, for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits or 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.

Persons aggrieved by an action may appeal under 3 Pa.C.S. § 517, section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge actions, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal/ New</i>
Noah W. Kreider & Sons LLP 1461 Lancaster Rd Manheim, PA 17545	Lancaster	1600	10986.76	Layers/ Pullet/Dairy	NA	Renewal
Leshner's Poultry 1153 Swamp Fox Rd. Chambersburg, PA 17202	Franklin	2304.1	1001.6	Poultry	NA	Renewal

**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**

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

**Application No. 4611520** Public Water Supply

Applicant **Oak Grove and Sales, Inc.**  
 Township Hatfield  
 County **Montgomery**  
 Responsible Official William Forst  
 2985 Cowpath Road  
 Hatfield, PA 19440  
 Type of Facility PWS

Application Received Date August 18, 2011  
 Description of Action Installing one (1) 264 gal. storage in Pump House #1 and two (2) 264 gal. storage tanks in Pump House #2, modifying existing piping and installing new piping as necessary to accommodate the proposed storage tanks.

**Application No. 1511521** Public Water Supply

Applicant **Aqua Pennsylvania, Inc.**  
 Townships Tredyffrin and Schuylkill  
 County **Chester**  
 Responsible Official Mr. Thomas M. Kiely, P.E.  
 P. O. Box 80794  
 Valley Forge, PA 19484-0794

Type of Facility PWS  
 Application Received Date August 1, 2011

Description of Action Construction of a new 2.0 MG storage tank at the Diamond Rock tank site in Chester County, PA.

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

**Permit No. 3911507**, Public Water Supply.

Applicant **Nestle Waters North America Inc.**  
 305 Nestle Way  
 Breinigsville, Pa  
 [Township or Borough] Upper Macungie Twp, **Lehigh Co.**

Responsible Official Michael Franceschetti, Plant Manager

Type of Facility Bottling plant  
 Consulting Engineer Forino Edward Davis P.E.  
 555 Mountain Home Rd  
 Sinking Spring, Pa

Application Received Date 9/26/2011

Description of Action The installation of log 4 disinfection, UV unit, on the city water supply line at the Breinigsville Bottling Plant.

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

**Application No. 4111503—Construction** Public Water Supply.

Applicant **Lycoming County Water & Sewer Authority**  
 [Township or Borough] Muncy Township  
 County **Lycoming**  
 Responsible Official Christine Weigle, Executive Director  
 Lycoming County Water and Sewer Authority  
 P. O. Box 186  
 216 Old Cement Road  
 Montoursville, PA 17754  
 Type of Facility Public Water Supply  
 Consulting Engineer David M. Swisher, P.E.  
 HRG, Inc.  
 474 Windmere Drive  
 State College, PA 16801  
 Application Received September 30, 2011  
 Description of Action The interconnection of a 12" main with the proposed high service pump station and the existing water system around Lycoming Mall Circle.

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

**Permit No. 4311503**, Public Water Supply

Applicant **Sunnyview Mobile Home Park**  
 Township Pymatuning Township  
 County **Mercer**  
 Responsible Official John Hamelly  
 Type of Facility Public Water Supply  
 Consulting Engineer Joseph Pacchioni, P.E.  
 Herbert, Rowland, & Grubic, Inc.  
 3755 East State Street  
 Hermitage, PA 16148  
 Application Received September 27, 2011  
 Date  
 Description of Action Installation of chlorine contact reactor to meet 4-Log disinfection requirements.

*Central Office: Bureau Director, Water Standards and Facility Regulation, PO Box 8467, Harrisburg, PA 17105-8467*

**Permit No. [9996588]**, Public Water Supply.

Applicant **[Johnson's Pools and Spas]**  
 [Township or Borough] [Owego, New York]  
 Responsible Official [Eric A. Johnson, Owner]  
 Type of Facility [Out of State Bulk Water Hauling System]  
 Application Received [September 15, 2011]  
 Date

Description of Action [Applicant requesting Department approval to sell bulk water in Pennsylvania. Drinking Water will be hauled from Town of Owego, New York using 6000-gallon tanker trucks.]

#### MINOR AMENDMENT

#### Applications Received Under the Pennsylvania Safe Drinking Water Act

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

#### Application No. 4011511MA

Applicant **Aqua Pennsylvania, Inc.**  
 [Township or Borough] Conyngham Township  
**Luzerne County**  
 Responsible Official Patrick R. Burke, Regional Manager  
 Northeast & Central Operations  
 Aqua Pennsylvania, Inc.  
 1 Aqua Way  
 White Haven, PA 18661  
 Type of Facility Community Water System  
 Consulting Engineer William A. LaDieu, PE  
 CET Engineering Services  
 1240 North Mountain Road  
 Harrisburg, PA 17112  
 717-541-0622  
 Application Received September 26, 2011  
 Date  
 Description of Action Application for modification of the Wapwallopen well station facility to provide additional chlorine contact time.

#### Application No. 4011512MA, Minor Amendment.

Applicant **Crestwood School District**  
 281 S. Mountain Blvd  
 Mountain Top, Pa 18707  
 [Township or Borough] Rice Twp. **Luzerne County**  
 Responsible Official John Capasso  
 Type of Facility Public Water System (NTNC)  
 Consulting Engineer Harry E. Garman, P.E.  
 Barry Isett & Associates  
 PO Box 147  
 Trexlertown, Pa  
 Application Received 9/28/2011  
 Date  
 Description of Action The change of a corrosion control chemical at the Rice Elementary School.

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

#### Application No. 5611516MA, Minor Amendment.

Applicant **Borough of Somerset**  
 340 West Union Street  
 Somerset, PA 15501

[Township or Borough] Somerset Borough  
 Responsible Official Benedict Vinzani, Jr., Borough Manager  
 Borough of Somerset  
 340 West Union Street  
 Somerset, PA 15501  
 Type of Facility Water system  
 Consulting Engineer The EADS Group, Inc.  
 450 Aberdeen Drive  
 Somerset, PA 15501  
 Application Received Date September 30, 2011  
 Description of Action Installation of approximately 3500 LF of 12" distribution line.

**Application No. 5611517GWR, Minor Amendment.**

Applicant **Garrett Borough**  
 307 Municipal Drive  
 Garrett, PA 15542  
 [Township or Borough] Garrett Borough  
 Responsible Official Ron Duerring, President  
 Garrett Borough  
 307 Municipal Drive  
 Garrett, PA 15542  
 Type of Facility Water system  
 Consulting Engineer  
 Application Received Date September 29, 2011  
 Description of Action Demonstration for 4-log removal of viruses for groundwater sources.

**Application No. 5020024, Minor Amendment.**

Applicant **Hampton Shaler Water Authority**,  
 3101 McCully Road,  
 PO Box 66,  
 Allison Park, PA 15101  
 [Township or Borough] Hampton Township, Shaler Borough  
 Responsible Official Samuel Scarfone, Executive Director  
 Hampton Shaler Water Authority,  
 3101 McCully Road,  
 PO Box 66,  
 Allison Park, PA 15101  
 Type of Facility New water system  
 Consulting Engineer  
 Application Received Date September 26, 2011  
 Description of Action Transfer of the Hampton Township Water Authority and Shaler Township Water System to the new Hampton Shaler Water Authority.

**Application No. 1111508MA, Minor Amendment.**  
 Applicant **Municipal Authority of the Borough of Portage**,  
 606 Cambria Street,  
 Portage, PA 15946  
 [Township or Borough] Portage Township  
 Responsible Official Raymond Vandzura, Chairman  
 Municipal Authority of the Borough of Portage,  
 606 Cambria Street,  
 Portage, PA 15946  
 Type of Facility water system  
 Consulting Engineer The EADS Group, Inc.  
 450 Aberdeen Drive  
 Somerset, PA 15501  
 Application Received Date September 19, 2011  
 Description of Action Installation of new filter media.

**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 mediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the mediator 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 AT&T Relay Service at (800) 654-5984.

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

*Northeast Region: Eric Supey, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Green Acres MHP/Szoke Residence**, 8989 Breinigs Run Circle, Upper Macungie Township, **Lehigh County**. Christopher A. Jacangelo, J. Rockwood & Associates, Inc., P. O. Box 1006, Easton, PA 18044 has submitted a Notice of Intent to Remediate (on behalf of his client, MHC Green Acres, LP, c/o Equity Lifestyle Properties, Inc., Two North Riverside Plaza, Suite 800, Chicago, IL 60606), concerning the remediation of soil found to have been impacted by No. 2 fuel oil/kerosene as a result of an accidental release occurring from an aboveground storage tank, which is located outside the residential dwelling. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**FedEx Freight, Inc.**, 2030 North Union Street, Middletown, PA 17057, Lower Swatara Township, **Dauphin County**. Bureau Veritas North America, Inc., 110 Fieldcrest Avenue, Edison, NJ 08837, on behalf of FedEx, Freight, Inc., 3405 Victor Street, Santa Clara, CA 95054, submitted a Notice of Intent to Remediate site soils contaminated with petroleum hydrocarbons from an oil/water separator. The site will be remediated to the non-residential Statewide Health Standard, and will continue operating as a trucking terminal or commercial/industrial site.

## AIR QUALITY

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

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 public. This approach allows the owner or operator of a facility to complete and submit permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department received applications for Plan Approvals or Operating Permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office listed before the applications. Persons interested in reviewing the application files should contact the appropriate regional office to schedule appointments.

Persons wishing to receive a copy of a proposed Plan Approval or Operating Permit shall indicate interests to the Department regional office within 30 days of the date of this notice and shall file protests or comments on a proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed documents to persons or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that hearings be held concerning a proposed Plan Approval or Operating Permit. A comment or protest filed with the Department regional office shall include a concise statement of the objections to the issuance of the Plan Approval or Operating Permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

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

Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (42 U.S.C.A. §§ 7401—7671q) and regulations adopted under the Federal Clean Air Act.

### PLAN APPROVALS

**Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745*

*Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226*

**63-00955B: National Fuel Gas Supply Corp.** (1100 State Street, Erie, PA 16512) for installation of two new turbines at their Buffalo Compressor Station in Buffalo Township, **Washington County**.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act 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 J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-705-4862*

**36-03186A: Kline's Services, Inc.** (5 Holland Street, Salunga, PA 17538) for installation of an anaerobic waste

digester process to produce electricity at their Kline's Services, Inc. facility in East Hempfield Township, **Lancaster County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to the abovementioned company for the abovementioned project.

Plan Approval #36-03186A is for the construction of an anaerobic waste digester process to generate electricity. The process will include the construction of one (1) digester, one (1) 1,057 bhp biogas fired IC engine and one (1) 852 kwe generator. The air contaminant emissions from the operation of the biogas fired engine will be controlled by an H<sub>2</sub>S biogas scrubber. The company shall be subject to and comply with 40 CFR 63 Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines and 40 CFR 60 Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines. CO, NO<sub>x</sub> and VOCs will be controlled by a lean burn engine combustion system with automatic air/fuel ratio control. PM will be controlled with a gas particulate filter. SO<sub>x</sub> will be controlled by an H<sub>2</sub>S biogas scrubber. 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. The expected actual air emissions from the proposed project are 1.53 tpy of PM<sub>10</sub>, 20.41 tpy of NO<sub>x</sub>, 22.45 tpy of CO and 10.21 tpy of VOCs.

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, 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Mr. Thomas Hanlon, East Permitting Section Chief, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Plan approvals issued to sources identified in 25 Pa. Code § 127.44(b)(1)–(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP, and will be submitted to EPA for review and approval.

**06-03029C: Yuasa Battery, Inc.** (2901 Montrose Ave., Laureldale, PA 19605) for upgrading equipment at their Laureldale facility in Laureldale Borough, **Berks County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to the abovementioned company for the abovementioned project. This plan approval may be incorporated into the company's facility-wide permit via an administrative amendment at a later date.

Plan Approval 06-03029C is for replacing the existing remelt pot and small parts caster with a new melt pot and a new lead cylinder casting operation controlled by a baghouse followed by a HEPA filter; installing a new ball mill for making lead oxide controlled by a baghouse followed by a HEPA filter; and installing three new silos for storage of lead oxide controlled by bin vent filters with HEPA filters. The company shall be subject to and comply with 40 CFR 60, Subpart KK; 40 CFR 63, Subpart P; and Best Available Technology (BAT). 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. The proposed project will increase the facility's potential-to-emit by 0.022 ton/yr of lead oxide.

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, 909 Elmerton Avenue, Harrisburg, PA 17110. A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Mr. Thomas Hanlon may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Plan approvals issued to sources identified in 25 Pa. Code § 127.44(b)(1)–(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP, and will be submitted to EPA for review and approval.

**06-03117F: Custom Processing Services, Inc.** (2 Birchmont Drive, Reading, PA 19606) for construction of an additional micro milling unit and associated collection system at their facility in Exeter Township, **Berks County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to the above mentioned company for the above mentioned project. This plan approval may be incorporated into the company's facility-wide permit via an administrative amendment at a later date.

This plan approval is for the authorization to construct an additional micronizer grinder. Particulate matter (PM) emissions are not expected to increase beyond 3.94 tons per year. The Plan Approval and Operating permit will

contain additional testing, recordkeeping, and operating restrictions designed to keep the facility operating within all applicable air quality requirements. The project will not trigger PSD or NSR 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, 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests, or for requests for a public hearing. 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.

Tom Hanlon, East Permitting Section Chief, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments, protests, or requests for a public hearing.

Plan approvals issues to sources identified in 25 Pa. Code § 127.44(b)(1)–(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP, and will be submitted to EPA for review and approval.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481*

*Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636*

**37-332A: Amerikohl Aggregates, Inc.—McMillin Mine** (1384 State Route 711, Stahlstown, PA 15687) for construction of a limestone processing plant at their facility in Wayne Township, **Lawrence County**.

Pursuant to 25 Pa. Code §§ 127.44(b) and 127.424(b), the Pennsylvania Department of Environmental Protection (DEP) intends to issue Plan Approval 37-332A to Amerikohl Aggregates, Inc. for the construction of a limestone processing plant at their McMillin Mine facility located on Chewton-Wurtemberg Rd., Wayne Township, Lawrence County. The Plan Approval will subsequently be incorporated into the facility's Operating Permit through an administrative amendment in accordance with 25 Pa. Code § 127.450.

Plan Approval No. 37-332A is for the construction of a 500 ton/hour capacity limestone processing plant, which will consist of sixteen (16) conveyors, two (2) crushers, two (2) screens, a 440 bhp diesel-fired generator, and associated stockpiles and paved and unpaved roadways. Based on the information provided by the applicant and DEP's own analysis, the proposed source will emit a maximum of 37.2 tons of particulate matter, 11.5 tons of which will be particulate matter less than 10 microns (PM-10), 2.7 tons of carbon monoxide, 3.1 tons combined

of nitrogen oxides and volatile organic compounds (VOC), and 0.98 ton of sulfur oxides per year.

The proposed facility will be limited to an annual throughput not to exceed 650,000 tons per year of material processed, and will be subject to the applicable requirements of 40 CFR Subparts 000 (Standards of Performance for Nonmetallic Mineral Processing Plants) and IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines). The Plan Approval will contain testing, monitoring, recordkeeping, and work practice requirements 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 are available for public inspection between the hours of 8 a.m. and 4 p.m. weekdays at the address shown below. To make an appointment, contact Records Management at 814-332-6340.

Anyone wishing to provide DEP with additional information they believe should be considered may submit the information to the address shown below. Comments must be received by the Department within 30 days of the last day of publication. Written comments should include the following:

1. Name, address, and telephone number of the person submitting comments.
2. Identification of the proposed Plan Approval; No. 37-332A.
3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted on the comments received during the public comment period. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation or the *Pennsylvania Bulletin* or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to John Guth, Regional Air Quality Manager, Department of Environmental Protection, Northwest Regional Office, 230 Chestnut St., Meadville, PA 16335, 814-332-6940.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104*

*Contact: Edward Wiener, Chief—Telephone: 215-685-9426*

**AMS 11004: Southeastern Pennsylvania Transportation Authority—Comly Bus Shop** (Penn and Comly Streets, Philadelphia, PA 19149) for installation of the following: two (2) 10.5 MMBtu/hr boiler, each firing natural gas or #2 fuel oil; one (1) 5.25 MMBtu/hr boiler firing natural gas or #2 fuel oil; one (1) 0.56 MMBtu/, one 65 kilowatt emergency generator firing natural gas, and stage 2 vapor recovery unit in the City of Philadelphia, **Philadelphia County**. After the installation, there will be a potential emission increase of the following pollutants: 17.8 tpy of NO<sub>x</sub>; 0.7 tpy of VOC, and 2.0 tpy of PM, 9.7 tpy of CO, and 23.9 tpy of SO<sub>x</sub>. The Plan Approval will contain operating, monitoring, testing, recordkeeping, and reporting requirements to ensure operation within all applicable requirements.

**AMS 11002: Southeastern Pennsylvania Transportation Authority—Fern Rock Subway Shop** (11th and

Grange Street, Philadelphia, PA 19141) for installation of the following: two (2) 10.461 MMBtu/hr boiler to be derated to less than 9.9 MMBtu/hr, each firing natural gas or No. 2 fuel oil; three (3) pressure washers firing natural gas; one (1) 80 kilowatt diesel emergency generator; eight (8) parts washers, and one spray booth in the City of Philadelphia, **Philadelphia County**. After the installation, there will be a potential emission increase of the following pollutants: 15.4 tpy of NO<sub>x</sub>; 2.1 tpy of VOC, and 1.7 tpy of PM, 8.3 tpy of CO, and 19.1 tpy of SO<sub>x</sub>. The Plan Approval will contain operating, monitoring, testing, recordkeeping, and reporting requirements to ensure operation within all applicable requirements.

**AMS 11044: SunGard Availability Services, Inc.** (401 N Broad Street, Philadelphia, PA 19108) for installation, replacement, and modification of the following sources in the City of Philadelphia, **Philadelphia County**:

1. Replacement one (1) 2036 kilowatt (kW) Emergency Generator with a 2000 kW Emergency Generator with Selective Catalytic Reductive (SCR) control device for Nitrogen Oxides (NO<sub>x</sub>),

2. Installation of two (2) 2000 kW emergency generators, each equipped with NO<sub>x</sub> SCR Control Device.

3. Modify the requirement under Plan Approval No. 10135 for an annual catalytic activities test to be conducted on each NO<sub>x</sub> SCR to at least every two (2) years.

4. Modify the requirement under Plan Approval No. 10135 for continuous temperature monitors and recorders to be installed on each of the SCR for Emergency Generator Nos. 2 thru 9 with the following requirements:

(a) NO<sub>x</sub> portable analyzer test or NO<sub>x</sub> stack test at least every five (5) years.

(b) Tuning of the SCR injection control panel at least every five (5) years

After the replacement, installation, and modification there will be a potential decrease of 8.8 tpy of NO<sub>x</sub>; and a potential increase of 4.5 tpy for Sulfur Oxides, 21.4 tpy for Carbon Monoxide, and 6.8 tpy for Particulate Matter. The Plan Approval will contain operating, testing, monitoring, recordkeeping, and reporting requirements to ensure operation within all applicable requirements.

#### OPERATING PERMITS

#### Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110*

*Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-705-4862*

**01-05009: Raven Rock Mountain Complex** (201 Beasley Drive, Suite 100, Fort Detrick, MD 21702) for operation of their communication facility in Liberty Township, **Adams County**. This is a renewal of the Title V Operating permit issued in January 2007.

In accordance with 25 Pa. Code §§ 127.424, 127.425 and 127.521, the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the above-mentioned facility. Actual emissions for calendar year 2010 included 9.7 tons of NO<sub>x</sub> and 2.5 tons of CO. 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.

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 the PA DEP Southcentral Regional Office at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Daniel C. Husted, PE, Chief, West Permitting Section, may be contacted at 717-705-4863, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481*

*Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6131*

**62-00012: Pittsburgh Glass Works, LLC—Meadville Works 8** (PO Box 800, Kebert Industrial Park, Meadville, PA 16335-6600) to modify the Title V Operating Permit for this glass manufacturing facility, in Greenwood Township, **Crawford County**. The modification was at the request of the permittee and incorporates the requirements from 25 Pa. Code 129.301—129.310, Control of NO<sub>x</sub> Emissions from Glass Melting Furnaces. The permittee has requested an alternative compliance schedule for Source ID: 102—Furnace 8-2 as permitted under the PA Glass Melting Furnace NO<sub>x</sub> Rule. The language contained in 25 Pa. Code 129.304(c)(2) allows the permittee to submit a petition, in writing, requesting an alternative compliance schedule. Their petition is requesting that Source ID: 102—Furnace 8-2 be exempted from the PA Glass Melting Furnace NO<sub>x</sub> Rule until after the next scheduled cold shutdown which is currently projected to be in the year 2024.

#### Intent to Issue Operating Permits 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 19428*

*Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920*

**23-00015: BMR-145 King of Prussia Road LP**, (145 King of Prussia Road, Radnor, PA 19087) for a Non-Title V Facility, State-Only, Synthetic Minor Permit in Radnor Township, **Delaware County**. The sources of emissions include boilers and emergency generators. The facility has a potential to emit less than 25 tons per year of Nitrogen



Oxides (NO<sub>x</sub>). Monitoring, record keeping and reporting requirements have been added to the permit to address applicable limitations.

**23-00099: Haven Memorial Park** (2500 Concord Road, Chester, PA 19013) for operation of a human crematory in Chester Township, **Delaware County**. The renewal permit is for a non-Title V (State only) facility. The sources of air emissions are 2 two-stage human crematory units, both firing on natural gas. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110*

*Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-705-4862*

**06-05115: Granger Energy of Morgantown, LLC** (16980 Wood Road, Lansing, MI 48906-1044) for operation of a landfill gas treatment plant in Caernarvon Township, **Berks County**.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The facility has minor fugitive emissions of volatile organic compounds from the various gas handling and treatment equipment at the plant. 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 WWW—Standards of Performance for Municipal Solid Waste Landfills and 40 CFR Part 63, Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.

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 the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Tom Hanlon, Chief, East Permitting Section, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests

**38-03016: PA Precision Cast Parts, Inc.** (521 North 3rd Avenue, Lebanon, PA 17042) for their steel foundry in Lebanon City, **Lebanon County**.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The subject facility has potential emissions of 1.49 tpy of NO<sub>x</sub>, 2.51 tpy of CO and 3.66 tpy of VOCs. 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 63 Subpart ZZZZZ—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

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 the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Mr. Thomas Hanlon, Chief, East Permitting Section may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

**01-05019: Colonial Fiberglass Industries, Inc.** (262 Church Street, Hanover, PA 17331) for operation of their fiberglass automotive after-market accessories manufacturing facility in Conewago Township, **Adams County**.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue a renewal of an Air Quality Operating Permit for the abovementioned facility.

The subject facility has actual emissions of 3 TPY of VOC and 3 TPY of styrene. The Operating Permit will include emission limits and work practice standards along with testing, monitoring, record keeping and reporting requirements to ensure the facility complies with all applicable air quality regulations.

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 the PA DEP Southcentral Regional Office at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

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

- Identification of the proposed permit by the permit number listed above.

- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period from the date of publication of this notice in the *Pennsylvania Bulletin* will exist for the submission of comments or protests.

Daniel C. Husted, P.E., Chief, West Permitting Section, may be contacted at 717-705-4863, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

**67-05117: York Building Products Co., Inc.** (5952 Lincoln Highway West, Thomasville, PA 17362) for operation of their quarry and sand processing facility in Jackson Township, **York County**.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit renewal for the abovementioned facility.

The facility has the following potential annual emissions: 0.2 tons SO<sub>x</sub>, 1.13 tons NO<sub>x</sub>, 2.7 tons PM, 2.05 tons PM-10, and 17.8 tons CO. 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.

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 the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

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

- Identification of the proposed permit by the permit number listed above.

- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests. 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.

Daniel C. Husted, Chief, West Permitting Section may be contacted at 717-705-4863, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

**06-03134: SEPS Reading LLC** (231 Rock Industrial Park Drive, Bridgeton, MO 63044) for their spray drying facility at 61 Vanguard Drive in Exeter Township, **Berks County**.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The subject facility has potential emissions of 4 tpy of NO<sub>x</sub>, 7 tpy of CO and 13 tpy of PM. 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.

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 the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

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

- Identification of the proposed permit by the permit number listed above.

- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Mr. Thomas Hanlon, Chief, East Permitting Section may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

**06-05073: Dyer Quarry, Inc.** (P. O. Box 188, Rock Hollow Road, Birdsboro, PA 19508) for operation of their quarry and stone crushing facility in Robeson Township, **Berks County**. This is a renewal of their State-only Operating Permit issued in 2006.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The subject facility has actual emissions of 19.7 tpy of CO, 5.0 tpy NO<sub>x</sub>, 56.8 tpy PM<sub>10</sub>, 0.6 tpy, & SO<sub>x</sub>. 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 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

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 the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed permit by the permit number listed above.
- A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Tom Hanlon, Chief, East Permitting Section, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745*

*Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174*

**56-00155: Somerset Area School District** (645 S Columbia Avenue, Somerset, PA 15501-2513) for an operating permit renewal for the Somerset Area Junior—Senior High School in Somerset Borough, **Somerset County**. Equipment at this facility includes two 14.9 mmbtu/hr tri-fuel boilers and a 55 kW natural gas-fired emergency generator. Potential emissions from the adjacent facilities are based on a limit of burning 2,150 tons of coal per consecutive 12 month period and are estimated to be 10.2 tons NO<sub>x</sub>, 1.4 tons VOCs, 11.8 tons CO, 16.1 tons particulate matter and 99.4 tons SO<sub>x</sub>. Actual emissions from the facility are much lower. The facility is subject to the applicable requirements of 25 Pa. Code Chapters 121—145. The proposed Operating Permit contains applicable emission limits, as well as testing, monitoring, recordkeeping, reporting and work practice requirements.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481*

*Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6131*

**10-00346: Scrap Salvage & Surplus—Butler Plant** (690 Glenwood Way, Butler, PA 16001-8422) to renew the State Only Operating Permit for the scrap and waste material facility in Center Township, **Butler County**. The facility is a Natural Minor. The primary sources at the facility include scrap cutting under a metal hood exhausted to a control device, an emergency diesel generator, scrap cutting in the yard, and fugitive emissions from the roadways. The applicable requirements of 40 CFR 60 Subpart IIII were added to the permit during this renewal. The renewal permit also contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

## 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*

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

**56010101 and NPDES No. PA0248924. Rosebud Mining Company**, 301 Market Street, Kittanning, PA 16201, permit renewal for the continued operation and restoration of a bituminous surface mine in Elk Lick Township, **Somerset County**, affecting 81.0 acres. Receiving stream(s): UTS to Casselman River and UTS to Elk Lick Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: August 25, 2011.

**32850114 and NPDES No. PA0597457. Beilchick Brothers**, P.O. Box 7, Heilwood, PA 15745, permit renewal for reclamation only of a bituminous surface mine in Pine Township, **Indiana County**, affecting 147.5 acres. Receiving stream(s): UTS of Little Yellow Creek classified for the following use(s): high quality cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 21, 2011.

**56960106 and NPDES No. PA0234192. AMFIRE Mining Company, LLC**, One Energy Place, Latrobe, PA 15650, permit renewal for the continued operation and

restoration of a bituminous surface mine in Lincoln Township, **Somerset County**, affecting 352.6 acres. Receiving stream(s): North Branch Quemahoning Creek and Horner Run classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning SWI. Application received: September 21, 2011.

**56960107 and NPDES No. PA0234231, PBS Coals, Inc.**, P. O. Box 260, Friedens, PA 15541, permit renewal for the continued operation and restoration of a bituminous surface mine in Jenner Township, **Somerset County**, affecting 125.4 acres. Receiving stream(s): unnamed tributaries to/and Quemahoning Creek classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning SWI. Application received: September 22, 2011.

**56100105 and NPDES No. PA0263079. Wilson Creek Energy, LLC**, 140 West Union Street, Somerset, PA 15501, revision of an existing bituminous surface and auger mine to add construction of a temporary raw coal stockpile area and add 8.3 acres to the permit for the purpose of constructing a new and permanent haul road in Black Township, **Somerset County**, affecting 141.0 acres. Receiving stream(s): Wilson Creek and Coxes Creek classified for the following use(s): warm water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 20, 2011.

**56663069 and NPDES No. PA0120944. Rosebud Mining Company**, 1117 Shaw Mines Road, Meyersdale, PA 15552, revision of an existing bituminous surface and auger mine to add 251 acres of additional mining area in Elk Lick and Summit Townships, **Somerset County**, affecting 3040.0 acres. Receiving stream(s): UTS to/and Casselman River and UTS to/and Elk Lick Creek classified for the following use(s): cold water fisheries. There are no potable water supply intakes within 10 miles downstream. Application received: September 26, 2011.

**56970301 and NPDES No. PA0234362. Garrett Limestone Company, Inc.**, 451 Stoystown Road, Suite 104, Somerset, PA 15501, revision of an existing bituminous surface mine to add 8.7 acres to the existing permit for surface support in Black and Summit Townships, **Somerset County**, affecting 174.4 acres. Receiving stream(s): Casselman River classified for the following use(s): warm water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 26, 2011.

**56100105. NPDES No. PA0263079 and General Permit GP-12-56100105, Wilson Creek Energy, LLC**, 140 West Union Street, Somerset, PA 15501, revision of an existing bituminous coal mining site to obtain coverage for coal processing under air quality general permit GP-12 in Black Township, **Somerset County**, affecting 140.3 acres. Receiving stream(s): Wilson Creek and Coxes Creek classified for the following use(s): warm water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 20, 2011.

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

**61110102 and NPDES Permit No. PA0259187. Ben Hal Mining Company**, (389 Irishtown Road, Grove City, PA 16127). Commencement, operation and restoration of a bituminous surface mine in Clinton Township, **Venango County** affecting 47.0 acres. Receiving streams: unnamed tributary to Scrubgrass Creek, classified for the following uses: CWF. The first downstream potable water supply intake from the point of discharge is Clintonville Water & Sewer. Application received: September 23, 2011.

**61970101 and NPDES Permit No. PA0227358. Bedrock Mines, LP** (111 Freeport Road, Aspinwall, PA 15215) Renewal of an existing bituminous surface mine in Irwin Township, **Venango County** affecting 71.5 acres. Receiving streams: Four unnamed tributaries to Scrubgrass Creek, classified for the following uses: CWF. There are no surface water supply intakes within 10 miles downstream. Application received: September 30, 2011.

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

**54960201R3. Northeastern Power Co.**, (P. O. Box 7, McAdoo, PA 18237), renewal of an existing anthracite coal refuse reprocessing operation in Kline, Hazle and Banks Townships, **Schuylkill, Luzerne and Carbon Counties** affecting 429.7 acres, receiving stream: Catawissa Creek, classified for the following use: cold water fishes. Application received: September 22, 2011.

**54110101 and NPDES Permit No. PA0225096. KK Coal, LLC**, (P. O. Box 8, Cumbola, PA 17930), commencement, operation and restoration of an anthracite surface mine, coal refuse reprocessing and refuse disposal operation and NPDES Permit for discharge of treated mine drainage in Blythe Township, **Schuylkill County** affecting 236.0 acres, receiving streams: Bushey Creek and unnamed tributary to Schuylkill River, classified for the following uses: cold water and migratory fishes. Application received: September 26, 2011.

*Noncoal Applications Received*

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

**01740401C2 and NPDES Permit No. PA0613045. New Enterprise Stone & Lime Company, Inc.**, P. O. Box 2009, Chambersburg, PA 17201, renewal of NPDES Permit, Hamiltonban Township, **Adams County**. Receiving stream(s): Muddy Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 6, 2011.

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

**24112802 and NPDES Permit No. PA0259179. North Star Aggregates, Inc.** (P. O. Box 51, Penfield, PA 15849) Commencement, operation and restoration of a small industrial minerals operation in Ridgway Township, **Elk County** affecting 10.6 acres. Receiving streams: Little Mill Creek, classified for the following uses: HQ-CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: September 23, 2011.

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

**54110301 and NPDES Permit No. PA0225100. Pierson-Middleport, LLC**, (P. O. Box 430, Woodstown, NJ 08098), commencement, operation and restoration of a sandstone, siltstone, clay and topsoil quarry operation

and NPDES Permit for discharge of treated mine drainage in Walker and Blythe Townships, **Schuylkill County** affecting 139.92 acres, receiving stream: unnamed tributary to Schuylkill River, classified for the following use: cold water fishes. Application received: September 21, 2011.

**58110304 and NPDES Permit No. PA0225088. Powers Stone, Inc.**, (15324 SR 3001, Montrose, PA 18801), commencement, operation and restoration of a sandstone, shale and bluestone quarry operation and NPDES Permit for discharge of treated mine drainage in Auburn Township, **Susquehanna County** affecting 41.47 acres, receiving streams: tributary to Nick Creek and unnamed tributary to Riley Creek, classified for the following uses: cold water and migratory fishes. Application received: September 23, 2011.

**38870301C11 and NPDES Permit No. PA0595543. Pennsy Supply, Inc.**, (P. O. Box 3331, Harrisburg, PA 17105), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in North Londonderry, North Annville, South Annville and Annville Townships, **Lebanon County**, receiving streams: Killinger Creek and Quittapahilla Creek, classified for the following use: trout stock fishery. Application received: September 27, 2011.

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
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.

In addition, the Department imposes a technology-based aluminum limit of 2.0 mg/l (30 day average) to protect stream uses. 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

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity*			
pH*		greater than 6.0; less than 9.0	

\* The parameter is applicable at all times.

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.

## 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:

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 BAT limits for noncoal mining activities as provided in 40 CFR Part 436 and 25 Pa. Code Chapter 77 are as follows:

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 associ-

ated 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 362-0600-001, NPDES Program Implementation—Memorandum of Understanding (MOU) Concerning Water Quality Management, NPDES Program Implementation, and Related Matters. 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*

*California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100*

**NPDES No. PA0235989 (Mining Permit No. 56100701), Wilson Creek Energy, LLC**, (140 West Union Street, Suite 102, Somerset, PA 15501). A new NPDES and mining activity permit for the Milford #3 CRDA in Milford Township, **Somerset County** for a new coal refuse disposal site. Surface Acres Affected 89.4. The application was considered administratively complete on February 16, 2011. Application received September 2, 2010.

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 facility location of the non-discharge alternatives are listed below:

<i>Facility Identification:</i>	<i>New Facility:</i>
Sedimentation Ponds B & C and Treatment Ponds TP-1 through TP-7	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

**NPDES No. PA0597112 (Mining permit no. 11850103), L & J Energy Company, Inc.**, P. O. Box J, Grampian, PA 16838, renewal of an NPDES permit for bituminous surface/auger mine in Susquehanna Township, **Cambria County**, affecting 98.0 acres. Receiving stream(s): West Branch Susquehanna River, classified for the following use(s): warm water fishery. This receiving stream is included in the West Branch Susquehanna TMDL. Application received: September 6, 2011.

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 outfall(s) listed below discharge to West Branch Susquehanna River:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
003 (Sediment Pond A)	N
004 (Sediment Pond B)	N

**NPDES No. PA0263303 (Mining permit no. 32110104), Simpson Coal Company**, 1003 Bush Road, New Alexandria, PA 15670, new NPDES permit for bituminous surface mine in Young Township, **Indiana County**, affecting 38 acres. Receiving stream(s): Nesbit Run and unnamed tributary to Whiskey Run, classified for the following use(s): cold water fishery. The receiving streams are included in the Kiski-Conemaugh TMDL. Application received: July 20, 2011.

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 treated wastewater outfalls listed below discharge to unnamed tributary to Whiskey Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001	Y

The treated wastewater outfalls listed below discharge to Nesbit Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
002	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: 001 and 002</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
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	1.9
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Osmotic Pressure (milliosmoles/kg)			50.0
pH (S.U.): Must be between 6.0 and 9.0 standard units at all times			
Alkalinity must exceed acidity at all times			

The stormwater outfalls listed below discharge to unnamed tributary to Whiskey Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
003	Y
004	Y

The stormwater outfalls listed below discharge to Nesbit Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
005	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: 003, 004, 005</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
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	1.9
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			

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

**NPDES No. PA0263150 (Mining permit no. 32110101), Amerikohl Mining, Inc.,** 1384 State Route 711, Stahlstown, PA 15687, new NPDES permit for coal surface mining in Brushvalley Township, **Indiana County**, affecting 70.9 acres. Receiving stream(s): unnamed tributaries to/and Ferrier Run, classified for the following use(s): cold water fishery. This receiving stream is included in the Kiskiminetas-Conemaugh TMDL. Application received: February 3, 2011.

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 outfall(s) listed below discharge to unnamed tributaries to/and Ferrier Run.

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
004—Treatment Pond 1	Y
005—Treatment Pond 2	Y
006—Treatment Pond 3	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls:</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
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	1.9
Total Suspended Solids (mg/l)	35.0	50.0	70.0
*Osmotic Pressure (milliosmoles/kg)	50.0	90.0	50.0
*Osmotic Pressure applies to Treatment Ponds 2 and 3 only.			
pH (S.U.): Must be between 6.0 and 9.0 standard units at all times			
Alkalinity must exceed acidity at all times			

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001—Sedimentation Pond A	Y
002—Sedimentation Pond B	Y
003—Sedimentation Pond C	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
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	1.9
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

**NPDES No. PA0263257 (Mining permit no. 56110105), Fieg Brothers**, 3070 Stoystown Road, Stoystown, PA 15563, new NPDES permit for surface mining including blasting and augering in Southampton Township, **Somerset County**, affecting 318.4 acres. Receiving stream(s): Unnamed Tributaries to Rush Run and Unnamed Tributaries to the North Branch of Jennings Run, classified for the following use(s): High Quality Cold Water Fishery and Cold Water Fishery. These receiving streams are not the subject of a TMDL. Application received: June 2, 2011.

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 treated wastewater outfalls listed below discharge to: Unnamed Tributaries to the North Branch of Jennings Run (Cold Water Fishery).

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001, 002, 003, 004, 005 & 006	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Iron (mg/l)	3.0	6.0	7.0
Manganese (mg/l)	2.0	4.0	5.0
Aluminum (mg/l)	2.0	4.0	5.0
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Osmotic Pressure (milliosmoles/kg)	50.0	50.0	50.0

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times

Alkalinity must exceed acidity at all times

The stormwater outfalls listed below discharge to: Unnamed Tributaries to the North Branch of Jennings Run (Cold Water Fishery)

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
007, 008, 009, 011, 012	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Iron (mg/l)			7.0
Total Settleable Solids (ml/l)			0.5

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times

Alkalinity must exceed acidity at all times

The stormwater outfall listed below discharge to: Unnamed Tributaries to Rush Run (High Quality Cold Water Fishery)

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
010	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Iron (mg/l)			7.0
Total Settleable Solids (ml/l)			0.5

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times

Alkalinity must exceed acidity at all times

**NPDES No. PA0263206 (Mining permit no. 56110104), Wilson Creek Energy, LLC**, 140 West Union Street, Suite 102, Somerset, PA 15501, new NPDES permit for surface and auger/highwall mine, including blasting, in Jenner Township, **Somerset County**, affecting 132.5 acres. Receiving stream(s): Unnamed Tributary to/and Hoffman Run, classified for the following use(s): cold water fishery. This receiving stream is included in the Kiskiminetas-Conemaugh River TMDL. Application received: March 18, 2011.



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 stormwater outfall listed below discharges to an Unnamed Tributary to Hoffman Run.

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
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	1.9
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			

The stormwater outfall listed below discharges to Hoffman Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
002	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
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	1.9
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			

The treated wastewater outfall listed below discharges to Hoffman Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
003	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
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	1.9
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			

## 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**

*Southcentral Region: Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4707.*

**E05-361: Kathryn Kunkel, Pennsylvania Electric Company, BNB Aerial Electric Distribution Line Construction**, 2800 Pottsville Pike, Reading, Pennsylvania 19612-6001, in Bedford Borough and Bedford Township, **Bedford County**, ACOE Baltimore District

To install two single poles in wetlands, a temporary crossing of wetland approximately 760.0 feet long by 15.0 feet wide (0.26 acre), and a Chapter 105 General Permit GP-5 (Utility line Stream crossing) for each of the four aerial crossings of the Raystown Branch of the Juniata River (TSF), for the purpose of a new electrical distribution line in the Bedford, Pennsylvania area to improve electrical reliability and to support the electrical load growth. The project is located between Bedford area and Bedford North Substations (Bedford and Everett West, PA Quadrangle; N: 9.30 inches, W: 0.68 inch; Latitude: 40°03'4.36", Longitude: -78°30'17.40") in Bedford Borough and Bedford Township, Bedford County.

**E28-371: W. D. Mills, Bridge Construction**, 8402 Path Valley Road, Fort Loudon, Pennsylvania 17224, in Metal Township, **Franklin County**, ACOE Baltimore District

To construct and maintain a 14.5-foot wide, single span steel I-beam open grate iron deck bridge, having a normal span of 60.0 feet and a minimum underclearance of 5.25 feet across West Branch Conococheague Creek (CWF, MF). The project is located at 8402 Path Valley Road (SR 0075) (Fannettsburg, PA Quadrangle; N: 5.36 inches, W: 15.84 inches; Latitude: 40°01'46.31", Longitude: -77°51'47.34") in Metal Township, Franklin County. The purpose of the project is to provide access to adjoining fields for agriculture.

**E31-223: Alexandria Borough Porter Township Joint Sewer Authority**, Grange Hall Road, PO Box 113, Alexandria, Pennsylvania 16611, in Alexandria Borough and Porter Township, **Huntingdon County**, ACOE Baltimore District

To: 1) construct and maintain an 8.0-inch PVC sewer line in and across an unnamed tributary to Frankstown Branch Juniata River (TSF) in two locations impacting 20 linear feet of stream channel and bored under nine wetlands temporarily impacting 0.09 acre of wetland from Latitude: 40°34'38", Longitude: -78°06'20" to Latitude: 40°33'08", Longitude: -78°05'49", 2) construct and maintain an 8.0-inch PVC sewer line in and across an unnamed tributary to Frankstown Branch Juniata River (TSF) in eleven locations impacting 68.0 linear feet of stream channel and bored under three wetlands temporarily impacting 0.05 acre of wetland from Latitude: 40°32'17", Longitude: -78°07'18" to Latitude: 40°33'08", Longitude: -78°05'49", and 3) place and maintain 10,000

cubic yards of fill in the 100-year floodplain of Frankstown Branch Juniata River (TSF) (Latitude: 40°33'08", Longitude: -78°05'49") to construct a new office building, control building, pump station, UV channel, reactor tanks, clarifier, and digesters. The purpose of the project is to expand and upgrade the existing Alexandria Borough Porter Township Joint Sewer Authority wastewater treatment plant, located on Grange Hall Road in Alexandria Borough and Porter Township, Huntingdon County.

**E34-130: Robert Barton, Lost Creek Community Park Revitalization**, 181 Bunkertown Road, PO Box 68, McAlisterville, Pennsylvania 17049, in Fayette Township, **Juniata County**, ACOE Baltimore District

To revitalize the existing Lost Creek Community Park. The proposed improvements consist of a new paved parking lot which is outside of the existing floodplain. Other improvements include paved walking trails by the pavilions and tot lots, renovating existing pavilions, and buffer restoration. The proposed work within the 100-year floodway of Little Lost Creek (TSF) for the project includes a proposed walking path at the existing grade and the riparian buffer restoration. There will be no fill in the 100-year floodway and flood plain and no wetlands impact. The project is located northwest of the intersection between State Routes 35 and 1004 (McClure, PA Quadrangle; N: 2.05 inches, W: 3.90 inches; Latitude: 40°38'10.6", Longitude: -77°16'41.2") in Fayette Township, Juniata County.

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

**E37-187, New Castle Area School District**, 420 Fern Street, New Castle, PA 16101-2220. Harry W Lockley Elementary School Expansion, in the City of New Castle, **Lawrence County**, ACOE Pittsburgh District (New Castle North, PA Quadrangle N: 41°, 0', 10.1"; W: -80°, 19', 39.3";).

To permanently fill 0.4636 acres of wetlands in the watershed of Neshannock Creek (TSF) as part of the expansion of the Harry W Lockley Elementary School and to mitigate for the wetland impacts by constructing 0.92 acres of onsite replacement wetlands all at a point approximately 1000 feet southeast of the State Route 108 and North Scott Street intersection.

**E62-427, Ellwood National Forge Co. One Front Street**, Irvine, PA 16329. Existing Levee Upgrade, in Brokenstraw Township, **Warren County**, ACOE Pittsburgh District (Youngsville, PA Quadrangle N: 41°, 50', 228"; W: -79°, 16', 10").

To upgrade an existing flood protection levee along the right bank of Brokenstraw Creek (CWF) around the Ellwood National Forge—Irvine Facility approximately 1500 feet north of the National Forge Road and Althom Road intersection consisting of:

1. Placement of additional embankment material up to approximately 1 foot above existing grade along approximately 200 feet of the northwest reach of the levee

2. Placement of additional embankment material up to approximately 3 feet above existing grade along approximately 600 feet of the southwest reach of the levee

Installation of sheet piling to a height of up to approximately 3 feet above existing grade along approximately 750 feet of the south reach of the levee.

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**ACTIONS**


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**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).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Wastes; Discharges to Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

Sections I—VI contain actions 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 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.

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**I. NPDES Renewal Permit Actions**


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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0114472 (Sewage)	Cherry Township Board Of Supervisors Wastewater Treatment Plant 11961 Route 87 Dushore, PA 18614-7440	Sullivan County Cherry Township	Birch Creek (10-B)	Y
PA0036820 (Sewage)	Galeton Borough Authority 4 Sherman Street Galeton, PA 16922-1318	Potter County Galeton Borough	Pine Creek (9-A)	N

\*\*\*\*Renewal individuals

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0223131 (Sewage)	Living Church International 59 W Penn Street Summerville, PA 15864	Redbank Township Clarion County	17-C	Y
PA0023167 (Sewage)	Kane Borough Authority 112 Baynard Street Kane, PA 16735	Kane Borough McKean County	16-F	N
PA0263842 (Sewage)	Keating Township P. O. Box 103 East Smethport, PA 16730	Keating Township McKean County	Potato Creek 16-C	Y

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

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

**NPDES Permit No. PA0027103 A3**, Sewage, **DELCORA**, 100 East Fifth Street, PO Box 999, Chester, PA 19016-0999, City of Chester, **Delaware County**.

The following notice reflects changes to the notice published in the July 9, 2011, *Pennsylvania Bulletin*:

The parameter CBOD 5 percent removal is changed to CBOD 20 percent removal.

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

**NPDES Permit No. PA0038385**, Sewage, **Larry Dollinger, DLA Installation Support at Susquehanna**, 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002.

This proposed facility is located in Fairview Township, **York County**.

Description of Proposed Action/Activity: Authorization to discharge to Susquehanna River in Watershed 7-E.

## III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law

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

**WQM Permit No. WQG02151110**, Sewage, **Country Fresh Mushroom Company**, P. O. Box 489, 8990 Gap Newport Pike, Avondale, PA 19311.

This proposed facility is located in New Garden Township, **Chester County**.

Description of Action/Activity: Construction and operation of a sewage pump station for a proposed mushroom packaging facility.

**WQM Permit No. 0993408**, Sewage, Renewal, **Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489.

This proposed facility is located in Solebury Township, **Bucks County**.

Description of Action/Activity: Renewal to continue operation of existing WQM Permit of a gravity collection system, pump station, package SBR plant rated at 0.06 mgd, effluent storage lagoon and spray irrigation system.

**WQM Permit No. 1595409**, Sewage, Renewal, **White Manor Country Club**, 831 Providence Road, Malvern, PA 19355-3407.

This proposed facility is located in Willistown Township, **Chester County**.

Description of Action/Activity: Permit renewal of existing treatment plant.

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

**WQM Permit No. 6711401**, Sewage, **Genevieve E. and Stephen J. Moore**, 4350 Old Orchard Road, York, PA 17402.

This proposed facility is located in Springettsbury Township, **York County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewage facilities consisting of 1500 gallon dual compartment septic tank w/ Zabel A-300 Filter → Ecoflo STB 500-650 Biofilter → Tablet Chlorinator → 200 gallon Chlorine Contact Tank w/ Three Corrugated Plastic Baffles and 24" diameter manhole → 4" PVC discharge pipe to UNT to Kreutz Creek.

**WQM Permit No. 4472401 Amendment 11-1**, Sewage, **McVeytown Borough Authority**, 10 North Queen Street, PO Box 321, McVeytown, PA 17051-7436.

This proposed facility is located in McVeytown Borough, **Mifflin County**.

Description of Proposed Action/Activity: Permit approving the construction of sewerage facilities consisting of a new disinfection system, aeration system changes and equipment repairs and replacements. The aerobic digester will have the capability to act as an aeration tank back up to allow maintenance to the aeration tank.

**IV. NPDES Stormwater Discharges from MS4 Permit Actions****V. NPDES Waiver Stormwater Discharges from MS4 Actions****VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024505001R	Jim A. Schlier P. O. Box 471 Tannersville, PA 18372	Monroe	Pocono Township	Scot Run, HQ-CWF, MF

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

*Somerset County Conservation District, 6024 Glades Pike, Suite 103, Somerset, PA 15501*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI055610002	CSX Transportation, Inc. (CSXT) 500 Water Street, J-275 Jacksonville, FL 32202	Somerset	Lower Turkeyfoot Township	Casselman River (WWF)
PAI055610003	CSX Transportation, Inc. (CSXT) 500 Water Street, J-275 Jacksonville, FL 32202	Somerset	Upper Turkeyfoot Township	Casselman River (WWF)
PAI055611004	CSX Transportation, Inc. (CSXT) 500 Water Street, J-275 Jacksonville, FL 32202	Somerset	Upper Turkeyfoot Township	Casselman River (WWF)

*Armstrong County Conservation District, Armsdale Administration Building, 134 Armsdale Road, Kittanning, PA 16201. (724.548.3435)*

<i>Permit No.</i>	<i>Applicant &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Stream Name</i>
PAI050311001	PennDOT District 10-0 2550 Oakland Avenue P. O. Box 429 Indiana, PA 15701 Prj: SR0028; Section 164 Slabtown Bridge/Baum Curve	Armstrong	Boggs Township	North Fork of Pine Creek (HQ-CWF) Naturally Producing Trout

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

*Erie Conservation District: 1927 Wagner Road, Erie Pa 16509*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062511002	Wallace Family Enterprises PO Box 430 Fairview PA 16415	Erie	McKean Township	Bear Run CWF; MF

**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 in 40 CFR 123.23(d).

**List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Small Flow Treatment Facilities
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application

PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

*General Permit Type—PAG-02**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Lower Nazareth Twp., Northampton Co.	PAG02004811008	Raymond Mamone Ray's Auto Restoration, LLC 3307 Julia Ct. Bethlehem, PA 18017	Schoeneck Creek, WWF, MF	Northampton Co. Cons. Dist. 610-746-1971
Schuylkill Haven Borough - and - North Manheim Twp.	PAG02005411001	PA Department of Transportation District 5-0 Attn: Michael C. Keiser 1002 Hamilton St. Allentown, PA 18101	Schuylkill River, CWF, MF	Schuylkill Co. Cons. Dist. 570-622-3742
Cumberland Township Adams County	PAG02000111008	Todd J. Williams Cumberland Township Authority 1370 Fairfield Road Gettysburg, PA 17325	Willoughby Run (WWF)	Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 717-334-0636
Southampton Township Franklin County	PAG02002811029	Will Carn US Xpress Shippensburg 2034 Hamilton Place Blvd Chattanooga, TN 37421	Furnace Run/Gum Run (CWF)	Franklin Co Conservation District 185 Franklin Farm Lane Chambersburg PA 17201 717-264-5499
Montgomery Township Franklin County	PAG02002811028	Amos Rowland Rowland-On Properties 12019 Kemp Mill Rd Williamsport MD 21795	UNT to Conococheague (TSF/MF)	Franklin Co Conservation District 185 Franklin Farm Lane Chambersburg PA 17201 717-264-5499

*Northcentral Region: Watershed Management Program Manager, 208 W Third Street, Williamsport, Pa 17701**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Athens Borough Bradford County	PAG02000811013	Dr Patrick Musto Valley Joint Sewer Auth One S River St Athens PA 18810	Susquehanna River WWF	Bradford County Conservation District Stoll Natural Resource Center 200 Lake Rd Ste E Towanda PA 18848 (570) 265-5539 X 120
Sheshequin Township Bradford County	PAG02000811014	Andy Bishop Bishop Brothers Partnership PO Box 289 Ulster PA 18850	Susquehanna River WWF	Bradford County Conservation District Stoll Natural Resource Center 200 Lake Rd Ste E Towanda PA 18848 (570) 265-5539 X 120

*Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Troy Township Bradford County	PAG02000811015	Wes Blauvelt Arnot Ogden Medical Center 600 Roe Ave Elmira NY 14905	South Branch of Sugar Creek TSF	Bradford County Conservation District Stoll Natural Resource Center 200 Lake Rd Ste E Towanda PA 18848 (570) 265-5539 X 120
Blossburg Borough Tioga County	PAG02005911013	Keith Yarger 241 Main St Blossburg PA 16912	Tioga River CWF, MF	Tioga County Conservation District 50 Plaza Ln Wellsboro PA 16901 (570) 724-1801 Ext. 5

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

*Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Somerset County Brothersvalley Township	PAG02005611007	Tom McClintock 161 Samuels Road Somerset, PA 15501	Laurel Run (WWF)	Somerset County CD 6024 Glades Pike, Suite 103 Somerset, PA 15501
Slippery Rock Township Butler County	PAG02 0010 05 005R(3)	Slippery Rock University Attn: Herbert Carlson 1 Morrow Way Slippery Rock PA 16057	Slippery Rock Creek CWF	Butler Conservation District 724-284-5270

*General Permit Type—PAG-3*

*Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Royersford Borough Montgomery County	PAR230063	Specialty Chemical Systems 400 First Avenue Royersford, PA 19468	Schuylkill River -3-D	Southeast Region Water Management 484.250.5970
York County / Manchester Township	PAR803652	Federal Express Corporation (THVA Station) 3620 Hacks Cross Road Building B, 2nd Floor Memphis, TN 38125	UNT Little Conewago Creek / TSF / 7-F	DEP—SCRO—WQ 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707

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

*Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Erie City Erie County	PAR808335	Con-Way Freight 2211 Old Earhart Road Suite 100 Ann Arbor, MI 48105	Municipal storm sewers to Lake Erie	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

*General Permit Type—PAG-4*

*Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
New Hanover Township Montgomery County	PAG040159	Kleintop Nathan 627 Kulp Road Perkiomenville, PA 18074	Deep Creek—3-E	Southeast Region Water Management 484-250-5970
Berks County / Exeter Township	PAG043918	Neighborhood Home Owners Associations 6350 Daniel Boone Road Birdsboro, PA 19508	Owatin Creek / 3D	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707

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

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Cranberry Township Venango County	PA041054	Heckathorne United Methodist Church	Unnamed Tributary to Halls Run 16G	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

*General Permit Type—PAG-10*

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Bristol Township Bucks County	PAR800072	FedEx Corp. 3620 Hacks Cross Road, Building B, Second Floor Memphis, TN 38125	Neshaminy Creek—2F	Southeast Region Water Management 484-250-5970

*General Permit Type—PAG-12*

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Franklin County / Lurgan Township	PAG123542	Mark Wagner (McClays Farm) 6397 High Street East Petersburg, PA 17520-1113	UNT Paxton Run / WWF / 7B	DEP—SCRO— Watershed Mgmt. 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4802
Lancaster County / Pequea Township	PAG123623	Future View Farm, LLC 13 Radcliff Road Willow Street, PA 17584	UNT Pequea Creek / WWF / 7K	DEP—SCRO— Watershed Mgmt. 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4802
Mifflin County / Decatur Township	PAG123507	Kenneth K. Loht Loht Farm CAFO 250 Road Apple Drive McClure, PA 17841	UNT Jacks Creek / CWF / 12-A	DEP—SCRO— Watershed Mgmt. 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4802
Lancaster County / Conoy Township	PAG123710	Dale Frank Dale Frank Farm 3167 Bossler Road Elizabethtown, PA 17022	Conoy Creek / TSF / 7-G	DEP—SCRO— Watershed Mgmt. 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4802
Perry County / Northeast Madison Township	PAG123527	Jonathan Miller Miller Hog Farm 1334 Valentine Road Ickesburg, PA 17037	UNT Bixler Run / CWF / 7-A	DEP—SCRO— Watershed Mgmt. 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4802
Franklin County / Warren Township	PAG123539	Greystone Pork Edwin Martin 12950 Forge Road Mercersburg, PA 17236	UNT Little Cove Creek / CWF / 13-B	DEP—SCRO— Watershed Mgmt. 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4802

## 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 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

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

**Permit No. Minor Amendment—Operation** Public Water Supply.

Applicant	<b>Ridge Crest Community</b>
[Township or Borough]	Liberty Township
County	<b>Centre</b>
Responsible Official	Mr. Curt Willar Ridge Crest Community 119 Office Lane Howard, PA 16841
Type of Facility	Public Water Supply
Consulting Engineer	N/A
Permit Issued	September 28, 2011
Description of Action	4-log inactivation of viruses at Entry Point 100 (Well Nos. 1 and 2).

**Permit No. MA (1483501)—Operation** Public Water Supply.

Applicant	<b>Howard Water System</b>
[Township or Borough]	Howard Borough
County	<b>Centre</b>
Responsible Official	Mr. Dan Brownson Borough of Howard P. O. Box 378 Howard, PA 16841
Type of Facility	Public Water Supply
Consulting Engineer	Eric Lundy, P.E. Nittany Engineering & Assoc., Inc. 2836 Earlstown Road Centre Hall, PA 16828
Permit Issued	September 30, 2011
Description of Action	Operation of the rehabilitated Well No. 2.

**Permit No. MA (1499501-T1)—Operation** Public Water Supply.

Applicant	<b>Pennsylvania American Water Company</b>
[Township or Borough]	Boggs Township
County	<b>Centre</b>

Responsible Official	Mr. David R. Kaufman Vice President—Engineering Pennsylvania American Water Company 800 West Hershey Park Drive Hershey, PA 17033
Type of Facility	Public Water Supply
Consulting Engineer	Joel A. Mitchell, P.E. PA American Water Co. 852 Wesley Drive Mechanicsburg, PA 17055
Permit Issued	September 30, 2011
Description of Action	Operation of the chlorine contact time piping adjacent to the water treatment plant.

**Permit No. 0895501-T3—Transfer** Public Water Supply.

Applicant	<b>Hillside Acres MHP</b>
[Township or Borough]	Ridgebury Township
County	<b>Bradford</b>
Responsible Official	Mr. Marvin L. Slomowitz General Partner Mark Ridgebury Assoc., L.P. 17 Hillside Acres Gillett, PA 16925
Type of Facility	Public Water Supply
Consulting Engineer	N/A
Permit Issued	September 30, 2011
Description of Action	Transfer of ownership and operation of the well source known as Well #1 and the facilities of distribution, disinfection, pump station, transmission lines and sequestration.

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

**Operations Permit** issued to **Knox Borough**, PWSID #6160005, Knox Borough, **Clarion County**. Permit Number 1694502-MA2 issued September 30, 2011 for the operation of water treatment facilities located at Sharp Shopper. This permit is issued in response to an operation inspection conducted by Department personnel on September 15, 2011.

**Operations Permit** issued to **Knox Borough**, PWSID #6160005, Knox Borough, **Clarion County**. Permit Number 1694502-MA3 issued September 30, 2011 for the operation of water treatment facilities located at Swartfager Welding. This permit is issued in response to an operation inspection conducted by Department personnel on September 15, 2011.

### HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

#### Proposed Consent Order and Agreement

#### Superior Tube Co., Collegeville, Montgomery County

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 Order and Agreement with Superior Tube Co. and Superior Tube Co., Inc. ("Superior Tubes"), sister corporations with plant operations located in a portion of the Lower Providence DCE HSCA Site in Montgomery County, PA ("the site"). This site consists of commercial and residential properties impacted by groundwater contamination.

The contaminants of concern impacting the site include: 1,1-dichloroethene (DCE), trichloroethene (TCE), cis-1,2-dichloroethene, 1,1,1-trichloroethane, tetrachloroethene (PCE), chloromethane, chloroform, methyl ethyl ketone (MEK), trichlorofluoromethane, xylene and toluene. Superior is responsible for a portion of the TCE released and threatened to be release on certain properties within the site area. Superior presently operates a groundwater pump and treat system to address certain contamination released from its plant. The Department shall install a public waterline to deliver potable water to affected residents and businesses within the site area.

In a Consent Order and Agreement, Superior and the Department agreed that Superior would reimburse the Department for response costs incurred and to be incurred by the Department for the public waterline project. Additionally, Superior agreed to remediate a portion of the site where TCE has been released and Superior agreed to attain an Act 2 (Land Recycling and Environmental Remediation Standards Act, 35 P. S. § 6026.101 et seq.) standard on this portion of the site. Superior's Notice of Intent to Remediate, its Remedial Investigation Report and its Cleanup Plan filed pursuant to Act 2, are retained in the Department's Regional Office Files.

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 Order and Agreement, 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 by contacting either Timothy Cherry or Gina M. Thomas, Esquire at (484) 250-5930. Mr. Cherry and Ms. Thomas may also be contacted electronically at [tcherry@pa.gov](mailto:tcherry@pa.gov) and [githomas@pa.gov](mailto: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. Cherry at the above address.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 2

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The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

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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 AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northeast Region: Eric Supey, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Green Acres MHP/Szoke Residence**, 8989 Breinigs Run Circle, Upper Macungie Township, **Lehigh County**. Christopher A. Jacangelo, J. Rockwood & Associates, Inc., P. O. Box 1006, Easton, PA 18044 has submitted a Final Report (on behalf of his client, MHC Green Acres, LP, c/o Equity Lifestyle Properties, Inc., Two North Riverside Plaza, Suite 800, Chicago, IL 60606), concerning the remediation of soil found to have been impacted by No. 2 fuel oil/kerosene as a result of an accidental release occurring from an aboveground storage tank, which is located outside the residential dwelling. A public notice regarding the submission of the Final Report was to have been published in *The Morning Call* on September 21, 2011.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110*

**PSECU Elmerton Avenue Site**, Elmerton Avenue, Harrisburg, PA 17110, Susquehanna Township, **Dauphin County**. Advantage Engineers, LLC, 910 Century Drive, Mechanicsburg, PA 17055, on behalf of PA State Employees Credit Union, PO Box 67013, Harrisburg, PA 17106-7013, submitted a Risk Assessment Report and Cleanup Plan concerning remediation of site soils and groundwater contaminated with arsenic and barium. The report and plan are intended to document remediation of the site to meet the Site-Specific Standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

### PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).**

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 AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401*

**Delaware County Emergency Services Training Center**, Delaware Township and Folcroft Borough, **Delaware County**. Frank Aceto, Stantec Consulting Corporation, 1060 Andrew Drive Suite 140, West Chester, PA 19380 on behalf of Marianne Grace, County of Delaware,

201 West Front Street, Media, PA 19063 has submitted a Final Report concerning the remediation of site groundwater contaminated with undetermined contaminant. The Final report did not demonstrate attainment of the Site Specific Standard and was disapproved by the Department on August 25, 2011.

**Bishop Tube**, East Whiteland Township **Chester County**. Gerald Kirkpatrick, Environmental Standards, Inc. 1140 Valley Forge Road, Valley Forge, PA 19483 on behalf of Richard Heany, Constitution Drive Partners, 2701 Renaissance Boulevard, 4th floor, King of Prussia, PA 19406 has submitted a 90 day Final Report concerning the remediation of site soil contaminated with pcb. The 90 day Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on July 29, 2011.

**Superior Tube**, Lower Providence Township **Montgomery County**. Paul Miller, P.E. Environmental Alliance, Inc., 5441 Limestone Road, Wilmington, DE 19808 on behalf of Rich Warden, Superior Tube Company, 100 Front Street, Suite 525, West Conshohocken, PA 19428 has submitted a Cleanup Plan/Remedial Investigation Report concerning the remediation of site groundwater and soil contaminated with chlorinated solvents. The Cleanup Plan/Remedial Investigation Report was approved by the Department on August 19, 2011.

**Columbia Lighting**, Bristol Borough **Bucks County**. Steven Tanen, AMEC Earth & Environmental, 502 West Germantown Pike, Suite 850, Plymouth Meeting, PA 19462, Bonnie Barnett, Esq, JUSI Holdings; USI Canada, Inc. and Jacuzzi Brands Corporation, c/o Drinker Biddle & Reath, LLP, One Logan Square, Suite 2000, Philadelphia, PA 19103-6996 on behalf of Michael Scott Feeley, Esp. Hubbell Lighting, Inc. c/o Latham & Watkins, LLP 2555 South Grand Avenue, Los Angeles, CA 910071-1560 has submitted a Remedial Investigation/Final Report concerning the remediation of site soil and groundwater contaminated with pcb. The Remedial Investigation/Final Report was place on hold by the Department on August 19, 2011.

**Evelyn Sander Towns homes Phase II**, City of Philadelphia. **Philadelphia County**. Michael Christie, Penn Environmental & remediation, 2755 Bergey Road, Hatfield, PA 19440 on behalf of Paul Aylesworth, Evelyn Sanders 2, LP, 407 Fairmount Avenue, Philadelphia, PA 19123 has submitted a Final Report concerning the remediation of site soil contaminated with pahs, metals, lead and mercury. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 24, 2011.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permit(s) issued under the Solid Waste Management Act, of July 7, 1980, P.L. 380, 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.**

*Southwest Regional Office, Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone 412.442.4000.*

**Permit ID No.100281. Greenridge Reclamation Landfill**, Greenridge Reclamation Landfill, LLC, 234 Landfill Road, Scottdale, PA 15683. Operation of a municipal waste landfill in East Huntingdon Township,

**Westmoreland County.** Permit renewal issued in the Regional Office on September 29, 2011.

### 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: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507*

**58-310-047GP3: Meshoppen Stone, Inc.** (PO BOX 127, Frantz Road, Meshoppen, PA 18630) on September 29, 2011, to construct and operate a Portable Crushing Operation with watersprays in Liberty Township, **Susquehanna County.**

**58-329-040GP9: Meshoppen Stone, Inc.** (PO BOX 127, Frantz Road, Meshoppen, PA 18630) on September 29, 2011, to install and operate a Diesel I/C engine in Liberty Twp., **Susquehanna 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: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920*

**46-0169D: Constantia Colmar, Inc.** (92 County Line Road, Colmar, PA 18915) on September 26, 2011, to install a new flexographic press and the removal of an existing flexographic press and an existing rotogravure press at an existing facility in Hatfield Township, **Montgomery County.** The facility is a non-Title V facility. Volatile organic compound (VOC) emissions from the facility will be captured by an existing permanent total enclosure and controlled by an existing regenerative thermal oxidizer. The VOC emission restriction for the facility, as currently indicated in State Only Operating Permit No. 46-00169, will remain at 24.7 tons/yr. The plan approval will include monitoring, recordkeeping, reporting, and work practice 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 J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-705-4862*

**28-05002C: US Army Letterkenny Army Depot** (AMLD-EN, Chambersburg, PA 17201-4150) on September 23, 2011, for construction and temporary operation of two new surface coating booths at their military facility Letterkenny Township, **Franklin County.**

**28-05002G: US Army Letterkenny Army Depot** (AMLD-EN, Chambersburg, PA 17201-4150) on September 27, 2011, for a revision to the Metal Pretreatment Acid Wash VOC emission limit contained in Letterkenny's Title-V Operating Permit and Reasonably Available Con-

trol Technology (RACT) Plan. The revision involves increasing allowable Metal Pretreatment Acid Wash VOC emissions under Source ID 148 in the Title V permit by 5.3 tons for a maximum total of 8.0 tons per each 12-month consecutive period at the facility. The proposed project will incorporate Reasonably Available Control Technology (RACT) with the use of High Volume Low Pressure (HVLP) coating application equipment and other work practices designed to minimize VOC emissions. The conditions in the plan approval are expected to be submitted to EPA as a SIP revision. The Letterkenny Army Depot is in Letterkenny Township, **Franklin County.**

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104*

*Contact: Edward Wiener, Chief—Telephone: 215-685-9426*

**AMS 11210: Allied Tube & Conduit** (11350 Norcom Rd., Philadelphia, PA 19154) on September 28, 2011, to install an Acid Scrubber (Air Control Device) in the City of Philadelphia, **Philadelphia County.** The scrubber is used to control Hydrochloric Acid emissions from their 1P & 2P Mills. The scrubber has an emission limit of removal efficiency rated at 50%. The scrubber uses a Sodium Hydroxide scrubbing liquid. The total HCL emission limit after the scrubber are 0.22 tons per year. The plan approval will contain operating, monitoring, recordkeeping, and reporting requirements to ensure operation within all applicable requirements.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401*

*Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920*

**09-0007C: Waste Management Disposal Services of PA, Inc.** (1000 New Ford Mill Road, Morrisville, PA 19067) on September 23, 2011, to operate a landfill gas collection & control system in Fall Township, **Bucks County.**

**23-0100A: Pyramid Materials** (2052 Lucon Road, Skippack, PA 19474) on September 23, 2011, to operate a generator in Aston Township, **Delaware County.**

**46-313-146: Penn Color, Inc.** (2755 Bergey Road, Hatfield, PA 19440) on September 23, 2011, to operate a (2) two dust collectors in Hatfield Township, **Montgomery County.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110*

*Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-705-4862*

**06-05002H: Lehigh Cement Co.** (537 Evansville Road, Fleetwood, Pennsylvania 19522) on September 23, 2011, to install SNCR NOx controls on the two cement kilns at their cement manufacturing facility in Maiden Creek Township, **Berks County.** The Plan Approval was extended.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745*

Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

**56-00257B: PA Department of Corrections** (P. O. Box 631, 5706 Glades Pike, Somerset, PA 15501) on August 8, 2011, as a result of equipment startup, to establish the 180-day period of temporary operation of the cogeneration facility including two natural gas-fired boilers, one dual fuel boiler, one landfill gas-fired turbine, and two landfill gas-fired engines authorized under plan approval PA-56-00257B, until February 8, 2012, at SCI Laurel Highlands in Somerset Township, **Somerset County**. The plan approval has been extended.

**63-00958: MarkWest Liberty Midstream and Resources, LLC** (1515 Arapahoe Street Tower 2, Suite 700, Denver, CO 80202-2126) on September 7, 2011, as a result of equipment startup, to establish the 180-day period of temporary operation of the four Waukesha rich burn natural gas-fired compressor engines authorized under plan approval PA-63-00958, until March 7, 2012, at Welling Compressor Station in Buffalo Township, **Washington County**. The plan approval has been extended.

**26-00579A: Tri-State Bio Fuels, LLC** (Thompson Recovery Road, Lemont Furnace, PA 15456) on October 1, 2011, for a plan approval extension with an expiration date of April 1, 2012, for the Lemont Pellet Plant, a wood pellet manufacturing plant in North Union Township, **Fayette County**. The plan approval has been extended.

**03-00215A: Allegheny Mineral Corp.** (PO Box 1022, One Glade Park East, Kittanning, PA 16201) on September 30, 2011, for a Plan Approval extension for the Worthington Plant located in West Franklin Township, **Armstrong County**. The plan approval has been extended.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481*

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

**10-265B: Iron Mountain Information Management—The Underground** (1137 Branchton Road, Boyers, PA 16020) on September 30, 2011, to install ten (10) emergency generators at their facility in Cherry Township, **Butler County**.

**25-1024A: PHB, Inc.** (8150 West Ridge Road, Fairview, PA 16415) on September 30, 2011, to install three (3) paint booths at their facility in Fairview Township, **Erie County**.

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**Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.**

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*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110*

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-705-4862

**07-05008: Team Ten LLC** (1600 Pennsylvania Avenue, PO Box 99, Tyrone, PA 16686) on September 27, 2011 for their paper mill in Tyrone Borough, **Blair County**. The Title V permit was renewed.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428*

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920

**09-00075: Dunmore Corp.** (145 Wharton Road, Bristol, PA 19007) on September 26, 2011, for operation of a plastic and film sheet coating facility in Bristol Township, **Bucks County**. The permit is for a non-Title V (State only) facility. Sources of air emissions are three (3) gravure printing presses, one mixing room and an oxidizer for VOC control. The renewal permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790*

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

**54-00076: Pottsville Materials, LLC** (P. O. Box 1467, Skippack, PA 19474) on August 31, 2011, to operate a quarry/stone crushing plant in New Castle Township, **Schuylkill County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110*

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-705-4862

**67-03028: Dentsply Prosthetics US LLC** (PO Box 872, York, PA 17405-0872) on September 27, 2011, for their dental appliance manufacturing facility in **York City**, York County. The State-only permit was renewed.

**38-03047: PA Department of Military & Veterans Affairs** (Environmental Office, Bldg 0-11, Annville, PA 17003-5002) on September 26, 2011, for their Fort Indiantown Gap Military support facility in Union Township, **Lebanon County**. The State-only permit was renewed.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745*

Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174

**11-00527: Phoenix Services, LLC** (1717 West Doe Run Road, Unionville, PA 19375) on September 27, 2011, to issue a state only operating permit to authorize the operation of a slag processing and handling facility at their Johnstown Slag Preparation Facility in Franklin Borough, **Cambria County**. Sources at this facility include front end loaders, vibrating grizzly feeder, jaw crusher, screens, conveyors, stackers, stockpiles, and roadways. Emissions from this site will not exceed 10 tons of particulate matter per year. Testing of the slag pile has indicated an 11.5% moisture content, so dust should be minimal. Fugitive emissions from this site are controlled through the use of water sprays; pressurized water truck; and road sweeper. Operating Permit contains conditions relating to monitoring, recordkeeping and work practice standards.

**30-00087: Emerald Coal Resources, L.P.** (158 Portal Road, Waynesburg, PA 15370) on September 27, 2011, to issue state only operating permit to operate the Emerald

Mine Coal Preparation Plant and rail loading facility in Franklin Township, **Greene County**. The operation of the 10 Million ton per year facility's air contamination sources, consisting of a breaker, conveyers, chemical froth flotation system, and storage piles emit 7.28 tons per year of PM10 and 31.84 tons per year of VOC. The facility is limited to a maximum opacity from any processing equipment of 20 percent. The facility is subject to the applicable requirements of Pa. Code Title 25, Chapters 121—145, and 40 CFR 60, Subpart Y. The permit also includes emission limitations, operational requirements, monitoring requirements, and recordkeeping requirements for the facility.

**56-00149: Somerset Area School District** (645 S Columbia Ave, Somerset, PA 15501-2513) on September 29, 2011, for a non-Title V, State Only, Synthetic Minor Operating Permit renewal for the Maple Ridge & Eagle View Elementary Schools in Somerset Borough, **Somerset County**. The permit is for the operation of two 4.3 mmbtu/hr tri-fuel boilers at each school. Maple Ridge Elementary School also has a 35 kW natural gas fired emergency generator and Eagle View Elementary School has a 55 kW natural gas fired emergency generator. The permit will include monitoring, recordkeeping, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

**63-00131: Avella Area School District** (1000 Avella Rd., Avella, PA 15312-2109) on September 30, 2011, for a non-Title V, State Only, Synthetic Minor Operating Permit renewal for the Avella Area Elementary & Senior High Schools in Cross Creek Township, **Washington County**. The permit is for the operation of two tri-fuel boilers burning anthracite coal and two natural gas-fired boilers as well as two small hot water heaters and emergency generators. The permit will include monitoring, recordkeeping, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirement

**63-00494: Fort Cherry School District** (110 Fort Cherry Rd., McDonald, PA 15057-2927) on September 30, 2011, for a non-Title V, State Only, Synthetic Minor Operating Permit renewal for the Fort Cherry Jr - Sr High School in Mt. Pleasant Township, **Washington County**. The permit is for the operation of one coal or natural gas-fired tri-fuel boiler and one natural gas only fired tri-fuel boiler. Additional minor sources include a small dust collector, hot water heaters, gas ovens, and steam kettles. The permit will include monitoring, recordkeeping, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481*

*Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-616636*

**37-00304: Heraeus Electro-Nite Co.** (3 Fountain Avenue, Ellwood City, PA 16117) on September 26, 2011, to issue a State Only Operating Permit renewal for their facility in the Borough of Ellwood City, **Lawrence County**. The facility is a Natural Minor. The primary sources at the facility include skiving machines, shell core molding machines, and curing ovens. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

## 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 Actions*

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

**56090110 and NPDES No. PA0262862. Wilson Creek Energy, LLC**, 140 West Union Street, Suite 102, Somerset, PA 15501, revision of an existing bituminous surface mine to add the Middle Kittanning coal seam in Jenner Township, **Somerset County**, affecting 91.9 acres. Receiving stream(s): UTS to Quemahoning Creek classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority. Application received: March 28, 2011. Permit issued: September 23, 2011.

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

**03060101 and NPDES Permit No. PA0250848. State Industries, Inc.** (P. O. Box 1022, Kittanning, PA 16201). Renewal permit for reclamation only of an existing bituminous surface mine, located in South Buffalo Township, **Armstrong County**, affecting 175.9 acres. Receiving streams: unnamed tributaries to the Allegheny River and Nicholson Run. Renewal application received: May 4, 2011. Renewal permit issued: September 23, 2011

**30100101 and NPDES Permit No. PA0251950. Border Energy, LLC** (308 Dents Run Road, Morgantown, WV 26501). Permit issued for commencement, operation and reclamation of a bituminous surface mine, located in Monongahela Township, **Greene County**, affecting 188.5 acres. Receiving streams: unnamed tributaries to Whiteley Creek. Application received: April 30, 2010. Permit issued: September 27, 2011.

**63090103 and NPDES Permit No. PA0251747. Amerikohl Mining, Inc.** (1384 State Route 711, Stahlstown, PA 15687). Revision permit to increase mining area and revise operations plan to an existing bituminous surface mine, located in Fallowfield & Somerset Townships, **Washington County**, affecting 222.2 acres. Receiving streams: Sawmill Creek and unnamed tributaries to Sawmill Creek. Application received: April 8, 2011. Permit issued: September 27, 2011.

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

**33010101. Sky Haven Coal, Inc.** (5510 State Park Road, Penfield, PA 15849) Renewal of an existing bituminous surface mine in Winslow & Sandy Townships, **Jefferson & Clearfield Counties** affecting 66.5 acres. Receiving streams: Unnamed tributary to Sandy Lick Creek. This renewal is issued for reclamation only. Application received: August 5, 2011. Permit Issued: September 20, 2011.

**10070101. Ben Hal Mining Company** (389 Irishtown Road, Grove City, PA 16127) Renewal of an existing bituminous surface mine in Clay Township, **Butler County** affecting 7.7 acres. Receiving streams: Unnamed tributaries to Muddy Creek. This renewal is issued for reclamation only. Application received: July 1, 2011. Permit Issued: September 28, 2011.

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

**54803019R4 and NPDES Permit No. PA0224995. Rausch Creek Land, LP**, (978 Gap Street, Valley View, PA 17983), renewal of an existing anthracite surface mine operation for reclamation activities only and the addition of NPDES Permit for stormwater discharges associated with mining activities in Hegins and Porter Townships, **Schuylkill County** affecting 1313.0 acres, receiving stream: East Branch Rausch Creek. Application received: October 21, 2010. Renewal issued: September 28, 2011.

**54850207R5 and NPDES Permit No. PA0592901. Rausch Creek Land, LP**, (978 Gap Street, Valley View, PA 17983), renewal of an existing anthracite coal refuse reprocessing and preparation plant operation in Hegins Township, **Schuylkill County** affecting 39.08 acres, receiving stream: East Branch Rausch Creek. Application received: March 21, 2011. Renewal issued: September 28, 2011.

**PA0224081R3. Stouidt's Ferry Preparation Co., Inc.**, (P. O. Box 279, St. Clair, PA 17970) and DEP, Bureau of Abandon Mine Reclamation, (2 Public Square, 5th Floor, Wilkes-Barre, PA 18711), renewal of NPDES Permit for removal and recovery of coal and other saleable waste materials from the Seyfert Impounding Basins in Exeter Township, **Berks County**, receiving stream: Schuylkill River. Application received: July 15, 2011. Renewal issued: September 28, 2011.

**35111101GP104. Silverbrook Anthracite, Inc.**, (1 Market Street, Lafin, PA 18702), General NPDES Permit for stormwater discharges associated with mining activities on Exploration No. 35111101 in the City of Carbondale, **Lackawanna County**, receiving stream: Powderly Creek. Application received: June 7, 2011. Permit issued: September 28, 2011.

#### 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 Actions*

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

**52114001. Northeast Blasting**, (403 Middle Creek Road, Honesdale, PA 18431), construction blasting for the Ryan Edwards House Foundation in Palmyra Township,

**Pike County** with an expiration date of September 21, 2012. Permit issued: September 29, 2011.

**58114030. John Brainard**, (3978 SR 2073, Kingsley, PA 18826), construction blasting for the FF Well Gas Pad in Lenox Township, **Susquehanna County** with an expiration date of December 31, 2011. Permit issued: September 29, 2011.

**58114031. John Brainard**, (3978 SR 2073, Kingsley, PA 18826), construction blasting for the Range Unit 17 Gas Pad in New Milford Township, **Susquehanna County** with an expiration date of December 31, 2011. Permit issued: September 29, 2011.

**58114035. Doug Wathen LLC**, (11934 Fairway Lakes Drive, Suite 1, Fort Myers, FL 33913), construction blasting for the Heitz & Rodder Gas Pad & Tank Farm Location in Springville Township, **Susquehanna County** with an expiration date of September 22, 2012. Permit issued: September 29, 2011.

### 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 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**

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

**E22-569: Pennsylvania State Employees Credit Union**, One Credit Union Place, Harrisburg, Pennsylvania 17110, in Susquehanna Township, **Dauphin County**, ACOE Baltimore District

To: 1) construct and maintain a 17.0-foot long, 6.0-inch minimum uniformly depressed, 48.0-inch RCP culvert extension on the upstream end and a 12.0-foot long, 6.0-inch minimum uniformly depressed, 48.0-inch RCP culvert extension on the downstream end of an existing 62.0-foot long RCP culvert for a total length of 91.0 lineal feet, and to place and maintain approximately 325.0 cubic yards of fill in the floodway of an unnamed tributary to Asylum Run (WWF, MF) permanently impacting 0.02 acre of PEM wetland; 2) install and maintain a 4.0-inch gas line in and across an unnamed tributary to Asylum Run (WWF, MF); 3) construct and maintain three stormwater channels discharging to an unnamed tributary to Asylum Run (WWF, MF); and 4) construct and maintain a 95.0-foot long, 6.0-inch minimum uniformly depressed, 24.0-inch diameter HDPE culvert pipe in an unnamed tributary to Asylum Run (WWF, MF). The purpose of the project is to construct a new corporate headquarters building for The Pennsylvania State Employees Credit Union and to widen and create turning lanes at the intersection of Elmerton Avenue and Kohn Road (Harrisburg East, PA Quadrangle, N: 8.15 inches, W: 16.01 inches; Latitude: 40°17'41.5", Longitude: -76°51'53.3") in Susquehanna Township, Dauphin County.

**ENVIRONMENTAL ASSESSMENTS**

*Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105*

**D45-148EA. CCP Property Owners Association South**, 1 Big Ridge Drive, East Stroudsburg, PA 18302. Middle Smithfield Township, **Luzerne County**, ACOE Philadelphia District.

Project proposes to breach and remove Rakes Dam across Pond Creek (HQ-CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The dam is located approximately 1400 feet north of the intersection of US209 and Primrose Lane (T540) (Bushkill, PA Quadrangle; Latitude: 41° 03' 24", Longitude: -75° 06' 09").

**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 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: Oil & Gas Program Manager, 400 Waterfront Drive, Pittsburgh, PA*

5/18/2011

ESCGP-1 No: ESX11-059-0033 Phase 1&2

Applicant Name: Alpha Shale Resources LP

Contact Person Toby Rice

Address: 171 Hillpointe Drive Suite 301

City: Canonsburg State: PA Zip Code: 15317

County: Greene Township: Jackson

Receiving Stream (s) And Classifications: UNT to House Run/S Fork Tenmile Creek, HQ

7/28/11

ESCGP-1 No.: ESX11-125-0032

Applicant Name: Range Resources—Appalachia LLC

Contact Person: Carla Suszkowski

Address: 380 Southpointe Boulevard

City: Canonsburg State: PA Zip Code: 15317

County: Washington Township(s): Cross Creek

Receiving Stream(s) and Classifications: UNTs to Cross Creek/Raccoon Creek Watershed

8/10/11

ESCGP-1 No.: ESX11-125-0071

Applicant Name: Range Resources—Appalachia LLC

Contact Person: Carla Suszkowski

Address: 380 Southpointe Boulevard

City: Canonsburg State: PA Zip Code: 15317

County: Washington Township(s): Morris

Receiving Stream(s) and Classifications: UNT 40901 to Tenmile Creek/Tenmile Creek Watershed, Other

8/31/11

ESCGP-1 No.: ESX11-125-0046 Major Revision

Applicant Name: Rice Drilling B LLC

Contact Person: Toby Rice

Address: 171 Hillpointe Dr Suite 301

City: Canonsburg State: PA Zip Code: 15317

County: Washington Township(s): West Pike Run

Receiving Stream(s) and Classifications: UNTs to Pike Run TSF, Other

8/15/2011

ESCGP-1 No.: ESX11-007-0007

Applicant Name: Appalachia Midstream Services LLC

Contact Person: Eric Stewart

Address: 179 Chesapeake Drive

City: Jane Lew State: WV Zip Code: 26378



COUNTY Beaver Township(s): Ohioville and South  
Beaver  
Receiving Stream(s) and Classifications: Pine Run/Ohio  
River Basin, HQ, Other WWF

8/8/11

ESCGP-1 No.: ESX11-059-0045  
Applicant Name: Energy Corporation of America  
Contact Person: Mark Fry  
Address: 1380 Route 286 Highway East, Suite 221  
City: Indiana State: PA Zip Code: 15701  
County: Greene Township(s): Cumberland  
Receiving Stream(s) and Classifications: UNTs to South  
Branch Muddy Creek/Muddy Creek WWF, Other

9/15/2011

ESCGP-1 No.: ESX11-125-0009 Major Revision  
Applicant Name: Range Resources—Appalachia LLC  
Contact Person: Joseph Frantz  
Address: 380 Southpointe Boulevard  
City: Canonsburg State: PA Zip Code 15317  
County: Washington Township(s): Jefferson  
Receiving Stream(s) and Classifications: UNT to North  
Fork Cross Creek and North Fork Cross Creek /Raccoon  
Creek Watershed, Other

9/9/2011

ESCGP-1 No.: ESX11-125-0017 Major Revision  
Applicant Name: MarkWest Liberty Midstream &  
Resources LLC  
Contact Person: Robert McHale  
Address: 601 Technology Drive, Suite 130  
City: Canonsburg State: PA Zip Code: 15137  
County: Washington Township(s): Blaine, Buffalo  
Hopewell  
Receiving Stream(s) and Classifications: UNTs to Brush  
Run HQ-WWF, Brush Run HQ-WWF, UNTs to Buffalo  
Creek HQ-WWF, UNTs to Cross Creek HQ-WWF/Brush  
Run and Buffalo Creek Watersheds, HQ

6/2/2011

ESCGP-1 No.: ESX11-125-0045  
Applicant Name: Range Resources—Appalachia LLC  
Contact Person: Carla Suszkowski  
Address: 380 Southpointe Boulevard  
City: Canonsburg State: PA Zip Code: 15317  
County: Washington Township(s): Buffalo & Hopewell  
Receiving Stream(s) and Classifications: UNTs and Brush  
Run, Buffalo Creek WWF Watershed

8/31/2011

ESCGP-1 NO.: ESX10-125-0048 Major Revision  
Applicant Name: Range Resources Appalachia LLC  
CONTACT PERSON: Carla Suszkowski  
ADDRESS: 380 Southpointe Boulevard  
City: Canonsburg State: PA Zip Code: 15317  
County: Washington Township(s): Chartiers  
Receiving Stream(s) and Classifications: UNT to Allison  
Hollow/Chartiers Creek Watershed, Other

09/13/2011

ESCGP-1 NO.: ESX11-059-0057  
Applicant Name: Chevron Appalachia LLC  
CONTACT: Jeremy Hirtz  
ADDRESS: 800 Mountain View Drive  
City: Smithfield State: PA Zip Code: 15478  
County: Greene Township(s): Dunkard  
Receiving Stream(s) and Classifications: UNT to Meadow  
Run/Dunkard Creek, Other

*Northwest Region: Oil and Gas Program Manager, 230  
Chestnut St., Meadville, PA 16335*

ESCGP-1 #ESX11-019-0089 Alwine Unit No. 2H

Applicant XTO Energy  
Contact Melissa Breitenbach  
Address 502 Keystone Drive  
City Warrendale State PA Zip Code 15086  
County Butler Township(s) Jefferson(s)  
Receiving Stream(s) and Classification(s) UNT of Thorn  
Creek—CWF

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## SPECIAL NOTICES

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### Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of September, 2011 Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act, act of July 9, 1987, P. L. 238, No. 43 (63 P. S. Sections 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed below to perform radon-related activities in Pennsylvania. The period of certification is two years. (For a complete list of persons currently certified to perform radon-related activities in Pennsylvania and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (1-800-23RADON).

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Accredited Radon Mitigation	130 W. Main Street Suite 144-186 Collegeville, PA 19426	Mitigation
Justin Ake	2309 13th Street Altoona, PA 16601	Testing
Dr. Joseph Baicker	403 Skillman Road Skillman, NJ 08558	Laboratory Analysis
George Basista	7501 E. Parkside Drive Boardman, OH 44512	Testing
Bill Brodhead WPB Enterprises	2844 Slifer Valley Road Riegelsville, PA 18077	Mitigation
John Denison	P. O. Box 4 Crescent, PA 15046	Testing
David Gunselman	4 Theresa Drive Conestoga, PA 17516	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Travis Hammond	84 Becker Hill Road Williamsport, PA 17701	Testing
Fred Hohman	26 Windhill Drive Greensburg, PA 15601	Testing
Rick Hynes	1037 Carnes School Road Seneca, PA 16346	Testing
Darryl Jamison	125 N. 42nd Street Erie, PA 16504	Testing
Robert Johnson	340 Freed Road Harleysville, PA 19438	Testing
David Kapturowski AccuStar Labs	11 Awl Street Medford, MA 02053	Laboratory Analysis
Matthew Kennedy	3920 Market Street Camp Hill, PA 17011	Testing
Fred Klein	702 Manchester Drive Maple Glen, PA 19002	Testing
Thomas Murray	24 S. Pearl Street North East, PA 16428	Testing
Wayne Murray	63 Bethesda Church Road East Holtwood, PA 17532	Testing
Timothy Musser	213 N. 14th Street Allentown, PA 18102	Mitigation
Prosser Laboratories, Inc.	P. O. Box 118 Effort, PA 18330	Laboratory Analysis
Jerry Reed	456 Avoy Road Lake Ariel, PA 18436	Testing
Brian Reuss Radon Control Services, LLC	200 Ravencroft Court Cranberry Township, PA 16066	Mitigation
Joik Ro	30 Sunset Drive Carlisle, PA 17013	Testing
David Scott	417 Pikeland Avenue Spring City, PA 19475	Testing & Mitigation
Jacob Troost	P. O. Box 163 Brodheadsville, PA 18322	Testing

**Request for Comments on the Proposed Total Maximum Daily Loads (TMDLs) Developed  
for the Limestone Run Watershed in Northumberland County**

The Department of Environmental Protection will accept comments on the proposed TMDLs developed for the Limestone Run Watershed in Northumberland County. These TMDLs were established in accordance with the requirements of Section 303(d) of the Clean Water Act. The Pennsylvania Integrated Water Quality Monitoring and Assessment Report included impaired stream segments in this watershed. The listings of these waterbodies were due to use impairments caused by excessive siltation.

There currently are no state or federal instream numerical water quality criteria for siltation. Therefore, the Department utilized a reference watershed approach to implement the applicable narrative criteria. These proposed TMDLs set allowable loadings of sediment in the Limestone Run Watershed. The sediment loading was allocated among cropland, hay/pasture land, transitional land and streambank categories present in the watershed. Data used in establishing these TMDLs was generated using a water quality analysis model (AVGWLF) designed by the Pennsylvania State University.

The following table shows the estimated current sediment loading for the watershed. Overall load reductions necessary in order to meet the TMDLs are also identified.

*Summary of TMDL Based Load Reductions in the Limestone Run*

<i>POLLUTANT</i>	<i>EXISTING LOAD (lbs./yr.)</i>	<i>EXISTING LOAD (lbs./day)</i>	<i>TMDL (lbs./yr.)</i>	<i>TMDL (lbs./day)</i>	<i>PERCENT REDUCTION</i>
Sediment	3,352,600	9,185	2,632,702	7,213	21.5%

The data and all supporting documentation used to develop the proposed TMDLs are available from the Department. The proposed TMDLs and information on the TMDL program can be viewed on the Department's website ([www.dep.state.pa.us/watermanagement\\_apps/tmdl/](http://www.dep.state.pa.us/watermanagement_apps/tmdl/)). To request a copy of any of the proposed TMDLs contact:

Sean Kilmartin, Civil Engineer Hydraulic  
 Watershed Protection Division, Central Office  
 Pennsylvania Department of Environmental Protection  
 Rachel Carson State Office Building  
 Harrisburg, PA 17105  
 Phone: 717-772-3922, e-mail: sekilmarti@pa.gov

The Department will consider all comments in developing the final TMDLs, which will be submitted to EPA for approval. Written comments will be accepted at the above address and must be postmarked by 45 days after publication in the *PA Bulletin*. A public meeting to discuss the technical merits of the TMDLs will be held upon request.

[Pa.B. Doc. No. 11-1767. Filed for public inspection October 14, 2011, 9:00 a.m.]

### **Pennsylvania State Clean Diesel Grant Program; Opening of the Grant Application Acceptance Period**

The Department of Environmental Protection (Department) announces an opportunity to apply for \$561,946 that has been made available through the United States Environmental Protection Agency (EPA) and the Federal Diesel Emission Reduction Act (42 U.S.C.A. §§ 16131—16137). This funding is available through the Pennsylvania State Clean Diesel Grant Program for eligible diesel emission reduction projects that will improve air quality and protect public health and the environment in this Commonwealth by reducing emissions from diesel-powered vehicles.

The Department is seeking applications for projects that will replace, repower or retrofit fleet diesel-powered school or transit buses. Funding is available for public and private entities that operate diesel-powered fleets throughout this Commonwealth. These entities may include school districts, municipal authorities, political subdivisions, other State agencies, nonprofit entities, corporations, limited liability companies or partnerships incorporated or registered in this Commonwealth. Projects must use technologies certified or verified by the EPA or the California Air Resources Board to lower diesel emissions. The technology may be a single technology or a combination of available technologies. The majority of the fleet's annual operation time must occur within this Commonwealth.

The Department will not reimburse grant recipients for project costs incurred prior to the grant performance period set forth in the applicable grant agreement.

The application package including guidance, instructions and application forms is available by contacting Martin T. Felion, Department of Environmental Protection, Bureau of Air Quality, Air Resource Management Division, 12th Floor, 400 Market Street, Harrisburg, PA 17101, (717) 787-9702. The application package is also available electronically on the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords "Clean Diesel").

The Department will begin accepting applications on October 17, 2011. Applications must be postmarked or hand delivered by 4 p.m. on December 15, 2011. Faxes and electronic copies will not be accepted.

MICHAEL L. KRANCER,  
*Secretary*

[Pa.B. Doc. No. 11-1768. Filed for public inspection October 14, 2011, 9:00 a.m.]

## **DEPARTMENT OF HEALTH**

### **Health Policy Board Meeting**

The Health Policy Board is scheduled to hold a meeting on Wednesday, October 19, 2011, at 10 a.m. in Room 812, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120.

For additional information or for persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should contact Katrina Kyle, Bureau of Health Planning, Room 1033, Health and Welfare Building, Harrisburg, PA 17120, (717) 772-5298, or V/TT (717) 783-6514 for speech and/or hearing impaired persons, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

ELI N. AVILA, MD, JD, MPH, FCLM,  
*Secretary*

[Pa.B. Doc. No. 11-1769. Filed for public inspection October 14, 2011, 9:00 a.m.]

### **Long-Term Care Nursing Facilities; Requests for Exception**

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Conestoga View  
 900 East King Street  
 Lancaster, PA 17602  
 FAC ID 035302

Mon Valley Care Center  
 200 Stoops Drive  
 Monongahela, PA 15063

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.67(k) (relating to electric requirements for existing and new construction):

Beacon Ridge, A Choice Community  
 1515 Wayne Avenue  
 Indiana, PA 15701

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 211.9(g) (relating to pharmacy services):

John J Kane Regional Center—Glen Hazel  
 955 Rivermont Drive  
 Pittsburgh, PA 15207

John J Kane Regional Center—McKeesport  
 100 Ninth Street  
 Pittsburgh, PA 15132

John J Kane Regional Center—Ross Township  
110 McIntyre Road  
Pittsburgh, PA 15237

John J Kane Regional Center—Scott Township  
300 Kane Boulevard  
Pittsburgh, PA 15243

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 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 and address listed previously.

Comments received by the Department within 15 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 V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,  
*Secretary*

[Pa.B. Doc. No. 11-1770. Filed for public inspection October 14, 2011, 9:00 a.m.]

## DEPARTMENT OF LABOR AND INDUSTRY

### Current Prevailing Wage Act Debarments

The following contractors have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-1—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), these contractors, or either one of them, or any firms, corporations or partnerships in which either one of these contractors has an interest, shall be awarded no contract for 3 years after the date listed.

<i>Contractor</i>	<i>Address</i>	<i>Date of Debarment</i>
Sterling Construction Specialists, Inc. Samuel Landis, individually and Robert Steven Livesay, individually EIN (27-0193211)	20323 Valley Forge Circle King of Prussia, PA 19406	09/16/2011

JULIA K. HEARTHWAY,  
*Secretary*

[Pa.B. Doc. No. 11-1771. Filed for public inspection October 14, 2011, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Pharmacy Prior Authorization

The Department of Public Welfare (Department) announces it will add stimulants and related agents designated as preferred on the Department's Preferred Drug List when prescribed for recipients 18 years of age and older to the Medical Assistance (MA) Program's list of services and items requiring prior authorization.

Section 443.6(b)(7) of the Public Welfare Code (62 P. S. § 443.6(b)(7)) authorizes the Department to add items and services to the list of services requiring prior authorization by publication of notice in the *Pennsylvania Bulletin*.

The Department will phase-in implementation of prior authorization of preferred stimulants and related agents and will issue MA Bulletins to providers enrolled in the MA Program specifying each age group of recipients, the effective date of implementation and the procedures for obtaining prior authorization of prescriptions. The first phase of implementation will be for preferred stimulants and related agents dispensed on or after October 17, 2011, to recipients 18 years of age or older but under 27 years of age. The second phase of implementation will be for preferred stimulants and related agents dispensed on and after November 14, 2011, to recipients 27 years of age and older.

### *Fiscal Impact*

These changes are estimated to result in savings totaling \$0.399 million (\$0.181 million in State funds) in the MA Outpatient Program in Fiscal Year (FY) 2011-2012. Savings are estimated \$ 0.685 million (\$0.312 million in State funds) in FY 2012-2013.

### *Public Comment*

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revisions to these prior authorization requirements.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,  
*Secretary*

**Fiscal Note:** 14-NOT-722. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 11-1772. Filed for public inspection October 14, 2011, 9:00 a.m.]

### Pharmacy Prior Authorization

The Department of Public Welfare (Department) announces it will add Xyrem to the Medical Assistance (MA) Program's list of services and items requiring prior authorization.

Section 443.6(b)(7) of the Public Welfare Code (62 P. S. § 443.6(b)(7)) authorizes the Department to add items and services to the list of services requiring prior authorization by publication of notice in the *Pennsylvania Bulletin*.

The MA Program will require prior authorization of all prescriptions for Xyrem dispensed on or after October 17, 2011.

The Department will issue an MA Bulletin to providers enrolled in the MA Program specifying the procedures for obtaining prior authorization of prescriptions for the medication listed previously.

#### *Fiscal Impact*

These changes are estimated to result in savings totaling \$0.042 million (\$0.019 million in State funds) in the MA Outpatient Program in Fiscal Year (FY) 2011-2012. Savings are estimated \$0.073 million (\$0.033 million in State funds) in FY 2012-2013.

#### *Public Comment*

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revisions to these prior authorization requirements.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,  
*Secretary*

**Fiscal Note:** 14-NOT-723. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 11-1773. Filed for public inspection October 14, 2011, 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 June 1, 2011, the following access route for use by the types of truck combinations as indicated:

1. (x) 102" wide up to 53' long trailer.
2. ( ) 102" wide twin trailers (28-1/2 feet maximum length each)
3. ( ) 102" wide maxi-cube.

<i>Route Identification</i>	<i>Route Description</i>	<i>Length Miles</i>
SR 1030	From SR 1051 to SR 1045	1.5

Questions should be directed to Matt Hedge, (717) 772-5462.

BARRY J. SCHOCH, P.E.,  
*Secretary*

[Pa.B. Doc. No. 11-1774. Filed for public inspection October 14, 2011, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

### Meeting Cancellation

The October 18, 2011, meeting of the Environmental Quality Board (Board) is cancelled. The next regularly scheduled meeting of the Board is scheduled for Tuesday, November 15, 2011, at 9 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105. An agenda and meeting materials for the November 15, 2011, meeting will be available on the Department of Environmental Protection's web site at <http://www.depweb.state.pa.us> (Select "Public Participation"; "Public Participation Center").

Questions concerning the Board's next scheduled meeting may be directed to Michele Tate at (717) 783-8727 or [mtate@pa.gov](mailto:mtate@pa.gov).

MICHAEL L. KRANCER,  
*Chairperson*

[Pa.B. Doc. No. 11-1775. Filed for public inspection October 14, 2011, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### 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 a copy can be obtained from the web site, [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

*Final-Form*

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
15-449	Department of Revenue Return and Payment of Tax	10/04/11	11/17/11

SILVAN B. LUTKEWITTE, III,  
*Chairperson*

[Pa.B. Doc. No. 11-1776. Filed for public inspection October 14, 2011, 9:00 a.m.]

## INSURANCE DEPARTMENT

### AF&L Insurance Company; Rate Increase Filing for Home Health LTC Forms

AF&L Insurance Company is requesting approval to increase the premium an aggregate 5.6% on 961 policyholders with the following individual home health LTC policy form: HHC-4.

Unless formal administrative action is taken prior to December 28, 2011, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at [www.insurance.pa.gov](http://www.insurance.pa.gov). Under the tab "How to Find . . ." click on the link "Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@state.pa.us](mailto:jlaverty@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,  
*Insurance Commissioner*

[Pa.B. Doc. No. 11-1777. Filed for public inspection October 14, 2011, 9:00 a.m.]

### Application for Approval to Acquire Control of Manito Title Insurance Company

General Title Insurance Company has filed an application for approval to acquire control of Manito Title Insurance Company, a domestic title insurance company. The filing was made under Article XIV of The Insurance Company Law of 1921 (40 P. S. §§ 991.1401—991.1413).

Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or [cbybee@pa.gov](mailto:cbybee@pa.gov).

MICHAEL F. CONSEDINE,  
*Insurance Commissioner*

[Pa.B. Doc. No. 11-1778. Filed for public inspection October 14, 2011, 9:00 a.m.]

### Application for Approval to Acquire Control of Penn Millers Insurance Company and American Millers Insurance Company

ACE American Insurance Company has filed an application for approval to acquire control of Penn Millers Insurance Company, a domestic property insurance company, and American Millers Insurance Company, a domestic casualty insurance company. The filing was made under Article XIV of The Insurance Company Law of 1921 (40 P. S. §§ 991.1401—991.1413).

Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department (Department) within 21 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or [rbrackbill@pa.gov](mailto:rbrackbill@pa.gov).

MICHAEL F. CONSEDINE,  
*Insurance Commissioner*

[Pa.B. Doc. No. 11-1779. Filed for public inspection October 14, 2011, 9:00 a.m.]

### The Prudential Insurance Company of America; Rate Increase Filing for Several LTC Forms

The Prudential Insurance Company of America is requesting approval to increase the premium 19% on 3,544 policyholders with the following individual LTC forms: GRP 98720, GRP 98721, GRP 98722, GRP 112687 and GRP 112685.

Unless formal administrative action is taken prior to December 29, 2011, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at [www.insurance.pa.gov](http://www.insurance.pa.gov). Under the tab "How to Find . . ." click on the link "Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@state.pa.us](mailto:jlaverty@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,  
*Insurance Commissioner*

[Pa.B. Doc. No. 11-1780. Filed for public inspection October 14, 2011, 9:00 a.m.]

# LEGISLATIVE REFERENCE BUREAU

## Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of *Bulletin*). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no documents have been received. For questions concerning or copies of documents filed, but not published, call (717) 783-1530.

### *Executive Board*

Resolution No. CB-11-002, Dated August 19, 2011. Collective Bargaining—Authorizing the 2011-2014 PSCOA Corrections Officers/Forensic Security Employees (H1) Interest Arbitration Award.

### *Governor's Office*

Management Directive No. 315.9—Withholding of Delinquent Local Taxes from Employees' Paychecks, Amended August 30, 2011.

Management Directive No. 315.15—Withholding of Pennsylvania Higher Education Assistance Agency Loans from Employee Pay, Amended August 30, 2011.

Management Directive No. 580.13—Report of Personnel Transactions for Non-State Employees, Amended September 16, 2011.

Management Directive No. 580.18—Pennsylvania Residency Requirements for the Classified Service, Amended August 31, 2011.

Management Directive No. 580.35—Employees Placed in the Classified Service by Position Reallocation, Amended August 29, 2011.

Administrative Circular No. 11-13—Availability—2011 Commonwealth Telephone Directory, Dated September 21, 2011.

MARY JANE PHELPS,  
*Director*  
*Pennsylvania Code and Bulletin*

[Pa.B. Doc. No. 11-1781. Filed for public inspection October 14, 2011, 9:00 a.m.]

## MILK MARKETING BOARD

### Hearing and Presubmission Schedule for All Milk Marketing Areas; Official General Order A-875

Under the Milk Marketing Law (31 P.S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Areas 1—6 on February 8, 2012, at 11:30 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning whether to remove the service contract initial fee and renewal fee from Official General Order A-875.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 3 p.m. on January 6, 2012, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 3 p.m. on January 6, 2012, notification of their desire to be included as a party. Parties shall indicate in their notices of appearance if alternate means of service, that is, e-mail or fax, are acceptable. Notices of appearance filed electronically should be directed to [deberly@state.pa.us](mailto:deberly@state.pa.us).

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 additional copies made available for the use of non-parties attending the hearing.

1. By 3 p.m. on January 12, 2012, Board staff shall file with the Board, in person or by mail, one original and five copies and ensure receipt by all other parties of one copy of:

a. A list of witnesses who will testify for the petitioner, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise. For expert witnesses there shall also be filed a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 3 p.m. on January 26, 2012, each responding party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

3. By 3 p.m. on February 2, 2012, parties shall file and serve as set forth in paragraph 1 information concerning surrebuttal witnesses and copies of surrebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 12 p.m. on January 30, 2012.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

TIM MOYER,  
*Acting Secretary*

[Pa.B. Doc. No. 11-1782. Filed for public inspection October 14, 2011, 9:00 a.m.]

### Hearing and Presubmission Schedule for All Milk Marketing Areas; Over-Order Premium

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Areas 1—6 on November 9, 2011, at 10:30 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning the level and duration of the Class I over-order premium to be effective January 1, 2012.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 3 p.m. on October 19, 2011, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 3 p.m. on October 19, 2011, notification of their desire to be included as a party. Parties shall indicate in their notices of appearance if alternate means of service, that is, e-mail or fax, are acceptable. Notices of appearance filed electronically should be directed to [deberly@state.pa.us](mailto:deberly@state.pa.us).

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 additional copies made available for the use of nonparties attending the hearing.

1. By 3 p.m. on October 21, 2011, the petitioner shall file with the Board, in person or by mail, one original and five copies and ensure receipt by all other parties of one copy of:

a. A list of witnesses who will testify for the petitioner, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise. For expert witnesses there shall also be filed a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 3 p.m. on October 28, 2011, each responding party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

3. By 3 p.m. on November 4, 2011, parties shall file and serve as set forth in paragraph 1 information concerning surrebuttal witnesses and copies of surrebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents, or records in other proceedings before the Board, or wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 12 p.m. on October 31, 2011.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

TIM MOYER,  
*Acting Secretary*

[Pa.B. Doc. No. 11-1783. Filed for public inspection October 14, 2011, 9:00 a.m.]

## PATIENT SAFETY AUTHORITY

### Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.303), announces a meeting of the Authority's Board to be held at the Harrisburg Area Community College, One HACC Drive, Harrisburg, PA at 10 a.m. on Tuesday, October 25, 2011.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

MICHAEL C. DOERING,  
*Executive Director*

[Pa.B. Doc. No. 11-1784. Filed for public inspection October 14, 2011, 9:00 a.m.]

## SUSQUEHANNA RIVER BASIN COMMISSION

### Public Hearing and Meeting

As part of its regular business meeting held on September 15, 2011, in Milford, NY, the Susquehanna River Basin Commission (Commission) convened a public hearing, at which it took the following actions: 1) approved settlements involving two water resources projects; 2) approved or tabled the applications of certain water resources projects, including two involving diversions of water into the Susquehanna River Basin and one involving a diversion of water out of the Susquehanna River Basin; and 3) rescinded approval for one water resources project.

For further information contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, [rcairo@srbc.net](mailto:rcairo@srbc.net); or Stephanie L. Richardson, Secretary to the Commission, (717) 238-0423, Ext. 304, fax (717) 238-2436, [srichardson@srbc.net](mailto:srichardson@srbc.net); or regular mail inquiries may be sent to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391. See also Commission web site at [www.srbc.net](http://www.srbc.net).

#### *Supplementary Information*

In addition to the public hearing and its related actions on projects identified in the summary and the listings as



follows, the following items were also presented or acted on at the business meeting: 1) presentation of the Commission's Maurice K. Goddard Award for Excellence by a Water Management Professional to Dr. Willard Harman, Director of the SUNY Oneonta Biological Field Station in Cooperstown, NY; 2) a report on expansion of the Commission Remote Water Quality Monitoring Network in New York State; 3) a report on hydrologic conditions in the Susquehanna River Basin, including a review of the August-September 2011 flood events caused by Tropical Storms Irene and Lee; 4) extension of the comment period to November 10, 2011, for the proposed rules that appeared in 76 FR 41154—41157, July 13, 2011; 5) a preliminary introduction to dockets; 6) adoption of a Fiscal Year 2012 capital budget for the acquisition of a new headquarters building for the Commission, including authority to execute an agreement of sale and related documents; 7) adoption of a resolution recognizing the Commission on the occasion of its 50th Anniversary; and 8) ratification of grants/contracts. The Commission also heard counsel's report on legal matters affecting the Commission. The Commission convened a public hearing and took the following specific actions:

*Public Hearing—Compliance Matter*

The Commission approved settlements in lieu of civil penalties for the following projects:

1. Energy Corporation of America; Coldstream Affiliates No. 1MH and Whitetail No. 1-5MH; Goshen and Girard Townships, Clearfield County, PA.—\$17,500

2. Keister Miller Investments, LLC; West Branch Susquehanna River; Mahaffey Borough, Clearfield County, PA.—\$1,000

*Public Hearing—Rescission of Project Approval*

The Commission rescinded approval for the following project:

1. Project Sponsor and Facility: Lake Meade Municipal Authority (Docket No. 19911102), Reading Township, Adams County, PA.

*Public Hearing—Projects Approved*

The Commission approved the following projects not involving diversions:

1. Project Sponsor: Borough of Ephrata. Project Facility: Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, PA. Groundwater withdrawal of up to 1.210 mgd from Well 1.

2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, PA. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.440 mgd (Docket No. 20080906).

3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, PA. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.440 mgd (Docket No. 20090605).

4. Project Sponsor and Facility: EXCO Resources (PA), LLC (Pine Creek), Porter Township, Lycoming County, PA. Surface water withdrawal of up to 1.000 mgd.

5. Project Sponsor: Hazelton Creek Properties, LLC. Project Facility: Hazelton Mine Reclamation, Hazelton City, Luzerne County, PA. Modification to increase consumptive water use approval by 0.145 mgd, for a total of 0.200 mgd (Docket No. 20110307).

6. Project Sponsor and Facility: J-W Operating Company (Sterling Run), Lumber Township, Cameron County, PA. Modification to conditions of the surface water withdrawal approval (Docket No. 20090330).

7. Project Sponsor and Facility: M & P Energy Services Inc. (Susquehanna River), Briar Creek Borough, Columbia County, PA. Surface water withdrawal of up to 0.999 mgd.

8. Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, MD. Modification to conditions of the surface water withdrawal and consumptive water use approvals (Docket No. 20010801).

9. Project Sponsor: Milton Regional Sewer Authority. Project Facility: Wastewater Treatment Plant, Milton Borough and West Chillisquaque Township, Northumberland County, PA. Withdrawal of treated wastewater effluent of up to 0.100 mgd.

10. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (West Branch Susquehanna River), Pine Creek Township, Clinton County, PA. Surface water withdrawal of up to 0.400 mgd.

11. Project Sponsor and Facility: Seneca Resources Corporation (Marsh Creek), Delmar Township, Tioga County, PA. Surface water withdrawal of up to 0.499 mgd.

12. Project Sponsor and Facility: Southwestern Energy Production Company, Herrick Township, Bradford County, PA. Groundwater withdrawal of up to 0.101 mgd from the Fields Supply Well.

13. Project Sponsor and Facility: Susquehanna Gas Field Services, LLC (Meshoppen Creek), Meshoppen Borough, Wyoming County, PA. Modification to project features and conditions of the surface water withdrawal approval (Docket No. 20090628).

14. Project Sponsor: Susquehanna Gas Field Services, LLC. Project Facility: Meshoppen Pizza Well, Meshoppen Borough, Wyoming County, PA. Modification to project features and conditions of the groundwater withdrawal approval (Docket No. 20100612).

15. Project Sponsor and Facility: William C. Wingo (Wingo Ponds), Ulysses Township, Potter County, PA. Surface water withdrawal of up to 0.099 mgd.

16. Project Sponsor and Facility: XTO Energy, Inc. (West Branch Susquehanna River), Chapman Township, Clinton County, PA. Surface water withdrawal of up to 2.000 mgd.

*Public Hearing—Projects Approved Involving Diversions*

The Commission approved the following projects involving diversions:

1. Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, MD. Modification to conditions of the diversion approval (Docket No. 20010801).

2. Project Sponsor: SWEPI, LP. Project Facility: Pennsylvania American Water Company—Warren District, Warren City, Warren County, PA. Into-basin diversion of up to 3.000 mgd from the Ohio River Basin.

3. Project Sponsor: EQT Production Company. Project Facility: Frano Freshwater Impoundment, Washington Township, Jefferson County, PA. Into-basin diversion of up to 0.482 mgd from the Ohio River Basin.

*Public Hearing—Project Withdrawn*

The following project application was withdrawn by the project sponsor:

1. Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, PA. Application for groundwater withdrawal of up to 0.660 mgd from Well I-5 (McJunkin Well Field).

*Public Hearing—Projects Tabled*

The following projects were tabled by the Commission:

1. Project Sponsor: Anadarko E&P Company, LP. Project Facility: Sproul State Forest—Council Run, Snow Shoe Township, Centre County, PA. Application for groundwater withdrawal of up to 0.715 mgd from Well PW-11.

2. Project Sponsor and Facility: Stanley S. Karp, Sr. (Tunkhannock Creek), Nicholson Township, Wyoming County, PA. Application for surface water withdrawal of up to 0.510 mgd.

*Authority:* Pub. L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808.

Dated: September 28, 2011.

PAUL O. SWARTZ,  
*Executive Director*

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